

Allegra, Robert
0752 1:15CR00243-1

Monthly Income (Note G)

Net Income	Royal Palm Aviation	\$42,000.00
Net Income	Allegra's Energy	\$8,333.00
Total Monthly Income		\$50,333

Monthly Expenses

Business/Mortgage		\$1017.00
Home Mortgage		\$4,400.00
Groceries	Electric, Gas, and Water	\$2,000.00
Utilities		\$891.00
Telephone		\$300.00
Cable		\$286.00
Car Payments (3)		\$2,862.00
Commuting Expenses		\$450.00
Auto Insurance		\$550.00
Health Insurance		\$1,800.00
Homeowner/Rental		
Insurance		\$320.00
Clothing		\$850.00
Loan Payments		\$1,017.00
Property Tax		\$3,700.00

Total Monthly Expenses **\$20,443**

Total Monthly Cash Flow **\$29,890**

Note A: The defendant provided tax filings for several companies that he owns. These include D&B Investment Partnership; D & B Investment, Inc.; Allegra Inc.; Allegra Unlimited, Inc.; Allegra's Progressive Energy Group, Inc.; and, Royal Palm Aviation.

D&B Investment Partnership reported the following ordinary business income: (\$12,612) in 2014, and total assets valued at \$31,018.

D&B Investment Inc. reported business income of \$4 in 2014, and total assets valued at \$5,843; and, business income of \$755 in 2013, and assets valued at \$5,721.

Allegra Inc. reported business income of \$23,250 in 2014, and total assets valued at \$21,831.

Allegra Unlimited, Inc. (S Corporation) reported business income of (\$32,926) in 2014, and total assets valued at \$32,926; and, business income of (\$59,961) in 2013, and total assets valued at \$36,859.

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Allegra's Progressive Energy Group, Inc. (S Corporation) reported business income of \$9,558 in 2014, and total assets valued at (\$15,264); and, business income of (\$5,960) in 2013, and total assets valued at \$11,026.

Royal Palm Aviation (S Corporation) reported business income of \$415,795 in 2014, and total assets valued at \$657,319; and, business income of \$359,855 in 2013, and total assets valued at \$376,023.

Finally, the defendant indicated that he is "expected to receive" money from two different parties in 2018. In the first instance, the defendant is owed \$150,000 from people who either "borrowed or stole" from money from him. He reported that he believes this person or people were government informants in the instant offense. In the second instance, the defendant is owed \$108,000 by an individual to whom he planned to purchase a range rover. The defendant reported that he was buying and selling range rovers and the seller in this case took the money that the defendant sent and then told him that he would not give it back because the defendant was involved in illegal activity.

Note B: The defendant's spouse has \$15,410 in her personal account.

Note C: The defendant explained that Ralph Meczyk is the original attorney that he retained to defend him in the instant offense. The amount listed is the deposit the defendant gave Mr. Meczyk, whom he states has not returned this money.

Note D: The defendant's spouse's vehicle is in her name only and it is valued at \$35,000. Additionally, although the defendant's residential property is in his wife's name, he reported paying the monthly mortgage payment. The mortgage balance is \$922,120. The defendant reported that the fair market value is \$2,200,000.

Note E: The defendant reported that both of his life insurance policies are term policies and they have no cash surrender value.

Note F: The defendant has several credit cards; however, he has zero balances on these and they are paid in full each month.

Note G: The defendant's wife is employed but he did not provide any information regarding her income.

Analysis

67. Restitution is not an issue in this case. The defendant's net worth is estimated at just under one million dollars, and his cash flow is approximately \$29,890. Based on the above financial information, it appears that the defendant has the ability to make full payment toward a fine. Should he be incarcerated, the defendant could contribute toward a fine through the Inmate Financial Responsibility Program, as well as make installment payments, during a period of supervised release.

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PART D. SENTENCING OPTIONS

Custody

68. **Statutory Provisions:** The maximum term of imprisonment is 20 years. 21 U.S.C. §846 and 21 U.S.C. §841(b)(1)(C). However, the defendant appears to meet the criteria set forth in 18 U.S.C. §3553(f)(1)-(5); therefore, the Court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence.
69. **Guideline Provisions:** Based upon a total offense level of 29 and a criminal history category of I, the guideline imprisonment range is 87 months to 108 months.

Impact of Plea Agreement

70. The defendant entered into a written plea agreement, a copy of which is attached. The undersigned officer's calculation of the defendant's total offense level does not comport with that in the plea agreement due to this officer's application of a two-level enhancement for the defendant's use of/piloting his plane during the commission of the instant offense. The criminal history category is identical to that set forth in the plea agreement.

Supervised Release

71. **Statutory Provisions:** The Court must impose a term of supervised release of at least three years on Count 1. 21 U.S.C. §. However, since the government agrees the defendant meets the criteria set forth in 18 U.S.C. §§ 3553(f)(1)-(5), the authorized term of supervised release is not more than three years. 18 U.S.C. § 3583(b)(2).
72. **Guideline Provisions:** The defendant meets the criteria set forth in USSG §5C1.2; therefore, the term of supervised release is 1 year to 3 years. USSG §5D1.2(a).

Supervised Release Conditions

The Probation Officer recommends those conditions identified by checkmarks below:

MANDATORY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. § 3583(d)

- ☒ (1) you shall not commit another Federal, State, or local crime.
- ☒ (2) you shall not unlawfully possess a controlled substance.
- ☐ (3) you shall attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, if an approved program is readily available within a 50-mile radius of your legal residence. [Use for a first conviction of a domestic violence crime, as defined in § 3561(b).]
- ☐ (4) you shall register and comply with all requirements of the Sex Offender Registration

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and Notification Act (42 U.S.C. § 16913).

- ☒ (5) you shall cooperate in the collection of a DNA sample if the collection of such a sample is required by law.
- ☒ (6) you shall refrain from any unlawful use of a controlled substance AND submit to one drug test within 15 days of release on supervised release and at least two periodic tests thereafter, up to 104 periodic tests for use of a controlled substance during each year of supervised release. [This mandatory condition may be ameliorated or suspended by the court for any defendant if reliable sentencing information indicates a low risk of future substance abuse by the defendant.]

DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. § 3563(b) AND 18 U.S.C. § 3583(d)

- ☒ (1) you shall provide financial support to any dependents if financially able.
- ☐ (2) you shall make restitution to a victim of the offense under § 3556 (but not subject to the limitation of § 3663(a) or § 3663A(c)(1)(A)).
- ☐ (3) you shall give to the victims of the offense notice pursuant to the provisions of § 3555, as follows: .
- ☐ (4) you shall seek, and work conscientiously at, lawful employment or pursue conscientiously a course of study or vocational training that will equip you for employment.
- ☐ (5) you shall refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances; (if checked yes, please indicate restriction(s) .
- ☒ (6) you shall refrain from knowingly meeting or communicating with any person whom you know to be engaged, or planning to be engaged, in criminal activity and from:
 - ☐ visiting the following type of places: .
 - ☐ knowingly meeting or communicating with the following persons: .
- ☐ (7) you shall refrain from ☐ any or ☐ excessive use of alcohol (defined as having a blood alcohol concentration greater than 0.08%); or ☐ .), or any use of a narcotic drug or other controlled substance, as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802), without a prescription by a licensed medical practitioner.
- ☒ (8) you shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
- ☐ (9) ☐ you shall participate, at the direction of a probation officer, in a substance abuse treatment program, which may include urine testing up to a maximum of 104 tests per year.
 - ☐ you shall participate, at the direction of a probation officer, in a mental health treatment program, which may include the use of prescription medications.
 - ☐ you shall participate, at the direction of a probation officer, in medical care; (if checked yes, please specify: .)
- ☐ (10) (intermittent confinement): you shall remain in the custody of the Bureau of Prisons

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during nights, weekends, or other intervals of time, totaling [no more than the lesser of one year or the term of imprisonment authorized for the offense], during the first year of the term of supervised release (provided, however, that a condition set forth in § 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with § 3583(e)(2) and only when facilities are available) for the following period .

- ☐ (11) (community confinement): you shall reside at, or participate in the program of a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of supervised release, for a period of months.
- ☐ (12) you shall work in community service for hours as directed by a probation officer.
- ☐ (13) you shall reside in the following place or area: , or refrain from residing in a specified place or area:
- ☒ (14) you shall remain within the jurisdiction where you are being supervised, unless granted permission to leave by the court or a probation officer.
- ☒ (15) you shall report to a probation officer as directed by the court or a probation officer.
- ☒ (16) ☒ you shall permit a probation officer to visit you ☒ at any reasonable time or ☒ as specified:
 - ☒ at home ☒ at work ☐ at school ☒ at a community service location
 - ☒ other reasonable location specified by a probation officer
- ☐ you shall permit confiscation of any contraband observed in plain view of the probation officer.
- ☒ (17) you shall notify a probation officer promptly, within 72 hours, of any change in residence, employer, or workplace and, absent constitutional or other legal privilege, answer inquiries by a probation officer.
- ☒ (18) you shall notify a probation officer promptly, within 72 hours, if arrested or questioned by a law enforcement officer.
- ☐ (19) (home confinement): you shall remain at your place of residence for a total of months during nonworking hours. [This condition may be imposed only as an alternative to incarceration.]
 - ☐ Compliance with this condition shall be monitored by telephonic or electronic signaling devices (the selection of which shall be determined by a probation officer). Electronic monitoring shall ordinarily be used in connection with home detention as it provides continuous monitoring of your whereabouts. Voice identification may be used in lieu of electronic monitoring to monitor home confinement and provides for random monitoring of your whereabouts. If the offender is unable to wear an electronic monitoring device due to health or medical reasons, it is recommended that home confinement with voice identification be ordered, which will provide for random checks on your whereabouts. Home detention with electronic monitoring or voice identification is not deemed appropriate and cannot be effectively administered in cases in which the offender has no bona fide residence, has a history of violent behavior, serious mental health problems, or substance abuse; has pending criminal

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charges elsewhere; requires frequent travel inside or outside the district; or is required to work more than 60 hours per week.

