

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEXANDER FISHENKO et. al.,

Defendant.

Case No.: 1:12-cr-00626-SJ

**SENTENCING MEMORANDUM FOR DEFENDANT ANASTASIA DIATLOVA**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
ARGUMENT .....	3
I. RELEVANT SENTENCING CONSIDERATIONS.....	3
II. THE ADVISORY GUIDELINES CALCULATION.....	4
A. Anastasia played a minimal role in the offense .....	4
B. Anastasia’s base offense level should be 14 pursuant to U.S.S.G. § 2M5.1(a).....	7
III. A SENTENCE OF TIME SERVED IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ACHIEVE THE GOALS OF SENTENCING.....	9
A. A sentence of time served will alleviate any unwarranted sentencing disparities between similarly situated defendants in this case .....	11
B. Anastasia’s sentence should be a fraction of the sentence received by the organizer and leader of the scheme.....	13
C. A sentence of time served would avoid unwarranted disparities with the sentences issued in other export control cases .....	14
D. A sentence of time served is sufficient but not greater than necessary to accomplish deterrence.....	17
E. Anastasia’s life has been characterized by dedication to her family, friends, and community .....	18
F. A sentence of time served is sufficient but not greater than necessary to protect the public.....	26
CONCLUSION.....	27

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Gall v. United States*,  
552 U.S. 38 (2007).....3

*Kimbrough v. United States*,  
552 U.S. 85 (2007).....3

*United States v. Booker*,  
543 U.S. 220 (2005).....3

*United States v. Cavera*,  
550 F.3d 180 (2d Cir. 2008) .....3

*United States v. Garcia*,  
920 F.2d 153 (2d Cir. 1990) .....5

**STATUTES**

18 U.S.C. § 371.....9

18 U.S.C. § 3553(a) .....3, 9

18 U.S.C. § 3559(a) .....9

18 U.S.C. § 3561.....9

U.S.S.G. §2M5.1(a) .....7, 8

U.S.S.G. § 3B1.2.....4, 5, 7

**RULES**

Local Rule 29 .....1, 8

Local Rule 33 .....1, 8

Anastasia Diatlova respectfully submits this memorandum and the accompanying exhibits to assist the Court in its sentencing determination following her conviction of one count of violating the International Emergency Economic Powers Act (IEEPA) and one count of conspiracy to violate IEEPA and commit wire fraud.<sup>1</sup>

### **PRELIMINARY STATEMENT**

We recognize that the export control laws are of significant importance and that a jury has convicted Anastasia of violating those laws. Anastasia profoundly regrets her conduct, and acknowledges that she did not properly appreciate the seriousness of her responsibilities and the care with which she was obligated to handle export information for certain of her sales transactions at ARC. She understands that now, and is deeply remorseful that she did not carry out her duties with the gravity they required. She knows that those choices will have a lasting impact on her life, and she will forever regret them. Prior to trial the government was prepared to recommend to the Court that Anastasia's conduct warranted a sentence of time served.<sup>2</sup> The government has continued to advocate the same sentence for the similarly-situated sales clerk defendants, who were more senior to Anastasia and were charged with a greater number of substantive export violations. The only difference now is that Anastasia exercised her right to put the government to its proof. The question for the Court is how much more is required because Anastasia exercised that right while the other clerk defendants did not.

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<sup>1</sup> At the time of submission of this sentencing memorandum, the Court has not yet ruled on our motion brought pursuant to Rules 29 and 33 seeking a judgment of acquittal or new trial on Counts One and Eight of the Superseding Indictment.

<sup>2</sup> A copy of the plea agreement is attached hereto as Exhibit 2.

The government is not alone in concluding that a sentence significantly less than the one called for by the Guidelines may be sufficient in this unique case. The Probation Department has identified myriad reasons why Anastasia should receive a sentence below the Guidelines:

The defendant (age 42) has no prior criminal history, and apart from her involvement in the instant offense, she has led an otherwise law-abiding life. The defendant's mother is ill with cancer and they communicate via face time technology on a daily basis. If the defendant is incarcerated, it is likely she will never see her mother again. The defendant has a limited education, and a long, verified work history. She was possibly the least culpable defendant in the instant offense. She received minimal compliance training in English (her second language), and was convicted of her involvement in one order of restricted electronic parts, although she was responsible for the sale of approximately 5 million non-restricted parts. Additionally, email and voice records demonstrate the defendant's attempts to comply with the restriction regulations. Together, all of these factors may be considered by the Court as a basis for mitigation below the advisory guideline custodial range.

PSR ¶ 132.

It is our hope that this memorandum can assist the Court by providing a more complete understanding of Anastasia's character and circumstances over the course of her life. Anastasia is a good person whose otherwise unblemished life has been marked by hard work, generosity, and love of others. She made no money in connection with ARC's scheme and wanted nothing more than to improve her station by finally getting a job in an office. The outpouring of support from Anastasia's friends, family, and neighbors overwhelmingly demonstrates that Anastasia is a fundamentally kind and loving person who is deeply committed to her community and is a source of love and support to countless people.<sup>3</sup> For the many reasons set forth below, we respectfully submit that a sentence of time served is warranted and sufficient in this case and we ask the Court to consider the entirety of Anastasia's circumstances before imposing sentence.

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<sup>3</sup> Many of the letters submitted on Anastasia's behalf were written in Russian and translated into English. Both the original versions and the translations are attached as Exhibits hereto. The letter excerpts are taken from the English translations where applicable.

## ARGUMENT

### I. RELEVANT SENTENCING CONSIDERATIONS

The Supreme Court made clear in *United States v. Booker* that the Sentencing Guidelines are advisory. 543 U.S. 220 (2005). A defendant's Guidelines range is therefore just one of many factors that the Court must consider when imposing a sentence, and the Court "may not presume that a Guidelines sentence is reasonable[.]" *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc). Instead, the Court must conduct its own independent review of all of the relevant factors, considering any and all information relating to the defendant's background, character, and conduct, and "make an individualized assessment based on the facts presented." *Gall v. United States*, 552 U.S. 38, 49-50 (2007). A sentence must be sufficient but "**not greater than necessary**" to accomplish the goals of sentencing," *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting 18 U.S.C. § 3553(a)) (emphasis added), and is inappropriate where it exceeds the minimum sentence necessary to achieve its purposes. *See Cavera*, 550 F.3d at 189.

