

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	NO(s): 1:20-CR-00277
	:	1:21-CR-00169
vs.	:	
	:	
SCOTT LEVY,	:	
Defendant	:	(Judge Wilson)

SENTENCING MEMORANDUM
SUBMITTED ON BEHALF OF SCOTT LEVY

TO THE HONORABLE JENNIFER P. WILSON, JUDGE OF SAID COURT:

I. INTRODUCTION

This Sentencing Memorandum is respectfully submitted on behalf of Scott Levy to provide Your Honor with information for use in determining a sentence “sufficient, but not greater than necessary” to comply with the purposes of sentencing enumerated in 18 U.S.C. §3553(a). It is hoped that, following consideration of the material presented herein, the Court will: 1) grant Mr. Levy a downward variance from the otherwise applicable Sentencing Guidelines Offense Level and its corresponding sentencing range, and; 2) pursuant to 18 U.S.C. §3141(b), allow Mr. Levy to voluntarily surrender thirty days following sentencing to the facility designated by the Bureau of Prisons for his confinement.

II. BACKGROUND

A. 1:20-CR-00277

In 2012 Scott Levy purchased the Hershey Road Family Restaurant (HRFR) which he operated until it closed in July, 2020. PSR, ¶9. From 2012 to 2016 HRFR failed to generate a profit. Id., ¶12. In federal income tax returns filed for 2016 and 2017, Mr. Levy, as charged in Count 1 of the Information filed against him to No. 1:20-CR-00277, underreported his income and thereby avoided the payment of income taxes in the aggregate amount of \$51,070. Id., ¶14. Moreover, as charged in Count 2 of the Information, from 2014 through 2018, Mr. Levy failed to report cash payments of employee salaries, including the salaries which he and his wife received, Id., ¶13, thereby avoiding the payment of \$179,276.44 in federal withholding, Social Security, and Unemployment Compensation taxes. Id., ¶14.

On January 14, 2020 Mr. Levy signed a Plea Agreement in which he acknowledged his culpability for Income Tax Evasion and the Willful Failure to Collect or Pay Over Tax in violation of 26 U.S.C. §§7201 and 7202, respectively. Id., pg. 4, ftnt. 1. An Information charging these offenses was filed against Mr. Levy on October 21, 2020, Id., ¶1, and, on November 24, 2020, he entered pleas of guilty to the charged misconduct. Id., ¶2.

B. 1:21-CR-00169

On April 3, 2020, acting on behalf of HRFR, Mr. Levy applied to the Small Business Administration (SBA) for a COVID-19 related Economic Injury Disaster Loan (EIDL) of \$150,000. *Id.*, ¶21. On April 14, 2020 Mr. Levy applied to the SBA for forgiveness of a prospective \$77,600 loan from PNC Bank to HRFR under the Administration's Paycheck Protection Program (PPP). *Id.*, ¶¶17 and 22. Mr. Levy made materially false statements on the applications submitted for both the EIDL loan and PPP loan forgiveness including assertions that the funds received through the EIDL and PPP programs would be used solely for specifically authorized business related expenses, and that, notwithstanding his January 14, 2020 execution of a Plea Agreement as indicated on page 2, *supra*, he had not pled guilty to a felony and was not subject to criminal charges. *Id.*, §§18, 19. Of the \$227,500 received by HRFR under the EIDL and PPP programs, \$170,000 was improperly diverted to personal use. *Id.*, ¶¶21-26.

Based upon this misconduct, on June 7, 2021 an Information docketed to 1:21-CR-00169 was filed against Mr. Levy charging him with Wire Fraud, Bank Fraud, and Money Laundering in violation of 18 U.S.C. §§1343, 1344, and 1956(a)(i)(B)(C), respectively, *Id.*, ¶3. On August 6, 2021 Mr. Levy entered pleas of guilty to these charges. *Id.*, ¶4. At the time of this plea, the two cases referred to herein were consolidated for sentencing. *Id.*