- ☐ You shall pay the cost of electronic monitoring or voice identification at the daily contractual rate, if you are financially able to do so.
- ☐ The Court waives the electronic/location monitoring component of this condition.
- ☐ (20) you shall comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by you for the support and maintenance of a child or of a child and the parent with whom the child is living.
- ☐ (21) (deportation): you shall be surrendered to a duly authorized official of the Homeland Security Department for a determination on the issue of deportability by the appropriate authority in accordance with the laws under the Immigration and Nationality Act and the established implementing regulations. If ordered deported, you shall not reenter the United States without obtaining, in advance, the express written consent of the Attorney General or the Secretary of the Department of Homeland Security.
- ☒ (22) you shall satisfy such other special conditions as ordered below.
- ☐ (23) (if required to register under the Sex Offender Registration and Notification Act) you shall submit at any time, with or without a warrant, to a search of your person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, by any law enforcement or probation officer having reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by you, and by any probation officer in the lawful discharge of the officer's supervision functions (see special conditions section).
- ☐ (24) Other:

SPECIAL CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. 3563(b)(22) and 3583(d)

- ☐ (1) if you have not obtained a high school diploma or equivalent, you shall participate in a General Educational Development (GED) preparation course and seek to obtain a GED within the first year of supervision.
- ☐ (2) you shall participate in an approved job skill-training program at the direction of a probation officer within the first 60 days of placement on supervision.
- ☒ (3) you shall, if unemployed after the first 60 days of supervision, or if unemployed for 60 days after termination or lay-off from employment, perform at least 20 hours of community service per week at the direction of the U.S. Probation Office until gainfully employed. The amount of community service shall not exceed hours.
- ☐ (4) you shall not maintain employment where you have access to other individual's personal information, including, but not limited to, Social Security numbers and credit card numbers (or money) unless approved by a probation officer.

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- ☒ (5) you shall not incur new credit charges or open additional lines of credit without the approval of a probation officer unless you are in compliance with the financial obligations imposed by this judgment.
- ☒ (6) you shall provide a probation officer with access to any requested financial information necessary to monitor compliance with conditions of supervised release.
- ☒ (7) you shall notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.
- ☐ (8) you shall provide documentation to the IRS and pay taxes as required by law.
- ☐ (9) you shall participate in a sex offender treatment program. The specific program and provider will be determined by a probation officer. You shall comply with all recommended treatment which may include psychological and physiological testing. You shall maintain use of all prescribed medications.
 - ☐ You shall comply with the requirements of the Computer and Internet Monitoring Program as administered by the United States Probation Office. You shall consent to the installation of computer monitoring software on all identified computers to which you have access. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, Internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. You shall not remove, tamper with, reverse engineer, or in any way circumvent the software.
 - ☐ The cost of the monitoring shall be paid by you at the monthly contractual rate, if you are financially able, subject to satisfaction of other financial obligations imposed by this judgment.
- ☐ You shall not possess or use any device with access to any online computer service at any location (including place of employment) without the prior approval of a probation officer. This includes any Internet service provider, bulletin board system, or any other public or private network or email system.
- ☐ You shall not possess any device that could be used for covert photography without the prior approval of a probation officer.
- ☐ You shall not view or possess child pornography. If the treatment provider determines that exposure to other sexually stimulating material may be detrimental to the treatment process, or that additional conditions are likely to assist the treatment process, such proposed conditions shall be promptly presented to the court, for a determination, pursuant to **18 U.S.C. § 3583(e)(2)**, regarding whether to enlarge or otherwise modify the conditions of supervision to include conditions consistent with the recommendations of the treatment provider.
- ☐ You shall not, without the approval of a probation officer and treatment provider, engage in activities that will put you in unsupervised private contact

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with any person under the age of 18, or visit locations where children regularly congregate (e.g., locations specified in the Sex Offender Registration and Notification Act.)

- ☐ This condition does not apply to your family members: [Names]
- ☐ Your employment shall be restricted to the district and division where you reside or are supervised, unless approval is granted by a probation officer. Prior to accepting any form of employment, you shall seek the approval of a probation officer, in order to allow the probation officer the opportunity to assess the level of risk to the community you will pose if employed in a particular capacity. You shall not participate in any volunteer activity that may cause you to come into direct contact with children except under circumstances approved in advance by a probation officer and treatment provider.
- ☐ You shall provide the probation officer with copies of your telephone bills, all credit card statements/receipts, and any other financial information requested.
- ☐ You shall comply with all state and local laws pertaining to convicted sex offenders, including such laws that impose restrictions beyond those set forth in this order.
- ☒ (10) you shall pay any financial penalty that is imposed by this judgment that remains unpaid at the commencement of the term of supervised release. Your monthly payment schedule shall be an amount that is at least \$ or % of your net monthly income, defined as income net of reasonable expenses for basic necessities such as food, shelter, utilities, insurance, and employment-related expenses.
- ☒ (11) you shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court.
- ☐ (12) you shall repay the United States "buy money" in the amount of \$ which you received during the commission of this offense. Payments should be made to .
- ☐ (13) if the probation officer determines that you pose a risk to another person (including an organization or members of the community), the probation officer may require you to tell the person about the risk, and you must comply with that instruction. Such notification could include advising the person about your record of arrests and convictions and substance use. The probation officer may contact the person and confirm that you have told the person about the risk.
- ☐ (14) Other:

The probation officer recommends the conditions checkmarked above, in order to comply with the statutes, the statutory factors of a) affording adequate deterrence to criminal conduct, b) protecting the public from further crimes of the defendant, and c) providing the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner, and the probation officer's statutory duty to keep informed concerning the defendant's conduct, condition, and compliance. Furthermore, these conditions enhance both officer and defendant safety, while permitting the probation officer to target interventions and factors that are proven to reduce the defendant's risk of re-offending, a goal for during and after

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court supervision. Lastly, the recommended conditions assist the defendant to be engaged in responsible fiscal behavior, while complying with the need to repay victims.

Probation

73. **Statutory Provisions:** The defendant is ineligible for probation because it is expressly precluded by statute. 18 U.S.C. § 3561(a)(2).
74. **Guideline Provisions:** The defendant is ineligible for probation because probation has been expressly precluded by statute. USSG §5B1.1(b)(2).

Fines

75. **Statutory Provisions:** The maximum fine is \$1,000,000. 21 U.S.C. § 841(b)(1)(C).
76. A special assessment of \$100 is mandatory. 18 U.S.C. § 3013.
77. **Guideline Provisions:** The fine range for this offense is \$15,000 to \$1,000,000. If the defendant is convicted under a statute authorizing (A) a maximum fine greater than \$250,000, or (B) a fine for each day of violation, the Court may impose a fine up to the maximum authorized by the statute. USSG §§5E1.2(c)(4) and 5E1.2(h)(1).
78. In determining whether to impose a fine and the amount of such fine, the Court shall consider, among other factors, the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed. USSG §5E1.2(d)(7) and 18 U.S.C. §3572(a)(6). These costs may include drug and alcohol treatment, electronic monitoring, and/or contract confinement costs. The most recent advisory from the Administrative Office of the United States Courts, dated June 16, 2015, provides the following monthly cost data:

	<u>Bureau of Prisons Facilities</u>	<u>Community Correction Centers</u>	<u>Supervision by Probation Officer</u>
Daily	\$84.00	\$79.00	\$11.00
Monthly	\$2,552.00	\$2,417.00	\$326.00
Annually	\$30,621.00	\$28,999.00	\$3,909.00

Restitution

79. **Statutory Provisions:** Restitution is not applicable in this case. 18 U.S.C. § 3663.
80. **Guideline Provisions:** Restitution is not applicable in this case.

Denial of Federal Benefits

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81. **Statutory Provisions:** At the discretion of the Court, the defendant, having been convicted of a first drug distribution offense, shall be ineligible for any or all federal benefits for up to five years after such conviction. 21 U.S.C. § 862(a)(1)(A).
82. **Guideline Provisions:** The Court, pursuant to 21 U.S.C. § 862, may deny the eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance. USSG §5F1.6.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

83. The probation officer has not identified any factors that would warrant a departure from the applicable sentencing guideline range.

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**PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE
ADVISORY GUIDELINE SYSTEM**

84. Factors to be considered by the Court, pursuant to 18 U.S.C. §3553(a), include the nature and circumstances of the offense, the history and characteristics of the defendant and the need for the sentence imposed to reflect the seriousness of the offense and provide adequate deterrence.

Respectfully Submitted,
Jeanne G. Walsh
Chief U.S. Probation Officer

Laura O'Connor

By: Laura O'Connor
Probation Officer

Approved:

E. J. Tolle

E.J. Tolle
Supervisory Probation Officer

LO: lo

Attachments: Government's Version of the Offense
(Including Victim Impact Statement)
Plea Agreement

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 15 CR 243
vs.)	
)	Hon. Elaine E. Bucklo,
ROBERT ALLEGRA,)	Presiding Judge
)	
Defendant.)	

**DEFENDANT'S OBJECTIONS TO THE PRESENTENCE INVESTIGATION
REPORT AND SENTENCING POSITION PAPER**

Now comes the defendant, Robert Allegra, by and through his undersigned attorneys, and respectfully requests that this Honorable Court, in light of *Gall v. United States*, 552 U.S. 38 (2007) and the factors set forth in 18 U.S.C. § 3553(a), sentence him to a period of probation, community or home confinement, monetary penalty, or any combination thereof. In support, the following is offered:

Introduction

If there was ever a crime that was in complete odds with the life and characteristics of an individual, this is it. There is no clear-cut explanation for Allegra's actions. The reality is that the current situation is only attributable to a lapse in judgment. Since being apprehended by federal agents over a year-and-a-half ago, Allegra's life has been consumed with anxiety, humiliation, and anguish as he has waited for his time before this Honorable Court for judgment. Now, Allegra comes before this Court extraordinarily humbled and contrite. He is deeply

ashamed and angered with himself; that he behaved in such a manner that was so inconsistent with the value that were instilled in him at a young age by his parents and that he subsequently passed on to his son. With exception to certain decisions Allegra has made, he has lived a life during which he was committed to helping his family, friends, and others in need, illustrating his genuine sense of compassion and generosity.

Allegra's plea for probation, both through this submission and his conversations with his probation officer, are not evidence of his lack of acceptance or remorse. Rather, it is quite the opposite. It is the last-ditch effort of a man in a desperate attempt to salvage a life that was once dedicated to career advancement, and is now fully dedicated to an 8-year-old son who deserves the opportunity to spend time with his older-than-usual father. At his age, Allegra's greatest fear is that his diminishing health will catch up with him during incarceration and that he will never have the opportunity to see his son again. To him, the idea of losing even one day with his son is the worst punishment he could face.

There is no denying the seriousness of Allegra's transgressions, and he does not intend on doing so – he was clearly wrong. Instead, he offers himself to the mercy of this Court, to take into consideration not only those actions that brought him before this Court, but to take into consideration the full value of a man's life that was more often than not guided by principles of generosity and benevolence, when fashioning its sentence. Ultimately, a sentence of probation, community or home confinement, a monetary penalty, or a combination thereof will take into

account the relevant considerations set forth below and result in a punishment that is appropriate, reasonable, and sufficient, but not greater than necessary, to comply with all of the purposes of sentencing.

I. Objections to the Presentence Investigation Report

The PSR improperly applies a two-level enhancement for the unlawful importation and exportation of a controlled substance in calculating Allegra’s advisory sentencing guidelines¹. §2D1.1(b)(3). Specifically, the PSR contends that Allegra committed an offense “in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export a controlled substance or (C) the defendant acted as a pilot aboard any craft or vessel carrying a controlled substance[.]” PSR, at ¶ 17. This enhancement, contemplates Allegra’s intention to pilot the agreed-upon control substance from Van Nuys, California to Aurora, Illinois. While there is no disputing these facts, they are at odds with the application of the aforesaid guideline.

