UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:19-cr-20693

UNITED STATES OF AMERICA

Plaintiff,

v.

PETER SOTIS and
EMILIE VOISSEM,

Defendants.

_____/

DEFENDANT SOTIS' MEMORANDUM IN AID OF SENTENCING

COMES NOW, the Defendant Peter Sotis, by and through the undersigned counsel, and respectfully submits this Memorandum in Aid of Sentencing in order to provide information to assist the Court in fashioning a sentence that is "sufficient but not greater than necessary" to achieve the statutory purposes of punishment as required by 18 U.S.C. § 3553(a)(2).

I. INTRODUCTION/PROCEDURAL BACKGROUND

On October 24, 2019, a Grand Jury sitting in this district returned a four-count Indictment charging Mr. Sotis, along with Emilie Voissem, with Conspiracy to Export Items in Violation of IEEPA in violation of 18 U.S.C. §371)(Count 1); Export and Attempted Export of Goods in Violation of IEEPA in violation of 50 U.S.C. §§1705(a), (c) (Count 2); Smuggling of Goods in violation of 18 U.S.C. § 554(a) (Count 3). Ms. Voissem was also charged with Making False Statements in violation of 18 U.S.C. § 1001(a)(2)) (Count 4) (Mr. Sotis was not charged in that count). In sum and substance, the Indictment alleges that between April 5, 2016, and October 25, 2016, Mr. Sotis and others conspired to transfer four (4) rEvo III rebreathers without a license. Believing in his innocence, Mr. Sotis exercised his right under the Sixth Amendment and proceeded to a trial by a jury. The trial began on October 14, 2021. On October 24, 2021, the jury found Mr. Sotis guilty of Counts 1, 2 and 3.

Mr. Sotis steadfastly maintains his innocence to all charges, but recognizes that he will be sentenced by this Court as a guilty individual prior to being able to assert his claims of actual innocence before other courts. As a result of these unfortunate events, Mr. Sotis will appear before this Court to be sentenced for the three crimes for which he was convicted on January 11, 2022.

This is a somber and humbling time for Mr. Sotis, but he is fortified by the support of dozens of family members, friends, and business associates who know his true character and stand behind him at this difficult time.

II. IMPACT OF THE GUIDELINES

On December 7, 2021, the Office of Probation filed its initial Pre-Sentence Investigation Report ("PSI"). On January 4, 2022, the Defendant, through counsel, made certain objections and suggestions for corrections to the PSI. As of this writing, no substantive changes have been made to the PSI by Probation Department and those objections have been preserved for this Court to resolve at the sentencing hearing.

In its report, the Probation Department computes the offense level for all counts of conviction as follows:

a.	Base offense level pursuant to U.S.S.G. § 2M5.2(a)(1)	26
b.	Specific Offense Characteristics	
c.	Adjustments:	
	U.S.S.G. § 3B1.1(a) Organizer/Leader	4
	U.S.S.G. § 3C1.1 Obstruction	2
d.	Total Advisory Guideline Level	32

The Advisory Guideline Level of 32 provides for a Guideline range of 121 to 151 months of incarceration. However, for several reasons, further discussed below, the defendant objects to the above calculation proposed by the Probation Department.

A. Base Offense Level Under USSG §2M5.2

Mr. Sotis has already noted his objection to the utilization of USSG §2M5.2 (a) (1) to determine his Base Offense level. (DE 135). USSG §2M5.2 provides:

> Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License :
>
> (a) Base Offense Level:
> 2M5.2(a)(1)
>
> (1) 26, except as provided in subdivision (2) below;
> 2M5.2(a)(2)
>
> (2) 14, if the offense involved only (A) non-fully automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed two, (B) ammunition for non-fully automatic small arms, and the number of rounds did not exceed 500, or (C) both.

In addition, the Application Note to USSG §2M5.2 provides:

> Under 22 U.S.C. § 2778, the President is authorized, through a licensing system administered by the Department of State, to control exports of defense articles and defense services that he deems critical to a security or foreign policy interest of the United States. The items subject to control constitute the United States Munitions List, which is set out in 22 C.F.R. Part 121.1. Included in this list are such things as military aircraft, helicopters, artillery, shells, missiles, rockets, bombs, vessels of war, explosives, military and space electronics, and certain firearms.

It is clear that the rebreathers are NOT arms, munitions or military equipment as those terms are typically defined and understood. Most importantly, rebreathers are not listed in the United States Munitions List as codified in 22 C.F.R.121.1. It is clear that the items subject to control on the United States Munitions List do not include rebreathers. Since they are not items that fall within the class of items described in USSG §2M5.2, neither level 26 nor 14 is appropriate. Indeed, either level would result in a sentence grossly disproportionate to the conduct in this case.

