**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**Charlottesville Division**

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| **UNITED STATES OF AMERICA** | ) | |
| | ) | |
| **v.** | ) | **Criminal No. 3:15CR00003-001** |
| | ) | |
| **SANDRA STEVENSON MARKS,** | ) | |
| | ) | |
| **Defendant** | ) | |

**DEFENDANT SANDRA MARKS' SENTENCING MEMORANDUM AND MOTION FOR VARIANCE SENTENCE**

Sandra Stevenson Marks submits this Sentencing Memorandum and Motion for Variance Sentence in support of her request for a variance sentence of 36 months, to be split between 18 months incarceration and 18 months home or community confinement, followed by supervised release and restitution. This provides an individualized sentence that is "sufficient, but not greater than necessary" to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2) and accounts for the mitigating factors present in this case, including Mrs. Marks' age, health, personal history, the harsh conditions of her pretrial confinement, and the offense characteristics.

**Sentencing Standards**

The Supreme Court has repeatedly emphasized that the Sentencing Guidelines are not to be used as a substitute for the sentencing court's independent determination of a just sentence, based on an "individualized assessment" of "the facts presented," *Gall v. United States*, 552 U.S. 38, 50 (2007), and full consideration of all the statutory sentencing factors. *See Nelson v. United States*, 555 U.S. 350 (2009). Moreover, as the Supreme Court recently reiterated, when imposing a sentence, "the punishment should fit the offender," "not merely the crime." *Pepper v. United States*, 562 U.S. 476, 488 (2011). Sentencing Guidelines are only advisory, *United States v.*

*Booker*, 543 U.S. 220 (2005), and courts "may not presume that the Guidelines range is reasonable." *Gall*, 552 U.S. at 50 (citing *Rita v. United States*, 551 U.S. 338, 351 (2007)).

When making these individualized assessments, sentencing courts are free to disagree with the Guidelines' recommended sentence in any particular case, and may impose a different sentence based on contrary views of what is appropriate under § 3553(a). This includes the freedom to disagree with "policy decisions" of Congress or the Sentencing Commission within the Guidelines. This broad discretion exists because district courts have a co-equal role with the Sentencing Commission and are best equipped to gauge what is appropriate in any given case.

As the Supreme Court stated in *Rita*, "[t]he upshot is that sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one at retail, the other at wholesale." 551 U.S. at 348. Above all, a court's final determination of a sentence must reflect "§ 3553(a)'s overarching instruction to 'impose a sentence sufficient, but not greater than necessary' to accomplish the sentencing goals advanced in § 3553(a)(2)," namely, retribution, deterrence, incapacitation, and rehabilitation. *See Kimbrough v. United States*, 552 U.S. 85, 101 (2007).

In the present case, the Court has the ability to assess Mrs. Marks individually and fashion a sentence that does more than simply apply a mechanistic formula. While the Guidelines, as computed by the Probation Officer, suggest Mrs. Marks serve a sentence of incarceration between 37 and 46 months, and the Guidelines as computed by Mrs. Marks suggest incarceration between 30 and 37 months, a variance sentence of 36 months to be split between 18 months of incarceration and 18 months of home or community confinement, followed by supervised release and restitution, is adequate but not greater than necessary to achieve the sentencing goals in this case.

## Guidelines Objections

### a. Victim Related Adjustment

In paragraph 20 of the Presentence Report, the Probation Officer adjusted the offense level of the mail fraud count by two levels pursuant to USSG §3A1.1(b)(1) based on her conclusion that Mrs. Marks knew or should have known that two of her victims, J.D. and K.S., were "vulnerable victims." PSR ¶ 20. The adjustment is predicated on J.D. having suffered from depression and K.S. having battled Amyotrophic Lateral Sclerosis (ALS), or Lou Gehrig's disease, prior to her passing. *Id*. (citing PSR ¶¶ 8, 11). These facts do not establish that either victim suffered from an unusual vulnerability and the impact these factors had on the victims does not distinguish them from any other victim in this case. Mrs. Marks objects to the application of this sentencing enhancement, as neither J.D. nor K.S. were unusually vulnerable to the offense.