Allegra’s attempt in flying an aircraft other than a regularly scheduled commercial air carrier to transport the purported controlled substance is not enough to trigger an enhancement under §2D1.1(b)(3). The entire enhancement – whether contemplating use of a specific aircraft or acting as a pilot – hinges on whether Allegra “unlawfully *imported or exported* a controlled substance[.]” (emphasis provided). *Id.* To meet the standard of importation or exportation, the controlled substances would must have either been flown into or out of the country.

¹ Defense counsel has spoken with the Assistant U.S. Attorney and Probation Officer and both agree that this enhancement is inapplicable. Defense counsel is including this section of the submission out of an abundance of cause

See “import” and “export.” Merriam-Webster.com. 2016. <http://www.merriam-webster.com> (22 Nov. 2016). While the commentary to this section does not provide any guidance, the plain language of § 2D1.1(b)(3) should be given effect. See *United States v. Joelson*, 7 f.3d 174, 180 (9th Cir. 1993).

Here, there is no evidence, or even suggestion, that any part of Allegra’s intended conduct included the importation or exportation of a controlled substance. The entirety of the offense was based around the confidential information’s (CI) use of Allegra in flying a purported controlled substance from California to Illinois – all within the same country. Even though Allegra intended on piloting an aircraft other than a regularly scheduled commercial air carrier, it is of no consequence. As such, Allegra’s intended acts do not amount to conduct that would prompt this enhancement and necessitate a two-level enhancement.

II. Sentencing Considerations Pursuant to 18 U.S.C. § 3553(a) Supporting a Sentence of Probation

This Court maintains unfettered discretion to fashion a sentence that punishes the offender, as opposed to just the crime. *Pepper v. United States*, 131 S.Ct. 1229, 1240 (2011); *United States v. Ramirez-Mendoza*, 683 F.3d 771, 777 (7th Cir. 2012). After first calculating the applicable sentencing range, district courts are then tasked with imposing a sentencing that is reasonable under § 3553(a). However, because sentencing guideline ranges are not to be presumed reasonable, this Court must consider whether they actual conform to the circumstances of the case. *Nelson*, 555 U.S. 350 (*per curiam*); *United States v. Dean*, 414 F.3d 725, 730-31 (7th Cir. 2005). So long as the selected sentence is “rooted in § 3553(a),

sufficiently individualized to the circumstances of [the] case, and generally associated with sentencing leniency[,]” a below guidelines sentence is appropriate. *United States v. Wachowiak*, 496 F.3d 744, 745 (7th Cir. 2007).

In fashioning his sentencing, Allegra respectfully asks this Court to consider his personal history and characteristics, acceptance of responsibility, his age and physical health, ruined reputation, and the collateral consequences he faces as a result of this lapse in judgment.

a. Advisory Guideline Range

A sentencing court’s inquiry begins by calculating the defendant’s advisory Guideline range. *United States v. Schroeder*, 536 F.3d 746, 755 (7th Cir. 2008). Allegra agrees with the advisory guideline range agreed upon with the government in the written plea agreement and in the government’s version of events. However, his advisory guideline ranges differs from the PSR’s. With the above-described positions in mind, Allegra calculates his advisory Sentencing Guidelines as follows:

Base Offense Level (§ 2D1.1(a)(5) and (c)(4)):	32
Specific Offense Characteristic (§§2D1.1(b)(17) and 2C1.2(a))	- 2
<u>Acceptance of Responsibility (§3E1.1)</u>	<u>- 3</u>
Total	27

Coupling the resulting anticipated offense level of 19 with a criminal history category of I, Allegra’s advisory sentencing range is 70 to 87 months imprisonment.

However, not all sentences within the guideline range are reasonable. *See*

United States v. Cunningham, 429 F.3d 673, 676 (7th Cir. 2005) (“[T]he sentencing judge may not rest on the guidelines alone, but must, if asked by either party, consider whether the guidelines sentence actually conforms, in the circumstances, to the statutory factors . . . He cannot treat all sentences that would fall within the guidelines sentencing range as reasonable per se.”). Allegra respectfully asks this Court to use its discretion, in accordance with the § 3553(a) factors and *Gall*, to depart from this advisory guideline range, and to sentence him to a period of probation, community or home confinement, monetary penalty, or a combination thereof.

b. Nature and Circumstances of the Offense

The instant matter arises out of a covert operation in which government agents, along with a CI, recruited Allegra to help transport a controlled substance from Van Nuys, California to Aurora, Illinois. The plan was for Allegra to fly to California, pick up a controlled substance, and transport it back to Illinois. That was the extent of his involvement. Allegra was not tasked with obtaining the controlled substance, he had no financial investment in the controlled substance, and he most certainly had absolutely no involvement in the distribution of the controlled substance. While it is not Allegra’s intention to minimize the culpability of his conduct, there are circumstances surrounding this offense, which would provide a clearer prospective as to his role in this matter.

The government came to know of Allegra in 2013 when, as part of a long-term investigation into a Mexican drug cartel, they arrested Alfredo Aurelia and CI.

Both individuals were looking at substation time of incarceration as a result of their involvement in trafficking significant amounts of heroin and cocaine. These individuals not only imported narcotics and distributed them across the United States, but they were part of a cartel that promoted its power through the use of violence and intimidation. Instead of taking responsibility for their actions, the two individuals agreed to cooperate with the government and participated in lengthy proffer and grand jury sessions during which they incriminated as many people as possible – both with truthful recollection and self-serving exaggeration – in an effort to curry favor with the government and obtain leniency. Now, although Aurelio has been charged and is awaiting sentencing (with the anticipated assistance of government leniency), the CI has yet to be charged with any offense.

Allegra was identified to the government as an individual who, during a short span in 2013, flew money from Chicago to McClellan, Texas on several occasions. It was also alleged that Allegra flew to Mexico on a single occasion to meet with alleged high-ranking cartel member. Although the trip certainly occurred, the original intention of the trip was to sell an airplane to a prospective buyer. When the conversation turned from plane sales to drug trafficking, Allegra backed out. The government is aware of this and do not assert that Allegra had any more involvement than that. *See* Post-Arrest Interview Transcript² (“Tr.”) at 26-27. The truth is that Allegra has never once transported any controlled substance – a contention with which investigating federal agents concur. *See Id.* at 14.

² Post-Arrest Interview Transcript was previously provided to this Honorable Court in connection with Allegra’s Motion to Suppress Statement.

Allegra's string of bad decisions came at a tumultuous time in his life.³ As with many people, the 2009 recession had a deep financial impact on Allegra and his wife. The recession coincided with a failed pregnancy, several years of in vitro fertilization attempts, the loss of Allegra's Florida-based aviation business, millions of dollars worth of losses in real estate investments, the inflammation of his wife's severed medical problems. The next several years entailed Allegra relocating back to the Chicagoland area in an effort to salvage the life to which his family had become accustomed. This became that much more important as Allegra and his wife were now raising a newborn son that was, quite literally, the product of blood, sweat, and tears. *See infra*. While Allegra was able to upstart his business and find other, legitimate moneymaking ventures, his wife was not so fortunate. A woman who was once a well-respected and successful commodities broker, Allegra's wife now found herself on a downward career trajectory. For four years, beginning in 2011, she not only failed to make a living, she suffered upwards of six-figure losses in each of the years leading up to 2014. Towards the end of 2014 and through the beginning of 2015, Allegra found himself in constant domestic turmoil, in part fueled by financial uncertainties and a newly-depressed wife, in part because of her inability to contribute financially to a growing family as she had because accustomed to. In turn, the combining effects of a continuously seeing his wife in a hospital, *see infra*, the loss of a significant portion of the families income, and the stresses of raising a newly-born son, Allegra felt lost, vulnerable, and, most frighteningly, desperate.

³ *See infra*, "Allegra's Personal History and Characteristics"

There is an undeniable distinction between Allegra and many of the defendants that come before this Honorable Court on charges of attempted possession with intent to distribute a controlled substance. Allegra has no discernable connections with a cartel or drug-trafficking ring; he has never transported a controlled substance. *See supra*. He is not a violent man. *See* Tr. at 42. He has absolutely no history of drug abuse. This begs the questions as to why the government would expend so much time and resources into an undercover operation that spanned over a year, on a man that – objectively – is a small prong, if any, in the government’s drug trafficking agenda.

After Allegra’s arrest, much was made out of the people that he knew and the circles in which he ran. Almost instantly, during Allegra’s post-arrest interview, agents informed him that they wanted his cooperation because he had his “fingers in a lot of different pots.” Tr. at 14. The agents were certain that Allegra knew a lot of people and had “a lot of information [they] can use.” *Id.* at 20. As this Court previously noted, the agents’ treatment of Allegra during this post-arrest interview was nothing short of “coercive.” *See* Dkt. # 43 at 17. When Allegra asked whether the government purpose was to make him an “informant,” both interviewing agents simultaneously and unequivocally answered “yes.” Tr. at 31.

Upon Allegra’s initial agreement to cooperate with authorities, the agents did what they would never do with an individual they believed posed to threat to society or re-offending: they let him go. Allegra was allowed to leave – uncharged – and fly back on his plane across the country to continue on with the normal dealing of his

every day life. And when Allegra refused to cooperate, and in turn was charged by way of indictment, the government had no objection to allowing him to continuing flying with his travel being restricted only to the continental United States.

Ultimately, Allegra has lived the past year-and-a-half under indictment the same way he lived his life prior to his lapses in judgment: uninvolved in drug trafficking.

c. Allegra's Personal History and Characteristics

It is truly rare to come across an individual that exhibits the sort of virtues that are harbored by Allegra. No matter the circumstances or the length of Allegra's relationship with an individual, there is no disparity between the level of care, loyalty, or generosity they experience. As perfectly put by Allegra's best friend, his "moral fibers and character are beyond questions."⁴ Because of this, Allegra's conduct that brought him before this Honorable Court has left those around him dumbfounded. Allegra has spent his life being working hard, caring for those closest to him, and always thinking about those in need. He is the type of person that friends and family "can trust and [] count on" in any situation.⁵ It is no surprise that the words loving, generous, thoughtful, honest, and trustworthy pour from the letters submitted on his behalf, shedding light on Allegra's genuine value. Simply put, Allegra "is a good man."⁶

Allegra was born in 1954 as one of two children to Frank and Irene, a car salesman and an interior designer (later a homemaker), respectively, in a working class neighborhood near Chicago. Allegra learned the value of hard work from an

⁴ Mark Sivek letter, pg. 1.

⁵ Id.

⁶ Rev. Richard A. Marks, PhD letter, pg. 2

early age. While other kids went home after school or participated in extracurricular activities, Allegra was picked up by his mother and taken to his father's dealership. There, he worked alongside his uncle and cousins where he learned the art of sales. This skill proved to be both invaluable in his future business ventures and detrimental, as evidenced by out-of-context allegations attributed to Allegra – through the FBI agents –in the PSR.

