

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

- against -

EDWARD THIESSEN,

Defendant.

3:19-cr-00181 (JBA)

**SENTENCING MEMORANDUM ON BEHALF OF
EDWARD THIESSEN**

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
I. SECTION 3553(a) FACTORS.....	4
A. A Sufficient, But Not Greater Than Necessary Sentence.....	4
II. PERSONAL BACKGROUND AND CHARACTER.....	6
A. Ed’s Life and Character	6
B. Ed’s Family and Childhood	7
C. Ed’s Education	8
D. Ed’s Career.....	9
E. Ed’s Family.....	10
III. RELEVANT SENTENCING CONSIDERATIONS	12
A. The Offense Conduct	13
B. The Section 3553(a) Factors.....	14
1. Ed’s Life and Character	14
2. Ed is Not a United States Citizen.....	14
3. A Non-Custodial Sentence with a Fine Is Appropriate.....	18
CONCLUSION	19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	4, 12, 17, 19
<i>Koon v. United States</i> , 518 U.S. 81 (1996).....	12
<i>Nelson v. United States</i> , 555 U.S. 350 (2009).....	12
<i>Rita v. United States</i> , 551 U.S. 338 (2007).....	12
<i>United States v. Adelson</i> , 441 F. Supp. 2d 506 (S.D.N.Y. 2006).....	6
<i>United States v. Brady</i> , No. 02 CR 1043(JG), 2004 WL 86414 (E.D.N.Y. Jan. 20, 2004).....	18
<i>United States v. Burnell</i> , 367 F. Supp. 3d 12 (E.D.N.Y. 2019)	18
<i>United States v. Emmenegger</i> , 329 F. Supp. 2d 416 (S.D.N.Y. 2004).....	18
<i>United States v. Wills</i> , 476 F.3d 103 (2d Cir. 2007).....	14
Statutes	
18 U.S.C. § 3181.....	3
18 U.S.C. § 3553(a)	<i>passim</i>
18 U.S.C. § 3553(a)(1).....	6, 19
18 U.S.C. §§ 3553(a)(1), (2)(A)	4
18 U.S.C. § 3553(a)(1)-(7).....	4
18 U.S.C. § 3553(a)(2).....	17

18 U.S.C. § 3553(a)(2)(A)	19
18 U.S.C. § 3553(a)(2)(B)-(C).....	4
18 U.S.C. § 3553(a)(2)(D)	5
18 U.S.C. § 3553(a)(6).....	19
18 U.S.C. § 3553(a)(7).....	5
18 U.S.C. § 3601.....	16

Through counsel, Edward Thiessen respectfully submits this memorandum and accompanying exhibits to assist the Court in determining an appropriate sentence. Sentencing is scheduled for March 24, 2020, at 2:00 p.m.

PRELIMINARY STATEMENT

Ed Thiessen is a quiet and humble man who stands before the court to be sentenced for conduct he admitted and accepted responsibility for during the early stages of the government's investigation of him. PSR ¶¶ 67, 122.¹ Ed deeply regrets his conduct while employed at Alstom in Southeast Asia, and he is particularly sorry that he has created so many sleepless nights and so much uncertainty for Deni, his wife of 23 years. Ex. 1-A, Deni Thiessen Ltr. pp. 2-3. Ed's actions, and their impact on those he loves, will weigh on him throughout the remainder his life. His remorse is genuine and heartfelt, and his shame at putting himself in this position is such that he has not yet been able to explain this situation to his young daughter. *Id.* at p. 3. In short, the unshakeable guilt he feels is profound.

Ed's personal life and personal characteristics demonstrates his true nature. He has no criminal history, having led a law-abiding life other than his involvement with this matter. PSR ¶¶ 79-84, 122. He is a loyal and loving husband, father, and friend. He is dedicated to his family above all else. He is kind and generous. He looks out for others, friends, family and strangers alike, in ways that have earned him deep admiration, praise, and love.

Ed is 61 years old and a Canadian citizen. *Id.* ¶ 12, 87, 90. Although he is currently in good physical health, he has had a number of significant health issues, including a spinal fusion, a two month hospital stay for Guillain-Barre syndrome, and an extended hospital stay for severe burns all over his body as well as damage to both hear drums after being a victim of a terrorist

¹ References to the Final Presentence Report are cited as "PSR ¶ _."

bombing in Jakarta in 2009. PSR ¶ 91; Ex 1-B, Jim Thiessen Ltr. p. 2. It is, in part, because of the damage to his ear drums that Ed speaks softly, which necessitated numerous requests to speak up during his plea hearing and during his three days of trial testimony. *See, United States v. Lawrence Hoskins*, 3:12-cr-00238 (JBA), Trial Transcripts Vols. II-IV (hereafter “Trial Tr., Vol. ___”).