Section 3A1.1 creates a two-prong test for assessing the application of the vulnerable victim adjustment. *See United States v. Llamas*, 599 F.3d 381, 388 (4th Cir. 2010) (citing *United States v. Stella*, 591 F.3d 23, 29 (1st Cir. 2009)). First, "a sentencing court must determine that a victim was *unusually* vulnerable." *Id*. (citing USSG § 3A1.1 cmt. n.2) (emphasis added). This requires a finding that "one or more of the victims belong to a class that is particularly vulnerable to the criminal activity in question." *United States v. Luca*, 183 F.3d 1018, 1025 (9th Cir. 1999). Second, the court must assess whether the defendant knew or should have known of such unusual vulnerability. *Llamas*, 599 F.3d at 388. Thus, the "judge must first validate a class of individuals as unusually vulnerable and then identify one or more individuals whom the defendant knew or should have known were members of the class and victims of the offense." *Luca*, 183 F.3d at 1025. The question is whether depression or ALS renders a victim to be unusually vulnerable to fraud. Finally, there must be some evidence that the victims were chosen because of their cited

vulnerabilities. *United States v. Gary*, 18 F.3d 1123, 1128 (4th Cir. 1994) (ruling that, before applying vulnerable victim adjustment, a sentencing court first must find that defendant "initially chose[] his victim because of her particular vulnerability"). Without more, there simply is not enough evidence to establish any of the requisite conclusions for a vulnerable victim enhancement in this case.

The PSR generally refers to J.D. having suffered from depression. PSR ¶ 8. By the very nature of the emotional or spiritual support services offered by counselors, spiritual leaders, and life-coaches, these individuals are more likely to interact with clients who suffer from some form of depression or anxiety. Though clinical depression and manic depression are illnesses, depression of some degree is an obstacle commonly experienced at some point in practically everyone's life. No evidence suggests that J.D.'s depression weakened her ability to abstain or withdraw from her relationship with Mrs. Marks. Therefore, she cannot be considered to have been more or less vulnerable than any other victim in this case or any other case involving fraud. *See, e.g.*, *United States v. Bolden*, 325 F.3d 471, 500–01 (4th Cir. 2003) (vulnerable victim enhancement not applied because, although defendant's victims were elderly and sick, their conditions did not facilitate defendant's fraud, nor influence his choice of victims).

The PSR also refers to K.S. having suffered from ALS in the years prior to passing away. PSR ¶ 11. Had Mrs. Marks promised K.S. that her counseling services would somehow cure K.S. of her disease, grant her a longer life, or even reduce physical discomfort, it is plausible to suggest that the ALS rendered her more vulnerable than other victims. Nothing in the PSR or the Statement of Facts suggests that was the case. At most, Mrs. Marks provided the same sort of emotional and spiritual counseling offered to her other clients who were in good health during this period.

Every case of fraud involves a victim placing some degree of faith in a defendant and exposing oneself to risk. Whether this faith is predicated on a defendant's financial expertise, a personal relationship, or a sense of spiritual guidance, fraud victims inherently lack some variable that makes them reliant and therefore vulnerable. For example, in traditional cases of investment frauds, victims detrimentally rely on a defendant's purported financial expertise and may prove to be vulnerable because of their own lack of particularized knowledge or basic informational asymmetry. When victims fall prey to fraud at the hands of friends or family members, vulnerability oftentimes appear in their personal sense of loyalty, love, or compassion. And in a case such as this, where a victim relies on a defendant's counseling, advice, or promise to provide support in a spiritual fashion, vulnerability appears as a sense of emotional unrest, whether that is caused by depression, anxiety, fear, or guilt. None of these are unusual vulnerabilities and none of them render a victim so vulnerable as to trigger an enhancement pursuant to § 3A1.1(b).

This case presents a scenario most akin to that in *United States v. Luca*, 183 F.3d 1018 (9th Cir. 1999). In *Luca*, the district court initially found that the victims' church membership made them "otherwise particularly susceptible to the criminal conduct" at hand. *Id.* at 1026. The PSR noted that members of the Eagle's Nest Christian Assembly were "convinced of the propriety of investing with Luca, in part, by and through Luca's prominent position and leadership role in the church." *Id.* The direct and implied representations that Luca was a "'man of God' effectively lowered the guard of church members to the fraud." *Id.* The probation officer noted that "in some Pentecostal Christian Protestant churches, the importance and role of spiritual gifts, which would include prophetic utterances directly from God, are magnified and they are often relied on to assess situations and make decisions." *Id.*