18 U.S.C. § 3553(a) sets forth a number of factors that the Court must consider when imposing a sentence. Among other things, those factors include the history and characteristics of the defendant, the nature and circumstances of the offense, the need to avoid unwarranted sentence disparities for similar conduct, the kinds of sentences available, and whether the sentence reflects the seriousness of the offense, promotes respect for the law, provides just punishment, and affords adequate deterrence. *Id.* We analyze these factors below.

## II. THE ADVISORY GUIDELINES CALCULATION

The parties have some disagreement as to how the advisory Guidelines range should be calculated in this case. Specifically, we wish to address (1) Anastasia's role in the offense and (2) the applicable base offense level.

We recognize that the export control laws are serious and that violating those laws deserves appropriate punishment. Anastasia did not properly appreciate the seriousness of her compliance responsibilities while she was working at ARC and is deeply remorseful that she did not carry out her duties accordingly. However, we respectfully submit that Anastasia's conduct was measurably different from that of other defendants charged in the scheme and sentenced by this Court.

### A. Anastasia played a minimal role in the offense

First, Anastasia played a minimal role in the counts charged, and therefore a four-level reduction in the base offense level is warranted. **The government does not oppose this position**, and in fact anticipated that Anastasia would receive a minimal role reduction, as evidenced by the plea agreement it offered Anastasia weeks prior to trial. *See* Exhibit 2 at 3. While the government now defers to Probation's assessment that Anastasia's role was minor rather than minimal, it has taken the position that it will not advocate against a four-level reduction.

This position is also supported by the commentary to the relevant Guidelines provisions, which provides that the offense level should be decreased by four levels if the defendant was a minimal participant in the criminal activity, two levels if the defendant was a minor participant in the criminal activity, and three levels in intermediate cases. *See* U.S.S.G. § 3B1.2. The commentary to U.S.S.G. § 3B1.2(a) indicates that the minimal role reduction is appropriate for a defendant who, like Anastasia, is substantially less culpable than the average participant in the

charged activity. This provision “is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of the group.” U.S.S.G. § 3B1.2, comment. (n. 4). The defendant’s “lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.” *Id.* By contrast, the Sentencing Guidelines define a “minor participant” as any participant “who is less culpable than most other participants, but whose role should not be described as minimal.” U.S.S.G. § 3B1.2, comment (n. 5). A determination that a defendant should get a reduction on account of her role in the offense, and whether she should be accorded a “minimal” or “minor” role adjustment, must be made in the context “of the facts of the particular case.” U.S.S.G. § 3B1.2, comment (n. 3(C)); *see also United States v. Garcia*, 920 F.2d 153, 155 (2d Cir. 1990) (“Whether a defendant may be accorded the benefit of a ‘minor’ or ‘minimal’ role adjustment under § 3B1.2 does not turn solely upon his status or his assigned task in the criminal enterprise. . . . this determination is to be made not with regard to status in the abstract but rather with regard to the defendant’s culpability in the context of the facts of the case.”).

There is no dispute that Anastasia was among the least culpable of any participant in the conspiracy. *See* PSR ¶ 132. The PSR acknowledges that Anastasia was the most junior salesperson charged in the scheme and that her involvement in the offense was limited to administrative tasks all undertaken “at the direction of her superiors.” PSR ¶¶ 6, 20, 21. By contrast, the other defendants had considerably more involvement in the charges. Anastasia was not aware of and did not participate in most of that alleged conduct:

- Anastasia had no involvement in founding ARC or determining its business activities, *see* PSR ¶¶ 5-6, 65;
- Anastasia did not set up the scheme, which began a decade before she began working at ARC, *see* PSR ¶¶ 5-6, 65;



- Anastasia never traveled overseas or met ARC's customers;
- Anastasia worked at ARC for the shortest amount of time of any of the defendants – while some of them worked there for many years, Anastasia only worked there for fifteen months, *see* PSR ¶¶ 62, 65; Tr. 1822-28;
- Unlike the other defendants – who had college educations and technical backgrounds – Anastasia had an eighth grade education, a very limited understanding of English, and had previously worked at a discount clothing store, *see* PSR ¶¶ 61, 63;
- Anastasia had no prior experience with export controls, received no export compliance training upon joining ARC, and the limited training she eventually received was given in English, which she struggled to comprehend, *see* PSR ¶¶ 63, 132;
- Anastasia was an hourly employee who made approximately \$12 an hour and had no financial stake in any of the transactions, *see* PSR ¶ 62;
- Anastasia had no supervisory role, acted at the direction of her superiors, and relied on her supervisors – who held themselves out as knowledgeable and trained in the area of export compliance – for guidance on complying with the law, *see* PSR ¶¶ 63, 132; Tr. 1069-70;
- Anastasia processed orders for only a handful of ARC's customers in Russia, *see* PSR ¶ 62; Tr. 898-90;
- Of the over five million pieces Anastasia exported during her fifteen months at ARC, the government only charged her at trial with exporting one order of primarily commercial, dual-use microchips without first obtaining the required license, *see* PSR ¶¶ 62, 64;
- Despite her limited training, Anastasia repeatedly attempted to comply with the export control laws and refused to sell restricted parts when clients requested them, *see* PSR ¶¶ 63, 65, 132; Tr. 2456-79;
- ARC's scheme did not require any participation by Anastasia to succeed, and had been operating for almost a decade without her involvement – in fact, the FBI had already been investigating ARC for years before she even started working there, *see* PSR ¶¶ 5-7, 63 n. 2;
- Anastasia had no involvement in ARC's finances and had no access to its bank accounts, *see* PSR ¶ 18; Tr. 2067-68;
- Anastasia did not participate in any money laundering, *see* PSR ¶ 18; and

- Anastasia did not participate in any obstruction of justice. *See* PSR ¶¶ 15, 35.

For these reasons, we respectfully submit that a four-level minimal role reduction is appropriate. In the alternative, we believe that a three-level role reduction should be applied pursuant to U.S.S.G. § 3B1.2.

