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

UNITED STATES OF AMERICA	)	
	)	No. 04 CR 661
v.	)	Hon. Rebecca R. Pallmeyer
	)	
SAMI KHOSHABA LATCHIN	)	

NOTICE OF FILING

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Please take notice that on this 20th day of September, 2006, the undersigned filed the following document(s) in the above-captioned cause, a copy of which is attached hereto.

SENTENCING MEMORANDUM

Respectfully submitted,
FEDERAL DEFENDER PROGRAM
Terence F. Mac Carthy
Executive Director

By: s/Mary H. Judge
Mary H. Judge
William H. Theis

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	)	Hon. Rebecca R. Pallmeyer
SAMI KHOSHABA LATCHIN	)	

SENTENCING MEMORANDUM

Defendant SAMI KOSHABA LATCHIN, by the FEDERAL DEFENDER PROGRAM and its attorneys MARY H. JUDGE and WILLIAM H. THEIS, respectfully requests, pursuant to 18 U.S.C. § 3553(a), *Rita v. United States*, 127 S.Ct. 2456 (2007), and *United States v. Booker*, 543 U.S. 220 (2005), that this Honorable Court impose a sentence of a year and a day, because such a sentence is sufficient, but not greater than necessary, to comply with the purposes of sentencing enumerated in 18 U.S.C. § 3553(a). Mr. Latchin states as follows:

I. Proposed Sentence

Sami Koshaba Latchin has been a caring, supportive husband since he and his wife, Stella Sada, were married in Baghdad, Iraq in 1974. Mr. Latchin's wife and two children came to this country in 1991 for their safety and with hopes of improving their opportunities and standard of living. Mr. Latchin emigrated to the United States in 1993 to reunite with his family. He worked hard to earn a living and support his family. His two children are now adults and he will soon

be a grandfather. As is evidenced by the outpouring of letters of support, he is well-liked and respected in his community, which is comprised generally of Assyrian speaking Iraqi Christians like himself. Interestingly, despite the fact that Mr. Latchin's conviction directly relates to his alleged spying on the Iraqi Christian community, their support of him continues and remains strong. (See letters sent to Court via Probation Office).

Mr. Latchin does not have any prior criminal history and is, therefore, in a Criminal History Category I. The presentence investigation report (PSR) places Mr. Latchin at a combined adjusted offense level 26, resulting in an advisory guideline range of 63-78 months. (PSR at 13). Notwithstanding, given Mr. Latchin's history and characteristics, the nature and circumstances of the offense, the unlikelihood of recidivism, and, in fact, the virtual impossibility of ever engaging in conduct related to the Iraqi Intelligence Service, a sentence of a year and a day is sufficient but not greater than necessary to meet the § 3553(a) goals of protection of the public, just punishment, respect for the law, and deterrence. Anything greater would be contrary to the statutory sentencing factors and would result in unwarranted sentencing disparity among similarly situated defendants.

II. Legal Standard

The Supreme Court and Congress require the district court to sentence in accordance with 18 U.S.C. § 3553(a). *Rita*, 127 S.Ct. at 2469 (explaining that district judges are required "to filter the Guidelines' general advice through 3553(a)'s list of factors"); *Booker*, 543 U.S. at 259-60; *see also United States v. Wachowiak*, 2007 U.S. App. LEXIS 18234, at *9-10 (7th Cir. Aug. 1, 2007) (holding that after *Booker*, the Guidelines are advisory, but application of § 3553(a) is mandatory). The Supreme Court held in *Rita* that sentencing judges are required "to 'impose a sentence sufficient, but not greater than necessary, to comply with' the basic aims of sentencing" in § 3553(a). *Rita*, 127 F.3d at 2463. This is known as 3553(a)'s parsimony provision, and it serves "as the guidepost for sentencing decisions post-*Booker*." *United States v. Ferguson*, 456 F.3d 660, 667 (6th Cir. 2006). The purposes of sentencing include the need:

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

18 U.S.C. § 3553(a)(2); *Booker*, 543 U.S. at 260. Section 3553(a)(1) directs sentencing courts to also consider the nature and circumstances of the offense and the history and characteristics of the defendant.