The Ninth Circuit deemed these findings to be insufficient to support the vulnerable victim enhancement. *Id*. The Ninth Circuit reiterated caution against employing the vulnerable victim enhancement where there was no finding that the defendant's victims "are those who are in need of greater societal protections" or where some condition of the defendant's chosen victims "render the defendant's conduct more criminally depraved." *Id*. (citing *United States v. Castellanos*, 81 F.3d 108, 111 (9th Cir. 1996). There was evidence that Luca's leadership position in the church caused some victims to trust him. A number of his victims commented during allocution that he manipulated their faith to gain access to their money. *Id*. at 1027. For example, one victim testified that "the church out there where we went, where Mr. Luca went, endorsed him highly, the pastor did. I trusted the pastor, and thus, we trusted Mr. Luca." *Id*. Another victim described how Luca prayed with her just before he showed her fraudulent layouts for his purported developments. The PSR quoted a letter written by a former member of the church:

> Luca was constantly being praised from the pulpit as an "anointed Christian businessman," with visiting prophets prophesying about his future successes and blessings from God. His later legal problems were called demonic attacks by these same people. . . Normally I could spot someone like Luca a mile away, but believing the EN [Eagle's Nest] active promotion of him, I turned off my internal alarms. . . Luca skillfully manipulated my faith in God to his advantage, looking me in the eye while praying to God to bless the investment, all the while stealing my life savings . . . To summarize, Luca is an expert at using people's faith in God as a means of getting to their savings, reaching through their souls to pick their pockets, taking not only their savings but also their faith.
>
> *Id*.

Moreover, Luca clearly used his victims' faith to target investors. A brochure printed by the church invited parishioners to invest with Luca, announcing that "in almost every case, our plan will be able to at least match or out-perform your current yields, and at the same time earn dividends for our church and its future. These funds will become the backbone of our plan to build

the church campus and retire all debt within five years." *Id.* In soliciting parishioners' investments, Luca announced:

> We can take . . . individuals who have whether its [sic] $ 2 hundred dollars [sic] in a savings account or $ 2 hundred thousand dollars [sic] in mutual funds, and we can allow you to retain the principal, but you use that interest . . . to help build God's kingdom, and also receiving the same rate that you're receiving currently from the bank. . . . I consider it a real honor and a privilege to be able to be an elder of this church and to be able to take part . . . in a vision that . . . will allow us . . . to quadruple in size . . . and when we finally get this facility, were [sic] gonna be able to minister to so much [sic] more people . . . .

*Id.*

However, the district court did not point to any facts that made the victims less able to defend themselves than a typical victim. *Id.* The same is true in this case. Nothing shows that J.D. or K.S. were any less able to defend themselves against the offense than other typical victims. Therefore, the 2-point vulnerable-victim enhancement is not appropriate for this case and must not be considered when determining the final Guideline calculations.

**b. Guideline Calculations**

Should the Court accept Mrs. Marks' objection to the 2-point enhancement for the victim related adjustment, the Guidelines calculations would be as follows:

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| Base Offense Level: | 6 | (no change from PSR ¶ 18) |
| Specific Offense Characteristics: | 14 | (no change from PSR ¶ 19) |
| Adjustment for Role in the Offense: | 2 | (no change from PSR ¶ 21) |
| Adjusted Offense Level (Subtotal): | 22 | (2 points lower than PSR ¶ 23) |
| Adjustment for Acceptance: | -2 | (no change from PSR ¶ 25) |
| Adjustment for Assistance: | -1 | (no change from PSR ¶ 26) |
| **Total Offense Level:** | **19** | (2 points lower than PSR ¶ 27) |

Criminal History Category: I

**Sentencing Range:** **30-37 months**

**Section 3553(a)(1) Offender Characteristics**

Mrs. Marks' life presents a unique but tragic story influenced by a litany of cultural traditions and a lifestyle considered unorthodox in both the United States and most of western civilization. Mrs. Marks was born in 1974 in Wheeling, West Virginia as a member of the Romani people, a nomadic ethnic group originating from the northern regions of India, now living in Europe and the Americas. The Romani have their own language and are widely known among English-speaking people by the exonym "gypsies," which some consider pejorative due to connotations of illegality and irregularity.

In accordance to Romani culture, Mrs. Marks was removed from formal education at the age of six. Unlike traditional homeschooling, emphasis was placed on her development as a Romani woman, that being a future homemaker, wife, mother, and caregiver rather than an independent, self-sustaining contributor in the modern workforce. As a result, Mrs. Marks was never taught to read or write and remains illiterate to this day. English was spoken as a second language throughout her upbringing, though it was commonly used in her adult life.