**B. Anastasia’s base offense level should be 14 pursuant to U.S.S.G. § 2M5.1(a)**

Second, we respectfully submit that the base offense level for Count 1(a) and Count 8 should be 14 rather than 26. The sentencing guidelines fail to define the term “national security controls” as used in U.S.S.G. § 2M5.1(a). While we recognize that courts in this circuit have concluded that the nature of the goods exported and the specific threat, if any, posed to national security are not determinative for these purposes, it simply cannot be the case that Congress intended a twelve-point increase in the base offense level simply because a defendant sold a predominantly commercial use part in violation of a licensing requirement. Anastasia’s actions are in no way analogous to the other activities sanctioned by U.S.S.G. § 2M5.1(a), which include shipments to terrorism-supporting countries – Iran, North Korea, Sudan, and Syria – and violations of nuclear proliferation, biological, and chemical weapons controls. Rather, Anastasia was convicted of exporting dual-use memory chips, which have been deemed by the government to warrant significantly less stringent export controls because they have both commercial and potential military uses. There was no evidence introduced at trial that Anastasia participated in this export with terroristic intent or that she sought to impair the national security of the United States, or, for that matter, that licenses would not have been readily granted for the parts at issue. In fact, according to Department of Commerce statistics, the denial rate for export licenses in 2012 was less than one percent. *See* [https://www.bis.doc.gov/index.php/forms-documents/doc\\_view/1497-statistics-of-2015-bis-licensing](https://www.bis.doc.gov/index.php/forms-documents/doc_view/1497-statistics-of-2015-bis-licensing).

Accordingly, we submit that the advisory Guidelines calculation for Count 1(a) and Count 8 is as follows:

- Base Offense Level (U.S.S.G. §2M5.1(a)(2)) 14
- Less: Minimal Role -4
- Total Offense Level 10

A total offense level of 10 and a Criminal History Category of I yields a guidelines range of 6 to 12 months.<sup>4</sup>

Should the Court disagree with our analysis of U.S.S.G. §2M5.1(a)(2), we submit that the advisory Guidelines calculation is as follows:

- Base Offense Level (U.S.S.G. §2M5.1(a)(1)) 26
- Less: Minimal Role -4
- Total Offense Level 22

A total offense level of 22 and a Criminal History Category of I yields an advisory Guidelines range of 41 to 51 months.

Finally, we note that the Court has not yet ruled on our motion brought pursuant to Rules 29 and 33 seeking a judgment of acquittal or new trial on Counts One and Eight of the Indictment. Should the conviction on Count One survive those motions – but the conviction related to the IEEPA counts be dismissed – we submit that the appropriate offense level is that set forth for conspiracy to commit wire fraud. *See* PSR ¶¶ 75-80. A base offense level of 6 and a reduction of four levels for a minimal role (or two levels for a minor role) both yield an advisory Guidelines sentence of 0 to 6 months. *See* PSR ¶¶ 75-80.

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<sup>4</sup> Should the Court apply a two-level reduction for a minor, rather than minimal, role, the base offense level would be 12, yielding a Guidelines range of 10-16 months. Should the Court apply the three-level intermediate role reduction, the base offense level would be 11, yielding a Guidelines range of 8-14 months.

Notwithstanding those advisory Guidelines ranges, for the reasons detailed below we respectfully submit that a sentence of time served is both available and warranted in this case.<sup>5</sup>

**III. A SENTENCE OF TIME SERVED IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ACHIEVE THE GOALS OF SENTENCING**

18 U.S.C. § 3553(a) requires the Court to consider a number of factors in determining whether the contemplated sentence is sufficient – but not greater than necessary – to accomplish the goals of sentencing. All of those factors weigh in favor of a sentence of time served.

Anastasia has accepted responsibility for her grave error in making false statements to vendors in connection with certain sales transactions at ARC. While she did not appreciate the seriousness of such conduct at the time, she is now deeply remorseful and acknowledges that she never should have done what she did.<sup>6</sup> This is precisely the same conduct that was admitted to by the other sales clerks who pleaded guilty in this case – clerks who either have been or likely will be sentenced to time served – and for which the government believed time served to be the appropriate sentence prior to trial. Probation has also recognized that Anastasia was the least culpable defendant in the case and that there are numerous reasons for the Court to impose a sentence outside the guidelines range. *See* PSR ¶ 132.

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<sup>5</sup> Anastasia has already served almost a month in prison in connection with her arrest in this case. 18 U.S.C. § 3561 provides that “[a] defendant who has been found guilty of an offense may be sentenced to a term of probation unless – (1) the offense is a Class A or Class B felony,” or “(2) the offense is an offense for which probation has been expressly precluded.” 18 U.S.C. § 3559(a) provides that a Class A felony is defined as a felony where the maximum term of authorized imprisonment is a life sentence, and a Class B felony is defined as one where the maximum term of authorized imprisonment is twenty-five years or more. Because Anastasia was convicted of one count of conspiracy in violation of 18 U.S.C. § 371, which provides a maximum term of imprisonment of five years, and one count of violating IEEPA in violation of 50 U.S.C. § 1705, which provides a maximum term of imprisonment of twenty years, her offenses are classified as a Class D felony and a Class C felony, respectively, under 18 U.S.C. § 3559(a). Therefore, the Court is free to impose a non-incarceratory sentence should it so choose.

<sup>6</sup> While Anastasia appreciates the seriousness of her mistakes now, we have consistently adhered to the position that she never willfully intended to violate the export control laws and did not think her conduct violated those laws – that is why she elected to go to trial despite the government’s promise of a recommendation of time served.

Moreover, for the last four years Anastasia has been subject to rigorous pre-trial and post-trial release conditions, with stringent monitoring, a strict curfew, and restrictions on her movements, including two years of house arrest with electronic monitoring. Anastasia will get no credit for the more than four years of her life during which her release conditions significantly limited her ability to come and go as she pleased, to travel, to attend the important life events of her friends and family, and to visit her terminally ill mother in Russia. Anastasia has complied with all of those conditions for four years, without exception. And despite those restrictions, she has remained employed, worked hard, and even earned a much-deserved promotion with her current employer. She has no criminal history and no incentive to commit any crimes in her new place of work – she has gone back to the retail clothing industry and has no opportunity to ever commit any crimes related to export controls. We respectfully submit that such restrictions, in addition to the time Anastasia spent in prison in connection with her arrest, have already served as a significant punishment that will deter Anastasia from ever committing any crime in the future.