The government has claimed that the rEvo III rebreathers were considered "dual use" items that have application for both recreational/commercial use as well as a military application.[1] However, while some rebreathers can be used for military application, it is submitted that the rEvo III involved here cannot. This is because the rEvo III rebreathers do not meet the necessary specifications for use in a military operation. Specifically, rEvo III rebreathers have metal components and a solenoid which makes them easily trackable with any form of sonar, including even a recreational "fish finder." The solenoid itself is also quite noisy making its adaptation for surreptitious military use more of a bald contrivance and supposition than a reality. For that reason, the rEvo III rebreathers are not approved for military use by the United States or any other government of which the defense is aware. Although these rebreathers required a license for shipment by virtue of the fact that they were categorized for licensure by the Department of Commerce under ECCN 8A002.q.1, the list informing the guideline recommended by the Probation Department under USSG §2M5.2 is the United States Munitions List which is issued by the State Department. That list does not reference rebreathers at all. Indeed, an examination of that list, as well as the text of USSG §2M5.2 and the Application Notes to that guideline section, reveals that the class of items addressed in those references – even in the lesser base level(14) provided for in USSG §2M5.2(a)(2) – concern items that can be properly described as weapons. Such draconian penalties might be appropriate for defendants who have shipped weapons of war to places in Libya, but their application to the facts of this case would lead to an absurdly disproportionate sentence.

Further, even if the court were to conclude that U.S.S.G. §2M5.2 (advising a base level of 14) is applicable, we believe a downward departure well below level 14 would be warranted in light of Application Note 2 to U.S.S.G. §2M5.2 which provides:

[1] It should be noted that the rebreathers in question, along with other dive equipment, were being shipped to CODI Group, a recreational dive company in Misurata, Libya. Misurata is a city on the Mediterranean coast known for shipwreck diving.

> In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security or foreign policy interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted.

In his objections to the PSI, Mr. Sotis has referred the court's attention to *United States v. Sevilla*, No. 04 CR 0171 (N.D. Ill. Nov. 29, 2006). There, the defendant was convicted of shipping a "United Computer Inclusive Hydraulic Floor Model Testing Machine" to Iran. The government suggested that U.S.S.G. § 2M5.1, was applicable. That provision is substantially similar to the proffered guideline in the present case, U.S.S.G. §2M5.2, but is applicable to offenses where "national security controls or controls relating to the proliferation of nuclear, biological, or chemical weapons or materials were evaded." Although the Court found that U.S.S.G. § 2M5.1 was in fact applicable, the court granted a variance to level 12, reasoning:

> Several factors mitigate the offense level of 24 for Sevilla. Sevilla's conduct occurred on only one occasion, and he has no other criminal history. The volume of commerce was minimal. Although the United States has a significant interest in controlling the export of materials to Iran, there is no evidence that attempted export was made with criminal or terroristic intent. Furthermore, as found in the Court's previous Memorandum Opinion and Order, the universal testing machine that was attempted to be exported by Sevilla was not a product that threatened controls relating to the proliferation of nuclear, biological, or chemical weapons.

The same reasoning holds true in the instant case. The conduct only occurred on one occasion and the volume of commerce was minimal. There were only four (4) rebreathers sold at $39,000, which profited Add Helium profited approximately $4,600 and there is absolutely no evidence that there was any "criminal or terroristic intent" on the part of Mr. Sotis or that of the other participants in this sale. It can hardly be argued that four (4) rebreathers sold to a Libyan commercial diving operation posed a threat to the national security. Mr. Sotis' offense conduct was not offensive because it was dangerous to U.S. foreign policy or national security, but rather because it was contrary to certain export control formalities. While the violation of export-law formalities is serious and should be treated as serious, the Court at sentencing also has to weigh

the realistic threat, if any, that Mr. Sotis' conduct presented. In this regard, the Application Notes to U.S.S.G. § 2M5.2 specifically allow for a downward departure in cases where smuggling conduct only violates export-law formalities and does not pose a threat to U.S. foreign policy interests. Thus, if the Court were to find U.S.S.G. § 2M5.2 applicable, we submit that a significant departure and variance would be warranted. However, the base levels advised in the recommended guideline section do not approach reflecting the nature of the offense in this case. For the reasons indicated below, we submit that the guideline section that addresses crimes of fraud, U.S.S.G. §2B1.1, is the more appropriate guideline to apply in this case.

B. Base Level Provided for in § U.S.S.G. 2B1.1 is Appropriate

It is submitted that that none of the provisions of U.S.S.G. §2M5 are applicable to Mr. Sotis' offenses of conviction. The defendant recognizes that the Statutory Index for a violation of 50 U.S.C. §1705 and 18 U.S.C. §554(a) refers to U.S.S.G. §2M5.1, §2M5.2 or §2M5.3.[2] However, a reading of those provisions demonstrates that they should not be used in the current case. The title of USSG §2M5.2 makes clear that it applies to the "exportation of arms, munitions or military equipment or services without a required validated export license." Mr. Sotis was not convicted of exporting arms, munitions or military equipment. USSG §2M5.2(a)(2) further supports the defense's contention that this particular guideline provision is not applicable to Mr. Sotis' case. That subsection provides that the lesser Base Offense level is 14 if the offense only applied to non-fully automatic small arms, less than 2 or less than 500 rounds of non-fully automatic bullets. It simply defies belief that Congress or the United States Sentencing Commission would specify that a person sending 2 guns with 499 rounds of ammunition to a particular country should receive a significantly lower sentence than a person that sent 4 rebreathers which are not even on the United

[2] The conviction for Count I, 18 U.S.C. §371 does not necessarily direct the application of U.S.S.G. §2M5.

States Munitions List, as set out in 22 C.F.R. Part 121.1. It is clear that utilization of U.S.S.G. §2M5.2 is nothing more than an attempt to fit a square peg in a round hole.