Mrs. Marks' childhood home was filled with multiple generations of family, including her mother, stepfather, half-siblings, and grandparents. Though this environment produced a close-knit family, it also fostered a debilitating degree of dependence and insulated her from exposure to traditional social norms. Mrs. Marks both knowingly and unknowingly suffered in multiple ways during this time, with concrete examples coming from physical abuse which is detailed in the sealed Presentence Report and, for privacy reasons, is not set out in detail here. Her escape came at the age of sixteen years old, when she entered into a religiously sanctioned marriage to

Donnie Marks. Their marriage would not become legally recognized until they received their state-issued certificate in 2005, fifteen years later.

The Marks' marriage produced four children: Larry, age 24; Melanie, age 23; Stephanie, age 22; and Cody, age 18. The family maintains a lifestyle consistent with the gypsy culture, with their sons currently living at home, Melanie living with her husband in Maryland, and Stephanie with her husband in Florida. During their marriage, Mr. and Mrs. Marks lived in Ohio, Georgia, and Virginia. Since Mrs. Marks' arrest, her family left Charlottesville to return to Savannah, Georgia.

The primary income for the family came from Mrs. Marks' work as a spiritual counselor, though Mr. Marks did occasionally work in the scrap metal business. Mr. Marks managed all personal and business related finances, including the opening, closing, and monitoring of bank accounts and personal spending. Mrs. Marks would oftentimes receive clients at her home, where she would conduct various forms of mystic exercises involving prayer, the use of crystals and idols, tarot card readings, and attempted communication with the dead. A majority of Mrs. Marks' experience with these practices did not involve the criminal conduct in this case. It was not until she developed a working relationship with Mr. Charles Cannon and his organization, "Synchronicity" of Nellysford, Virginia, that the criminal conduct underlying this case began to take place.

Ms. Marks has already made significant efforts at rehabilitation. In February, 2016, she enrolled in literacy classes at the Central Virginia Regional Jail. This class meets for only one hour one time per week, yet Ms. Marks has made significant progress and reports that she can now read at a very elementary level. She has also enrolled in GED classes and has made progress in that program, which meets for 1 hour, twice a week. While her reading deficit prevents her from taking

the GED test at present, she has, for the first time, been exposed to basic knowledge in language arts, mathematics, social studies and science.

**Section 3553(a)(1) Offense Characteristics**

In 2003, Mr. Charles Cannon visited Mrs. Marks in her former home-office located in Albemarle County, Virginia. During this meeting, Mr. Cannon sought spiritual counseling services and took a keen interest in Mrs. Marks' practices. Over time, he introduced her to his religious organization, Synchronicity, located on a compound in Nellysford, Virginia, where she became an employee offering similar spiritual services.

While an employee and counselor at Synchronicity, Mrs. Marks was introduced to a practice that Cannon deemed "the Big Process." This involved clients placing significant funds, ranging from thousands to hundreds of thousands of dollars, into the care of Synchronicity or Mrs. Marks. The relinquishment of funds was considered as a sign of unwavering faith in Cannon as a diety and was meant to sever his followers from the negative temptations of materialism. Mrs. Marks received clientele from Mr. Cannon and would ultimately return significant funds to him and his organization for his referrals. Mrs. Marks began counseling these clients and secured their finances by offering to: channel her spiritual gifts, rid these clients and their funds of negative spirits, and return the funds once they were "cleansed." In reality, these funds were spent and were very rarely returned.

Of the victims in this case, all but one met Mrs. Marks through the Synchronicity organization at the direction of Mr. Cannon. These individuals, J.D., K.S., D.A., D.R and A.R., were followers of Cannon's religious and spiritual teachings and ultimately took his advice to seek counseling from Mrs. Marks. The one victim whose relationship originated outside of Synchronicity, K.C., eventually placed funds in Mrs. Marks' care pursuant to the same promises

as the others in this case. Once they placed finances into her care, she counseled them and worked to assuage their respective fears, stresses, and anxieties, but the funds were used for personal expenditure rather than any spiritual ceremony. Over time, Mrs. Marks received hundreds of thousands of dollars. These funds were typically wired into a bank account jointly held by Mrs. Marks and her husband. The funds were then managed and spent on her and her family's behalf by Mr. Marks. Of the expenditures, Mr. Marks purchased cars, jewelry, and clothing, while also travelling and incurring gambling debts. Over the next decade, Mrs. Marks continued to secure funds and was the primary breadwinner for her family, but remained ignorant of how a majority of the funds were being used on a daily basis.