In *Rita*, the Supreme Court forbade district courts from according a presumption of reasonableness to the Guidelines. *Rita*, 127 S.Ct. at 2465 ("The sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply."). The Seventh Circuit has likewise held that district court judges are not "permitted . . . to presume that a sentence within the Guideline range is the correct sentence," *United States v. Demaree*, 459 F.3d 791, 794 (7th Cir. 2007), and that district courts "must sentence based on § 3553(a) without any thumb on the scale favoring a guideline sentence," *United States v. Sachsenmaier*, 2007 U.S. App. LEXIS 15346, at * 11-12 (7th Cir. June 28, 2007). Moreover, the Supreme Court has held that appellate courts may not adopt a presumption of unreasonableness for sentences outside the advisory Guideline range. *Rita*, 127 S.Ct. at 2467; *see also Wachowiak*, 2007 U.S. App. LEXIS 18234, at *14 ("That a within-guidelines sentence is presumed reasonable on appeal does not mean that a sentence outside the range is presumptively unreasonable.").

District court judges have broad discretion to sentence below the advisory guideline range. *See, e.g., Wachowiak*, 2007 U.S. App. LEXIS 18234, at *19-20 ("We will not substitute our judgment for that of the sentencing court. . . . As with other discretionary decisions, the district court is institutionally better situated to make individualized sentencing judgments than an appellate panel.");

United States v. Ngatia, 477 F.3d 496, 501-02 (7th Cir. 2007) ("[T]he district court's choice of sentence, whether inside or outside the guideline range, is discretionary and subject therefore to only light appellate review."). In fact, a district court judge's "freedom to impose a reasonable sentence outside the range is unfettered," *United States v. Demaree*, 459 F.3d 791, 795 (7th Cir. 2007), and the Seventh Circuit will scrutinize a district court's refusal to grant a reduction below the range, *United States v. Vaughn*, 433 F.3d 917, 924 (7th Cir. 2006).

The Supreme Court in *Rita* emphasized that a district court may sentence below the guideline range if it determines that "the Guidelines sentence should not apply, perhaps because (as the Guidelines themselves foresee) the case at hand falls outside the 'heartland' to which the Commission intends individual Guidelines to apply, perhaps because the Guidelines sentence itself fails properly to reflect § 3553(a) considerations, or perhaps because the case warrants a different sentence regardless." *Rita*, 127 S.Ct. at 2465 (citations omitted). The Seventh Circuit confirms that a sentence below the advisory guideline range is appropriate as long as the reasons for selecting that sentence "are rooted in § 3553(a), sufficiently individualized to the circumstances of [the] case, and generally associated with sentencing leniency." *Wachowiak*, 2007 U.S. App. LEXIS 18234, at *2. A below-guideline sentence will be deemed reasonable on

appeal if "the sentencing judge has given meaningful consideration to the sentencing factors enumerated in § 3553(a)," *id.* at *12, and if the sentence "is adequately reasoned in light of the § 3553(a) factors," *United States v. Wallace*, 458 F.3d 606, 609 (7th Cir. 2006); *see also United States v. Cunningham*, 429 F.3d 673, 675-76 (7th Cir. 2005).

After *Booker*, a district court should place "no limitation" on the information concerning the background, character, and conduct of a person convicted of an offense. 18 U.S.C. § 3661; *Booker*, 125 S.Ct. at 760 (quoting § 3661). In fact, a district court may give previously discouraged or forbidden sentencing factors "much more weight than the Guidelines themselves would have allowed." *United States v. Rose*, 435 F.3d 735, 737 (7th Cir. 2006). As Justice Stevens recognized in his concurrence in *Rita*, "many individual characteristics . . . are not ordinarily considered under the Guidelines," but are nevertheless "matters that § 3553(a) authorizes the sentencing judge to consider." *Rita*, 127 S.Ct at 2473 (Stevens, J., concurring). Therefore, even if the Guidelines prohibit or limit consideration of a particular fact as the basis for a downward departure, a post-*Booker* sentence reduction based on the same "prohibited" fact is authorized by § 3661, as long as such a reduction furthers one or more of the purposes of sentencing under § 3553(a).

Careful consideration of the 3553(a) factors is especially critical in this case, since the PSR calculates the adjusted offense level based on analogous guidelines in four out of the five counts in the indictment.

In cases where the relevant statutes are not listed in the Statutory Index, section 2X5.1 of the Guidelines directs sentencing judges to apply the most analogous guideline. Recognizing that this directive is not always workable–because a court may find that there is *not* a sufficiently analogous guideline–the Guidelines instruct that section 3553(a) factors control. USSG § 2X5.1.

In the post-*Booker* world, and even more so now in light of *Rita,* it is clear that consideration of 3553(a) factors supplant the need to consider analogous guidelines. Therefore, the best course of action, and one that comports with Congress, recent Supreme Court jurisprudence, and the Guidelines, is to forego the determination of a guideline range. This is prudent because there is no sufficiently analogous guideline and because the provisions of 18 U.S.C. § 3553 are controlling, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline, remain applicable, albeit advisory.[1] See USSG § 2X5.1, comment. (n.2).