II. BASIS FOR A DOWNWARD VARIANCE

A. Introduction

Following the Supreme Court’s decision in United States v. Booker, 543 U.S. 220, 125 S.Ct. 738 (2005), sentencing courts were vested with the “discretion to craft an appropriate sentence falling anywhere within the range of punishments authorized by Congress.” United States v. Ashburn, 502 F.3d 331 (3^d Cir. 2007). This “ability to vary preserves district courts’ ultimate ability to impose, regardless of what the guideline range is found to be, a sentence that it views as ‘sufficient, but not greater than necessary,’ to serve the goals of sentencing.” Departures and Variances; Office of General Counsel, United States Sentencing Commission, pg. 43 (March, 2020).

B. Factor Mitigating Against a Downward Variance

Before presenting facts in support of Mr. Levy’s request that Your Honor grant him a downward variance, the existence of conduct which may mitigate against such relief must be acknowledged. This conduct consists of Mr. Levy’s commission of the fraud and money laundering offenses charged in 1:21-CR-00169 shortly after his execution of a Plea Agreement acknowledging his culpability for the tax charges filed at 1:20-CR-00277. PSR., pg. 4, ftnt 1.

While, absent significant evidence supporting a downward variance, this conduct may well vitiate any argument for such relief, it is respectfully submitted that the bases for the relief requested herein are sufficiently compelling that they

simply cannot be ignored, and, indeed, significantly outweigh Mr. Levy's pathologically unwise recidivist behavior. Moreover, in considering the effect of the 1:21-CR-00169 criminal conduct on Mr. Levy's request for a downward departure, it cannot be ignored that his recidivism resulted in additional charges being filed against him with a concomitant increase in his advisory Guidelines sentencing range. By virtue of these additional charges, Mr. Levy's offense level for the misconduct for which he will be sentenced increased from 16 to 23, and, depending on the Court's disposition of defense exceptions to the Guidelines calculation contained in the PSR, any diminution of that offense level for Acceptance of Responsibility was eliminated or, at least, reduced. Consequently, Mr. Levy has gone from a possible split-sentence range of 12-18 months to a total confinement range of 46-57 months. Having thus suffered for his repeated criminal activity, it seems unfair to punish Mr. Levy a second time by denying the prayed for downward variance solely on the basis of his recidivism and despite the hereinafter disclosed information.

C. Factors Mitigating in Support of a Variance

1. remarkable efforts by Mr. Levy to successfully operate his business

As confirmed by Joseph Santangini, one of Mr. Levy's instructors at culinary school, Mr. Levy's purchase of HRFR was a "dream come true." See Mr. Santangini's letter submitted herewith as Appendix, A-1. So powerful was Mr.

Levy's dream to have his own restaurant, when Nick and Angie Loxas, close personal friends of Mr. Levy, were building the HRFR for themselves, Mr. Levy "showed up every day for 3 years to assure that he would be the man that we would sell the business to." See, letter from Angie Loxas, A-2. Eventually, Mr. and Mrs. Loxas decided to sell their restaurant. Before selling the business to Mr. Levy, however, "We did advise Scott that it would be tough to handle all that debt, he borrowed the down payment, he borrowed the money for the business...." Id.

Mr. and Mrs. Loxas' admonition proved prescient. During the first 3½ years that Mr. Levy owned the Restaurant, the business lost money and, even when eventually profitable, the profits were modest. While a "great chef [Mr. Levy was] not really a good businessman," see letter from Nick Loxas, A-3, and despite his "very modest lifestyle," [Scott] was always overwhelmed with paying his bills...." Id. To keep HRFR operating, it was necessary, as indicated by Mrs. Loxas, for Mr. Levy to incur greater and greater debt. Despite working "17 hour days/7 days a week," Id., and even with generous reductions provided by Mr. and Mrs. Loxas to the monthly rental payments which Mr. Levy was obligated to pay them for the use of their building and equipment, Id., "during his time running the business he continually had money problems, [t]oo much debt...never able to dig himself out." Id. Although Mr. Levy worked tirelessly as indicated in Mrs. Loxas' letter and in letters from former employees Candy Osmun ("He is always ready to help, whether