The same holds true for the application of U.S.S.G. §2M5.1. That Guideline is applicable to "EVASION OF EXPORT CONTROLS; FINANCIAL TRANSACTIONS WITH COUNTRIES SUPPORTING INTERNATIONAL TERRORISM." It is clear that Mr. Sotis offense of convictions did not involve a financial transaction with a country supporting international terrorism. There was no financial transaction. The shipment was not sent to a "country" *qua* "country" and, in any event, Libya was not defined as a country supporting international terrorism as designated in accordance with section 6(j) of the Export Administration Act (50 U.S.C. App. 2405). Further, it is equally certain that the rebreathers could never be classified as relating to the "proliferation of nuclear, biological, or chemical weapons or materials…."

What is clear, however, is that the government spent significant time throughout the trial of this cause attempting to demonstrate that this was in fact a financial crime -- a crime of greed -- that Mr. Sotis and Add Helium were in dire financial straits and would do anything necessary to obtain the proceeds in the sale of the items to Bensadik. In a sense, the government presented a fraud and deceit case in which the United States was the victim. It is submitted that, to be consistent with the Government's position, U.S.S.G. § 2B1.1 should be utilized. Based on that section, the defense suggests that under that guideline, the Adjusted Offense Level would be as follows:

U.S.S.G. 2B1.1(a)(1)	6
U.S.S.G. 2B1.1(b)(1)(A) (less than $6500)[3]	0
Adjusted Offense Level	6

C. Role Enhancement USSG §3B1.1(a).

The defendant objected to a role enhancement pursuant to U.S.S.G. §3B1.1(a) as an organizer or leader or a criminal activity involving five or more criminal participants. Section 3B1.1 of the U.S. Sentencing Guidelines increases a defendant's offense level by four levels if he or she was "an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). The government has the burden to prove the aggravating role by a preponderance of the evidence. *United States v. Martinez*, 584 F.3d 1022, 1027 (11th Cir. 2009). Courts are required to consider several factors to determine whether a defendant was an organizer or leader of criminal activity. *United States v. Shabazz*, 887 F.3d 1204, 1222 (11th. Cir. 2018) These include: (1) decision-making authority; (2) the nature of the defendant's participation in the offense; (3) the recruitment of others; (4) the receipt of a larger share of the fruits of the crime; (5) the degree of participation in the organizing and planning of the offense; (6) the nature and scope of the illegal activity; and (7) the degree of control the defendant exercised over others involved. *Id.* The government is not required to establish all of these factors. *United States v. Dixon,* 901 F.3d 1322, 1348 (11th Cir. 2018), but there must be some exercise of authority, leadership, control, or influence before the four-level enhancement may be applied.

[3] There does not appear to be any loss to anyone involved so it is submitted that the "gain" from the sale of the rebreathers should be utilized. Application Note 3(B) to USSG §2B1.1 provides: The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.

The amount of gain, in terms of profit to Add Helium, was $4,600. Under USSG §2B1.1(b)(1)(A) there would be no further increase in the base level. If the amount of gain were to be based on the retail price of the rebreathers (approximately $39,000), that would result in an increase of four levels, setting the base offense at level 10. USSG §2B1.1(b)(1)(C).

First, we point out in terms of being an "organizer," it is submitted that Mr. Sotis did not organize any criminal activity whatsoever. It is unrefuted that on April 5, 2016, Osama Bensadik initiated contact with Add-Helium to purchase rebreathers. This is not surprising since Add Helium was a leader in the field of selling rebreathers. Mr. Sotis maintains that when the initial contact was made, Bensadik made no mention that the re-breathers would be shipped to Libya but does admit he later learned of the ultimate destination of the rebreathers. It was Bensadik that "organized" and indeed initiated the sale of the rebreathers to Libya. In fact, at all times relevant Bensadik controlled the method of sale and shipment to Libya. Mr. Sotis was specifically directed by Bensadik that the order be coordinated through Ramas, LLC, and its owners Mohammad and Diana Zaghab. Ramas, LLC was purportedly an exporting company. (See, PSI ¶ 24) Thus, by April 5, 2016, it was Bensadik who placed the order for the rebreather's and Ramas and the Zaghabs coordinated the sale and paid for the items. Mr. Sotis, organized, initiated and led nothing at this point. He was acting as a salesman and a supplier to a domestic company.

As was its usual practice, Add Helium initially arranged for the shipping of the rebreathers and dive equipment to Libya pursuant to the instructions provided by Bensadik and the Zaghabs. On or about July 27, 2016 that Global Forwarding, Inc., Add Helium's shipping company, notified Add Helium that there could be problems with the shipment going to Libya. Armed for the first time with that information, Mr. Sotis requested that Voissem "Go ahead and look into the department of commerce requirements and see how time consuming it might be. Then we can make a determination." PSI ¶ 26. Three days later, Mr. Sotis informed both Voissem and Robotka, that "Ok, if the president has banned all shipments to Libya,[4] they are going to have to find another route or handle it from here. We do not need trouble from the government for making illegal shipment. I think its [sic] time Osama [Bensadik] and Mohammad [Zaghab] manage this problem

[4] Then President Obama had not banned such shipments. That statement was based on erroneous information that Robotka had supplied to Ms. Voissem, who, in turn, had passed that bad information on to Mr. Sotis.

and let us know how they intend to receive their goods as we can't ship to Libya." PSI ¶29. In other words, once he realized that there would be certain legal impediments to shipping some of the items purchased by Ramas, LLC, he simply deferred to the wishes of the Zaghabs. Thereafter, Mohammad Zaghab offered to take charge of the shipping himself and, on August 2, 2016 (two days prior to Wagner's visit to Add Helium), Ms. Voissem emailed the Zaghabs and agreed to take them up on their previous offer to take over responsibility for the shipment. Again, all this occurred before Wagner's visit to Add Helium. Ultimately, the Zaghabs did so and the items were picked up by their chosen shipping company. There is simply no sufficient evidence that Mr. Sotis organized or led the shipment of the rebreathers to warrant the 4-level enhancement recommended by the Probation Department.