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[1]It is Mr. Latchin's position that the provisions of 18 U.S.C. § 3553 control. However, if this court requires application of an analogous guideline, the applicable base offense levels are as follows resulting in an advisory range of 10 to 16 months:

Count One (unlawful procurement of citizenship) level 8;

Mr. Latchin objects to the PSR's contention that USSG. § 2M5.1 (Financial Transactions with Countries Supporting International Terrorism) is an analogous guideline with respect to the crimes charged in counts two, three, four and five.

When considering counts two and three (acting as an unregistered agent and conspiring to do so), the more analogous guideline is USSG § 2B1.1, which has a base offense level of 6. See, *United States v. Dumeisi*, No. Civ.A. 06C4165, Slip Op. WL 2990436 (N.D. Ill., Oct. 17, 2006) (finding USSG. § 2B1.1 the appropriate "most analogous guideline" for a conviction under 18 U.S.C. 951(a)). *Dumeisi*, WL 2990436 at *9.

For count four (false statement), Mr. Latchin agrees with the government that the appropriate base offense level is 6, as false statement charges are cross referenced to guideline § 2B1.1. Mr. Latchin objects to the PSR's assertion that the appropriate guideline is 2M5.1.

As for count five (prohibited financial transaction), if this Court finds USSG § 2M5.1 is the appropriate analogous guideline to apply to count five (or

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Count Two (acting as an unregistered agent) level 6;
Count Three (conspiracy) level 6;
Count Four (false statement) level 6;
Count Five (prohibited financial trans.) level 26
(if 2M5.1 analogous); but fourteen-level departure warranted; *see United States v. Sevilla*, No. 04 CR 171, WL 1710139 & 3486872 (N.D. Ill, June & November 2006)(attached) (adjusted offense level 12 and criminal history category I, establishing an advisory range of 10 to 16 months).

any other count), the ultimate result is essentially the same, as guideline § 2M5.1 requires sentencing courts to "consider the degree to which the violation threatened a security interest of the United States" in order to determine if a departure is warranted. USSG § 2M5.1, comment. (n.2). As there is absolutely no evidence that Mr. Latchin is now or ever was a security threat, an advisory guideline sentence would be significantly "greater than necessary" and would create unwarranted sentencing disparities in violation of 18 U.S.C. § 3553.

III. Sami Latchin's History and Characteristics

As stated above, Mr. Latchin is a family man, a good father and good husband. His son, 26-year-old Dan Khoshaba has described him as a "great father figure" and as someone he considers a good friend. (PSR at 9). Mr. Latchin has worked hard to support his family as a front desk representative for various hotels and as a ticket counter representative for American Airlines. He has been described by his employers as a "hard-working, honest, and reliable employee." (PSR at 11). Mr. Latchin has also valued and continued his education throughout his life, graduating from the University of Baghdad in 1974 and taking classes after emigrating to the United States. While out on bond in this case, he was 100 percent compliant with all the conditions of his release. During the over two-year time-frame that this case has been pending, Mr.

Latchin was granted more and more freedom. Mr. Latchin earned this freedom to work and to travel, because he never violated his conditions of release and has always been in court as required and on time. Mr. Latchin has been considerate, respectful and cooperative throughout this entire process. His demeanor, his non-existent criminal history and the underlying facts surrounding this indictment portray a man who although convicted, is not a danger, is not violent, and is certainly not a threat to national security.

IV. The Nature and Circumstances of the Offense

The government portrayed Mr. Latchin as someone who lied about his affiliation with the IIS and received money from the IIS while a resident of the United States. The government's case presented two somewhat inconsistent theories. In one scenario, Mr. Latchin was a sleeper spy instructed to do nothing. In the second, Mr. Latchin was asked to gather random information available to the general public-information available at a local public library or newspaper stands. None of the information had anything to do with the American government or the U.S. Military and none of it was classified. The information allegedly mailed overseas by Mr. Latchin consisted generally of public records, newspaper and magazine articles and local gossip.

Consider that Mr. Latchin was charged and convicted of unlawful

procurement of United States citizenship[2], conspiracy to act as a foreign agent, acting as an unregistered foreign agent, making false statements to a federal agent,[3] and engaging in a prohibited financial transaction. The five counts in the indictment stem from Mr. Latchin's alleged activities as an "agent." According to the government's evidence at trial, none of these convictions involved any acts of terrorism, or any actions that jeopardized the national security of this country.[4]

The government attempts to portray Mr. Latchin as a dangerous "sleeper agent." There is no evidence to support this portrayal. Mr. Latchin did not

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[2]Apparently Sami Latchin was not alone. In 2005, the *Washington Post* published a study of the results in terrorism-related prosecutions involving 330 defendants. Of 330, only 39 involved charges overtly related to terrorist actions, the rest were of minor crimes such as violating immigration laws and false statements. (*See* Dan Eggen, *U.S. Campaign Produces Few Convictions on Terrorism Charges*, Wash. Post, June 12, 2005, at A1).