it be busing tables, or washing dishes, or running food, if it needed to be done, Scott was there to help do it.”, A-4) and Miranda Eichner (“Scott would spend endless hours at the restaurant making sure we had quality product that was prepped and prepared to his high standards.”, A-5), nothing he did or, indeed, could do was enough to avoid the inevitable, financially induced demise of his business. The extent to which Mr. Levy went to keep his business afloat is made clear by a review of a document, submitted herewith as A-6, which discloses details of one of the two predatory loans which he took out in the foolish hope that he could salvage the business. As apparent from a review of this document, Mr. Levy paid \$78,000.48 to borrow \$150,000.00. Yet, even these efforts, and other, more conventional borrowing practices such as establishing lines of credit with PNC Bank, were unsuccessful in avoiding the failure of the business. Despite his indefatigable work habits, the borderline delusional decision to resort to predatory loans to continue to operate the business, and, ultimately, his criminal behavior, Mr. Levy’s entrepreneurial dream came to its inevitable denouement. PSR, ¶27. Moreover, as a result of Mr. Levy’s quixotic effort to stay in business by continued borrowing, he is now personally financially devastated. PSR, ¶70.

2. Extraordinary charitable efforts engaged in by Mr. Levy

Despite the crippling financial problems which Mr. Levy confronted throughout the time he operated the HRFR, he used his restaurant to participate in

an almost endless series of charitable activities. Charlie Gipe, like Mr. Levy, a Certified Executive Chef, has known Scott for more than 35 years. Mr. Gipe writes that during the time Mr. Levy owned HRFR he

...participated in hundreds of fundraising events [including] the taste of South Central Pennsylvania, Chocolate Fest in Hershey, Share Our Strength – a national organization that in major cities across the United States would hold an event to raise money for education and the feeding of hungry people across the world. And one other event that our ACF Chapter does each month is to provide food for the Ronald McDonald House in Hershey, which takes care of families of children that are at the Hershey Medical Center. Scott has also taken care of a whole summers (on the first Saturday [of each month]) worth of meals so that these parents don't have to spend their own money on going out to eat and while worry about their sick child.

See, A-7. As further noted by Mr. Gipe, “if I was putting together a fundraiser...I have a list of five names that I call my go to list. And Scott for the most part was either the first or second call I made.” Id.

Similar testaments to Mr. Levy's generosity are expressed by Robert Corle, Jr., a chef and culinary arts instructor, who writes that “...Scott would regularly donate food to the Ronald McDonald [H]ouse in Hershey. Scott and his crew took one whole year of providing meals [one day per week] to the House!! His charitable contributions over the years have been impressive to say the least!” See, A-8. Moreover, Mr. Corle notes, “Scott made time to be a judge for our cooking

competitions and made room for my students to assist him at the Taste of South Central Pa....” Id.

Denise Goble, a former employee of Mr. Levy, accompanied Mr. Levy on some of his charitable work. She writes of her gratitude to Scott for giving “me the chance to do something that I always dreamed of doing -- work at a soup kitchen on [T]hanksgiving day[.] Chef said show up and he will take the lead, myself and his son [J]ack went in to St. Frances soup kitchen and chef took over the whole show and we cooked and dished out the food for the less fortunate of Harrisburg.” See A-9.

Additional letters similarly attest to Mr. Levy’s generosity and include references to providing meals to an ill friend, A-10; volunteering at the Pa. Food Bank, A-11, and; participating in fundraisers that “benefited the State Police camp cadets....” A-12. Despite his modest, or worse, financial circumstances, and however unwise from a business perspective, Mr. Levy gave tens of thousands of dollars to charity.