Allegra has always had an extremely close relationship with his parents. When Allegra went away to college, he continued his love for working with his father and would commute back home every weekend in order to do so. Strained by the long commute, after his first year, Allegra transferred schools to be closer to work and family. When Allegra's father died in 1979 after a long battle with cancer, he was devastated. He was devastated that he lost his best friend and he was devastated that his mother was now left alone. From that day forth, he "devoted his life to taking care of his mother."⁷ Now at 92 years of age, Allegra's mother still talks to her son every single day and is frequently assisted with obtaining medication and other every day activities.

In 1972, Allegra took a long time fascination with flying airplanes and turned it into a reality. Since then, Allegra has attended over thirty aviation schools and is a pilot licensed to fly several different categories of air carriers. For each of the air carriers he is licensed to fly, Allegra acts as a flight instructor, passing on his love of flying to other interested individuals. What started off as a hobby has now become Allegra's livelihood. For over 35 years, people from all walks of life including

⁷ Cynthia Lazarus letter

celebrities, businessmen, and politicians have hired Allegra as a pilot. What is more, but Allegra has been able to harness the skills he learned working alongside his father and started a business where Allegra buys and sells airplanes across the country.

Allegra has earned himself the utmost respect as a businessman. His success is directly attributed to the “kind and friendly”⁸ demeanor he exhibits throughout all of his business dealing. He is “professional and honest in his business transactions”⁹ which makes working with him both easy and enjoyable. Because Allegra demonstrates “good business skills” and “treat[s] those around him with respect,” he has been able to develop a business through all of the personal and financial hardships he has had to endure. As observed by his tax attorney and accountant (turned close personal friend), Allegra is “both a very creative and hard working small business owner” who has “finally reached the point where he could start to reap the rewards from the building of this business.”¹⁰

As with his business dealing during which Allegra “would bend over backwards to accommodate others,”¹¹ he did so with any other person he saw was in need of help. When it comes to helping others, Allegra is “generous with his time, he is generous with his money, and he is generous with his love.”¹² In fact, there has “never been a person who needed help be it financially or even just support from

⁸ Conrad Martinez letter

⁹ John R. Calfa letter, pg. 1

¹⁰ Richard K. Morley letter

¹¹ Rv. Richard A. Marks, PhD, letter pg. 2

¹² Lisa Allegra letter, pg. 2

a phone call that [Allegra] turned down.”¹³ He does not “have to work at being caring and generous, it is his nature, and he does it unconditionally with no expectations.”¹⁴ Whether he is helping his unemployed sister, spending the night at a hospital with a colleague,¹⁵ or mentoring a close friends son,¹⁶ Allegra always shows “true concern and offer[s] to help in any way.”¹⁷

From a very early age, Allegra invested his life in finding ways to contribute to his community and making it a better place. This inherent need to help others began when as a fifteen-year-old sophomore in high school when Allegra was assigned as a Physical Education Student Leader to a Rehab Adapted Physical Education class.¹⁸ There, he assisted in implementing individualized rehabilitation programs for physically handicapped, Down syndrome, emotionally disturbed, and special needs students.¹⁹ Since then he has consistently contributed time and money with local communities and charities, “expect[ing] nothing in return.”²⁰ See Exhibit A²¹. Throughout the years, Allegra has given jobs to those in need, donated money to various causes that are dear to him and others, and has spent “thousand of hours” working for and raising money for various charities.²² Truly, Allegra was always motivated by genuine benevolence, never by ulterior aims. See *United States v. Warner*, 792 F.3d 847, 857-58 (7th Cir. 2015) (“a defendant’s good works

¹³ Id.

¹⁴ Id.

¹⁵ Conrad Martinez letter,

¹⁶ Bernie Klotz letter, pg. 1

¹⁷ Id.

¹⁸ Earl F. O’Malley letter

¹⁹ Id.

²⁰ Cynthia Lazarus

²¹ Allegra did not keep records of charitable donations and contributions prior to this indictment.

²² Lisa Allegra letter, pg. 2

must be sufficient to justify the variant sentence, but they need not necessarily be exceptional.”). With him, the “community is a better place.”²³

In 2004, Allegra met his wife, Lisa. They were introduced by a common friend, and from the beginning were completely inseparable. Because of the lasting image his parents’ relationship left in his mind, Allegra had always waited to get married until he found the perfect woman.²⁴ He wanted someone that he could “admire, respect, and love.”²⁵ From the get-go, Lisa was that person. Within two years, Lisa was pregnant and they were set to get married. Unfortunately, one month before the wedding, Lisa had a miscarriage. Allegra, however, would not let this get in the way of the family he always envisioned.

Over the next several years, Allegra and Lisa tried everything they could to have a child. The physical and emotional scars from this experience are still ever-present and have taken a toll on both Allegra and Lisa. At the time, they were ready to give up as many doctors told them that having a child was not a viable option. Then, a miracle happened: Lisa became pregnant with their soon-to-be son, Alessandro (Alec). This new journey as a family would not be an easy one, *see infra*, but Allegra was overjoyed.

The character letters submitted on Allegra’s behalf come from individuals who he has met at different points in his life, in different circumstances, and each having a unique perspective of Allegra based on their experiences with them. But there is one commonality that is present in every letter: Allegra’s love for his son.

²³ Matt Riordan letter

²⁴ Earl F. O’Malley letter

²⁵ Id.

This is no accident or coincidence. It is impossible to have a meeting, a meal, or a car ride with Allegra without him speaking ever so highly of his son, showing pictures of their latest adventure, and speaking to him at least once on the phone. Alec truly is Allegra's world. To Allegra, nothing even comes close. There are simply not enough words to describe the look in Allegra's eyes when the topic of conversation is his son. Their bond is "truly special."²⁶ This submission could never do enough justice to this father-son relationship.

The relationships Allegra has with his mother, his wife, and most importantly, his son, show a side of Allegra that cannot be feigned or replicated. With his mother, Allegra assumed the role of husband and son when his father passed away. With his wife, Allegra has been a pillar of support through medical emergencies, *see infra*, devastating career changes, and financial insecurities. With his son, the relationship can be best illustrated by a recent school project in which his son proclaimed Allegra as his "hero" because "his dad is always by his side, provides him with love, and protects him."²⁷ Fundamentally, Allegra is the "essence of a family man and displays this in every e action of his life every day it is not just a display when it is convenient for him."²⁸

Allegra is sincerely a "thoughtful and generous"²⁹ individual. He is an "honest and a truly caring individual" who shows "deep concern for his family and others around him."³⁰ The letters on his behalf clearly exemplify a person who would stop

²⁶ Lisa Allegra letter.

²⁷ Lisa Allegra letter, pg. 2

²⁸ Id.

²⁹ Randy Frank letter

³⁰ Rev. Richard A. Marks, PhD letter, pg. 2

at no great length to offer any kind of financial or psychological support whether it is his immediate family or a newly formed friendship. It is no surprise that those who know him best “believe fundamentally there is inherent good in him.”³¹ Ultimately, Allegra is a “man that makes the world a better place simply by being a part of it.”³²

Allegra deeply regrets the decisions he made in this case. Coping with these situations is never easy, but for someone as prideful as Allegra, it is that much more difficult. Allegra now battles his emotion, being in a constant state of grief, regret, and anxiety. His sense of pride prohibits him from openly discussing the emotions that he is dealing with, but he copes with his fate by spending as much time as possible with his family, in particular his son, who unfortunately has been shunned by many of his friends because of the rumors surrounding Allegra’s current situation. To those who have had the opportunity to recently converse with Allegra have seen “a man who is incredibly scared, saddened, and quite candidly disgusted with his behavior.”³³ Undoubtedly, the lapse of judgment Allegra has accepted responsibility for is not emblematic of his character, but a Scarlet Letter he must now bare.

i. Allegra’s Family Circumstances Warrant Consideration For A Downward Variance

Over the past several years, Allegra has seen his wife, Lisa’s, health deteriorate. This results in frequent hospital visits and near death experiences. At

³¹ Robert W. Fioretti letter.

³² Cynthia Lazarus letter

³³ Stephen D. Phillips, Esq. letter, pg. 2

the age of 12, Lisa was diagnosed with diabetes. Although this disease is commonly experienced and dealt with by millions of people, years of attempting in vitro fertilization, a difficult pregnancy, and age have led to a flare-up in symptoms. As a result, during the past eight years, Lisa has been battling debilitating pain, uncertain medical diagnosis, and surgeries, which have led to her requiring Allegra's help in even the most mundane circumstances. Because of this Allegra has been relegated to constant uncertainty and alert when it comes to Lisa's health. While one day she may seem as healthy as ever, the next day may be spent in an emergency room followed by months – or years – of recovery. Regardless, Allegra is always at her side, either assisting with daily living skills, taking care of their son, or putting everything on hold when she experiences an unexpected emergency.

The troubles began in 2007 when Lisa finally became pregnant with their son, Alec. In November of that year, while in Florida, Lisa began experiencing severe migraines and vomiting. She was immediately flown back to Chicago and admitted to a hospital. There, she was tested for spinal meningitis, which included eight spinal punctures done in error. Consequently, Lisa lost all of her spinal fluid and was hospitalized, again, where she was taken to a pain clinic for two different blood patches. The following April, Lisa developed eclampsia and went into a high watch category. She was sent to the hospital four weeks early in an effort to induce labor as a result of kidney and liver function failure. She had to suffer through three failed epidurals and spinal fusion, which necessitated an emergency caesarian section under full anesthesia. During the procedure, there was a severed blood

vessel, which caused internal bleeding. An emergency operation was performed to cauterize the vessel; this did not work. For the next five weeks, Lisa wore a specially made reverse pressure pump to help close up the wound.

In October 2008, Lisa began to experience severe wrist pain. She was subsequently diagnosed with De Quervain's syndrome and received a series of injections to calm her tendons. The following month similar pain began in her shoulder. This was diagnosed as frozen shoulder; a direct result of long-term type I diabetes. During this same time, Lisa was found to have nodules on her thyroid. She went through a series of grueling tests for thyroid cancer and Hashimoto's disease, only to rule those out and simply be prescribe to Synthroid. This was followed by a diagnosis for pre-kidney failure. In the beginning of 2009, Lisa had the first of her three shoulder surgeries, each taking nearly two years for full recovery.

Frankly, Lisa is under constant medical care. Throughout the years, Lisa attempts to more-or-less control her diabetes. She follows the proper procedures, does the necessary test and injections, and follows rules set forth by her doctors. But as illustrated by the above-described tribulations, for her, it is impossible to live without constant fear of the next misfortune. While all does not result in long-term hospital stays and surgeries, there is a sense of uncertainty as to the next episode she may suffer. For example, in August 2013 while Allegra was on a fishing trip with their six-year-old son, Lisa went into a coma induced by an extremely low blood sugar level. As she regained consciousness, Lisa suffered a seizure followed

by continuous vomiting. Fortunately, she was somehow able to call 911 and was taken to the Hinsdale Hospital emergency room. This was a direct result of a pancreas that was not working. Since then, Lisa has been equipped with a diabetic pump tasked with injecting her with insulin.