It is admitted that Mr. Sotis had decision making authority over Add Helium - but not over Ramas or Bensadik. He "led" Add Helium. That alone does not make him an organizer or a leader. It is also clear he recruited no one. In fact, he was "recruited" for a lack of a better term, by Bensadik and the Zaghabs, as they reached out to him to purchase the rebreathers.

Further, it is clear that when it came to "organizing" the actual shipment, Mohammad Zaghab took the lead role in arranging the transportation. It is undisputed that once he became aware that shipping to Libya would be time consuming and problematic, Mr. Sotis deferred to the principals at Ramas, LLC.[5] Mohammad Zaghab's numerous emails prove this. For instance, on August 1, 2016 he wrote to Ms. Voissem and stated, "Please let us know if you want us to handle the shipping through our shipping companies." (Government Exhibit 12BB). On August 2, 2016, Ms. Voissem wrote back stating, in part, "It may be appropriate and in the best interest of time for the shipping to go through you. We do apologize regarding this shipping issue, however, it is out of our hands and there was no indication from our shipping company of any issues or concerns until

[5] During most of the time relevant to this transaction, Mr. Sotis' time was consumed with teaching diving students, not with overseeing the shipment of these items.

they went to book it." *Id.* In response, shortly thereafter on August 2, 2016, Mohammad Zaghab confirmed that he would take responsibility for the actual shipping: " We would like to arrange for the shipping company to pick up the goods from your store." It is clear that Mr. Sotis had nothing to do with arranging the actual shipping to Libya. In fact, he declined to do so, once he learned that the shipment might pose impediments his company had not previously encountered . Thereafter, others arranged for the shipping.[6] Clearly , he was not an organizer or leader of a criminal activity and the objection to this adjustment must be sustained.

D. Obstruction Enhancement

The Office of Probation suggests that there should be a 2-point adjustment for obstruction of justice under U.S.S.G. § 3C1.1 based on allegations that Mr. Sotis threatened Robotka and that certain documents were purportedly withheld once an administrative subpoena was served on Add Helium.

First, it is clear that the government has the burden of proof by a preponderance of the evidence that this adjustment is applicable. *United States v. Martinez*, 584 F.3d 1022, 1027 (11th Cir. 2009). The government failed to do so. The only testimony regarding these alleged threats came from Mr. Robotka himself. His testimony strains credulity.

In fact, during the time period within which Mr. Robotka claims Mr. Sotis threatened him, the two were still working together, diving together and even traveled on business together. They went on dive trips together after the alleged threats were supposedly made. Is it likely that a person would take dive and business trips with a man that is alleged to have just threatened to kill him? It is suggested that the alleged threats were either an utter fabrication or a thorough exaggeration of an argument between Robotka and Mr. Sotis. By any measure, it was certainly not a mafia-style threat as it was characterized at trial. Tellingly, there was nothing in the recording of his conversation with Mr. Sotis which Mr. Robotka made on December 13, 2016, (after he had told

[6] These events all preceded Wagner's visit to Add Helium on August 4, 2016.

Agent Wagner he was threatened for cooperating with the government) that indicated that any such threats had been ever been made by Mr. Sotis. Still the government persisted in making these supposed threats a central part of its call for his conviction at trial. Yet, even with this testimony, there is insufficient evidence of obstruction.

Second, the government has asserted that the obstruction adjustment should apply because Mr. Sotis purportedly failed to supply documents in response to an administrative subpoena and instructed an employee to destroy certain documents. Although, Mr. Sotis denies the allegations in this regard, it is submitted that even if true, the government failed to meet its burden.

In *United States v. Alpert,* 28 F.3d 1104, (11th Cir. 1994) the Court explained that meaningful appellate review requires a sentencing court applying an enhancement for obstruction of justice to explain what the defendant did, "why that conduct warrant[ed] the enhancement," and "how that conduct actually hindered the investigation or prosecution of the offense." 28 F.3d 1104, 1107–08 (11th Cir. 1994) (*en banc*). It has not been shown that, even if true, how a failure to produce any evidence had any material effect on the investigation and prosecution of this case. That is because it had no such effect. It is clear that the emails sought by the government were actually obtained in response to a search warrant (*see* ¶46 PSI) – an investigative tool that would be employed as a normal part of any criminal investigation. Thus, there was no "obstruction" of this investigation and prosecution based on failure to turn over certain emails.

For the reasons supplied in his Objections to the PSI, and which will be argued at sentencing, there is insufficient credible evidence of obstruction to warrant the two-level enhancement recommended.