3. Post-offense rehabilitation

Not long after the failure of HRFR, Mr. Levy was hired by Energy Plus, Inc. to work as a Clean Air Technician at a salary of \$20 per hour. PSR, ¶66. Colleagues at Energy Plus write of his “exemplary” performance at work. See letter from former prison guard and Scott’s supervisor at Energy Plus, William Baitman A-13. Former

police officer Curt Nevenglosky writes that Scott is “a hard worker, reliable, and dependable. Overall, he has been enthusiastic about learning new things and strives to make it a better place to work.” A-14. David Skoczynski, another Energy Plus supervisor, writes that:

He is very reliable, in fact he has never called in sick or been late since he began his employment. Scott continues to grow in his new role as a Clean Air Technician and has quickly caught on to our unique business. He takes his new role very seriously and has an eagerness to learn and grow within our company.

A-15.

As indicated in the attached letter from Mike Geppert, Jr., the owner of Energy Plus, Scott’s work for the Company has been such that, following his release from confinement, he will be welcomed back to the Company. A-16.

4. Exceptional family hardship

As apparent from a review of a report prepared by Joshua Wethli, NP, Mr. Levy’s wife, Jacqueline, has an absolutely horrific medical history which includes heart disease, ankylosing spondylitis, chronic rheumatoid arthritis, and a multi-level set of fractures in her spine. See, A-17. As a consequence of these conditions, Mrs. Levy “requires frequent doctors, physical therapy, and orthopedic and cardiology appointments....[and s]he also has a medication regimen” that maintain[s] a do not drive recommendation.” Id. Mrs. Levy’s conditions have “rendered her “100%

dependent on Scott for bathing, cooking, cleaning, shopping, and transportation to all her appointments.” Id.

Mrs. Levy’s letter to the Court, A-18, provides a personal perspective to this clinical description of her illnesses. In graphic terms she describes the affects of her illnesses on her daily life. She writes that her chronic, debilitating conditions began in 2018 when she experienced intense pain in her upper and lower extremities and neck. Her condition required help in performing routine daily functions such as getting in and out of bed, bathing, dressing, and using the bathroom. As the pain which she experienced increased, she was taken to the Holy Spirit Hospital where she was diagnosed with Ankylosing Spondylitis, an inflammatory autoimmune condition causing inflammation in the spinal joints resulting in chronic back and neck pain. While treated with medication, Mrs. Levy’s condition makes her dependent on her husband for assistance in engaging in virtually all activities of daily living. “Scott had to do more for me at home, he would make sure that I was okay getting into the shower and checking on me before he left for work. He would come home periodically to make sure I was okay, make meals for me and help me to the restroom.” Id. Her condition has caused falls while walking up and down stairs and during showers and these falls have resulted in fractured bones. As a consequence of this condition, Mrs. Levy has been and remains incontinent. Id.

In 2020, Mrs. Levy had three heart attacks. In November, 2021, she was diagnosed with non-traumatic multi-level spinal fractures that caused pain so severe she was prescribed Oxycodone, Percocet, and Fentanyl. Id. Following a two week hospital stay, "...Scott was taking care of pretty much everything I needed. I was solely dependent on him with everything I had to do or needed on a day to day basis." Id. Mrs. Levy has been advised not to bend or lift more than five pounds and uses a walker. Mr. Levy assists his wife with physical therapy, and he shops, cooks, cleans, and does the laundry. He also continues to help his wife shower and dress. Except when unavailable because of business travel, Scott awakens his wife at 2:00 a.m. daily to provide her with medications. Id.

As a consequence of her physical condition, Mrs. Levy is unable to work and receives Social Security Disability Insurance in the amount of \$949.00 monthly. From that sum \$148.50 is deducted for health insurance. See A-19. Upon Mr. Levy's incarceration it appears that SSDI will be Mrs. Levy's sole source of income although, apparently, if the family home is sold and no other residence is purchased, she may be eligible for Public Assistance. While the Levys' son and Mrs. Levy's brother plan to help care for her during her husband's absence, and while in-home nursing care may, if affordable, be an additional available option, there are so many vagaries and uncertainties associated with Mrs. Levy's physical condition that Mr. Levy's absence is virtually certain to have serious, unforeseeable, and unavoidable

consequences. Mrs. Levy's extraordinary health and financial concerns are in themselves an appropriate basis for a variance. See, United States v. Schroeder, 536 F.3d 746 (7th Cir. 2008).