Mrs. Marks' relationship with each of her victims was different, in that some of them grew to become friends and close confidants, while others maintained a more distant client-counselor relationship. She never made commitments to rid her clients of physical illness or ailment. Instead, her services were always cited as attempts to rid these individuals and their loved ones of negative spiritual influences in their lives.

**Section 3553(a)(2) Need for Just Punishment in Light of the Seriousness of the Offense**

A split sentence of 18 months incarceration and 18 months home confinement satisfies the retribution requirement of the sentencing statute. The need for retribution is measured by the degree of "blameworthiness," which "is generally assessed according to two kinds of elements: the nature and seriousness of the harm caused or threatened by the crime; and the offender's degree of culpability in committing the crime, in particular, his degree of intent (mens rea), motives, role in the offense, and mental illness or other diminished capacity." Richard S. Frase, Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: "Proportionality" Relative to What?, 89 MINN. L. REV. 571, 590 (February 2005). Thus, Mrs. Marks' motive is highly relevant at

sentencing. As to the scheme at issue in this case, Marks' was not predisposed to engaging in fraudulent activity, but was eventually introduced to such a scheme via Mr. Cannon and Synchronicity. Her work with this organization fostered a pattern of conduct that eventually became fraudulent in nature. It was neither a premeditated nor complicated scheme, but client-counselor relationship that resulted in a costly abuse of trust. Mrs. Marks has already lost her business, her home in Charlottesville, Virginia, and valuable time with her family. Her last 16 months have been spent in Central Virginia Regional Jail, a state facility with significantly more restrictive conditions of confinement than those in federal prison camps. The Court should consider these conditions, along with their punitive impact, when fixing an appropriate sentence.

**Section 3553(a)(2) The Need for Deterrence**

A lengthy prison sentence is not necessary to deter Mrs. Marks from later committing new crimes. The Sentencing Commission's data reveal that defendants like Mrs. Marks who are in a low criminal history category, are married, do not have a history of substance abuse, and are in their 40s or older at the time of conviction are much less likely to recidivate than other defendants. S*ee* Measuring Recidivism: The Criminal History Computation of The Federal Sentencing Guidelines, May 2004, pp. 11–13. Similarly, research has consistently shown that while the certainty of being caught and punished has a deterrent effect, "increases in severity of punishments do not yield significant (if any) marginal deterrent effects." Michael Tonry, *Purposes and Functions of Sentencing*, 34 CRIME & JUST. 1, 28 (2006). "Three National Academy of Science panels . . . reached that conclusion, as has every major survey of the evidence." *Id.*, *see also* Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 CARDOZO J. CONFLICT RESOL. 421, 447–48 (2007) ("[C]ertainty of punishment is empirically known to be a far better deterrent than its severity.").

For white-collar offenders, studies have found no difference in the deterrent effect of probation and that of imprisonment. *See* David Weisburd et al., *Specific Deterrence in a Sample of Offenders Convicted of White Collar Crimes*, 33 CRIMINOLOGY 587 (1995); *see also* Gabbay, at 448–49 ("[T]here is no decisive evidence to support the conclusion that harsh sentences actually have a general and specific deterrent effect on potential white-collar offenders."). In this case, the data support the conclusion that a lengthy prison term is not necessary to achieve deterrence. Mrs. Marks' behavior while in pre-trial and pre-sentencing detention is illustrative of this point. She has sought opportunities to become literate by taking courses on how to read and write with the hope of achieving more traditional forms of employment outside of the home upon release.

**Section 3553(a)(2) The Need for Incapacitation**

Like deterrence, the need for incapacitation through incarceration for white-collar defendants is low. The Sentencing Commission's own data reveal a recidivism rate of 10% for all females sentenced with a Category I criminal history. For those, such as Mrs. Marks, who are married and over age 40 at time of sentencing, the rate is even lower. *See* U.S. Sent'g Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at 28–29 (Exhibits 9, 10) (May 2004). Finally, offenders like Mrs. Marks with zero criminal history points have a rate of recidivism half that of offenders with one criminal history point. *See* Sent'g Comm'n, *Recidivism and the "First Offender"*, at 13–14 (May 2004). When considering a sentence for Mrs. Marks, the Court should consider her statistically low rate of recidivism, her age, her lack of criminal history points, her strong family ties and impose the most lenient sentence sufficient to accomplish the sentencing goals. It is fair to consider her other personal characteristics, as described in the many supporting letters, in determining that her risk of recidivism is low and that incapacitation through a lengthy incarceration is not necessary.