When he first signed his plea agreement, Ed Thiessen did not simply *accept* responsibility for his role in the offense underlying his plea, he *took* responsibility for it because his personality is such that it couldn't happen any other way. Although Ed's plea was entered in July 2019, he originally signed his plea and cooperation agreements in April, 2015. PSR ¶ 11; Trial Tr., vol. II, 322-323 and Exs. 308 and 309. However, Ed's case was put on hold for more than *four years* while the Hoskins case worked its way through the appellate process. Throughout that period, even with all of the stress of uncertainty, Ed never wavered from taking responsibility for his conduct and cooperating with the government. He has been existing under a cloud of uncertainty for almost five years since first executing his plea and cooperation agreements, and even longer when measured back to his first proffer session with the government, in September 2014.

Like many others in the related matters, Ed Thiessen is a foreign national. Trial Tr., vol. II, 311. He was born and raised in Canada and spent his career working there, as well as Africa, Europe and Asia. Ex. 1-C, Daboll Ltr., p. 2. Unlike some others in those related matters, however, Ed did not travel to the United States, get arrested unexpectedly, and then negotiate a plea deal. Indeed, after some negotiating around logistics, Ed first met with the government by voluntarily appearing for a proffer session at the U.S. Embassy in Jakarta in September, 2014. Trial Tr., vol. III, 503-504. Ed's acceptance of responsibility thus extends far before his guilty

plea and well beyond “sparing the Government the burden of preparing for trial.” PSR ¶ 123. He also spared the government the burden and expense of attempting to extradite a foreign national of one country (*i.e.*, Canada) from another country (*i.e.*, Indonesia) that has no extradition treaty with the United States. *See* 18 U.S.C. § 3181.

Ed took responsibility for his conduct early because it is in his nature to do so. It is not his way to blame others for what he did. He owns his conduct. His personal traits of humility, honesty and putting others before himself led him to do the right thing in this matter, not just by taking responsibility, but by cooperating with the government’s investigation and prosecution of others. However, the purpose of this memo is not to demonstrate all of Ed Thiessen’s cooperative efforts – this Court witnessed his testimony over three trial days during the six day trial of Lawrence Hoskins. Trial Tr., Vols. II-IV. Nor is its purpose to argue for a downward departure based on section 5k1.1 of the United States Sentencing Guidelines, as that is something only the government can do. The purpose of this memo is simply to inform this Court about some of Ed Thiessen’s personal history and his personal characteristics unrelated to the charged conduct so that the Court will have as full a picture as possible when meting out a sentence in this matter.

As this memorandum, and the attached letters from those who know Ed best demonstrate, the charged conduct deviated markedly from the way he has otherwise lived his personal life. The government and probation agree that Ed Thiessen was a “minimal participant” in the conspiracy charged. PSR ¶¶ 73, 122, 123. We also agree with this conclusion, and note that even as a minimal participant, Ed Thiessen’s penchant for doing what is right and owning up to his conduct still led him to take responsibility for his role, which provides useful context for determining an appropriate sentence.

Ed's consistent traits of kindness and generosity from a young age, his humble nature, his dedication to his wife and daughter, his retired status, his status as a foreign national, non-U.S. resident, and his otherwise law-abiding life all counsel against imposing any additional period of incarceration to achieve the sentencing goals of 18 U.S.C. § 3553(a).

I. SECTION 3553(a) FACTORS

A. A Sufficient, But Not Greater Than Necessary Sentence

Title 18, United States Code, Section 3553(a) instructs courts imposing sentences as follows:

(a) Factors To Be Considered in Imposing a Sentence. – The court shall impose a **sentence sufficient, but not greater than necessary**, to comply with the purposes set forth in paragraph (2) of this subsection.

18 U.S.C. § 3553(a) (emphasis added). Following that introductory mandate, section 3553(a) continues on to list a series of additional factors including, but not limited to, the history and characteristics of the defendant. *See*, 18 U.S.C. § 3553(a)(1)-(7).