[3]According to Justice Department records post 9/11, the government has classified a very large number of individuals as "terrorists" or "anti-terrorists." According to the government manual, anti-terrorists are those who have been targeted on the grounds that charging them with any crime might "prevent or disrupt potential or actual terrorists threats." See Justice Department Program Categories. False statement charges represent one of the top-five lead charges for terrorism cases, and account for over half of all convictions - - 56.8%. *See* TRAC, "Criminal Terrorism Enforcement in the United States During the Five Years Since the 9/11/01 Attacks," Sep. 2006, available at http://trac.syr.edu/tracreports/terrorism/169/.

[4]The commentary to Section 2M5.1 provides that, "[i]n determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States." USSG § 2M5.1, comment. (n.2). Therefore, the argument that Mr. Latchin did not threaten a security interest of the United States is applicable in both an analogous guideline world and when considering 3553(a) factors.

engage in any acts of terrorism and no analysis of the facts from the trial support such a finding. Absolutely no evidence supports the assertion that Sami Latchin ever posed a danger to anyone either in Iraq or in the United States. According to government witnesses, in fact, quite the contrary is true. Mr. Jeto testified that Sami Latchin helped him escape from Iraq. (Tr. 700). Further described Sami as someone who helped everybody. (*Id.).* Mr. Khalil testified that he had no fear of Mr. Latchin. (Tr. 561,570). Sami Latchin was not accused of engaging in any acts of terrorism, and there was no evidence to suggest that Mr. Latchin ever would have engaged in terrorism.

Significantly, the government made expensive agreements with senior members of the IIS. Mr. Latchin was a casualty of those agreements. The government must justify its non-prosecution and lifetime financial and familial support of its star-witness, and perjurer, Mohammed Al-Dani. Convicting Mr. Latchin falls far short of this goal.[5] To that end, the government describes Sami Latchin, without any evidence in support, as a danger with great potential for

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[5]In 2003, during the time Mr. Latchin was under FBI investigation, the DOJ and the FBI, in particular, came under close media scrutiny for its handling and reporting of terrorism cases. A 2003 TRAC report observed that federal investigators referred over 6400 individuals for prosecution since 9/11, but that the median sentence for persons convicted in international terrorism cases was a mere 14 days. (*See* "Criminal Terrorism Enforcement Since the 9/11/01 Attacks: A TRAC Special Report," (Dec. 8, 2003)).

future harm. Essentially, the government has to rely on what might have been. But merely wishing Sami Latchin were an evil terrorist, does not make it so.

Obviously recognizing the futility of such a speculative argument, the government filed an eleventh hour, third superseding indictment adding a fifth count. Count Five charges that Mr. Latchin violated the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1702, 1705. In particular, the indictment alleges that Mr.Latchin engaged in prohibited financial transactions with Iraq, when he was allegedly paid for his services as an IIS agent. Given that this new count did not include any previously unknown criminal conduct, presumably the government superseded in an attempt to present this as an embargo violation case, for the purpose of seriously inflating Mr. Latchin's potential penalties. (See 2M5.1, requiring a base offense level of 26 for participating in financial transactions with Iraq). As demonstrated below, such strategies have failed to persuade sentencing judges here, and across the country.

The commentary to Section 2M5.1 provides that, "[i]n determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States." USSG § 2M5.1, comment. (n.2). This section is key, as Mr. Latchin's conduct was not found to have threatened a security interest of the United States to any

degree. Mr. Latchin was convicted in count five for receiving payments from the Iraqi government. Mr. Latchin's alleged activities included his traveling overseas to collect the payment, and in some instances depositing money into a bank account. That's it. The government's theory was that Mr. Latchin's payments were provided in exchange for his being a sleeper spy-a terrorist in waiting. Significantly, even under the government's evidence, Mr. Latchin was instructed to merely assimilate and do nothing. "[T]here was no evidence of any meaningful, overt espionage activity in the United States, as this would have been in opposition to his directive to remain a sleeper agent." (FBI Agent Joel Robertz statement, PSR at 4). The facts established that Mr. Latchin lived a law abiding life and worked a variety of jobs to support his family. No interpretation of these activities, not even the government's, could suggest that Mr. Latchin's conduct threatened a security interest of the United States.