**Section 3553(a)(4) The Guidelines**

In *Rita*, the Supreme Court gave two reasons why it may be "fair to assume" that the guidelines "reflect a rough approximation" of sentences that "might achieve § 3553(a)'s objectives." 551 U.S. at 350. First, the original Commission used an "empirical approach" which began "with an empirical examination of 10,000 presentence reports setting forth what judges had done in the past." Second, the Commission may review and revise the guidelines based on judicial feedback through sentencing decisions, and consultation with other frontline actors, civil liberties groups, and experts. *Id.* at 348–50. The Court went on to recognize that not all guidelines were developed in this manner. *See Gall*, 552 U.S. at 46 & n.2; *Kimbrough v. United States*, 552 U.S. 85, 96 (2007). When a guideline "do[es] not exemplify the Commission's exercise of its characteristic institutional role," because the Commission "did not take account of 'empirical data and national experience,'" the sentencing court is free to conclude that the guideline "yields a sentence 'greater than necessary' to achieve § 3553(a)'s purposes, even in a mine-run case." *Id.* at 109–10.

The fraud guideline of § 2B1.1 is not based on empirical data of past practice or on national experience since then. Because the Commission failed to rely on empirical data or national experience in promulgating or amending § 2B1.1, it failed to fulfill its institutional role. Therefore, this Court remains independent and free to disagree with the Commission's recommendation. *See Pepper*, 562 U.S. at 501; *Spears v. United States*, 555 U.S. 261, 264 (2009); *Kimbrough*, 552 U.S. 101–02, 109–10; *Rita*, 551 U.S. at 351, 357.

Moreover, the Commission quickly abandoned its original goal of ensuring "short but definite" sentences. Beginning just two years after the Guidelines went into effect, prison sentences for fraud offenders steadily increased. The effect of those increases on this case was to add four

levels for loss in 1989, to add five more levels for loss in 2001, to increase the base offense level by one level in 2003, and to add six levels for the number of victims in 2001 and 2003.

Under the 1987 Guidelines, Mrs. Marks' sentencing guidelines offense level would have been only 15 and with a criminal history category of I, her guidelines range would have been 18–24 months. The latest guideline represents an increase of almost 300% over the 1987 Guidelines' suggested sentence. Fortunately, in fiscal year 2011, sentences below the guideline range were imposed in 43.1% of all fraud cases; 20.5% were government-sponsored, 22.6% were non-government sponsored. *See* U.S. Sent'g Comm'n, *2011 Sourcebook of Federal Sentencing Statistics*, tbl. 27.

> [S]ince *Booker*, virtually every judge faced with a top-level corporate fraud defendant in a very large fraud has concluded that sentences called for by the Guidelines were too high. This near unanimity suggests that the judiciary sees a consistent disjunction between the sentences prescribed by the Guidelines for cases like these and the fundamental requirement of Section 3553(a) that judges impose sentences 'sufficient, but not greater than necessary' to comply with its objectives.
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> Frank O. Bowman III, *Sentencing High-Loss Corporate Insider Frauds After Booker*, 20 FED. SENT. R. 167, 169, 2008 WL 2201039 at *4 (Feb. 2008).

A variance is necessary to do justice in this case and will contribute to the evolution of responsible guidelines. As the Supreme Court emphasized, when judges articulate reasons for sentences outside the guideline range, they provide "relevant information to both the court of appeals and ultimately the Sentencing Commission," which "should help the Guidelines constructively evolve over time, as both Congress and the Commission foresaw." *Rita*, 551 U.S. at 357–58.

**Section 3553(a)(7) The Need to Provide Restitution to Victims of The Offense**

When determining an appropriate sentence, this Court should consider "the need to provide restitution to any victims of the offense." See 18 U.S.C. § 3553(a)(7); *see also, e.g.*, *United States*

*v. Menyweather*, 447 F.3d 625, 634 (9th Cir. 2006) (acknowledging district court's discretion to depart from guidelines to impose probationary sentence, because the "goal of obtaining restitution for the victims of Defendant's offense . . . is better served by a non-incarcerated and employed defendant"); *see also United States v. Peterson*, 363 F. Supp. 2d 1060, 1061–62 (E.D. Wis. 2005) (granting a variance so that defendant could work and pay restitution).