III. ANALYSIS OF THE STATUTORY SENTENCING FACTORS

A. Post Booker Sentencing Considerations

In *United States v. Booker,* 543 U.S. 220 (2005), the Supreme Court made it clear that United States district courts are no longer bound or restricted by a mandatory and unwavering

application of the United States Sentencing Guidelines. More recently, the Court has explained that as a necessary corollary to the constitutional proscription on treating the Guidelines as mandatory, sentencing courts "may not presume that the Guidelines range is reasonable." *Gall v. United States,* 552 U.S. 38, 50 (2007); *see also, Rita v. United States,* 551 U.S. 338, 351 (2007)(noting that "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply"). The Supreme Court has since re-emphasized that the Guidelines are both advisory and not to be presumed reasonable. *Nelson v. United States,* 555 U.S. 350, 352 (2009). It is submitted that this case is a prime example of why the guidelines should not presumed to be reasonable.

The defense is requesting a significant variance from the advisory guideline range, whatever formula the Court ultimately decides to be appropriate. A "variance" refers to the selection of a sentence outside of the advisory Guidelines range based upon the district court's weighing of one or more of the sentencing factors of § 3553(a). While the same facts and analyses can, at times, be used to justify both a Guidelines departure and a variance, the concepts are distinct. *United States v. Grams*, 566 F.3d 683, 686–87 (6th Cir. 2009) (*per curiam*).

Even the government has "acknowledge[d] that . . . 'courts may vary [from Guidelines ranges] based solely on policy considerations, ***including disagreements with the Guidelines***.'" *Kimbrough v, United States,* 552 U.S. 85, 101 (2007)(Emphasis added); *United States v. Cavera*, 550 F.3d 180, 191 (2d Cir. 2008) (*en banc*) ("As the Supreme Court strongly suggested in *Kimbrough*, a district court may vary from the Guidelines range based solely on a policy disagreement with the Guidelines, even where that disagreement applies to a wide class of offenders or offenses."). Rather a district court's mandate is to impose "a sentence sufficient, but not greater than necessary, to comply with the purposes" of section 3553(a)(2.)

To that end,"[f]irst, the district court should determine the [g]uidelines sentencing range. Second, the district court should determine whether any traditional departures are appropriate.

Third, the district court should apply all other section 3553(a) factors in determining whether to impose a [g]uidelines or non-[g]uidelines sentence." *United States v. Rivera*, 439 F.3d 446, 448 (8th Cir. 2006).

Judges may vary from the guidelines because of the individual circumstances of the case, *United States v. Pauley*, 511 F.3d 468, 474-75 (4th Cir. 2007), and/or because the Guidelines are not the product of empirical data, national experience, or independent expertise and thus do not satisfy § 3553(a)'s objectives, or both. *United States v. Grober*, 624 F.3d 592 (3d Cir. 2010).

The defense requests that the Court to consider the following factors and analysis in fashioning an individualized sentence based upon the facts and circumstances of this case.

B. Sentencing Policy as provided in 18 U.S.C. §3553(a)

Title 18 U.S.C. § 3553(a) provides that the primary goal for the sentencing court is to "impose a sentence sufficient, but not greater than necessary , to comply with the purposes set forth in paragraph 2." Section 3553(a)(2) states that those purposes are to:

(A) Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) Afford adequate deterrence to criminal conduct;
(C) Protect the public from further crimes of the defendant; and
(D) Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining the minimally sufficient sentence, § 3553(a) directs sentencing courts to consider several factors in addition to the sentencing range under the advisory guidelines, among them:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;
(2) the kinds of sentences available;
(3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
(4) the need to provide restitution to any victims of the offense.

The defense will address these issues as they relate to Mr. Sotis.

C. Offender Characteristics

Mr. Sotis is a highly intelligent, well-spoken, self-educated, driven entrepreneur. He was a talented diver, educator and advisor and he is still a very talented man. Yet for all he has accomplished – and overcome – he finds himself facing the possibility of imprisonment. He has been described as one of the most caring and compassionate people who is willing to give completely of himself to others. At a relatively young age, he faced a crossroads that threatened to derail his life. Instead, he pulled himself up by his bootstraps and rebuilt his life based on his passion and ultimately, expertise, in one of the most specialized fields of marine sport. Along the way he made another mistake, though not of the kind made in his youth, but of the kind that can perhaps most accurately be described as based on arrogance. It is submitted that Mr. Sotis finds himself before this Court, not for his intent to harm this country (for which he had no intention) or to aid or abet terrorists (which he would never have done), but for making a choice out of thoughtlessness and failing to consider and anticipate how his cavalier behavior with respect to his business could lead to such an outcome. Obviously, his claim of innocence notwithstanding, he has been humbled by that choice and realizes what he brought on himself. He has a strong sense of family and community, but failed to recognize the effect his actions have on a community and a family. As a result, this hardworking, loving, and gifted member of this community, has lost the profession and business he loved and now stands before you a convicted felon.

Peter Sotis was born on May 11, 1964 in Warwick, Rhode Island. Although, he had a healthy relationship with his mother until her death; he has no relationship with his father and does not even know if he is still alive. He has two siblings, John and Thomas Sotis with whom he is close.