There was no evidence that could even remotely suggest that Mr. Latchin's activities in any way implicated the security of the United States. Again, the government wishes to emphasize that Mr. Latchin was working for Hussein's government. The government speculates that Mr. Latchin could have been planted as a sleeper agent whose true destructive purpose would only be ascertained far into the future after he had burrowed comfortably within the

fabric of American Society. Yet this is all conjecture. The evidence, taken in the light most favorable to the government, only established that Mr. Latchin failed to disclose his membership in the Baath Party and Iraqi Intelligence Service (IIS) on his application for U.S. citizenship, worked for the IIS, failed to register with the U.S. government, lied about working for the IIS, and received payments from the IIS. None of this conduct was shown to threaten the security of the United States. Therefore, even if this Court finds that 2M5.1 is an analogous guideline, a significant downward departure is warranted.

It is imperative that Mr. Latchin be sentenced only for the conduct proven to the jury beyond a reasonable doubt and not conduct dreamt up by the prosecution or described to reporters during press conferences by the government.

Mr. Latchin was convicted of lying about his Baath Party and IIS affiliation; and for accepting payments made to him by the IIS. Those acts alone are what he should be punished for.

V. A Sentence of A Year and A Day Comports with the Goals of Punishment Articulated in 18 U.S.C. § 3553(a).

A sentence of a year and a day is sufficient but not greater than necessary to reflect the seriousness of the offense, promote respect for the law, and provide just punishment, 3553(a)(2)(A); provide adequate deterrence, 3553(a)(2)(B);

protect the public, 3553(a)(2)(C); and avoid unwarranted sentencing disparities, 3553(a)(6).

A. A sentence of a year and a day reflects the seriousness of the offense, promotes respect for the law, and provides just punishment under § 3553(a)(2)(A).

After *Booker*, courts must consider "those factors that are unique to an individual defendant . . . that are not taken into account when calculating the guideline range." *United States v. Schmitt*, 2007 U.S. App. LEXIS 18662, at *14 (7th Cir. Aug. 7, 2007). A lower sentence is appropriate if the reasons for that sentence are, "specific to and generally correspond to leniency in sentencing." *Wachowiak*, 2007 U.S. App. LEXIS 18234, at *29.

The unusual circumstances of this case, such as the dismantling of the Iraqi government and the IIS, the mitigating circumstances of this offense, and Mr. Latchin's good character (including his commitment to his family and strong work ethic), set him apart from the typical offender and demonstrate that a sentence of a year and a day is sufficient but not greater than necessary to provide just punishment and promote respect for the law.

First, this case is atypical because the United States' invasion of Iraq makes the commission of any offense related to the IIS a virtual impossibility. Second, this offense involves mitigating circumstances, including Mr. Latchin's desire

and need to leave a war-torn country, his struggles to make a living, and the fact that while living in the United States he works hard, supports his family and leads a life just as any other law-abiding citizen in the United States. In addition, he is an active, well-respected member of his community. Third, Mr. Latchin's good character is depicted in the many supportive letters sent to the Court on his behalf.

"[W]hile 3553(a) requires the court to consider the character of the defendant, the guidelines account only for criminal history," which is generally an aggravating offender characteristic. *Wachowiak,* 412 F. Supp. at 963 (explaining that "[t]he guidelines failed to consider the defendant's outstanding character, as depicted in the many supportive letters"). Therefore, not surprisingly, the Seventh Circuit has upheld below-guideline sentences that were based in part on the lower court's consideration of the defendant's positive character traits. *See, e.g., United States v. Wachawiak,* 2007 U.S. App. LEXIS 18234, at *27-28; *United States v. Baker,* 445 F.3d 987, 992 (7th Cir. 2006) (explaining that a court may consider positive offender characteristics under § 3553(a)(1) in meting out a below-guideline sentence).

B. The risk of recidivism is extremely low.

Given the unusual circumstances of Mr. Latchin's case and his history, a

sentence of a year and a day is sufficient to protect the public from any future crimes. Courts have recognized that "a lesser period of imprisonment is required to deter a defendant not previously subject to lengthy incarceration than is necessary to deter a defendant who has already served serious time yet continues to re-offend." *United States v. Qualls*, 373 F. Supp. 2d 873, 877 (E.D. Wis. 2005).