5. The USSC's failure to conform its sentencing guidelines for white collar crimes to congressional prescriptions results in unduly harsh punishment in this case

The Sentencing Reform Act of 1984, contained at Title II of The Comprehensive Crime Control Act of 1984, P.L. 98-473; 98 Stat. 1837, created the United States Sentencing Commission (USSC). Among the duties which Congress assigned to the Commission was the promulgation of sentencing guidelines. To discharge its congressionally delegated responsibility, the USSC was directed to "ascertain the average sentences imposed...prior to the creation of the Commission" in those categories of crimes for which guidelines were formulated. 28 U.S.C. §994(m). This preference for a sentencing scheme based upon empirical data is articulated in Senate Report No. 98-225 which provides that:

It is the expectation of the Committee that determinate sentences imposed under this new sentencing system will not, on the average, be materially different from the actual times now spent in prison by similar offenders who have committed similar offenses. Logic and reason on the part of the Sentencing Commission, as reviewed and accepted by the Congress, will control the length of the recommended terms, but historical averages will be examined during their development.

In creating an empirical data base to use in discharging its delegated responsibility, the Commission reviewed almost 100,000 federal cases from 1983 to 1985. U.S. Sentencing Commission Supplemental Report on the Initial Sentencing Guidelines and Policy Statements, 16-21 (1987). However,

[e]ven though the Sentencing Commission farmed this data [with respect to white collar cases], it immediately, and arbitrarily, without explanation then or now, jettisoned the nearly 50% of federal sentences where a defendant was given probation – thus hijacking realistic data from prior federal sentencing practices. To make matters worse, the Sentencing Commission abandoned the empirical approach of prior sentences, even with the skewed data of eliminating cases with probation, for a new, significantly harsher approach.

Mark Osler & Judge Mark W. Bennett, “*A Holocaust in Slow Motion?*”: *America’s Mass Incarceration and the Rule of Discretion*, 7 DePaul J. for Soc. Justice 117, 140-41 (2014).

The abandonment of an empirical basis for the formulation of sentences in white collar cases in favor of reliance on a more visceral approach is explicitly articulated in the Supplemental Report On The Initial Sentencing Guidelines and Policy Statements, pg. 18 (1987):

...the empirical results showed that [t]he sentences for “white collar” crimes, such as embezzlement, fraud and tax evasion, were considerably lower than those for the substantially equivalent crime of larceny. In light of the legislative history supporting higher sentences for white-collar crime (S. Rep. No. 225, 98th Cong., 1st Sess., 177 (1983), the Commission made a policy decision to adopt a guideline structure under which all of these crimes are treated essentially identically. Average sentences for

larceny were lowered slightly, while those for white-collar crimes were raised to the same level. (Emphasis added.)

While the guidelines formulated by the Commission were intended to generally reflect pre-Guidelines sentences, this practice was largely ignored with respect to white collar crimes and, thus, “unlike the guideline penalties for most other offenses that *allegedly* used pre-guideline empirical data developed by the initial Sentencing Commission, economic crime guidelines were ratcheted up in excess of this prior judicial sentencing data.” Mark Osler & Judge Mark W. Bennett, *“A Holocaust in Slow Motion?”: America’s Mass Incarceration and the Rule of Discretion*, *supra*. As a consequence, the Commission’s methodology with respect to white collar guidelines resulted in a “draconian approach to white collar crime, unsupported by any empirical data.” United States v. Gupta, 904 F.Supp. 349 (SDNY 2012).

In the instant case, then, when using the applicable Guidelines sentencing range as a starting point to determine whether, and if so, to what extent to grant a variance, it is respectfully submitted that the manner in which the sentencing ranges for white collar offenses was formulated should be considered.