Section 3553(a) represents “a broad command to consider ‘the nature and circumstances of the offense and the history and characteristics of the defendant.’” *Gall v. United States*, 552 U.S. 38, at 50 & n. 6 (2007) (citation omitted). Courts must consider each of those factors in fashioning sentences that are “sufficient, but not greater than necessary” to comply with those statutory objectives. 18 U.S.C. § 3553(a). They include the history and characteristics of a defendant, the nature and circumstances of the offense, the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment. 18 U.S.C. §§ 3553(a)(1), (2)(A). They also include the need for the sentence to afford adequate deterrence and to consider the public's need for protection from future crimes. 18 U.S.C. §

3553(a)(2)(B)-(C).² Section 3553(a) further requires the Court to consider the kinds of sentences available and Guidelines range applicable to the defendant ((a)(3) and (4)), and any pertinent policy statement issued by the Sentencing Commission ((a)(5)). The factors also emphasize the need to avoid unwarranted sentencing disparities among defendants with similar records ((a)(6)).

While the court is required to analyze all of these factors, this memorandum is focused only on Ed's personal history and his personal characteristics unrelated to the conduct for which he entered a guilty plea, as per the provisions of his plea agreement. PSR ¶ 116. Ultimately, Ed hopes that the court will also consider his level of cooperation, including the veracity and utility of his testimony that the court was able to observe during three days of the Hoskins trial. *See*, Trial Transcripts Vols. II-IV. In addition, although no promises have been made, nor assurances given, we are cautiously optimistic that the government will file a downward departure motion in light of Ed's lengthy and extensive cooperation in the Hoskins case and related matters.

Beyond its own and the government's views of Ed's cooperation, however, we encourage the court to also consider Ed's personal history and his personal characteristics, and impose a non-custodial sentence coupled with a financial penalty.

² We respectfully submit that the factors set forth in 18 U.S.C. § 3553(a)(2)(D) are inapplicable to Ed's sentencing determination, as there is no need here for educational or vocational training, medical care, or other correctional treatment. Likewise, as "[t]here are no identifiable victims in this offense," the Court need not consider the factor set forth in 18 U.S.C. § 3553(a)(7) ("the need to provide restitution to any victims of the offense"). PSR ¶ 65.

II. PERSONAL BACKGROUND AND CHARACTER

A. Ed's Life and Character

A key statutory factor requires sentencing courts to consider “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). In assessing this factor and the individual person to be sentenced, it is important to recognize that:

[I]f ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, the history and characteristics of the defendant.

United States v. Adelson, 441 F. Supp. 2d 506, 513-514 (S.D.N.Y. 2006) (internal quotation marks and citation omitted). Similarly, as noted by now Circuit Judge Sullivan during a post-trial sentencing:

Those factors include, as we have discussed in great detail, the facts and circumstances of the life of the individual. I am imposing a sentence on an individual who is unique, with a unique combination of experiences, decisions, just accidents of life, of good judgments, bad judgments, a lifetime worth of judgments. And so naturally that is the starting point for any sentence.

Ex. 2, Contorinis Sentencing Hr'g Tr. 52:1-7, (*United States v. Contorinis*, No. 1:09-cr-01083-RJS-1).

In evaluating his personal history and characteristics, *several* aspects of Ed's life counsel in favor of a variance: the law abiding life he has led, his extreme remorse and acceptance of responsibility, his lack of citizenship in the United States, and his extensive cooperation. These characteristics, when considered as a whole and weighed against the offense conduct, counsel in favor of leniency and a variance for Ed Thiessen.

B. Ed's Family and Childhood

Ed Thiessen was born on [REDACTED] in St. Catherine, Ontario, Canada. *Id.* ¶ 87. He is the younger of two children born to the marital union of David Thiessen and Margaret Dressen. *Id.* He is a Canadian citizen and he has never worked or lived in the United States. *Id.* ¶¶ 12, 87, 96-101. Ed was blessed by being born into and raised by a good, stable, low to middle income family in a working class neighborhood. *Id.* ¶ 87. Although his parents divorced in 1986, and his father passed away in 1988, both of these events occurred after Ed had moved out on his own and entered the workforce. *Id.* Ed's mother passed away in 2008 when she was 85 years old. *Id.*

Ed had a good childhood and maintains a close relationship with his brother Jim, who is six years his senior and has supported Ed throughout this ordeal. PSR ¶ 88; Ex. 1-B, Jim Thiessen LTR., p. 1. One of Ed's good friends since eighth grade described him as "my best friend for 50 years." Ex. 1-C, Daboll Ltr., p. 1. This particular friend noted how Ed's "kindness, commonsense wisdom, and his deep grounding in religion and morality have fundamentally changed my life for the better." *Id.*