The Seventh Circuit has found that a defendant's extraordinary family circumstances constitute a legitimate basis for imposing a below-guidelines sentence. *United States v. Schroeder*, 536 F.3d 746 (7th Cir. 2008). Prior to *Booker*, sentencing courts were limited in their ability to grant a downward departure based on family circumstances to the content of 18 U.S.C. § 5H1.5, a policy statement that provides that "family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted," but allowing a district court to impose a below-guideline sentence "once it finds that a defendant's family ties and responsibilities . . . are so unusual that they may be characterized as extraordinary." *United States v. Canoy*, 38 F.3d 893, 906 (7th Cir. 1994); *See e.g.*, *United States v. Norton*, 218 F.Supp.2d 1014(E.D. Wis. 2002); *United States v. Owens*, 145 F.3d 923 (7th Cir. 1998). The commentary to § 5H1.5 directs sentencing courts to consider a non-exhaustive list of circumstances, *inter alia*, the substantial, direct, and specific loss of essential caretaking to the defendant's family. *See* Application Note 1(B).

Today, sentencing courts may consider family responsibilities as an aspect of history and characteristics, §3553(a)(1), providing a mitigating basis for a below-guideline sentence. *Menyweather*, 447 F.3d at 634. Although *Booker* has rendered

the concept of departures obsolete, sentencing courts can look to the advisory departure guidelines as a way to analogize § 3553(a) factors. *United States v. Miranda*, 505 F.3d 785, 791, 792 (7th Cir. 2007).

Sentencing courts, both pre- and post-*Booker*, have granted downward departures and variances where a defendant is so irreplaceable that a term of incarceration would create an exceptional hardship for the family. In a situation similar to Allegra's, *United States v. Bueno*, a defendant's sentence of five years probation was affirmed, as the downward departure was evidenced by the defendant's wife suffering from life-threatening diseases and maladies which rendered the defendant's caretaking as an indispensable part of his wife's well-being and to her caretaking regime. 549 F.3d 1176 (8th Cir. 2008). The rationale for these downward departures is not that the family circumstances decrease the culpability of the defendant, but that sentencing courts are reluctant to "wreak extraordinary destruction" on dependents who rely solely on the defendant. *Schroeder*, 536 F.3d at 756; quoting *United States v. Johnson*, 964 F.2d 124, 129 (2d Cir. 1992).

To Lisa, Allegra is most certainly irreplaceable and indispensable. Allegra helps take care of his wife everyday, morning, noon, and night. She depends on him "not only for the physical support, but the mental support he instills in [her] each and every day [they] are together."³⁴ Fortunately, because of his flexible work schedule, he is able to dedicate the sort of time and alertness necessary to provide Lisa with any assistance she may need, taking her to doctors' appointments, or

³⁴ Liss Allegra letter, pg. 3

stopping everything at the drop of a dime to help her during emergencies that have started to occur all too often. Should Allegra be incarcerated for any length of time, there would be no one left to provide the sort of care and nurture that she requires. While Lisa still has other family, her siblings have careers and families that cannot be put on hold should Allegra face incarceration and her parents are of age where they are facing difficulties taking care of themselves. Not only do they not have the appropriate amount of time and ability to set aside to befittingly take care of Lisa, Allegra is the only one who fully understands all of her medical needs.

ii. Allegra's Health Concerns Warrant Consideration For a Downward Variance

In sentencing Allegra, this Court may consider her physical impairments and need for certain medical care when determining the sentence it believes to be appropriate. 18 U.S.C. 3553(a)(2)(D) (mandating consideration of “the need for the sentence imposed. . . to provide the defendant with . . . medical care, or other correctional treatment in the most effective manner”); *see United States v. Powell*, 576 F.3d 482, 499 (7th Cir. 2009) (instructing sentencing court to consider defendant’s arguments about his physical infirmities and advanced age). His above-described health concerns must be taken into account along with his age and the matter-of-course infirmities that come with it such as his high blood pressure, high cholesterol, and bulging disc when fashioning its sufficient, but not greater than necessary, sentence. PSR at ¶ 49-50. Ultimately, Allegra is, no doubt, in need of a sentence that will facilitate the provision of his much needed medical care.

d. Recidivism, Deterrence, and Other Policy Considerations

As a 62-year-old first time offender, with a significant role in his family and community, long history of stable employment, no criminal history, and no history of drug or alcohol abuse, there is nothing to suggest that Allegra poses any threat or risk of re-offending. The character letters submitted in behalf of Allegra conclusively demonstrate the aberrant nature of his conduct that landed him before this Court. The letters discuss Allegra's genuine remorse and unlikelihood to commit future crimes. More telling of his character, Allegra originally agreed to cooperate with authorities and accepted responsibly for his actions. Although his ability to cooperate was thwarted by a publically-filed indictment, Allegra nevertheless met with authorities and admitted his conduct in not only the instant matter, but in peripherally related conducted that occurred in years prior. The emotional tolls these proceedings have taken on Allegra, and more importantly his family, are tremendous and cannot be overlooked. Ultimate, a prison sentence is not necessary to promote his appreciation and respect for the law.

The circumstances surrounding Allegra's conviction assure that he is among those individuals least likely to offend again. At 62 years of age, Allegra's chances of recidivism continue to drop with age. *See United States v. Bullion*, 466 F.3d 574, 577 (7th Cir. 2006); U.S. Sentencing Commission, *Measuring Recidivism, The Criminal History Computation of the Federal Sentencing Guidelines*, pgs. 12, 28 (May 2004). Combining Allegra's increased age, his lack of criminal history, non-violent nature of the offense, and lack of substance abuse alone make it highly

unlikely he will commit any future crimes. *See United States v. Warner*, 2015 WL 4153651, at *11 (finding that defendant “was 69 years old, had no prior criminal history, and posed no danger to society”); *United States v. Behrendt*, 2008 WL 4643380, at *3 (E.D. Wis. Oct. 20, 2008) (sentencing defendant to probation based on considerations of age, physical condition, and lack of criminal record).

What is more, Allegra will most certainly never fly an airplane again – a skill that Allegra has dedicated his life to studying, teaching, and building a career and reputation around. Allegra’s love for flying airplanes is only exceeded by his love for his wife and son. The Federal Aviation Administration strongly looks down upon pilots abusing their licenses in connection with controlled substance violations. In fact, they have implemented statutory safeguards that punish those convicted under a law related to a controlled substances that is punishable by imprisonment for more than a year if the Administration finds that an aircraft was either used to commit or facilitate the commission of the offense and the individual served as a pilot or was on the aircraft in connection with the offense by revoking their licenses to fly. *See* 49 U.S.C. § 44710(B). While Allegra will be able to appeal any revocation of his license, the reality is that there is very little chance, if any, that his license will ever be reinstated. This is directly related to sentencing, as a defendant’s inability to commit similar crimes in the future is highly relevant in determining whether there is a need for imprisonment. *See, e.g., United States v. Olis*, 2006 WL 2716048, at *13 (S.D. Tex. Sept. 22, 2006); *United States v. Gains*, 829 F.Supp. 669, 671 (S.D.N.Y. 1993); *United States v. Virgil*, 476 F.Supp.2d 1231,

1235 (D.N.MM. 2007); *United States v. Samaras*, 390 F.Supp.2d 805, 809 (E.D. Wis. 2006). Because soon after judgement is entered in this matter, Allegra will never be able to fly an airplane again. With the loss of his license, not only will Allegra lose his identify, but he will lose any ability to participate in a similar offense again.

It is clear from the letters in support of Allegra that he will not engage in unlawful behavior in the future – one of the primary factors, which must be considered, under § 3553(a). According to § 3553(a)(2), an appropriate sentence should “afford adequate deterrence to criminal conduct” and “protect the public from further crimes of the defendant.” Granted a sentence must reflect the seriousness of the offense and provide for adequate deterrence, the effect on Allegra resulting from his conviction will ensure that the purposes of sentencing, deterrence, and respect for the law will still be fully vindicated if this Honorable Court imposes a sentence of probation. Such a sentence would not deprecate the seriousness of the offense and would provide adequate specific and general deterrence. *See Gall*, 552 U.S. at 54. The conjunction of the limitations put forth by a period of probation, along with the significant collateral consequences of a federal felony conviction and will suffice to not only deter Allegra from future crimes, but will serve as a deterrent to all potential offenders.

e. Just Punishment

The goal of sentencing is to impose a sentence that is sufficient, but not greater than necessary to comply with the purposes set forth in § 3553(a)(2). Through this “parsimony provision,” the Court is to impose a sentence that is the

minimum necessary to accomplish those goals set for in paragraph (2). As a first-time felony offender whose crime, although serious, was non-violent in nature, a sentence of probation would, without a doubt, meet the goals of sentencing. *See* 28 U.S.C. § 994(j), *amended (this section unaffected)* by PL 11-273, Oct. 12, 2010, 124 Stat 2858 (probation is an appropriate sentence for “cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense,” reserving imprisonment for “a person convicted of a crime of violence that result[ed] in serious bodily injury”).

Allegra makes no effort to deprecate the seriousness of this offense and understands the need for retribution. Nonetheless, any sentence of imprisonment would go beyond what is necessary to accomplish the purposes of sentencing. A sentence of probation is in no way a free pass and sufficiently exemplifies punitive consequences and significant restrictions. *See Gall*, 552 U.S. at 47-48; *quoting United States v. Knights*, 534 U.S. 112, 119 (2001) (“Inherent in the very nature of probation is that probationers ‘do not enjoy the absolute liberty to which every citizen is entitled’” (internal citations omitted)). There is no shortage of cases in which courts have significantly varied from advisory guidelines in sentencing a defendant to a term of probation.

Allegra is not a violent or serial career criminal who poses a dangerous threat to society. He is a 62-year-old, first time offender who accepted responsibility for his actions. A day has not passed since Allegra’s initial confrontation with federal agents where he has not appreciated and felt the effects of his transgressions. For

over a year-and-a-half, Allegra's entire life has been consumed by his wrongdoings, the ripple-effects of which have been felt dearly by the ones closest to him. While retribution is warranted, a term of imprisonment will deviate beyond the purposes of sentencing. A felony conviction is, in and of itself, a devastation that will be carried with Allegra for the rest of his life and will, no doubt, overshadow the all the positive contributions he has made to his family and community. Here, a jail sentence is not necessary to promote Allegra's respect for the law, as it can clearly be seen that the consequences of his conduct will stay with him for the rest of his life. He will forever be branded a convict.