As this Court is aware, Mr. Latchin has never before been in prison. Mr. Latchin is 61 years old. At that age and with no criminal history, the likelihood of his re-offending is extremely minimal. *See* U.S. Sentencing Commission, "Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines" 12, 28 (May 2004, pg. 30). Therefore, the interests of deterrence and protecting the public against future crimes are not served by sentencing Mr. Latchin to an extended prison stay. This is especially true here, because committing similar offenses in the future is an impossibility, given the demise of the IIS. As such, the risk of recidivism is nonexistent.

C. The need to adequately deter criminal conduct; and the need to avoid unwarranted sentencing disparities among similarly situated defendants.

Section 3553(a)(2)(B) requires the Court to impose a sentence that "adequate[ly]" deters others from committing similar crimes. Section 3553(a)(6) addresses the need for treating similarly situated defendants the same. This

section defines similarly situated defendants as those "with similar records who have been found guilty of similar conduct." *Id.*

As previously discussed, the government attempts to establish that Mr. Latchin is an international agent and serious threat to the United States. Secondly, the government argues that Mr. Latchin should be punished for violating "IEEPA," specifically for violating the Iraqi embargo. These arguments presumably are in place to seriously enhance Mr. Latchin's potential sentence.

However, properly considered under § 3553(a), the government's argument is fatally flawed. First, it is painfully obvious that Mr. Latchin is not a dangerous man. There is no evidence that he has ever committed an act of violence either here or abroad. The only activities he participated in according to the government's conflicting theories, was to either assimilate and "do nothing" or, if some of the witnesses are to be believed, to mail documents and stories available to anyone, back to Iraq. To say that Mr. Latchin was waiting to be called into action is a serious overstatement.

Consequently, the government tries to invoke § 2M5.1 to place Mr. Latchin in an offense level of 26. This too is flawed.

Consider, *United States v. Sevilla*, No. 04 CR 0171, 2006 WL 1710139 & 3486872 (N.D. Ill, June & November, 2006), where the defendant attempted to

engage in a transaction that had the purpose of evading controls on the exportation of goods and technology from the United States to Iran. *Sevilla*, 2006 WL 1710139 at *2. The court determined that USSG § 2M5.1, base offense level 26 was applicable after finding that the embargo existed against Iran because of national security concerns. (See J. Darrah's Memorandum Opinion and Order at 4-5, attached). However, after acknowledging the Sentencing Reform Act's requirement that the court consider the sentencing factors listed in 18 U.S.C. § 3553, the court departed 14 levels, to a base offense level of 12.

In departing the court reasoned that the defendant had no other criminal history, the volume of commerce was minimal, there was no evidence that the attempted export was made with criminal or terrorist intent, the product exported did not threaten national security, and a term of imprisonment of 51-63 months (the applicable sentencing range in that case) was inconsistent with sentences among defendants with similar records who have been found guilty of similar offenses. *Sevilla*, 2006 WL 3486872 at *2-*3, (attached); *see also, United States v. Kyriacou, No. 04 CR 265, (E.D. Pa.)* (defendant sentenced to 5 years probation for exporting technology to Iran); *United States v. Lachman* and *Subilia,* 93-10193 (D. Mass.) (sentenced both defendants to probation in 2005 after remand; both convicted for conspiring to export equipment used to manufacture

material that improves the accuracy of strategic ballistic missiles with nuclear capabilities to India). (Sevilla also presented scores of citations to civil and administrative proceedings where lenient fines were imposed).

The court acknowledged the significant government interest in controlling exports to Iran. *Id.* Nonetheless, it found the fact that the machine to be exported was not a product that threatened controls relating to the "proliferation of nuclear, biological, or chemical weapons" mitigating. *Id.* The district court was not persuaded by (1) the government's argument that Sevilla's case was distinguishable because Sevilla did not cooperate with the government and, therefore, was not "similarly situated;" or (2) by examples of cases where prison sentences not probation were imposed. *Id.*

All of these mitigating factors apply in Mr. Latchin's case as well. Mr. Latchin has no prior criminal history, prior arrests or even traffic tickets. The volume of "commerce" was minimal. The commerce consisted of alleged moderate payments in sums of $10,000 to $15,000. Further, there was no evidence that Mr. Latchin acted with any terrorist-related intent, or that his receiving these payments threatened national security.

Finally, if sentenced pursuant to a base offense level of 26, Mr. Latchin's advisory range would be 63-78 months. As stated, 18 U.S.C. § 3553(a)(6)

mandates that the Court consider, "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Mr. Latchin's charged conduct in Count Five involves an embargo violation. When faced with defendants who have engaged in more egregious conduct such as the sale of night vision goggles and other goods placed on the U.S. Department of Commerce's "Watch List" to Iran, courts have sentenced the defendants well below Mr. Latchin's guideline range. *See Sevilla*, 2006 WL 1710139 at *4-*5 (finding guideline sentence of 51 to 63 months inconsistent with sentences among defendants with similar records who have been found guilty of similar conduct and sentencing *Sevilla* to probation).