Ed's brother noted that he never got in trouble of any kind growing up and was always helpful to his mother and father. Ex. 1-B, Jim Thiessen Ltr., p. 1. Jim Thiessen described his younger brother as a very hard working young man who was always there for his older brother. *Id.* at pp. 1-2. Jim went on to describe how Ed was a "great brother" who enjoyed spending time with his family and friends and even took his older brother to the hospital for treatment following an accident in an ultralight plane. *Id.*

One of Ed's closest friends described a particularly insightful incident, during which that friend thoughtlessly complained aloud about how long a disabled girl was taking to navigate the steps during a high school fire drill. Ed grabbed his friend on the shoulder following his

complaint with a look that “was so unmistakably clear” that the message was received without Ed saying a word. Ex. 1-C, Daboll Ltr., p. 1. As his friend admiringly noted, Ed’s “extraordinary, caring and respectful manner” made him “universally admired” by others. *Id.* at p. 2. These words and examples from those who know Ed best shed light on his true character, and they reveal why Ed’s guilt is so profound.

Ed is also a steadfast and loyal friend. He is humble, and he exhibits kindness and generosity consistently and frequently without fanfare, whether the recipients are family, friends, or strangers. Ed neither seeks attention for his actions, nor expects anything in return. This is who he is as a human being.

C. Ed’s Education

Although Ed and his best friend were self-described “car guys” in high school, and based on his ownership of a 1950 GMC pickup it appears that Ed still is, after graduating Ed decided to pursue higher education. Ex. 1-C, Daboll Ltr., p. 2; PSR ¶ 102. Ed began his post-secondary education at Niagara Community College, where he obtained a diploma in Mechanical Engineering in 1981. PSR ¶ 95; Ex. 1-B, Jim Thiessen Ltr., p. 1; Ex. 1-C, Daboll Ltr., p. 2.

During the following years, Ed attended night school at McMaster University, eventually completing the professional engineering requirements such that he could register with the Association of Professional Engineers in Ontario. Notably, although Ed was working at Westinghouse and attending night school at McMaster, and without being asked or paid, he still found time to help his friend run and expand a family farm. *Id.* Approximately ten years later, in 2002, while working at Alstom, Ed completed an Advanced Management Seminar at INSEAD business school in Fontainebleau, France. PSR ¶ 95.

D. Ed's Career

The positions held by Ed during his career at Alstom and its predecessor companies are accurately portrayed in the presentence report and will not be restated here. *Id.* ¶¶ 96-101. That career ended when he was forced to retired in 2014 as a consequence of the government's investigation of Alstom. At that point, Ed had been working for Alstom for over 20 years. During that career, Ed suffered two traumatic illnesses/injuries worth noting.

The first occurred during a business trip to Bangkok and Tokyo in 2005 when Ed ended up in the intensive care unit after contracting Guillain-Barre syndrome. He ended up spending two months in a hospital in Bangkok while recovering. Ex. 1-B, Jim Thiessen Ltr., p. 2; Ex. 1-A, Deni Thiessen Ltr. p. 2. His brother noted how one of Ed's local work colleagues was extremely helpful, visited Ed often in the Bangkok hospital and provided assistance for his recovery, evincing how well liked Ed was in the workplace. Ex. 1-B, Jim Thiessen Ltr., p. 2.

The second incident was even more frightful. In the summer of 2009, Ed attended a breakfast of business leaders of western companies at the JW Marriott hotel in Jakarta, Indonesia. Unfortunately, that same day at least two terrorists decided to detonate bombs in Jakarta. One of those terrorists was a suicide bomber who detonated two explosives in the meeting room where Ed was attending the breakfast. PSR ¶ 92. A few minutes later a second bomber launched a similar attack at the nearby Ritz-Carlton. *Id.*³ The bombings killed at least eight people and injured approximately 50 more, among them Ed Thiessen. Fortunately, Ed found his way to a hospital and was ultimately air-lifted to a burn center in Singapore where he

³ See, <https://www.cbc.ca/news/world/suicide-bombers-blamed-for-jakarta-attacks-1.808517> (attached as Exhibit 3); <https://www.theglobeandmail.com/news/world/hotel-was-devastated-canadian-survivor-says/article4289105/> (attached as Exhibit 4).

remained for almost two more months before being released. Ex. 1-A, Deni Thiessen Ltr. p. 2; Ex. 1-B, Jim Thiessen Ltr., p. 2.