Mrs. Marks sincerely desires to make amends and provide restitution to all victims. She is a caring woman who grew very close with the individuals listed as victims. Given her age and health, there is every reason to believe that she can obtain some form of steady employment upon release and begin repaying her debts. This Court should minimize her period of incarceration and maximize her ability to make the restitution the victims deserve.

**Section 3553(a) The Kinds of Sentences Available**

This Court must also consider all of "the kinds of sentences available" by statute, even if the "kinds of sentence . . . established [by] the guidelines" zones recommend only a lengthy prison term. *See Gall*, 552 U.S. at 59–60 & n. 11. Congress directed the Sentencing Commission to "insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense." 28 U.S.C. § 994(j). Congress issued this directive believing that "sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society," and that "in cases of nonviolent and non-serious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service." *See* Pub. L. No. 98-473, § 239, 98 Sat.1987, 2039 (1984).

Consistent with foregoing provision, the Director of the Federal Bureau of Prisons testified before the Senate Judiciary Committee as recently as November 6, 2013, concerning issues faced by the Bureau, including over-crowding. He emphasized that the Department of Justice is "urging prosecutors in appropriate circumstances involving non-violent offenses to consider alternatives to incarceration" to help alleviate cost and crowding issues in the federal prisons. *See* Statement of Charles E. Samuels, Director, *Federal Bureau of Prisons, to the Senate Judiciary Committee*, at 8 (available at http://www.judiciary.senate.gov/pdf/11-6-13SamuelsTestimony.pdf).

A split sentence of 18 months incarceration and 18 months home confinement will provide a just punishment for Mrs. Marks. Home confinement and supervised release can be a severe punishment, hugely restrictive of liberty, highly effective in the determent of crime, and amply retributive. The Supreme Court in *Gall* agreed with United States District Judge Pratt that probation is a "'substantial restriction of freedom,'" 552 U.S. at 48, stating:

> We recognize that custodial sentences are qualitatively more severe than probationary sentences of equivalent terms. Offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty. *See United States v. Knights*, 534 U.S. 112, 119 (2001) ("Inherent in the very nature of probation is that probationers 'do not enjoy the absolute liberty to which every citizen is entitled' " (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987))). Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking. U.S.S.G. § 5B1.3. Most probationers are also subject to individual "special conditions" imposed by the court. Gall, for instance, may not patronize any establishment that derives more than 50% of its revenue from the sale of alcohol, and must submit to random drug tests as directed by his probation officer.
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> *Id*. at 48–49 (footnote omitted).

A sentence that includes home confinement is appropriate in this case. It punishes Mrs. Marks for her actions and serves the interests of deterrence and protection of the public from any

further crimes by the defendant. There is also little likelihood of Mrs. Marks reoffending. She has no criminal history, strong family support, and a sincere desire to receive an education so she can have a more traditional form of employment.

In a White Paper, *Sentencing Options under the Guidelines* (Nov. 1996), available at http//rashkind.com./alternatives/dir_00/USSC_sentencingoptions.pdf), the Commission found that the recidivism rate for federal violators placed on probation was historically very low, with only 2.7% of offenders being charged with new offenses. A variance in this case is necessary to do justice and will also contribute to the evolution of responsible guidelines. As the Supreme Court emphasized, when judges articulate reasons for sentences outside the guideline range, they provide "relevant information to both the court of appeals and ultimately the Sentencing Commission," which "should help the Guidelines constructively evolve over time, as both Congress and the Commission foresaw." *Rita*, 551 U.S. at 357–58.

***Conclusion***

For the foregoing reasons, Mrs. Marks respectfully requests that this Court sentence her 18 months incarceration and 18 months home confinement, followed by supervised release and an order to make restitution. She also requests that he be allowed to self-report to any institution to which the Bureau of Prisons designates. Such a sentence is "sufficient, but not greater than necessary" to achieve the purposes of sentencing set forth in 18U.S.C. § 3553(a)(2).

Respectfully submitted,

SANDRA STEVENSON MARKS

/s/ William J. Dinkin
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of November, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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