V. Conclusion

In addition to finding the guidelines advisory, *Booker* dictates that all the factors enumerated under §3553(a), be carefully considered prior to determining the appropriate sentence. *Booker*, 543 U.S. 245-46. Consequently, this Court must sentence Sami Latchin"as an individual" based on the numerous factors that set him apart. Based on all these considerations, a sentence of a year and a day is sufficient but not greater than necessary to accomplish the goals of sentencing and to avoid unwarranted disparity.

WHEREFORE, Defendant Sami Latchin requests that this court impose a sentence of a year and a day.

Respectfully submitted,
FEDERAL DEFENDER PROGRAM
Terence F. MacCarthy,
Executive Director

By: s/Mary H. Judge
Mary H. Judge
William H. Theis

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CERTIFICATE OF SERVICE

The undersigned, William H. Theis, an attorney with the Federal Defender Program, hereby certifies that in accordance with FED.R.CIV.P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

SENTENCING MEMORANDUM

was served pursuant to the district court's ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on September 20, 2007, to counsel/parties that are non-ECF filers.

By: s/Mary H. Judge

MARY H. JUDGE
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IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 04 CR 661
v.	)	Hon. Rebecca R. Pallmeyer
	)	
SAMI KHOSHABA LATCHIN	)	

EXHIBIT LIST

Attachment - J. Darrah's Memorandum Opinion and Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	**No. 04 CR 0171**
v.	)	
	)	**Judge John W. Darrah**
JUAN SEVILLA	)	

MEMORANDUM OPINION AND ORDER

In March 2005, a two-count indictment was filed against Defendant, Juan Sevilla. Sevilla was charged with violations of 50 U.S.C. §§ 1702 and 1705(b) and violations of C.F.R. Parts 560.203, 560.204, 756.7, 746.2(a), and 746.2(c). Later that same month, Sevilla pled guilty to Count One of the indictment in a blind plea. Count One specifically charged that on or about October 27, 2003, and continuing until on or about February 19, 2004, Sevilla knowingly and willfully attempted to engage in a transaction that had the purpose of evading or avoiding a prohibition on the unauthorized direct or indirect exportation and supply, from the United States or by a United States person, of goods and technology from the United States to Iran. The transaction Sevilla attempted to make was the sale of a United Computer Inclusive Hydraulic Floor Model Testing Machine.

Following the Court's acceptance of the guilty plea and the finding of guilty and entering of judgment thereon, the case was continued for sentencing. A presentence investigation was conducted, and a report was prepared by the probation office. The Government and Sevilla filed multiple briefs, including Sentencing Memorandum, Defendant's Version of Events, and Government's Response to Defendant's Version of the Events. A sentencing hearing was held; at which time, Sevilla presented a PowerPoint presentation in which Sevilla reviewed his career with United Computer Inclusive, the circumstances at the time of the attempted sale to Iran, and his

activities following the indictment. The main contested issue between the parties at this hearing was the nature of the universal testing machine that was to be sold to Iran and whether the controls relating to the proliferation of nuclear, biological, or chemical weapons or materials were evaded as provided in 2M5.1(a)(1) of the Sentencing Guidelines. Sentencing was continued to allow the parties to file additional briefs on the issues of: (1) the nature of the universal testing machine that was to be sold to Iran; (2) the other district courts' treatment of embargo violations post-*United States v. Booker*, 543 U.S. 220 (2005) (*Booker*); and (3) whether Sevilla's version of the events and sentencing memorandum demonstrated that Sevilla had not accepted responsibility.

On June 13, 2006, the Court issued a Memorandum Opinion and Order, addressing the issues that were the subject of the additional briefs. The Court found that the Government had not proven by a preponderance of the evidence that the universal testing machine that was attempted to be sold by Sevilla was a product that threatened national security controls relating to the proliferation of nuclear, biological, or chemical weapons. Therefore, pursuant to Section 2M5.1(a)(2), the base offense level for the offense was 14.

Subsequently, the Government filed a Motion to Reconsider, arguing that it had not taken the position that the universal testing machine and "watch list" were the "national security control" at issue. Instead, it was the embargo itself which constituted the national security control found in 2M5.1(a)(1).[1]

[1]This contention was less than clear as demonstrated by the Government's failure to cite in any of its previous filings either of the two cases it relies upon to support its present argument.