While Ed was hospitalized in Singapore, his brother noted how clear it was that Ed was well liked and respected by his co-workers and that they sent him a lengthy “get well” video from the office in Jakarta. *Id.* In addition to being treated for severe burns on his hands, arms, shins and face (*see, e.g.*, Ex. 5, Airlift photograph), Ed suffered significant damage to both eardrums, one of which required follow up surgery and both of which contribute to the tinnitus he has today. PSR ¶ 92. The tinnitus, which gives Ed the perception of noise or ringing in the ears, is what makes it very difficult for Ed to hear and helps explain why he speaks so softly, often requiring requests to speak up. *See e.g.* Trial Tr., vol. II, 320.

E. **Ed’s Family**

Ed spends virtually all of his time with or for the benefit of his wife, Deni, and his daughter, ██████. Ed’s biggest project since retirement has been his renovation of a second home in Canada that the family hopes to move into this spring.

Ed and Deni met in Jakarta, Indonesia, in 1994. Ex. 1-A, Deni Thiessen Ltr. p. 1. They married in 1996. PSR ¶ 90; Ex. 1-A, Deni Thiessen Ltr. p. 1. Deni describes how Ed loves her dearly and takes good care of her and how he is kind, thoughtful and generous to her family. Ex. 1-A, Deni Thiessen Ltr. p. 1. Two notable examples are worth highlighting.

The first example occurred when Ed offered to have a niece from Deni’s side of the family move to Kuala Lumpur, Malaysia, to stay with Ed and Deni and attend college. In addition to assisting his sister-in-law financially, and his niece with her education, Ed was also helping Deni to acclimate better in Kuala Lumpur. Deni is from Jakarta, Indonesia, and she was away from her family and support network at a time when Ed was busy working and travelling for business. *Id.* It was not something Ed had to do, but it was something he did.

The second example occurred when Ed arranged for another of Deni's nieces to attend high school and live with them in Kuala Lumpur in 2006. Again, it was not as if someone asked Ed to do this, nor was it something he had to do, it was his idea. *Id.*

During this time period, Deni and Ed were trying to have a child, with numerous failed IVF efforts and other treatments. Unfortunately, this effort continued for 13 years with no success. *Id.* Then, in 2008, Deni became pregnant with the "miracle baby" who is now their daughter. *Id.*; Ex. 1-C, Daboll Letter, p. 3.

Unfortunately, the timing of their daughter's birth coincided with the passing of Ed's mother back in Canada, who had fallen gravely ill. Ed had to make the "agonizing choice" of whether to visit his mother before she passed away and potentially miss his daughter's birth – something he waited 13 years to experience – or stay for his daughter's birth and perhaps never see his mother again. Ex. 1-A Deni Thiessen Ltr. p. 2; Ex. 1-C, Daboll Letter, p. 3. Ed opted to see his mother one last time and was at her bedside when she died in peace. Ex. 1-C, Daboll Letter, p. 3.

Although he missed his daughter's birth to be with his mother one last time, Ed is by all accounts a "loving," "caring and very involved father" and he and his small family are "always together." Ex. 1-A, Deni Thiessen Ltr. p. 2; Ex. 1-B, Jim Thiessen Ltr., p. 2 ; Ex. 1-C, Daboll Ltr., p. 3. As his brother noted, Ed is "very close" with his daughter and has dedicated his life to being a great husband and father. Ex. 1-B, Jim Thiessen Ltr., p. 2.

III. RELEVANT SENTENCING CONSIDERATIONS

Ed accepted responsibility for his actions and pled guilty to one count of conspiracy to violate the FCPA. PSR ¶ 1. Ed signed his plea and cooperation agreements in April 2015, over four years before he was asked to enter a guilty plea in July, 2019. *Id.* ¶¶ 11. His acknowledgment of guilt avoided a potentially lengthy and uncertain extradition process, and a potential trial if that extradition process proved successful for the government, thereby potentially saving the Court and the government extensive resources.