No matter the sentence, there will be a permanent and profoundly negative impact on Allegra's life and freedom. The stigma carried by a federal felony conviction blights a person's life, forever. There are no shortages of limitations placed upon an individual's life including social stigma, psychological impact on the defendant and his family, along with the curtailment of even the most basic freedoms. Given the situation, and his responsibility for the financial and emotional well-being of his family, a sentence well-below the advisory guideline range will not only adequately reflect the seriousness of the offense and promote respect for the law, but would also provide just punishment.

III. Objections to Proposed Conditions of Supervised Release

Should this Honorable Court decide that a term of supervised release is warranted, Allegra respectfully objects to Discretionary Condition (14), as recommended by the Probation office. This condition of supervised release restricts

Allegra's travel to the jurisdiction within which he is being supervised. In support of this objection, it is submitted that for the past year-and-a-half Allegra has been released on a secured bond with pretrial supervision. During this time he has been able to travel within the confines of the continental United States – which he has done so without incident. Permitting Allegra to continue traveling within the continental United States will allow him to continue his employment that is centered on buying and selling airplanes around the country. This will allow Allegra to continue supporting his family within his chosen occupation and will further allow him to pay any monetary fine this Honorable Court may deem necessary. It should be noted that counsel of Allegra has not had the opportunity to confer with the government, and therefore, does not know their position as to this modification.

Conclusion

This Court holds significant discretion to not only craft a reasonable, appropriate sentencing pursuant to the guidelines, but to consider the totality of circumstances surrounding the individual involved, including, among others factors, Allegra's history and characteristics. The foregoing considerations outlined in this submission show only a small portion of who Allegra truly is: a devoted, generous, kind-hearted family man. The conduct that placed Allegra before this Honorable Court is not only shameful, but is directly contrary to the legitimate business practices on which Allegra has built his life. This transgression was not motivated by any sort of evil malice; it was a lapse in judgment. In sentencing Allegra to a

period of probation, home confinement, or a combination thereof, this Court would accomplish the goals of sentencing by punishing the individual, not the crime, to a sentence that is sufficient, but not greater than necessary. *See Pepper*, 131 S.Ct. at 1240.

Respectfully submitted,

/s Vadim A. Glozman
An Attorney For The Defendant

Edward M. Genson
Blair C. Dalton
Vadim A. Glozman
EDWARD M. GENSON & ASSOCIATES
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 726-9015

CERTIFICATE OF SERVICE

I, Vadim A. Glozman, an attorney for Defendant Robert Allegra, hereby certify that on this, the 29th day of November, 2016, I filed the above-described document on the CM-ECF system of the United States District Court for the Northern District of Illinois, which constitutes service of the same.

Respectfully submitted,

/s/ Vadim A. Glozman

EDWARD M. GENSON & ASSOCIATES
53 W. Jackson Blvd., Suite 1420
Chicago, IL 60604
(312) 726-9015

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)

vs.)

ROBERT ALLEGRA)

No. 15 CR 243

Judge Elaine E. Bucklo

PETITION PURSUANT TO 28 U.S.C. § 2255

Defendant, Robert Allegra ("Mr. Allegra"), by his attorneys, James A. Shapiro and Colleen Hurley, pursuant to 28 U.S.C § 2255, petitions this Court to reduce his sentence because of ineffective assistance of counsel at Mr. Allegra's July 19, 2017 Sentencing Hearing. In support of his petition, Mr. Allegra states:

SENTENCING HEARING

WRONG CHARGE → Mr. Allegra pleaded guilty to possession of controlled substance and transporting the controlled substance from Mexico to Chicago. *VS. NUGS* On July 19, 2017, this Court sentenced him to 65 months in prison for those crimes. At the sentencing hearing, his attorneys, Edward M. Genson, Jeffrey B. Steinback, and Carolyn P. Gurland appeared. Very early in the sentencing hearing, it was apparent that Mr. Steinback was suffering from an illness or physical malady. He suffered it throughout the duration of the sentencing hearing, so much so that Mr. Steinback referenced it several times during the sentencing hearing. He even left the hearing early in an ambulance before the conclusion of the hearing. In addition, one of Mr. Allegra's other lawyers, Mr. Genson, also indicated he had difficulty standing during the hearing, asking to instead sit and speak into the microphone. *Also did not know what day it was,*

In fact, Mr. Steinback had begun "to process passing a kidney stone." Tr. 4:5. Mr. Steinback stated he was struggling to stand and therefore would have to sit during the sentencing hearing

Tr. 3:22-4:4. He further stated he would have to allow his co-counsel to argue in his stead if he began to make “strained or pain faces.” Tr. 4:9-11). He would therefore divide the responsibilities three ways, quipping that opposing counsel “is such a great lawyer that we can’t take him on one-on-one anyway.” Tr. 4:14-22.

At the outset of his mitigation argument, Mr. Genson stated, “Monday is always my worst day for walking. I’m a little better by about Friday. So if I can do my just brief words here,” apparently asking the Court to sit while arguing, to which the Court responded, “That’s fine. This is Wednesday.” Tr. 18:8-11. Mr. Genson then makes several mitigating points about Mr. Allegra, requesting a downward variance based on the facts that that he has been a friendly acquaintance of Mr. Allegra for approximately twenty years, he has a record with no priors, he is charitable in the community, is involved with his family, and has had a successful career as a pilot. Tr. 18-21.

I never met Genson
Plus

In referencing the guidelines, Mr. Genson indicates significant ignorance of the advisory guideline range, stating, “Now, the guidelines say on the bottom I think 70 to 84 months, or whatever. . . I think the recommendations of the probation person in this case were initially 60 months when they were higher, and I believe they are at this point 48 months. And I would think that you might—your Honor will consider even lowering it lower than that.” Tr. 20:1-7.

Mr. Steinback made arguments in connection with § 3553(a)(6) concerning the need to avoid unwarranted sentencing disparities. He cited various cases. Tr. 21:5-50:17). He distinguished Mr. Allegra from the *Gall* and *Aurelio* cases on the grounds that Mr. Allegra is a 62-year-old man, a non-violent first offender, and neither a source, user, nor distributor of drugs. Mr. Steinback then apologized to the Court, thanking it for its patience through “some of the grimacing I’ve maybe showed” and then asked the Court for permission to “walk around to

the back of the courtroom just to move" (Tr. 50:9-51:1), implying that like Mr. Genson, he may have been laboring under some pain or illness.

Ms. Gurland then argued additional mitigating facts for Mr. Allegra. She, like Mr. Steinback, was socially acquainted with him. She argued Mr. Allegra has a good reputation in the community, he has been caring for his ailing wife, he is charitable, he has been dedicated to and involved in the upbringing of their only son, that his son is dependent on him, and that he has been receiving preventative health treatment for a risk of bladder cancer, analogizing Mr. Allegra's case to *Rothbard*, *Carter*, and *Holt*. Tr. 51:12-75:7). Ms. Gurland asked for a downward variance to 48 months.

AUSA Otlewski then argued for guideline sentence of 70 to 87 months for Mr. Allegra based on the severity of his crime, arguing that the mitigation presented should not be a consideration. Tr. 75:16-89:7. *The Post Arrest Checklist states*

Mr. Genson then argued again in rebuttal. He pointed out that Mr. Allegra was cooperative by pleading guilty at an appropriate time, reasonably refusing to go undercover, and acting out of desperation due to his wife's illness and his child's dependency on him. Tr. 89:12-92:16). Mr. Genson then apologized for Mr. Steinback's absence in the middle of the sentencing hearing, stating, "I don't know if you've ever had a kidney stone, I hope not, but I have. He was in a lot of pain and we took him to [the ER]." Tr. 92:17-20.

Mr. Allegra then addressed the Court, expressing regret for his actions, apologizing to the Court and admitting to his crime, indicating he made this offense based on extreme stress. Tr. 94:17- 97:13. In imposing sentence, the Court analyzed the § 3553 factors and sentenced Mr. Allegra to 65 months in the custody of the Bureau of Prisons, a \$500,000 fine, and a special assessment of \$100 due immediately. Tr. 103:14-104:6.

PRE-SENTENCING

During several pretrial status hearings, Mr. Genson did nothing to disabuse the court of the prejudice against Mr. Allegra and his apparent wealth. Tr. 11/20/15; 12/8/15. Mr. Genson's colloquy with the court centered around the Bentley that the government wanted to forfeit. On December 8, 2015, the court stated, "Judges aren't likely to be experts on Bentleys." 12/8/15 Tr. 4:3-4. At the next hearing, on December 18, 2015, the court added, "And probably Assistant U.S. Attorneys don't [know much about Bentleys] either." 12/18/15 Tr. 2:12-13. AUSA Otlewski rejoined, "No, I've never owned a 2014 Bentley GTS V8 that's worth [\$]160,000. *Id.* lines 14-15. But then Mr. Genson chimed in, "Neither have I." *Id.* 16. The court bantered back, "You could probably afford one." *Id.* 17. Mr. Genson: "I probably could, but I still don't have one." *Id.* 18-19. The court: "Why would anybody want one?" *Id.* 20. Then the AUSA sobered up the discussion by bringing up a Bentley salesman who attested to the value of the vehicle. Mr. Genson simply failed to advocate for his client.

Later, the court wryly observed, "He must be a very successful pilot." 12/18/15 Tr. 3:21. Mr. Genson agreed, but instead of explaining that Mr. Allegra needed a fancy car to impress his high end clientele, he folded by stating "for some reason" his client wanted to continue making payments on a car he wasn't able to drive because the government had seized it. *Id.* lines 22-25.

Bought & sold cars as well

Need to consider the discussion with the Bentley in conjunction with the issue of the number of attorneys. Genson did not do anything to explain or rebut negative connotation of Bentley. Judge negative connotation - "I can't afford one;" Genson agreed as well. Didn't protect

or advocate or raise fact Bob had Bentley because he dealt with high income individuals and it was a business decision intended solely to connect and impress clients, just as insurance agents used to drive Cadillacs to convey impression of success, etc. (Failure to advocate)

2. 2. Attorneys utilized. Negative image of Bob compounded. Genson did not have to tell judge he was qualified - everyone knew that including Bucklo. This was an ego thing - Genson was pissed off at Bob for bringing additional attorneys into case. This related to Bentley, Bucklo clearly saw this negatively - bias openly apparent and fed into drug

dealer perception. Genson essentially agreed with Buckle's negative perception and

I

then putting his ego over Bob's, violated confidential client communication by telling Judge this was "Bob's decision." It was apparent that having so many attorneys in the courtroom was another negative comment by Bucklo. Genson did nothing to rebut or protect Bob-placing his ego, rep, etc. over Bob's interests. This perpetuated negative perception of Bob. Information regarding why counsel retained, the reasons for the retention of particular counsel, number of counsel, and whether it was done by client or attorney or both are all confidential communications privileged under the attorney-client privilege. This is especially so when the Judge ascribed a negative connotation to Bob for having so many attorneys in the courtroom and Genson agreed with Judge because his ego was bruised (headlines, most prominent Chicago criminal defense attorney, etc.) rather than protecting his client by shielding decision-making process.