Mr. Sotis reports that he had a normal or average childhood with two loving parents and two loving siblings. He was not subject to any form of abuse as a child. Although he dropped out of High School in the 11th grade, he returned to school to obtain his General Equivalency Diploma. Afterwards, he attended Rhode Island Community College and New England Technical College

taking classes in automotive technology. At that point, beginning in 1982, he began working as a marine salesman in Rhode Island and Naples, Florida. For approximately 5 years, between 2001 and 2007 he worked as a realtor in Florida. In 2003, he started Add-Helium, LLC on a part time basis and began working full time at Add-Helium in 2007.

Living in coastal states for all of his life, diving was his true passion. As with many divers, they begin in shallow waters, then progress to open water and wreck diving. Sometimes, as with Mr. Sotis, divers progress to extreme diving forms. Following his passion and dream, Mr. Sotis opened a diving concern, first as Peter Sotis, Inc. then as Add Helium, LLC. Initially, Mr. Sotis made a living as a guide and instructor to novice and intermediate divers taking many on guided trips to various underwater novelties such as shipwrecks and coral reefs. As his experience and business developed, Mr. Sotis took a keen interest in more extreme forms of diving. These forms included deep dives requiring the use of specialized equipment such as rebreathers. Rebreathers, replace an open circuit Scuba system and allow a diver to submerge for a longer period of time and to deeper levels. Without getting overly technical, suffice to say a rebreather recirculates the exhaled carbon dioxide from a diver's exhalation and "recycles" it. It allows for deeper and longer divers. The systems are extraordinarily complex and quite dangerous if not properly used, maintained and operated. Mr. Sotis was an expert at the training and use of rebreathers. His company flourished and became one of the leaders in the sale and use of re-breathers.

A review of the many character letters submitted to the court, provides a glimpse into Mr. Sotis' true character. On a general note, Mr. Sotis has always been considered to be outgoing, friendly and gregarious. He is generous to a fault and puts other's interest ahead of his own regardless of consequences. He is gentle, extraordinarily intelligent and a caring.

The most important facet of Mr. Sotis's life always has been his passion for diving and his concern and love for others. That fact is evident from the numerous letters to the Court that emphasizes Mr. Sotis' devotion to his wife, family and his clients and his mother. His wife Claudia

Sotis notes: " Peter has always been loving, kind, encouraging and supportive towards me. All these attributes have kept my love for this man alive and growing. I am convinced of his innocence based on having intimate knowledge of this man's integrity and my thorough knowledge of these events. (See Exhibit A-1 letter from Claudia Sotis dated November 4, 2021.) His brother, Thomas Sotis, writes: "For the last 30 years, Peter has led an exemplary life. He is a self-made man who started at the very bottom and worked his way up through enormous effort and commitment to excellence in all his endeavors. Peter strives to maintain a healthy lifestyle through proper nutrition with a dedicated exercise regimen, and he reads to keep his mind sharp, educated, and informed. Peter was relentless in his commitment to provide the highest level of excellence to his clients through his deep subject knowledge, his diving experience, and most importantly, because they trusted him." What is apparent is that Mr. Sotis is a good, caring and loving person who apparently made a mistake that brings him before this court for sentencing.

As explained, for the past 20 plus years Peter has devoted his life to diving and dive training. Many of his clients and employees share their admiration for Mr. Sotis.

A client, Mark Flory writes: I would like the court to know that I sincerely believe Peter is a good American who loves his country and would never do anything on purpose to hurt our country and would never ever do anything that would put one of our soldiers is harm's way. Peter has been a good friend to me and has been a very positive influence on my family." (See, Exhibit A-4, Letter from Mark Flory dated December 7, 2021

The defense submitted all the letters of character that it has received. There is one clear and certain theme: Mr. Sotis is a devoted friend, teacher and family member. To even suggest a sentence of 121 months for a man who is so well-respected and loved would be unthinkable.

It is submitted that his heretofore unblemished record for 30 years; his family ties and responsibilities as well as his lifetime of achievement and hard work, warrants a significant variance.

D. Offense Characteristics

Neither Mr. Sotis, nor his family, seek to underestimate or downplay the nature, severity and gravity of the crime of conviction. However, it is suggested that the nature of this type of violation should not result in a lengthy term of imprisonment. Indeed, this is not one of those cases where there was direct support to a terrorist organization or a hostile government. This is not a case where nuclear parts or arms that can only be used for nefarious purposed were shipped. This is not even a case where military grade equipment was shipped. As noted earlier, the rebreathers, dual use items as proffered by the government, were not military grade. These particular re-breathers were not approved for military use by any government that the defendant is aware. They have metal parts, and a solenoid and make noise that can be detected by almost any form of sonar. However, it is recognized that nonetheless they were unlawful to ship to Libya absent government approval.

Discussed in more detail below, Mr. Sotis's case suggests the imposition of a minimal sentence.