Finally, the conduct for which Anastasia was convicted pales in comparison to the conduct of the individuals who planned, directed, and orchestrated the scheme. Alexander Fishenko, the owner of ARC, has already been sentenced to ten years in prison for his conduct. It is only reasonable that Anastasia, the most junior employee and least culpable defendant to be indicted, receive a sentence far less than that which Fishenko received. *See* PSR ¶ 132.

Anastasia is a good person who played a minimal role in the offense, realized no monetary gain, and has already given up four years of her life as a result of her indictment. All

of those factors support the conclusion that a sentence of time served is sufficient, but not greater than necessary, to satisfy the considerations that guide sentencing.<sup>7</sup>

**A. A sentence of time served will alleviate any unwarranted sentencing disparities between similarly situated defendants in this case**

Section 3553(a)(6) urges courts to avoid unwarranted sentencing disparities with defendants who have been found guilty of similar conduct. As detailed above, Anastasia was the most junior sales clerk who was indicted in this case, had no supervisory role of any kind, and had worked at ARC for just fifteen months at the time of her arrest. The other sales clerk defendants either have been or likely will be sentenced to time served, and they engaged in more culpable conduct than Anastasia. Accordingly, a sentence of time served will avoid unwarranted sentencing disparities in this case.

Unlike the other sales clerks, the Indictment charged only one of Anastasia's sales orders as violating the export control laws. Also unlike the other clerks, Anastasia did not lie about ARC's export function – although she sometimes referred to ARC's status as a “contract manufacturer” in her emails, such language was pasted from the emails of her predecessor and always made it very clear that the items would be exported to Russia. Moreover, although the government argued at trial that Anastasia knowingly used a Singapore-based company to circumvent export control laws, the single audio recording involving Anastasia that the government submitted into evidence demonstrated only that Anastasia was aware of the existence of that company – not that she had any involvement in setting it up or understood how it was being used by her superiors. *See* Tr. 1993-94, GX 401(T).

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<sup>7</sup> In the alternative, we submit that a sentence of house arrest and community service, while more restrictive than time served, would also satisfy the goals of sentencing while still allowing Anastasia to continue working and supporting herself and her ailing mother.

Nor did Anastasia have any knowledge of or participate in any obstruction of justice. *See* PSR ¶¶ 15, 35. In fact, the government's sole cooperating witness, Viktoria Klebanova, sat at the work station right next to Anastasia's, had worked at ARC for far longer and had much more awareness of its functioning, and never once implicated Anastasia in her testimony:

MR. FODEMAN: And, in fact, as you sit here today, you have no information one way or another of whether Ms. Diatlova intentionally, knowingly sent this part to Russia knowing that she needed a license to do it?

MS. KLEBANOVA: No.

MR. FODEMAN: In fact, you don't have any information about any part in particular that Ms. Diatlova sent to Russia without a license, knowing that a license was needed?

MS. KLEBANOVA: No.

Tr. 1093:19 – 1094:3.

At the time of this submission, only one other sales clerk, Sevinj Taghiyeva, has been sentenced, and she is arguably the most similarly-situated to Anastasia because she was also a junior employee and never held a supervisory role over the other clerks. Ms. Taghiyeva received a sentence of time served. *See* minute entry of Taghiyeva sentencing hearing held on June 27, 2016. The other sales clerk defendants, who were charged with multiple substantive counts and held supervisory roles over other employees, are also likely to receive similar non-incarceratory sentences. For example, the government has stated that it will recommend time served for Svetalina Zagon, a sales clerk who was charged with three substantive counts and held a supervisory role over the other clerks.<sup>8</sup> When it comes to their offense conduct, the only difference between those defendants and Anastasia is that Anastasia exercised her constitutional

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<sup>8</sup> *See* transcript of plea hearing of Svetalina Zagon at 7-8. A copy of that transcript is attached hereto as Exhibit 3.

right to challenge the sufficiency of the government's evidence at trial. We respectfully submit that a sentence that is twenty-five or thirty times longer (the difference between a sentence of approximately two months and the Guidelines range calculated by the Probation Department) is unwarranted under the circumstances of this case.

Finally, we note that many other sales clerks and employees who worked at ARC – who repeatedly participated in the exact same conduct and for much longer periods of time – were never charged at all in this case. Those employees worked at ARC for many years, held supervisory roles, and shipped numerous restricted parts with the wrong export designations. *See* PSR ¶ 65; GX 1329; AD-101; Exhibits 18-21; *see also* Exhibit 22. Those clerks will not face any conviction or the collateral consequences of one, let alone a sentence of imprisonment. Sentencing Anastasia to a term of incarceration within the advisory Guidelines range would create an unwarranted disparity not only with the co-defendants who pleaded guilty and were sentenced to time served, but would create an enormous disparity with those who engaged in much more extensive conduct and will receive no punishment at all.

**B. Anastasia's sentence should be a fraction of the sentence received by the organizer and leader of the scheme**

Defendant Alexander Fishenko – the founder of ARC Electronics and the architect of all of its operations – has already been sentenced to 120 months in prison. Fishenko was the organizer of the scheme and reaped all of its benefits: he founded ARC in 2001, directed its activities, and kept the profits from the business while his employees made a low wage. Fishenko knowingly collaborated with clients in Russia to procure parts in violation of the export control laws, and structured ARC's finances so that its revenue was directed through third-party shell corporations. *See* Tr. 2041, 2052-65. Following Toshiba's discovery that it had misclassified two parts shipped by ARC, Fishenko orchestrated a cover up, including falsifying



documents, scrubbing affiliated websites of any reference to military clients, obscuring the relationship between ARC and various client entities, and filing fraudulent documents with the Department of Commerce. *See* Tr. 1226-28. Finally, Fishenko explicitly told his collaborators to keep his employees in the dark and not tell them that the products they were ordering had military end uses. *See* Exhibit 23 at 4-6; Exhibit 24 at 2.

Fishenko organized the scheme, made all of the money, used otherwise law-abiding people to carry out his plans, and ruined their lives in the process. They are now convicted felons, and it is unlikely that they will ever again be able to obtain stable employment. The Court has sentenced Fishenko to 120 months in prison for his crimes. As the most junior sales clerk and a pawn in Fishenko's scheme, it is only fair that Anastasia's sentence not only align with the sentences of the other sales clerks, it should not be remotely close to the sentence given to Fishenko. Accordingly, we submit that a sentence of time served is the appropriate sentence in this case.