3. Looking at 2255 standard, argument can be made this was not harmless error. Bob showed up at every hearing, pled guilty knowing full range of consequences even though he was a pilot, etc. Bucklo ordered him immediately into custody without any

consideration - highly unusual and done without any factual basis. Hitting him also with

\$500,000 fine in addition to lengthy prison sentence also evinces bias by Bucklo, that can be directly tied to Genson's failure to erase over the course of proceedings the inaccurate perception. Genson didn't erase because of his ego, so the damage was done early on, without any challenge or remediation by his attorneys.

He agreed to work for the govt for past 10 years
ANALYSIS

Strickland v. Washington, 466 U.S. 688, 687-94 (1984), sets forth the now-familiar two-prong test that a court must apply to determine whether a defendant was denied his right to effective assistance of counsel: First, an attorney's actions constituted errors so serious as to fall below the objective standard of reasonableness. Second, absent these errors, there was a reasonable probability that the defendant's sentence trial would have resulted in a different outcome.

In *Kubat v. Thieret*, 867 F.2d, 351 (7th Cir. 1989), the defendant argued ineffective assistance of counsel at his sentencing in a kidnapping and murder case. He stated that his attorney failed to present a coherent defense at sentencing and failed to object to erroneous instructions given to jurors at sentencing. The district court held that defense counsel committed three errors: failure to investigate or present mitigation, a "bizarre" and prejudicial closing argument, and failure to object to erroneous instructions indicating a requirement for unanimous agreement regarding a decision to not impose the death penalty, misstating the law. *Id.* at 366, 370.

Only two of fifteen available character witnesses were asked to testify at the sentencing hearing. The closing argument was a "rambling, incoherent discourse . . . that may have actually strengthened the jury's resolve to impose the death sentence." Counsel admitted that he was "not going to convince" the jury, which, on appeal, was held to amount to "no representation at all."

Id. at 368. The Court held that viewing performance of counsel solely from the perspective of strategic competence, counsel must make a significant effort, based on reasonable investigation and logical argument, to ably present the defendant's fate to the jury. *Id.* at 369. The Court further stated that, "counsel, in effect, presented no defense at the sentencing hearing. We view this failure of counsel as a 'breakdown in the adversarial process that our system counts on to produce just results.' On this basis alone, our confidence in the outcome is sufficiently undermined to find that Kubat was prejudiced." *Id.* The Court further held that whether the jury was completely misled or merely confused by the jury instructions would not alter its determination that Kubat was prejudiced, and even if only one juror had been confused, the reliability of the verdict is undermined. *Id.* at 370.

This case is analogous to *Kubat* in that ineffectiveness at sentencing prejudiced Mr. Allegra. In *Kubat*, the defendant suffered prejudice, in part, due to his counsel's failure to present many available character witnesses at the post-conviction hearing. In this case, Mr. Allegra not only had counsel who failed to effectively argue on his behalf, failed to present mitigating factors effectively, but he also had counsel who was unable to remain for the duration of the sentencing hearing due to the physical ailment he was suffering.

Indeed, Mr. Steinback referred many times to his physical ailment in the passing a kidney stone, so much so that he left the sentencing hearing prior to its conclusion in an ambulance. He indicated "grimacing" to the Court during his argument, and even to "walk around" the back of the Courtroom during the sentencing hearing. Mr. Genson, upon Mr. Steinbeck's apparent departure in an ambulance, indicated that he was in a "a lot of pain" and therefore had to leave.

Mr. Genson too indicated he was in physical pain during the sentencing hearing, implying that he had difficulty standing and would need to sit during his arguments. The Court

then sentenced Mr. Allegra to 65 months in prison and a \$500,000 fine, rather than a below guideline sentence.

It is ~~deferred~~ that because
the sentencing Gerson was in
fact suffering from terminal cancer
and presently in the final stages of
his life.

The *Strickland* two-prong test demands a finding of ineffective counsel in this case. Specifically, Mr. Allegra's attorney's actions caused prejudice because at least one of them was laboring under physical ailment so great that he could not even finish the sentencing hearing and left in the middle in an ambulance. It cannot be considered reasonable that representation was effective if a counsel cannot even remain for the duration of the hearing. Absent this ineffectiveness, Mr. Allegra would have received a lower sentence.

WHEREFORE, Mr. Allegra respectfully requests this Court to order a new sentencing hearing for Mr. Allegra with constitutionally effective counsel.

Gerson obviously was also incapable being
 diagnosed with terminal cancer
 Respectfully submitted,
 whether before or not it is obvious he too
 was in serious pain

 James A. Shapiro

 Colleen Hurley

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SHORT RECORD
NO. 18-3150
FILED 10/9/18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case No. 1:18-cv-05061

UNITED STATES OF AMERICA)

Plaintiff-Appellee,)

vs.)

ROBERT ALLEGRA)

Defendant-Appellant.)

Notice of Appeal

DEFENDANT ROBERT ALLEGRA'S NOTICE OF APPEAL

Notice is hereby given that ROBERT ALLEGRA, defendant-appellant in the above named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from a September 25, 2018 ruling denying his 2255 motion to vacate and set aside his July 19, 2017 sentence.

Respectfully submitted,

ROBERT ALLEGRA

By: 
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UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.2.2
Eastern Division

United States of America

Plaintiff,

v.

Case No.: 1:18-cv-05061
Honorable Elaine E. Bucklo

Robert Allegra

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, September 25, 2018:

MINUTE entry before the Honorable Elaine E. Bucklo: Defendant's 2255 motion to vacate and set aside sentence [1] is denied. All pending dates and motions are terminated as moot. Enter Order. Civil case terminated. Mailed notice. (mgh,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.2.2
Eastern Division

United States of America

Plaintiff,

v.

Case No.: 1:18-cv-05061

Honorable Elaine E. Bucklo

Robert Allegra

Defendant.

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This docket entry was made by the Clerk on Tuesday, September 25, 2018:

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For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF CASE OPENING

October 9, 2018

No. 18-3150	ROBERT ALLEGRA, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No. 1:18-cv-05061 Northern District of Illinois, Eastern Division District Judge Elaine E. Bucklo Clerk/Agency Rep Thomas G. Bruton Case filed: 10/09/2018 Case type: pr/fed Fee status: Paid Date of Judgment: 09/25/2018 Date NOA filed: 10/08/2018	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

Deadlines:

<u>Appeal No.</u>	<u>Filer</u>	<u>Document</u>	<u>Due Date</u>
18-3150	Robert Allegra	Docketing statement due	10/15/2018
18-3150	Robert Allegra	Transcript information	10/23/2018

sheet

NOTE: This notice is issued to counsel of record, in furtherance of the revised *Circuit Rule 3(d)*, to provide necessary information regarding this appeal. Please verify this notice for accuracy. Counsel are encouraged to provide a fax and/or e-mail address to the court. If any corrections are necessary, please indicate those corrections on this notice and return it to the Clerk's Office within ten (10) days.

**THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT /
SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.**

Important Scheduling Notice!

Hearing notices are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals are scheduled after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your appeal might be scheduled, please write the clerk advising him of the time period and the reason for your unavailability. The court's calendar is located at <http://www.ca7.uscourts.gov/cal/argcalendar.pdf>. Once an appeal has been scheduled for oral argument, it is very difficult to have the date changed. See Cir.R. 34(e).

form name: c7_Docket_Notice(form ID: 108)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF DOCKETING - Short Form

October 9, 2018

The below captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit:

Appellate Case No: 18-3150

Caption:
ROBERT ALLEGRA,
Petitioner - Appellant

v.

UNITED STATES OF AMERICA,
Respondent - Appellee

District Court No: 1:18-cv-05061
District Judge Elaine E. Bucklo
Clerk/Agency Rep Thomas G. Bruton

Date NOA filed in District Court: 10/08/2018

If you have any questions regarding this appeal, please call this office.

form name: c7_Docket_Notice_short_form(form ID: 188)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

November 21, 2018

By the Court:

No. 18-3150	ROBERT ALLEGRA, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No: 1:18-cv-05061 Northern District of Illinois, Eastern Division District Judge Elaine E. Bucklo	

Pursuant to Circuit Rule 3(c), a Docketing Statement must be filed within seven (7) days of the filing of the notice of appeal. The appellant failed to do so. The court issued a show cause order directing that the appellant file a Docketing Statement within fourteen (14) days of the date of the order or face a fine and/or dismissal of the appeal. To date, the appellant has not filed the required Docketing Statement.

IT IS ORDERED that this cause is **DISMISSED** for failure to comply with Circuit Rule 3(c).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

November 21, 2018

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604-0000

No. 18-3150	ROBERT ALLEGRA, Petitioner - Appellant v. UNITED STATES OF AMERICA, Respondent - Appellee
Originating Case Information:	
District Court No: 1:18-cv-05061 Northern District of Illinois, Eastern Division District Judge Elaine E. Bucklo	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

TYPE OF DISMISSAL: Circuit Rule 3(c)

DATE OF RSC ORDER: 10/23/2018

STATUS OF THE RECORD: no record to be returned

NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date:

Received by:

form name: c7_Mandate(form ID: 135)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 18 CV 5061
v.)	
)	
ROBERT ALLEGRA)	Judge Elaine E. Bucklo

**GOVERNMENT MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE**

The UNITED STATES OF AMERICA, through its attorney, JOHN R. LAUSCH, JR., United States Attorney for the Northern District of Illinois, respectfully submits its response to defendant Robert Allegra's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence.

On July 18, 2018, defendant filed the instant motion to vacate, set aside, or correct sentence pursuant to Title 28, United States Code, Section 2255. R. 150.¹ In his motion, defendant argues that the ineffective assistance of his counsel at his sentencing and previous hearings resulted in a higher sentence and fine than he should have received, despite the fact that he received a below-Guidelines sentence from this Court. For the reasons set forth below, the government requests that this Court deny defendant's motion in its entirety.

BACKGROUND

On April 19, 2015, an indictment was returned against defendant, charging him with one count of attempting to knowingly and intentionally possess with intent

¹ Citations to the record are in Case No. 15 CR 243, defendant's underlying criminal case.

NO DRUGS.

to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. § 846. R. 1.

The indictment also contained a forfeiture allegation, and the interests of the defendant subject to forfeiture included \$30,000 in U.S. currency and a Bentley Continental vehicle, pursuant to 21 U.S.C. § 853(a). *Id.* On September 23, 2015, the government filed a motion for the interlocutory sale of defendant's Bentley in order to secure the asset for forfeiture. R. 32. After a series of court hearings in which defendant's attorneys, including Edward Genson, argued that defendant's Bentley would not use value because defendant was making payments on it, the government withdrew its motion. R. 150-2, 150-3, and 150-4. On July 1, 2016, defendant pleaded guilty pursuant to a plea agreement in which defendant agreed that as part of his offense conduct, \$30,000 of drug-related proceeds were placed in his Bentley, in defendant's presence, by the confidential informant in the case. R. 52 at 3. Defendant also agreed to the forfeiture of the property identified in the forfeiture allegation of the indictment. *Id.* at 9.