Respect for the law is promoted by punishments that are fair, however, not those that simply punish for punishment's sake. *United States v. Cernik*, No. 07-20215, 2008 U.S. Dist. LEXIS 56462, at *15 (E.D. Mich. July 25, 2008) ("[A] sentence of *imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing*." (citing *Gall,* 128 S. Ct. at 599))(Emphasis added). There is no reason to believe that respect for the law will increase if a defendant who deserves leniency is sentenced harshly any more than there is reason to believe that respect for the law will increase if a defendant who deserves a harsh punishment receives a slap on the wrist. *See United States v. Zavala*, No. 07-14851, 2008 U.S. App. LEXIS 24168, at *8 (11th Cir. Nov. 25, 2008) ("[A]ny higher sentence would promote disrespect for the law.") (quoting the district court); *United States v. Ontiveros*,

07-CR-333, 2008 U.S. Dist. LEXIS 58774, at *4 (E.D. Wis. July 24, 2008) ("[A] sentence that is disproportionately long in relation to the offense is unjust and likewise fails to promote respect [for the law]."). A just punishment for Mr. Sotis is one that balances the severity of his crime with the individual characteristics of Mr. Sotis that counsel in favor of leniency.

Deterrence to criminal conduct is also one of the major considerations embodied in 18 U.S.C. §3553. Certainly, the lessons learned over the past 5 years suggest that the consequences of criminal conduct are dire and often quite severe. To date, Mr. Sotis's criminal acts have been (or will be) well-publicized and such is expected to continue at least until sentencing. The details of the matter have been disseminated throughout print and electronic media in the area and perhaps nationally. He will certainly be subjected to the ostracism of friends, family, former co-workers and associates. Indeed, he will never be able to re-enter the world of diving as it is certain that no manufacture will ever distribute to him. These are all collateral consequences of a felony conviction that Mr. Sotis will continue to suffer, regardless of any additional penalties that may be imposed by the Court. By this conviction, he has not just lost the means to earn a living – he has lost the ability to contribute his knowledge and skill to his community. Numerous courts have recognized that the collateral consequences of a conviction can be nearly as harsh and far more permanent than even a short term. *See e.g., United States v. Gaind*, 829 F.Supp 669, 671 (S.D.N.Y. 1993) (granting downward departure where defendant was punished by the loss of his business); *United States v. Samaras*, 390 F. Supp. 805, 809 (E.D. Wis. 2005)(granting variance in part because defendant lost a good public sector job as a result of his conviction).

While it is highly unlikely that Mr. Sotis will reoffend, the judicial system is well equipped to provide adequate means of individual deterrence for future criminal conduct by the imposition of a term of supervised release with special conditions. The imposition of detailed special conditions by the Court, with the assistance of the Office of Probation, can certainly ensure a sentence with adequate safeguards that would deter any chance of his reoffending. Incarceration

of this defendant is simply not necessary to ensure individual deterrence. It can hardly be suggested that Mr. Sotis is a hardened criminal with a long past of endangering public safety and others at risk. He is a 58-year-old hard-working man and it appears unlikely that the public needs to be protected from the likes of him. Neither is incarceration necessary to serve as a general deterrent to others. The fact that this prosecution was pursued so aggressively, and that Mr. Sotis' life is in virtual ruin as a result, should serve as an adequate deterrence to others who would not heed the instructions of officers enforcing the licensure requirements of the U.S. Department of Commerce.

E. Disparity

As the court is aware, one of the overarching goals in federal sentencing is to avoid unwarranted sentencing disparities. 18 U.S.C. §3553(a)(6).). Courts routinely review "case law submitted by defense counsel that many similarly situated defendants had received shorter than the guideline range applicable here" and then impose a sentence below the Guideline range. *Sarvestani v. United States* 2015 U.S.Dist. LEXUS 159491 (SDNY Nov. 25, 2015.) A survey of similar cases suggests that a sentence as suggested by the Office of Probation will create an unwarranted sentencing disparity. The following are examples of similar cases that are illustrative:

1. *United States v. Sevilla*, No. 04-CR 0171 (N.D. Ill. Nov. 29, 2006) Utilizing U.S.S.G. 2M5.1 rather than U.S.S.G. §2M5.2 the court granted a 14-point variance and imposed a sentence of probation for the unlawful sale of a hydraulic testing machine to Iran and imposed a probationary sentence.

2. *United States v. Alexander*, 782 F.3d 1251 (11th Cir. 2015) Conspiring to violate International Emergency Econ. Powers Act for the planned sale of industrial water-jet cutting machines to Iran. The court imposed an 18-month sentence.

3. *United States v. Aydin,* No.12 Cr-00221 (USDC GA 2012) shipping F-14 fighter jet parts to Iran. The court imposed a 30-month sentence.

4. *United States v. Banki,* 685 F. 3rd 99 (2nd Cir 2011) IEEPA violation regarding transfer of money to and from Iran. Guideline range was 63-78 months and a 30 month sentence was imposed.

5. *United States v. Francois,* 661 Fed.Appx. 661 Fed.Appx. 587. (11th Cir. 2016) Firearms trafficking. The court imposed a 36-month sentence.

6. *United States v. Reyes*, 270 F. 3d. 1158, (7th Cir. 2001) Smuggling firearms outside the United States. The court imposed a 41-month sentence.

7. *United States v. Vasquez,* 2018 WL 3814727 (11th Cir. 2018) Smuggling firearms outside the United States the court imposed a 46-month sentence.

8. *Perez-Pelaez v. United States*, 2018 WL 1100386 (N.D. Ga.2011) Smuggling firearms outside the United States. The court imposed a 46-month sentence.

9. *United States v. Amirnazmi*, 645 F. 3rd 564 (3rd Cir. 2011) Conspiring to International Emergency Econ. Powers Act by selling industrial software to a state-owned Iranian company along with direct dealings with the President of Iran. The court imposed a 48-month sentence.