**C. A sentence of time served would avoid unwarranted disparities with the sentences issued in other export control cases**

The need to avoid unwarranted sentencing disparities among similarly-situated defendants in other cases also weighs heavily against the imposition of lengthy incarceration in this case. Many defendants involved in comparable or vastly more serious conduct have received significantly lower sentences than that reflected in the advisory Guidelines range. To assist the Court in evaluating this factor, we provide a brief survey of other export control-related criminal cases where sophisticated defendants exported items to terrorist-supporting countries or exported sensitive items without licenses, yet received much lower sentences than the advisory Guidelines range Anastasia faces.

<b>Case</b>	<b>Conduct</b>	<b>Sentence</b>
<i>United States v. Chen</i> , No. 12-CR-563 (E.D.N.Y. April 5, 2013)	Personally attempted to export 5 to 10 tons of weapons-grade carbon fiber to Taiwan without a license.	Time served (9 months)
<i>United States v. Mahmood</i> , No. 04-CR-365 (D.D.C. Jan. 24, 2006)	Business owner exported lift truck parts to Iran.	Time served (17 months)
<i>United States v. Rezaei</i> , No. 07-CR-380 (N.D. Ga. May 15, 2008)	Business owner exported netbook laptops to Iran while concealing their true destination from export authorities.	Time served
<i>United States v. Miller</i> , No. 02-CR-1117 (N.D. Ill. Mar. 3, 2005)	CEO exported polygraph machines to China without a license.	30 months probation (including 6 months electronically monitored home confinement)
<i>United States v. Gribbin</i> , No. 07-CR-544(arr) (E.D.N.Y. Feb. 2, 2009)	Sales manager conspired to export microplate processing and test tube coating systems to Iran in violation of the U.S. embargo.	3 years probation
<i>United States v. Ghashim</i> , No. 06-CR-283 (S.D. Tex. Feb. 27, 2008)	Company president attempted exports of thousands of dollars' worth of computer equipment to Syria in violation of the U.S. embargo.	3 years probation
<i>United States v. Trujillo</i> , No. 07-CR-714 (D. Ut. Dec. 10, 2008)	Personally attempted to export ITAR-controlled wiring harnesses for fighter jets without a license.	3 years probation
<i>United States v. Singh</i> , No. 10-CR-93 (D. Del. Mar. 3, 2011)	Business owner attempted export of digital microwave radios to Iran in violation of the U.S. embargo.	3 years probation (including 6 months home monitoring)
<i>United States v. Khan</i> , No. 04-CR-441 (E.D.N.Y. Jul. 30, 2007)	Business owner conspired to export aircraft components to Iran in violation of the U.S. embargo.	5 years probation
<i>United States v. Angehr</i> , No. 08-CR-03 (E.D. La. Aug. 7, 2008)	Business owner conspired and attempted to export highly sophisticated oil and gas computer software to Iran in violation of the U.S. embargo.	5 years probation
<i>United States v. Kraaiipoel</i> , No. 09-CR-220 (D.D.C. Jun. 20, 2012)	Company director conspired to export hundreds of aviation components to Iran.	60 months probation
<i>United States v. Telemi</i> , No. 09-CR-736 (N. D. Ill. Nov. 30, 2012)	Business owner conspired to export ITAR-controlled connectors for missile guidance systems to the U.A.E. without a license.	5 years probation
<i>United States v. Sevilla</i> , No. 04-CR-171 (N.D. Ill. Nov. 30, 2006)	Director of International Sales exported testing equipment to Iran in violation of the U.S. embargo.	5 years probation (including 6 months home detention)

<b>Case</b>	<b>Conduct</b>	<b>Sentence</b>
<i>United States v. Groos</i> , No. 06-CR-420 (N.D. Ill. Jan. 15, 2009)	President of International Operations exported fire suppression equipment to Iran in violation of the U.S. embargo.	60 days incarceration
<i>United States v. Gromacki</i> , No. 12-CR-302 (S.D.N.Y. Jan. 8, 2014)	Exported over 6,000 pounds of carbon fiber to China. The carbon fiber at issue is controlled by the Department of Commerce by virtue of its nuclear, uranium enrichment, and missile applications.	3 months incarceration
<i>United States v. Budenz</i> , 05-CR-1863 (S.D. Cal. July 19, 2006)	Former naval officer illegally exported ITAR-controlled military engine components to Iran.	12 months incarceration
<i>United States v. Talebi</i> , No. 12-CR-295 (S.D.N.Y. Feb. 19, 2013)	Conspired to obtain hundreds of thousands of dollars' worth of sensitive electrical components and industrial hardware for several petrochemical companies in Iran, including a company wholly-owned by the Government of Iran in violation of the U.S. embargo.	12 months and 1 day incarceration
<i>United States v. Lam</i> , No. 06-CR-290 (D. Conn. Mar. 15, 2007)	Personally smuggled U.S. night vision equipment to China.	14 months incarceration
<i>United States v. Freyer</i> , No. 06-CR-891 (C.D. Cal. Dec. 17, 2007)	International businessman conspired, aided and abetted the export of petrochemical valves to Iran and Iraq.	17 months incarceration
<i>United States v. Avanesian</i> , No. 09-CR-1344 (C. D. Cal. Jul. 6, 2011)	Business owner conspired to export equipment for the enrichment of uranium to Iran.	18 months incarceration
<i>United States v. Ponomarenko</i> , No. 12-CR-254 (E.D.N.Y. May 22, 2013)	Used straw purchasers to acquire ITAR-controlled, military-grade night vision equipment for export to the Ukraine without the required license from the State Department.	24 months incarceration
<i>United States v. Sarvestani</i> , 13-CR-214 (S.D.N.Y. Aug. 16, 2013)	Highly sophisticated business man and owner and director of two companies based in the United Arab Emirates used those companies to conceal the true destination of the items exported to Iran. Defendant instructed his employees to disguise the fact that they were exporting satellite technology and hardware from the United States to Iran.	30 months incarceration