Ed's plea agreement contains an agreed-upon advisory Guidelines calculation of 60 months' imprisonment, due to the statutory maximum term of his offense. *Id.* ¶¶ 105-106. However, that advisory calculation is only one of many factors the court must consider when fashioning an appropriate sentence. *See Gall*, 552 U.S. at 49 (acknowledging that a court must consider the Guidelines as "the starting point and the initial benchmark," but that the advisory Guidelines range is "not the only consideration" in a court's determination of a sentence). Moreover, the Guidelines are advisory only, they are not mandatory, they are not even presumptively reasonable, and they represent only one of a number of relevant considerations. *See Nelson v. United States*, 555 U.S. 350, 352 (2009) ("Our cases do not allow a sentencing court to presume that a sentence within the applicable Guidelines range is reasonable The Guidelines are not only not mandatory on sentencing courts; they are also not to be presumed reasonable."); *Rita v. United States*, 551 U.S. 338, 367 (2007) ("the Guidelines are truly advisory"). An independent review of the factors set forth in 18 U.S.C. § 3553(a) should occur in each case as well, as the court must "consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and punishment to ensue." *Gall*, 552 U.S. at 52; *see also Koon v. United States*, 518 U.S. 81, 113 (1996).

While we very much appreciate the thoughtful, careful analysis by, and hard work of, the Probation Department in assembling its presentence investigation report and reaching its recommendation, we are not aware of that recommendation and cannot comment on it. Moreover, this memorandum is being submitted before the government will file its own sentencing submission, which we are hopeful will include a very strong motion for a downward departure under U.S.S.G 5k1.1, particularly in light of the duration and extent of Ed's cooperation, which included multiple trips to the United States from overseas and Canada, as well as three days of trial testimony as a witness in the *Hoskins* case. We also recognize that the court will formulate its own views – the only views that ultimately matter – concerning Ed's conduct and his cooperation. Our objective in this submission is only to inform those views by offering additional information concerning Ed's personal history and characteristics.

A. The Offense Conduct

The relevant offense conduct provided by the government is detailed in the presentence report. PSR ¶¶ 13-64. As that section concludes:

In approximately 2008, Mr. Thiessen became Alstom's Country President for Indonesia. In that capacity, in July 2010, he took steps to assist PT Gajendra in getting paid on one of the Tarahan-related invoices from Alstom.

PSR ¶ 64 (emphasis added). In addition, Ed Thiessen allocuted to the following conduct when this Court accepted his guilty plea in July 2019:

In or around 2003 in Indonesia, I worked to assist Alstom in securing power projects. My principal focus was the MuaraTawar Project, a gas fired plant to be built by Alstom Power Turbo Systems. As part of that project, I participated in efforts to hire consultants to bribe [*sic*] Indonesian officials. I later became privy to discussions about Alstom Power Inc.'s efforts to secure the Tarahan Project, including efforts to bribe [*sic*] Indonesian officials, and I participated in some of those conversations. There was significant overlap between consultants and officials for the MuaraTawar and Tarahan Projects. Later, in 2010, while I was the

Alstom Country President for Indonesia, I took steps to assist consultant B in getting paid pursuant to a consulting agreement between Alstom Power Inc., and Consultant B's company. That consulting agreement was designed to allow Alstom Power Inc. to funnel bribes to Indonesian officials at PLN.

PSR ¶ 67 (emphasis added); . Both the PSR and the government agree that Ed was a minimal participant in the criminal activity. PSR ¶¶ 73, 122, 123.

B. The Section 3553(a) Factors

1. Ed's Life and Character

In evaluating Ed's personal history and characteristics, *several* aspects of Ed's life counsel in favor of a variance: the law abiding life he has led, his foreign citizenship and residency, his extreme remorse and his acceptance of responsibility. These qualities, when considered as a whole and weighed against his minimal role in the conspiracy, counsel in favor of leniency for Ed.

2. Ed is Not a United States Citizen

As noted previously, Ed is a Canadian citizen. If he is sentenced to any period of incarceration in the United States, his alien status will result in him being remanded into ICE custody pending deportation, which would result in an additional, indefinite period of incarceration in a deportation facility. Such an outcome would be patently unfair and attributable solely to his citizenship, not to the charged conduct.⁴

In a recent decision, a court declined to sentence the defendant to incarceration despite an advisory guidelines range of 57 to 71 months. Ex. 6, Black & Connolly Sentencing Hr'g Tr.,

⁴ We are not suggesting in any way that Ed's status as a non-U.S. citizen is a basis for a downward departure from the advisory Guidelines. Nor are we suggesting that it is the only basis for a variance under 18 U.S.C. § 3553(a). We are simply noting that this status is a personal characteristic of this defendant that can be considered by the court when assessing the "totality of [the] circumstances" before it, including the court's own observations and any future submissions that aid the court in sentencing. *United States v. Wills*, 476 F.3d 103, 110 (2d Cir. 2007).