10. *United States v. Ning Wen,* 477 F. 3rd 896 (7th Cir. 2007, Violation of export control laws by providing militarily useful technology to China. The court imposed a 60-month sentence.

11. *United States v. Piquet,* 372 Fed Appx. 42 (11th Cir. 2010) Violation of export control laws by exporting electronic warfare components to China. The court imposed a 60-month sentence.

12. *United States v. Hanna*, 661 F. 3d. 271 (6th Cir.2011) Violation of International Emergency Econ. Powers Act by shipping telecommunication and navigation equipment to Iraq with a national security enhancement pursuant to U.S.S.G. 2S1.1(b)(1)(iii)). The court imposed a 72-month sentence.

It is respectfully submitted that the facts of this case do not even approach to the gravity of the charges in any of those cases. The defense points out that the value of the re-breathers was approximately $39,000 and at best is considered by some as "dual use" equipment with little, if any, military use or application. Add Helium's net profit for these items was approximately $4,600. There were no guns, munitions, fighter jets parts, microprocessors or anything with a direct connection to terrorism or a military operation. The relevant items were high-tech scuba gear which the defendant asserts have no military application and the facts of this case do not merit the imposition of prison time.

F. Parsimony Provision

The defense would stress the importance of the parsimony provision of the 18 U.S.C. §3553. That provision provides that "The court shall impose a sentence *sufficient, but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection. (Emphasis added). Thus, the defense posits that the Court is statutorily bound not to impose a sentence greater than what would be necessary to comply with the relevant sentencing provisions discussed below. *See, e.g., United States. v. Pizano-Rico*, 255 Fed.Appx. 483 (11th Cir. 2007 unpublished.)

The defense recognizes the various guideline levels under the varied guideline sections described above. Nevertheless, regardless of the section deemed applicable, the court is free to disagree with all or parts of the Guidelines on policy grounds and, in any event, consider the possibility of a variance from whatever guideline range is determined to be appropriate.

G. The Kinds of Sentences Available

As discussed below, it is suggested that incarceration is the least effective method in achieving stated Congressional sentencing policy. Certainly, one of the primary purposes of our national sentencing policy and the Sentencing Reform Act of 1984 is rehabilitation. However, little documentary evidence exists to support the proposition that incarceration has any effect on

rehabilitation whatsoever. A May 2004 study conducted by the United States Sentencing Commission belies the critical assumption that a period of incarceration for a first time offender had any effect on rates of recidivism. *Recidivism and the First Offender*, United States Sentencing Commission May 2004. In fact, the conclusion of the study appears to point to the contrary: **The more involvement one had in the criminal justice system and the longer in prison sentence, the higher the rate of recidivism**.

Indeed, it can be fairly argued that national sentencing policy is fostered not by mandating long periods of incarceration but by the partial utilization of alternatives to unduly lengthy prison sentences. The Sentencing Reform Act has always provided sentencing judges with flexibility to consider which of the core sentencing principles--retribution, deterrence, incapacitation, and rehabilitation--are most important in a particular case, and to provide alternatives to incarceration where necessary in carrying out statutory goals. These four core principles have guided sentencing policy and implementation in one form or another since at least 1984. *See, e.g., Kate Stith & José A. Cabranes*, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 41 (1998). Indeed, the United States Sentencing Guidelines themselves, along with sound sentencing and penological philosophy, have always permitted the courts to view alternatives to prisons in appropriate circumstances and to craft individual sentencing in appropriate cases. In determining whether an alternative to incarceration is appropriate, courts have examined several general issues, including the risk a particular sentence poses to the public, the harm caused by the crime, the defendant's prior criminal behavior, his or her likelihood of committing another crime and potential hardship to others. *Cf.* Model Penal Code § 7.01. Such alternatives for the Court to consider are substantial periods of probation/supervised release, community service, drug and alcohol rehabilitation programs, home confinement, electronic monitoring or any combination of the above. Thus, it is suggested that this Court can be highly consistent and in all probability fashion a sentence for Mr.

Sotis *sans* an advisory guideline sentence and still protect and foster Congressional and constitutional sentencing policy.

For the above stated reasons, the Mr. Sotis respectfully requests that this Court impose a non-guideline sentence. One goal of effective punishment is the reformation. One of the measures of effective punishment is the position the defendant is in after he serves whatever sentence is imposed. Ultimately, reformation should go hand in hand with punishment. Punishment too severe or harsh will frustrate this goal of reassimilating a defendant into society. While this may satisfy a "lust" for punishment, an unduly harsh punishment of overly lengthy incarceration frustrates the overall purpose of the criminal justice system.

CONCLUSION

For all of the reasons stated herein, the undersigned urges the Court to impose a non-guideline sentence, one tempered with mercy and proportionate to the totality of the conduct in this case – a "just" sentence, one "sufficient but not greater than necessary" to further the sentencing purposes described in 18 U.S.C. § 3553.

WHEREFORE, Defendant Peter Sotis respectfully requests that this Memorandum in Aid of Sentencing, together with the previously submitted letters, be considered in determining the sentence to be imposed.

Dated: January 7, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system on this 7th day of January, 2022 and was served electronically to all counsel of record.

By: Bruce Udolf