IV. CONSIDERATIONS OF §3553(a) SENTENCING FACTORS

A. Introduction

Mr. Levy’s Total Offense Level as presently calculated is 23, PSR, ¶¶45 and 48, with a corresponding sentencing range of 46 to 57 months. The sentencing

factors contained in 18 U.S.C. §3553, however, must be analyzed to determine whether a sentence within that range is “sufficient but not greater than necessary” to achieve the statutory purposes of punishment. 18 U.S.C. §3553(a). Thereafter, the Court may “make its own reasonable application of the §3553(a) factors and to reject...the advice of the Guidelines.” Kimbrough v. United States, 552 U.S. 85 (2007). That, it is respectfully submitted, appears to be indicated in this case.

B. 18 U.S.C. §3553(a) Factors

**1. nature and circumstances of the offense
§3553(a)(1)**

The description of the nature and circumstances of the charges filed against Mr. Levy at 1:20-CR-00277 presented at pages 4-7, supra, of this Memorandum is incorporated herein by reference.

A comment contained in the PSR regarding a possible motive for Mr. Levy’s tax charges must, however, be addressed. The PSR states that, before purchasing the HRFR, and while working as a salesman for U.S. Foodservice, “Levy observed that many of the owners of the restaurants [which he serviced] appeared to have substantial disposable income, drove nice cars, and lived in expensive homes...and they explained to Levy how they were able to evade their local, state, and federal tax liabilities by underreporting their income and by paying employees in cash.” PSR, ¶8. The PSR goes on to note that, “Once Levy purchased HRFR, he began implementing some of the strategies he learned while a salesman for U.S.

Foodservice...” Id., ¶10. To the extent that these assertions are intended to suggest a venal motive for Mr. Levy’s criminal conduct, they may, however true, be unjustifiably cynical. After all, there was no resort to illicit practices with respect to the IRS until 2014, PSR, ¶¶12, 13, approximately two years following Scott’s purchase of HRFR. Clearly, Mr. Levy did not evade income taxes or underreport his payroll tax obligation to accumulate “substantial disposable income...nice cars, and... expensive homes.” Rather, he did so in a desperate effort to save his business. His criminal conduct was a matter of desperation and not of greed. Mr. Levy started losing money from virtually the moment he opened his business and, to deal with this dilemma, he subordinated his judgement to his survival instinct. Stupid?; clearly. Venal?; not really. Desperate?; absolutely.

Finally, how did Mr. Levy’s criminal conduct avail him? As is abundantly clear from a review of the financial information contained in the PSR at paragraphs 70-73, he is now virtually destitute, and, despite his wife’s serious medical condition, is on his way to jail.

2. history and characteristics of the Defendant §3553(a)(1)

With the exception of a motor vehicle offense in 2017, PSR, ¶47, and marijuana use while in college, PSR, ¶61, Mr. Levy had avoided any unlawful conduct for 50 years. Unfortunately, when, contrary to the advice of friends, an ill-advised decision was made to pursue his dream of owning a restaurant, virtually

everything in his life changed, and changed for the worse, and nothing he tried was able to staunch the bleeding. He worked tirelessly, he borrowed money at effective interest rates in excess of 50%, and, eventually, he broke the law. His dream turned into a nightmare which almost destroyed him. But it didn't. He has overcome his poor judgement, his weakness, and the suffering which they caused, and now has a normal, albeit, difficult life. Mr. Levy is as committed to caring for his wife and to his new job as he was to successfully operating his restaurant -- but now he is acting legally. The character which Mr. Levy presently displays -- perseverance, tenacity, loyalty, and, yes, adherence to the law -- speak well of him and certainly recommend serious consideration for a downward variance.

3. seriousness of the offense
§3553(a)(2)(A)

While in no way seeking to minimize the seriousness of Mr. Levy's wrongdoing, and while acknowledging that the following observation does not apply to all charges to which Mr. Levy has pled guilty, USSC statistics for tax fraud sentences in 2018 reflect an average sentence of 17 months. In this case, Mr. Levy's Offense Level for his tax charges is 16, and with a 3 level adjustment for Acceptance of Responsibility, he could very well be looking at a Zone C sentence. See <https://www.USSC.gov/research/quickfacts>. Moreover, USSC statistics indicate that 54% of tax fraud offenders received a variance. All things considered, is there

any basis to conclude that, because of his recidivism, Mr. Levy should be sentenced to prison for 47 months?