In his July 19, 2017 sentencing, defendant was represented by three attorneys – Jeffrey Steinback, Edward Genson, and Carolyn Gurland. R. 150-1 at 3. The parties first discussed the government's motion to revoke defendant's bond based on defendant's wife's attempt to sell a property that served as collateral for defendant's bond R. 150-1, at 7-17. Mr. Genson and Mr. Steinback explained in detail how the attempted sale was an "honest misunderstanding." *Id.*, at 11. The government argued that the defense had first proposed to "swap out" the property being used to secure

it wasn't a
Honest
mistake
steinback
said to
sell the
house

defendant's bond without informing the government that the property was already put up for sale, which was a violation of the forfeiture agreement executed by defendant. *Id.*, at 13-14. This Court indicated that it had a hard time understanding how defendant's wife could have put the property on the market after being informed of the "repercussions" of her violating the magistrate judge's bond order. *Id.*, at 16. The Court then turned to the sentencing factors. *Id.*, at 17.

*Not
Correct
Gurland's*

After agreeing to the correct Guidelines calculations for sentencing purposes (offense level 27 and criminal history category I, which results in a Guideline range of 70 to 87 months' imprisonment), Mr. Genson stated that the defense sentencing presentation would be presented by himself, Mr. Steinback, and Ms. Gurland. *Id.*, at 18. Mr. Genson then gave an overview of defendant's mitigating § 3553 factors. *Id.* Specifically, Mr. Genson discussed defendant's significant contributions to his community, his lack of criminal history, his wife's health history, and other personal circumstances. *Id.*, at 18-21. After Mr. Genson concluded his overview, Mr. Steinback discussed, in great detail, defendant's history and characteristics, the nature of the offense, and other sentencing factors such as unwarranted sentencing disparities. *Id.*, at 21-50. Finally, Ms. Gurland's presentation focused on defendant's personal history and characteristics and highlighted his family life, contributions to charity, and significant health issues. *Id.*, at 51-75. The government then discussed the seriousness of defendant's crime and other aggravating § 3553 factors. *Id.*, at 75-89. The government requested a sentence within the advisory applicable Guideline range

of 70 to 87 months' imprisonment. *Id.*, at 89. In response to the government's sentencing arguments, Mr. Genson provided additional arguments in mitigation. *Id.*, at 89-94.

In pronouncing its sentence, the Court discussed in detail defendant's § 3553 factors. *Id.*, at 100-103. The Court focused on, among other things, the seriousness of defendant's conduct, but it also considered the defendant's age, health, family circumstances, as well as the "good work" defendant had done in his community. *Id.*, at 103. The Court then sentenced defendant to 65 months in prison, which was 5 months *less* than the low-end of the applicable Guideline range of 70 to 87 months' imprisonment. *Id.* The Court also imposed a \$500,000 fine based on defendant's financial situation, but it noted that its sentence of imprisonment "would otherwise probably have been higher" without the imposition of the fine. *Id.* Defendant did not appeal his sentence. *Genson was told to be claims he didn't have time.*

ARGUMENT

"[R]elief under § 2255 is an extraordinary remedy because it asks the district court essentially to reopen the criminal process to a person who already has had an opportunity for full process." *Almonacid v. United States*, 476 F.3d 518, 521 (7th Cir. 2007). Such a remedy is "available only when the sentence was imposed in violation of the Constitution or laws of the United States, the court lacked jurisdiction, the sentence was greater than the maximum authorized by law, or it is otherwise subject to collateral attack." *Torzala v. United States*, 545 F.3d 517, 521 (7th Cir. 2008)

NO
Jurisdiction

This actually Applies perfectly - "CRIME doesn't fit the Sentence"

(internal quotations omitted). Ineffective assistance of counsel claims can be brought for the first time on collateral review. *See Massaro v. United States*, 538 U.S. 500, 504 (2003). § 2255 provides relief for Sixth Amendment claims of ineffective assistance of counsel only when the prisoner can demonstrate that counsel's performance was so deficient as to be "objectively unreasonable under prevailing professional norms" and that he suffered prejudice as a result of counsel's deficient performance. *United States v. Parker*, 2016 WL 7034131 (7th Cir. 2016) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). A court "consider[s] the reasonableness of counsel's conduct in the context of the case as a whole, viewed at the time of the conduct, and there is a strong presumption that any decisions by counsel fall within a wide range of reasonable trial strategies." *Valenzuela v. United States*, 261 F.3d 694, 698-99 (7th Cir. 2001) (quoting *United States v. Lindsay*, 157 F.3d 532, 535 (7th Cir. 1998)). In order to establish that counsel's performance was deficient, the defendant must show errors so serious that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Atkins v. Zenk*, 667 F.3d 939, 944 (7th Cir. 2012). In addition, "[o]nly a significant increase in the sentence, attributable to counsel's error, constitutes prejudice." *Durrive v. United States*, 4 F.3d 548, 551 (7th Cir. 1993). To establish prejudice in the pleading context, the defendant must prove that there is a reasonable probability that he would not have pled guilty absent his attorney's deficient conduct. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

Counsel let me down Not knowing what I
 Plead to Not the Guidelines Don't Apply.

Here, defendant alleges that his counsels' performance was constitutionally deficient because they failed to: object to the portrayal of defendant as a "rich, spoiled drug dealer," effectively argue on defendant's behalf, present mitigating factors effectively, and remain for the duration of the sentencing hearing due to physical ailments." R. 150 at 8. These allegations do not meet the standard for demonstrating the ineffectiveness of legal representation set out in the seminal opinion in *Strickland*.

First, defendant erroneously states that this Court did not sentence him to a "below guideline sentence." R. 150 at 9. On the contrary, the sentence imposed by this Court after hearing defendant's sentencing arguments was 5 months *lower* than the low-end of the applicable Guideline range in this case, which was 70 months. The Court's below-Guideline sentence shows that no prejudice resulted from counsels' performance. Rather, defendant obtained a benefit from the mitigation arguments presented by his attorneys. *See United States v. Wilson*, 2016 WL 4245529, at *3 (N.D.Ill., Aug. 11, 2018); *see also United States v. Longstreet*, 669 F.3d 834, 838 (7th Cir. 2012) (finding that a below-Guidelines sentence was presumptively reasonable).

Second, the record does not support defendant's contention that his attorneys "bolstered a narrative" that he was a rich, spoiled drug dealer. At sentencing, all three of defendant's attorneys extensively discussed defendant's "kindness and generosity." In particular, Mr. Steinback specifically argued that "because somebody has amassed what others would regard as wealth – a very substantial house,

expensive automobiles and a sizable income – does not mean that they derived it through illegal means.” R. 150-1 at 28. Mr. Steinback further argued that just because defendant “worked hard and ... earned significant sums of money and ... has invested wisely ... should not be a factor held against him any more than someone’s poverty should be an excuse for something.” *Id.*, at 29. Mr. Steinback further pointed out that there was never “any sense of entitlement that [the defendant] has ever indicated to [him].” *Id.*, at 30. While the Court noted defendant’s successes (*id.*, at 102), there is no evidence that it considered defendant as an “unrelatable and unsympathetic character,” as defendant claims. R. 150 at 11. In fact, the record suggests the opposite. The Court indicated that it took into account the good works that defendant did for his community and his family situation with his wife’s health and his son. R. 150-1 at 101, 103. Moreover, when the government argued that defendant’s attempts to influence the Probation Officer’s sentencing recommendation reflected poorly on his personality, the Court suggested that it did not agree with the government’s assessment of defendant’s character. *Id.*, at 86. Under § 3553, this Court was required to consider defendant’s background and characteristics, even the unsavory ones, and nothing in the record shows that the Court did so inappropriately.

Defendant also disparages his attorneys’ conduct during pre-sentence hearings where the parties discussed the forfeiture of defendant’s Bentley, claiming that his attorneys’ comments about his choice of vehicle and attorneys unfairly

portrayed him as someone “less worthy of sympathy.” However, the record shows that defendant’s attorneys vigorously defended defendant’s challenge to the government’s forfeiture motion and motion for the interlocutory sale of defendant’s Bentley. Defense counsel filed two separate responses to the government’s motion (R. 39, 46) and ultimately presented sufficient evidence to the Court and the government, which resulted in the government withdrawing its motion. R. 48. In alleging that defendant’s attorneys’ performance was deficient, defendant merely takes certain comments made by his attorneys and this Court out of context without any evidence demonstrating that the comments unfairly prejudiced this Court’s perception of defendant’s personality, history, or characteristics.

Third, defendant’s claim that Mr. Steinback and Mr. Genson’s physical conditions rendered their performance constitutionally deficient is meritless. Before Mr. Steinback was taken to the hospital during the sentencing, the record shows that he argued extensively about mitigating sentencing factors, including unwarranted disparities in sentencing. In fact, Mr. Steinback’s sentencing arguments covered approximately 29 pages of the transcript of defendant’s sentencing hearing. R. 150, at 21-50. And although Mr. Steinback may not have finished his arguments because he went to the hospital, the record shows that Mr. Genson continued the arguments on Mr. Steinback’s behalf, including arguing that defendant’s decision not to cooperate should not be held against him. *Id.*, at 91. Defendant also claims that Mr. Genson “manifested significant ignorance of the advisory guideline range” because

NO Guidelines. NO DRUGS

he stated that the range was "70 to 84 months." However, Mr. Genson's calculation of the top-end of the Guidelines was merely 3 months below the correct top-end of the Guidelines (87 months). This 3-month difference can hardly constitute such a "significant ignorance" that rendered Mr. Genson's performance constitutionally ineffective. *In Fact No Quantity No Sentence.*

Finally, defendant's other claims of ineffective assistance of counsel fail the *Strickland* test. For example, defendant alleges that his attorneys failed to properly object to the \$500,000 fine imposed by the Court. But the record shows that defense counsel did object to the fine. R. 150 at 104. And while defendant argues that the fine "should have been at most half that," he fails to point to anything in the record that the Court should have relied on to justify a lesser fine. In fact, the Court suggested that it imposed a fine in that amount in lieu of a higher term of imprisonment, which actually benefited, not prejudiced, defendant. Defendant further argues that Mr. Genson failed to advise Probation that defendant has a drinking problem, which, if he had done so, would have resulted in a "significantly lower sentence." This claim is baseless. During defendant's pre-sentence investigation interview, he told Probation that he does not have a problem with alcohol or substance abuse issues. PSR, ¶ 56.

CONCLUSION

For the reasons set forth above, the Court should deny defendant's Section 2255 motion because the record presently before the Court conclusively shows that defendant is not entitled to relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant U.S. Attorney hereby certifies that this GOVERNMENT'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE was served on August 13, 2018, in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers. A copy of this document will also be deposited in the U.S. Mail on or about August 13, 2018 for service on the following:

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