16-cr-370 (CM), 84-96. Unlike Mr. Thiessen, Mr. Black did not plead guilty and cooperate with the government for over five years, he took his case to trial and was convicted. Like Ed, however, Mr. Black was not a United States citizen, he was a citizen of the United Kingdom. As the court noted, “because he is a non-citizen, he will not be eligible to serve his sentence in the same way that any American citizen who stood convicted of this crime would serve.” Ex. 6, Black & Connolly Sentencing Hr’g Tr. 91:13-14.

The court highlighted that Mr. Black had lived an “otherwise exemplary” life, and presented “no risk of recidivism and no danger to the public.” Ex. 6, Black & Connolly Sentencing Hr’g Tr. 86:20-23. The court also emphasized the collateral consequences that Mr. Black’s arrest and conviction conferred, including the attendant publicity, “loss of jobs and employability,” financial stress on his family, and “loss of status in the community.” Ex. 6, Black & Connolly Sentencing Hr’g Tr. 90:10-12.

In reaching its conclusion that incarceration was unnecessary in Mr. Black’s case, the court observed that sentencing Mr. Black to even a brief term of incarceration would be excessive due solely to the fact that he is not a United States citizen. Ex. 6, Black & Connolly Sentencing Hr’g Tr. 91:1-16. Judge McMahon noted that Mr. Black would be required to serve his sentence “in a private facility and not at some place like FCI Allenwood” Ex. 6, Black & Connolly Sentencing Hr’g Tr. 91:19-20. Also relevant to Ed’s situation, Judge McMahon acknowledged that if she sentenced a non-citizen like Mr. Black to incarceration, he would not be released upon completion of his sentence of imprisonment, but rather “he would be treated like an illegal alien [which Judge McMahon stated he was not], and he would be released into the custody of ICE, and at some point long after my intended sentence had expired he would be deported. And that is not right.” Ex. 6, Black & Connolly Sentencing Hr’g Tr.91-92. Judge

McMahon concluded that there existed “unusual ‘all other things are not equal’ collateral consequences of Mr. Black not being a United States citizen.” Ex. 6, Black & Connolly Sentencing Hr’g Tr. 92:25-93:1.

Ultimately, Judge McMahon sentenced Mr. Black to time served, plus three years of supervision, including nine-months of home confinement to be served in the United Kingdom. Ex. 6, Black & Connolly Sentencing Hr’g Tr. 95:10-13. The court allowed that the sentence of supervision could be served using “such providers as the probation department shall contract with” or “from abroad by our probation department” and it suspended certain impractical conditions of supervised release, like mandatory drug testing. Ex. 6, Black & Connolly Sentencing Hr’g Tr. 95:10-96:18.

Ed’s argument for a non-custodial sentence is even more compelling than Mr. Black’s, who contested his case all the way to verdict (and possibly beyond). Ed has been cooperating with the government for over five years, he accepted responsibility for his conduct by pleading guilty, and he testified for three days at the trial of related defendant.

We are cognizant of the PSR’s conclusion that supervised release is not recommended due to Ed’s residency in Canada, and that he is ineligible for probation based on his guideline range. PSR ¶¶ 110, 120. However, if the court concludes that a below guidelines sentence is appropriate, the possibility of probation may exist. And, while the PSR notes that Ed is not a United States citizen and resides in Canada, it also notes that he has not been subject to pretrial release supervision or conditions. PSR ¶¶ 11, 122. Thus, even if the court were to impose a sentence of probation, or a sentence of time-served followed by supervised release, there is no reason he could not serve that sentence in Canada without active supervision or even with telephonic or video supervision. See *e.g.* 18 U.S.C. § 3601 (a person sentenced to probation

shall be subject to supervision “to the degree warranted by the conditions specified by the sentencing court”) and 18 U.S. Code § 3563(15) (“report to a probation officer as directed by the court”), (17) (“answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment”), and (18) (“notify the probation officer promptly if arrested”). A Non-Custodial Sentence Coupled with a Fine is Sufficient Punishment.

Given Ed’s personal history and characteristics described above, a non-custodial sentence, coupled with a fine, vindicates the goals of sentencing codified at Section 3553(a)(2) – namely, imposition of a sentence that provides for both specific and general deterrence, and that provides “just punishment.” *Gall*, 552 U.S. at 50 & n.6. Ed is retired and unlikely to ever work again, no period of incarceration is necessary to deter Ed from committing any future violation of the FCPA. Nor is it necessary to serve the purpose of general deterrence given the attendant publicity and wide range of FCPA sentences imposed on others. Indeed, leniency toward Ed is just as likely to encourage others to cooperate in future FCPA cases.