Case	Conduct	Sentence
<i>United States v. Zhang</i> , No. 12-CR-666 (E.D.N.Y. Dec. 18, 2013)	Attempted to export thousands of pounds of aerospace-grade carbon fiber to China. This material is frequently used for military, defense, and aerospace purposes and is thus regulated by the Department of Commerce for nuclear non-proliferation and anti-terrorism reasons.	57 months incarceration
<i>United States v. Bout et al</i> , No. 09-CR-1002 (S.D.N.Y. Dec. 9, 2014)	Defendant conspired with a notorious arms dealer to violate IEEPA as well as to commit wire fraud and money laundering in addition to six substantive counts of wire fraud. Defendant was a designated Specially Designated National (“SDN”), and conspired to purchase commercial aircraft from American companies and ferry those aircraft to Tajikistan. American companies were prohibited from doing business with the Defendant and his associate because of their SDN status. Defendant sought to avoid SDN sanctions by concealing his identity and hiding SDN designation.	60 months incarceration

**D. A sentence of time served is sufficient but not greater than necessary to accomplish deterrence**

Violating the export control laws is a serious offense. This case has reverberated throughout the export control world, and Mr. Fishenko’s sentence serves as a cautionary tale that has already had a tangible impact on the conduct of entities that are subject to those laws. This investigation alone has already accomplished general deterrence with tangible and immediate results.

As for the individual sales clerks, each has already served time in prison in connection with this case, including Anastasia. Moreover, as noted above, for the last four years Anastasia has been subject to rigorous pre-trial and post-trial release conditions, with stringent monitoring, a curfew, and restrictions on her movements. Within that period, she has also been subject to house arrest with electronic monitoring for almost two years in total – nine months following her

arrest and then another eleven months following her conviction. While certainly preferably to detention, Anastasia will get no credit for the more than four years of her life during which those conditions significantly limited her control over her daily life, her work, her ability to come and go as she pleased, to travel, and to attend the important life events of her friends and family, including weddings, the births of children, and funerals. Most heartbreakingly, Anastasia has been unable to visit her terminally ill mother in Russia for the last four years.

Anastasia has complied with all of those conditions without exception and with no concern or objection from Pretrial Services. And despite those restrictions, she has remained employed, worked hard, and even earned a much-deserved promotion with her current employer. We respectfully submit that the conditions of the last four years, in addition to the time Anastasia spent in prison in connection with her arrest, have already served as a significant punishment that will deter Anastasia from ever committing any crime in the future. As a convicted felon, her life and her ability to obtain employment will be forever impacted by her conviction alone.

Anastasia understands this, and has given up her dream of ever working in an office again. She has gone back to working in retail and trying to rebuild her ties in her community, and is just starting to get back on her feet. The turmoil of the past four years has made it difficult for Anastasia to make ends meet and to maintain any semblance of a stable life – she wants nothing more than to keep working, rebuild her life, and be there for her mother during her illness.

**E. Anastasia's life has been characterized by dedication to her family, friends, and community**

Finally, Anastasia is a good person whose life has otherwise been characterized by love for her family, friends, and community. Anastasia was born in Tatarstan, a rural area about two hours outside of Moscow. PSR ¶ 96. Her father left her mother, Nellie, before Anastasia was born. *Id.* Anastasia is an only child, and she and her mother have an extremely close

relationship to this day. *Id.* ¶¶ 97-98. Even though they are oceans apart, they make sure to video chat every single day. *Id.* ¶ 132. Anastasia’s mother worked in a truck factory in their hometown, and raised Anastasia to value hard work and self-reliance, even when the circumstances were difficult. *Id.* ¶ 97. Although Anastasia tried her best at school, she was only able to complete the eighth grade before dropping out to take a job at the same factory where her mother worked. *Id.* ¶ 114. Despite this early setback, Anastasia was committed to completing her education and later began taking classes at night – after a few years of study she was eventually able to earn her high school diploma. *Id.* ¶ 107. A childhood friend recalls the hardships of that time, explaining that “due to the very harsh financial situation and the crisis in Russia in 1990s, we all had to endure very difficult times because we would not get paid for 9 months. Anastassia, who was 15 years old then, had to go to work and finish her high school education at night. She worked for the Scientific and Technological Center at the Kamsky Automobile Plant where her mother and her stepfather worked.” Exhibit 11(T) at 1. Despite the difficult environment in Russia, Anastasia’s friends were struck by her optimistic attitude and dedication to her friends, family, and colleagues: “among her coworkers she had always been loved for her good heart and responsiveness. She knew how to be a good friend. Since her childhood she had and has many friends of various ages with whom she still remains friends.”

*Id.*

Anastasia dreamed of going to college and building a stable life for herself. She enrolled in night classes and worked at a number of entry level jobs to support her studies, including doing data entry and working as a cleaning person. *Id.* ¶ 114. However, despite her desire to obtain a college degree, Anastasia was only able to complete a few semesters before leaving school for good.

Anastasia got married in 2002 and immigrated with her husband to Houston, Texas, where she immediately began putting down roots in her new community. PSR ¶¶ 100, 113. The outpouring of support from friends and neighbors in the letters submitted on her behalf show just how beloved she is in that community to this day. Her friend, Eugenia Greenshpun, writes:

I have met Anastasia in 2003. From the moment we met I was enchanted by her friendly attitude, kindness and positive spirit. She is sincere and honest person, always bringing positive notes into conversation. Our families spent a lot of nice time together, sharing both troubles and happy moments such as mutual friends' as well as our own weddings, birthdays, holidays or just quality time on the weekends. She is always willing to help and support her friends which I had a chance to ensure multiple times, the most memorable of those was when I have lost my husband and Anastasia was invaluablely supportive, even though she had difficult times of herself. She did everything to bring good spirit and optimism, she also helped me with my household issues which I didn't have energy and willingness to take care of at that moment. Even though it sounds normal however not everybody had a chance to be that supportive.

Exhibit 10 at 1.

Anastasia became involved in her local church and helped her neighbors in caring for their children and aging family members. Her friend, Valerie Gilliam writes:

I would describe Anastasia as a very honest and caring person, that has the strong Christian and human values and willing to help the others. As an active member of the community Anastasia helped a lot of people. I have been a witness of many things and actions that Anastasia contributed to the community in Houston. She is one of the best people I met in my life – her loving and sensitive heart, ability for compassion, willingness to dedicate her time and resources to others made her a very noticeable person in the community and beyond . . . . Anastasia loves children and she is always willing to look after them when their parents ask her. People trust her enough to leave their small children with her, they rely on Anastasia and they are always sure she will give them her love and care. She is a good and trustful caregiver – I know she also helped her co-worker to look after her 80+ years old mother, when her co-worker had to leave the town for a couple of weeks. Anastasia told me she enjoyed the company of that older lady and used to get her some little treats to cheer her up.