ANALYSIS

The government bears the burden to prove the facts supporting a sentence by a preponderance of the evidence. *USA v. Noble*, 246 F.3d 946, 951 (7th Cir. 2001).

Pursuant to U.S.S.G. 1B1.1 Application Note 1, sentencing for statutory provisions not listed in the Statutory Index are to be determined by the most analogous guideline as determined by U.S.S.G. § 2X5.1 (Other Offenses). Pursuant to § 2X5.1, if the offense is a felony or Class A misdemeanor for which no guideline expressly has been promulgated, the court is to apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553(b) are controlling, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline remain applicable.

Here, Sevilla engaged in a transaction that had the purpose of evading and avoiding a prohibition on the unauthorized direct or indirect exportation and supply of goods from the United States to Iran. The most analogous offense guideline for a violation of 50 U.S.C. § 1702 is found in U.S.S.G. § 2M5.1. Section 2M5.1 provides:

> Evasion of Export Controls; Financial Transactions with Countries Supporting International Terrorism
>
> (a) Base Offense Level (Apply the greater):
>
> (1) **26**, if (A) national security controls or controls relating to the proliferation of nuclear, biological, or chemical weapons or materials were evaded; or (B) the offense involved a financial transaction with a country supporting international terrorism; or
>
> (2) **14**, otherwise.

The Application Notes further provide that the court "may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences." U.S.S.G. § 2M5.1, Application Note 2.

The Government argues that the appropriate base offense level is 26, pursuant to Section 2M5.1(a)(1), because Sevilla attempted to sell the universal testing machine to Iran, a country against which an embargo exists because of the threat to the national security of the United States.

The Executive Order initiating the current embargo against Iran states that "the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Executive Order 12957 (March 15, 1995). Thus, the embargo is intended as a national security control.

Under similar facts presented here, the First Circuit held that Section 2M5.1(a)(1) applies to any shipment or attempted shipment that "offends" an embargo, whether or not the goods shipped or intended to be shipped are for an innocent use. *See United States v. McKeeve*, 131 F.3d 1, 14 (1st Cir. 1997) (*McKeeve*). "In short, the embargo is intended as a national security control." *McKeeve*, 131 F.3d at 14; *see also United States v. Min*, 2000 WL 1576890 (S.D.N.Y. Oct. 23, 2000) (*Min*) (shipment of goods to country which an embargo exists against is a national security concern – the nature of the goods is not controlling); *United States v. Shetterly*, 971 F.2d 67, 76 (7th Cir. 1992) (*Shetterly*) (Section 2M5.1(a)(1) applied to defendant who violated the Export Administration Act because one of the bases of the Act was to protect national security).

Here, Sevilla attempted to evade export controls to a country to which an embargo exists against because of national security concerns. Accordingly, Section 2M5(1)(a) is applicable, resulting in a base offense level of 26. *See McKeeve*, 131 F.3d at 14; *Min*, 2000 WL 1476890 at * 2; *Shetterly*, 971 F.2d at 76.

After subtracting two points for acceptance of responsibility, Sevilla's offense level is 24. Sevilla is a criminal history I. Without a downward departure, this places Sevilla within Zone "D," with a guideline range of 51 to 63 months' imprisonment. U.S.S.G. § 5C1.1(f).

When sentencing a defendant, the Sentencing Reform Act requires the court to consider the factors listed in 18 U.S.C. § 3553. *See United States v. Booker*, 125 S. Ct. 738, 764-65 (2005). Section 3553(a) provides, in relevant part, that in imposing a sentence, the court is to "impose a sentence sufficient, but not greater than necessary . . . (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant . . . ." 18 U.S.C. § 3553(a)(2). The court is also to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a)(6). A sentencing court may depart from the range stated in the guidelines if it determines that there exists an aggravating or mitigating circumstance or characteristic of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. 18 U.S.C. § 3553(b). In so doing, this Court must consider, *inter alia*, the nature and circumstances of the offense and the history and characteristics of the Defendant and kinds of sentences available.

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. Lastly, as also addressed in the Court's previous Memorandum Opinion and Order, a term of imprisonment of 51 to 63 months is inconsistent with sentences among defendants with similar records who have been found guilty of similar conduct.

Considering the factors set out in Section 3553, the specific nature and circumstances of the offense, the Presentence Investigation Report, and several positive letters submitted in support of Sevilla, the Court departs 14 levels from the offense level of 26, resulting in a base level of 12 before the two-point deduction for acceptance of responsibility.

Based on the above, the Government's Motion to Reconsider is granted. The Court finds that the total offense level is 10.

Dated: November 29, 2006

JOHN W. DARRAH
United States District Court Judge