**4. adequate deterrence
§3553(a)(2)(B)**

It is generally recognized that “the deterrent effect of punishment is minimal for...white collar offenses, while the likelihood of detection and adjudication has a far greater impact.” *Is Deterrence Relevant?* 61 Wayne Law Review, 47 (2015). See also, Sally S. Simpson and Christopher S. Koper, “*Deterring Corporate Crime,*” 30 Criminology 347 (1992).

**5. protection of the public from further crimes of the defendant
§3553(a)(2)(C)**

The need “to protect the public from further crimes of the defendant,” 18 U.S.C. §3553(a)(2)(C), is almost certainly non-existent from both a personal and a statistical perspective. Personally, the effect of Mr. Levy’s conviction on his life and the manner in which he has responded to his misfortune make it very unlikely that he will reoffend. Statistically, as apparent from a review of the USSC’s 2016 publication by the Sentencing Commission of “*Recidivism Among Federal Offenders: A Comprehensive Overview,*” (2016), Mr. Levy is at a low risk to reoffend because of the level of his education (39.3%), nature of offense (34.2%), lack of prior offenses (30.2%), and age (21.7%).

6. §§3553(a)(2)(D), and (a)(3), (4), (5) and (7)

These remaining §3553 considerations have no application to this case.

V. VOLUNTARY SURRENDER

Pursuant to 18 U.S.C. §3141(b), “A judicial officer of a court of original jurisdiction over an offense...shall order that, pending imposition or execution of sentence..., a person be released or detained under this chapter.”

A person found guilty of an offense who is awaiting execution of sentence shall

...be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any person or the community if released pursuant to §3142(b) [Release on Personal Recognizance or Unsecured Appearance Bond] or (c) Release on Conditions]. If the Judicial officer makes such a finding, he shall order the release of the person in accordance with the provisions of section 3142(b) and (c).”

18 U.S.C. §3143(a).

While it cannot be denied that, following Mr. Levy’s awareness that he was being investigated for tax offenses and after he signed a Plea Agreement acknowledging his culpability for those offenses, he engaged in further criminal conduct. A great deal has occurred since the time of that stupid decision, and it cannot now be credibly argued that Mr. Levy constitutes either a flight risk or a threat to public safety. He has a job that he likes, is good at, and which will be

available to him upon his release from confinement. He has a wife who is virtually totally dependent upon him and is likely to be so for the rest of her days, and he has not shrugged his spousal duty to care for her.

In deciding whether or not to permit Mr. Levy to surrender voluntarily for compliance with his sentence, it is also significant to consider that, pursuant to BOP Program Statement 5100.08, failure to permit voluntary surrender will be considered by the Bureau of Prisons in determining Mr. Levy's security status and, thus, his designation.

Denying voluntary surrender is unnecessary, unjustified, and, it is respectfully submitted, would be punitive.

VI. CONCLUSION

It is respectfully submitted that a sentence within the sentencing range corresponding to Mr. Levy's Total Offense Level (23), 46 to 57 months, is not justified in this case. The criminal conduct does not merit it, the Defendant does not deserve it, and the public will not benefit from it. That having been said, Mr. Levy must be punished for his crimes. In punishing him, however, it is appropriate to keep in mind that his criminal behavior is part of his past and, really, does not define who he now is. Indeed, despite everything, he has persevered and is a truly remarkable husband, a valued employee, and a productive citizen. A variance is justified in this case. It is respectfully submitted that in sentencing Mr. Levy, Your

Honor vary the 5 levels to an Offense Level of 18 and sentence him to a period of total confinement at the low end of the applicable sentencing range of between 27 and 33 months. Such a sentence would, indeed, be “sufficient but not greater than necessary” to comply with the §3553 factors and vindicate the interest of justice. Under the circumstances which attend this case, this request is neither frivolous, nor greedy.

Respectfully submitted,

Date: January 18, 2022

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document will be served on this date as indicated below:

Electronic Delivery via ECF:

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Date: January 18, 2022

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