Exhibit 9 at 1. Another friend, Julia Frekhtman, shares a similar sentiment:

Anastasia has been an unbelievable friend and supporter to me and my family ever since we met. She has served as a dependable babysitter for my children who

love her as well as a great friend to my husband and myself. I have also depended on Anastasia's help when it comes to my parents. Both of them suffer from various illnesses and have needed numerous surgeries, doctors' visits and other needs. Anastasia has never declined any of my or their needs and has treated them as her own parents. In return they love her as if she was their own daughter. While taking care of my own three kids, I am not sure what I would have done without her help when it came to their care.

Exhibit 7 at 1. Yet another friend, Karina Belitskaya, shares a similar account of Anastasia's care for her neighbors and their families:

Last year in fall I was looking for Russian speaking lady to take care of my mother for a week. It was my husband's birthday and he wanted to celebrate it in exotic place. I was very nervous to leave my mother with some memory problems alone for a week. I knew Anastasia has a lot of friends and I asked if she knows somebody who can help. She said that I can calm down and she will help me. I was shocked. It was very inconvenient for her for two reasons: very long drive to my mother's place and retail schedule. I introduced Anastasia to my mom over dinner and my mom liked her from the very first minute. She asked me why I hide such a nice person from her. Every day during my vacation Anastasia emailed me how they spend time together, how my mom feels and what she eats. When I returned back, my mom had a lot to say about how nice Anastasia was. She wanted to see her again and I invited Anastasia for dinner. We had such a nice time all together. Unfortunately my mom passed away in a week after that. I will never forget how Anastasia helped me and I am very grateful for that.

Exhibit 4 at 1.

Alex and Leah Ostrovsky write that Anastasia "had become the first person we would call for help in different circumstances – when it was necessary either to take one of us to a doctor or to take care of our dogs and cats when we went on vacations. Anastasia was extremely supportive when Leah lost her son, and she is still helping his widow in many instances of her life." Exhibit 16 at 1. Victoria Reese, a friend and neighbor, explains that "Anastasia always volunteers in the Church activities, helps to cook and to serve food at the Church's events. When I was sick, Anastasia visited me several times, brought me groceries and helped with necessary tasks. She is a very responsive and kind person. Anastasia helped to collect help



for poor, and school supplies for children. She participated in charity activities, and she is very good daughter, taking care of her mother.” Exhibit 17 at 1.

As the letters overwhelmingly demonstrate, Anastasia’s friends and neighbors are struck by her kind, loving, and open nature. As Viktoriya Miller writes:

I know Anastasia is beautiful inside and out. She is very open, sincere, honest, giving, warm, loving, and positive. She will always be the first to offer her help or share with you the last thing she has. She loves people, accepts them for who they are, and always finds the right words to support you if you are in pain or takes care if you are sick. She will find a way to make you feel special and is sincerely happy for you for your happy moments of life. Never in my life have I met someone more kind, helpful, supportive, or spiritually rich person than Anastasia. Every Sunday and religious holiday she goes to church and actively participates in any event for the church. She is honest and trusting and only sees the good in people.

Exhibit 15 at 1. Another friend, Olga Kolesnikova writes:

Anastassia and I have been friends for more than 20 years. Anastassia is a wonderful person. Trustfulness is her distinctive feature which sets her apart from other people. Anastassia never lies and, probably because of that, sincerely trusts people. Positive, humble and hardworking, Anastassia will always help not only her close friends but strangers as well. Anastassia is an open, honest and responsive person who doesn’t know how to lie. In my life I have never met a more light-hearted and decent person.

Exhibit 11(T) at 2.

The letters also describe Anastasia as unfailingly generous and trusting, to a fault. Her friend, Tatyana Aleksandrova writes:

Firstly, she is a very honest and kind person. I personally like to help her and feel compelled to do so because she is many times naïve and she doesn’t know simple questions to ask people. For example, I have noticed that she doesn’t know the right questions to ask about jobs, new relationships with men and over trust in people. She is very spontaneous which is good and bad depending on the situations in life. I like her easy going nature and enjoy her spontaneity. Whatever she has, she is willing to share with me and not think about reimbursement. For example, when she is invited to our parties we are hosting, she always brings more than expected and shows her giving personality. She likes to cook and many times provided much help in preparing dishes and organizing for our parties.

Exhibit 14 at 1. Victoria Galeyeva, a friend since childhood, recalls the positive impact that Anastasia has had on her throughout their lives, remembering Anastasia's kindness, warmth, and loyalty:

My circle of friends expanded because Nastia introduced me to her numerous friends. I was happy to spend my time with a cheerful, full of energy and at the same time serious, responsible and attentive girl, who was able to understand the feelings of another person. Also, I was very impressed by the fact that she always stood on the side of the weak person, but was always fair. She is not capable of lying, underhandedness or betrayal. As she grew older, Anastassia did not lose her best qualities. Our relationship has grown into friendship and now I can say with a big degree of certainty that I have a reliable, responsible, devoted and honorable friend. I am thankful to her for that. Regardless of the fact that thousands of kilometers separate us now, our relationship and our friendship have not changed. On the contrary, they became stronger and reached new levels. Through Nastia I learned more about the USA, a country that became a second home to her. She talks so much and with such enthusiasm about her life that it became obvious that she fell in love with this country. And even now, being in a difficult situation, she keeps her spirits high and still has confidence in the fact that it's a wonderful country and it's her home.

Exhibit 8(T) at 1.

And Anastasia did devote herself to her new home. Although she knew only the Russian language when she moved to the United States and had no training in English, Anastasia was able to pick up enough spoken English to eventually get a job at K&G Superstores, a discount retail clothing store in Houston. PSR ¶ 112. Because her English was so poor, Anastasia worked in the warehouse, packing boxes and stocking shelves. She eventually learned enough spoken English that she was able to get a promotion to work on the floor and help customers. Anastasia was consistently well-liked by her colleagues, her customers, and her supervisors at K&G, and worked there happily for eight years, consistently earning glowing reviews. As her friend, Valerie Gilliam recounts, Anastasia provided "exceptional customer service at work and she received many awards from her employers including the 'employee of the year' award from K&G." Exhibit 9 at 2. Another friend, Viktoriya Miller, explains that Anastasia "is hard

working, reliable, trusted employee. I have seen her at her work place where her coworkers treat her with love, warmth, respect, and say Anastasia is a person they want to be around all the time.” Exhibit 15 at 1.