Ed has faced – and for the rest of his life will continue to face – collateral consequences that serve the statutory goals of sentencing. Moreover, given Ed’s background and the unique circumstances that led to his misconduct, incarceration is not necessary to protect the public or to serve as a general deterrent to others.

Moreover, Ed has already experienced severe penalties and consequences as a result of his misconduct. He will forever be a felon. He lost his job over six years ago and is now retired, focusing all of his efforts on his family. PSR ¶¶ 90, 96. The attendant publicity of related cases and his role as a cooperating witness serve to ensure that Ed’s reputation will be forever indelibly linked to his lapses in judgment. A simple Google search of his name bears this out.

Finally, because Ed is retired there is no risk that he will engage in a similar offense (or any offense) in the future. There will be no opportunity for Ed to again engage in similar conduct. Indeed, even if he were able to somehow re-enter the workforce, no company would hire him into a position that would present such a risk. Accordingly, there is no unfulfilled need to protect the public from potential future economic crimes by him. *See, e.g., United States v. Burnell*, 367 F. Supp. 3d 12, 16 (E.D.N.Y. 2019) (finding that the defendant posed a low risk of recidivism in part because he was “no longer operating the business involved in the instant offense.”); *United States v. Emmenegger*, 329 F. Supp. 2d 416, 428 (S.D.N.Y. 2004) (finding the risk of recidivism eradicated by the fact that the offenses at issue were “particularly adapted to [the defendant’s] chosen career,” “[t]hat career is over, and his potential to commit this particular type of crime has been eliminated”). Additionally, a period of incarceration is not necessary to serve as a general deterrent to others. Ed is a mechanical engineer and anyone similarly situated to Ed would surely be deterred by the many individual setbacks and consequences that Ed has faced as a result of his behavior.

Accordingly, because of Ed’s personal history and characteristics, incarceration is not necessary to achieve the dual goals of specific and general deterrence. Rather, the proposed non-custodial sentence, coupled with a financial penalty, is sufficient – “but not greater than necessary” – to satisfy the solemn goals of sentencing.

3. A Non-Custodial Sentence with a Fine Is Appropriate

Other courts and the advisory sentencing guidelines have recognized that, in an appropriate case, probation is a sufficient to satisfy the statutory mandate that the sentence reflect the seriousness of the offense and provide just punishment. *See United States v. Brady*, No. 02 CR 1043(JG), 2004 WL 86414, at *8-9 (E.D.N.Y. Jan. 20, 2004) (probation “may be used as an alternative to incarceration, provided that the terms and conditions of probation can be fashioned

so as to meet fully the statutory purposes of sentencing”) (quoting *U.S. Sentencing Guidelines Manual* ch. 5, pt. B, introductory cmt.). In light of the specific circumstances of this case and Ed’s unique characteristics, “[a]ny term of imprisonment...would be counter effective by depriving society of [his] contributions,” particularly where – as here – Ed “understands the consequences of his criminal conduct and is doing everything in his power to forge a new life.” *Gall*, 552 U.S. at 44; *see also* PSR ¶ 31 (noting that Ed “understands the magnitude of his actions and the seriousness of the offense and is extremely remorseful and regretful of his actions.”).

CONCLUSION

Ed Thiessen’s personal history and characteristics – including his foreign citizenship and residency, his extremely low risk of recidivism, and his genuine remorse – counsel in favor of a significant variance. *See* 18 U.S.C. § 3553(a)(1). He is a good man who made some bad mistakes that were totally inconsistent with how he has lived his life. A non-custodial sentence would be consistent with how other courts have approached similarly situated FCPA defendants who have entered guilty pleas and cooperated by testifying at a trial as part of their cooperation. Such a sentence, which could include a financial penalty, is “sufficient, but not greater than necessary” to provide just punishment and adequate deterrence, while avoiding unwanted sentencing disparities. *See* 18 U.S.C. §§ 3553(a), (a)(2)(A), (a)(6).

For the reasons discussed above, Ed's personal history and characteristics counsel in favor of a significant variance. We therefore respectfully request that the Court impose a non-custodial sentence along with a fine as a sufficient "but not greater than necessary" sentence.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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