Despite the fact that she was doing well at K&G, retail work was difficult and Anastasia had always hoped work at an office job. When Anastasia learned that a friend was leaving her desk job at company called ARC Electronics, and that they were looking for a replacement who spoke Russian, she jumped at the opportunity. Anastasia interviewed and was thrilled when she got the job. Because she had never worked in an office before, she was in way over her head, made many mistakes, and was getting paid even less than she made at K&G. However, Anastasia was still excited about the opportunity and resolved to do her best. Her friend, Julia Frekhtman, recalls Anastasia’s optimism about her new career: “I know Anastasia to be very hard working and family minded individual who often put the needs of her family and friends before her own. She was so incredibly excited to get the job with ARC Electronics and worked very hard to please those around her.” Exhibit 7 at 1. Unfortunately, this was one of the most catastrophic decisions she made in her life.

Anastasia has been through a lot over the years, but she has always been able to build a community and reach out to others in the face of adversity. She has perseverance and will sustain her friendships wherever she goes. But the single most important thing in her life is her mother. Anastasia is her mother’s only child, and she speaks to Nellie every single day. PSR ¶¶ 97, 98, 132. Viktoriya Miller writes that “family is the most important thing in life for Anastasia. She hasn’t seen her mom in person in 5 years, which breaks her heart. She is unable to leave the country due to the court sentencing so she calls her every day through Skype. Her Mom is 71 years old and for last 2 years is fighting kidney cancer. Anastasia might never see her

alive again if she goes to prison.” Exhibit 15 at 1. Tatyana Aleksandrova explains that “whenever I call her, she is usually skyping with her Mother in Russia. Her mother has cancer and is extremely stressed about her daughter’s situation and doesn’t want to spend money for any cancer treatments until she knows Anastasia will be okay. As an only child, Anastasia is the only one that can influence her Mom into accepting the cancer treatment she needs.” Exhibit 14 at 1.

One of Nellie’s friends writes that Nellie speaks constantly of her daughter, and that she is everything in her life: “Anastassia’s mother has a few chronic conditions. She had several surgeries in order to restore her health. While Anastassia was under investigation her mother’s condition had worsened. In the case of Anastassia’s incarceration her mother will be left without any support since Anastassia is her only daughter. She supports her financially and morally since her mother is a senior citizen. Anastassia’s incarceration will shorten her mother’s life.”

Exhibit 12(T) at 1. Victoria Galeyeva writes:

The situation became even more dire for her now. Her mother has cancer. Nastia always received strong support from her mother. They have a good and trusting relationship. But now Nastia is trying to show her support for her mother without showing her own pain about the fact that under current circumstances she cannot be near her. Of course, how else could it be? Because she is a loving and caring and only daughter who doesn’t lose the hope of hugging and hearing the sound of the heart of the dearest and most darling person in her life. I was in a similar situation with my mother. She died from cancer and I cannot describe my sorrow and pain in words. Only the support of my relatives and friends was able to give me strength. Nastia even came over for a few days to support me. I think that during my 25 years of friendship with Anastassia I got to know her very well and with full responsibility I can say that she is a sensitive, fair and absolutely not greedy person and she has the biggest soul.

Exhibit 8(T) at 1-2.

**F. A sentence of time served is sufficient but not greater than necessary to protect the public**

There can be no meaningful argument that Anastasia poses a threat to the public in the future, let alone that incarceration is needed to prevent her from engaging in recidivism. She has no criminal history and no incentive to commit any crimes in her new place of work. She has been a model employee at all of her prior jobs, and is well-liked by her colleagues and supervisors at her current job as well. As always she is reliable, works very hard, and was recently promoted. The only reason Anastasia finds herself in this situation is because she happened to work at ARC – she does not have a propensity to commit crimes and there is no reason to believe she will commit any crimes in the future, as the letters submitted on her behalf overwhelmingly attest.

The consequences that Anastasia has already experienced are more than adequate to deter her from ever engaging in illegal conduct, and we respectfully submit that she poses no danger to the public whatsoever. Anastasia has no criminal record, and has complied with all the conditions of her pretrial and post-trial release without exception. She accepts responsibility for her grave error in judgment – she now appreciates the gravity of what she has done, and will never ever engage in such conduct again. As she writes in her statement to the Court:

Now my trial is over and I accept that I was found guilty, and I understand that I made terrible mistakes that I deeply regret. I would give anything to go back and change my decisions, but I didn't know that what I was doing was a violation of the law. I know that is not an excuse, but I hope Your Honor will understand my state of mind when you decide my sentence . . . .

I am very afraid that if you send me to jail that will hurt my relatives and people close to me. And it is very possible that I will never see my mother again because she is very ill and I am her only daughter. It is hard for me to even think about. I love her so much, and I have not seen her since I was arrested.

I promise that I will never again appear before you or any other judge facing criminal charges. I am so sorry for my mistakes, and I am begging you to show some leniency in sentencing me and to not give me more jail time.

Anastasia is deeply remorseful, and poses no risk of recidivism. She has deep ties within her community and has strong relationships with her church, her neighbors, her friends, and her family. A sentence of further incarceration is unnecessary to prevent Anastasia from leading a law abiding and hardworking life, and we submit that a sentence of times served is appropriate in this case.

### **CONCLUSION**

In advance of trial, the government believed that a sentence of time served was the appropriate and sufficient sentence for Anastasia's conduct. As Your Honor presided over the trial, we know that you are very familiar with the evidence presented by the government, and it is our hope that this memorandum can help the Court more fully understand the considerations that led Anastasia to that decision.

The jury's determination was devastating for Anastasia, and she knows it will have a profound impact on the rest of her life. We ask only that the Court consider the circumstances of the case, Anastasia's minimal role in the scheme, and the generosity, loyalty, and compassion that have otherwise characterized Anastasia's life, before imposing sentence.

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Respectfully submitted,

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