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12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,)	CASE NO. CR 18-00656-JFW
15 Plaintiff,)	DEFENDANT VALLMOE
16 v.)	SHQAIRE'S SENTENCING
17 VALLMOE SHQAIRE,)	MEMORANDUM
18 Defendant.)	Hearing Date: April 26, 2019
)	Hearing Time: 8:30 a.m.

19 **TO THE HONORABLE JOHN F. WALTERS, UNITED STATES DISTRICT**
 20 **JUDGE, AND TO ASSISTANT UNITED STATES ATTORNEY**
 21 **ANNAMARTINE SALICK:**

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TABLE OF CONTENTS

PAGE(S)

I. INTRODUCTION 3

II. STATEMENT OF FACTS..... 4

 A. FACTS RELATING TO MR. SHQAIRE’S LIFE 4

 B. THE FACTS OF THE INSTANT OFFENSE 6

III. SENTENCE CALCULATION 6

 A. MR. SHQAIRE’S HISTORY AND CHARACTERISTICS
 ARE MITIGATING AND WARRANT A PROBATIONARY
 SENTENCE 7

 B. SECTION 3553(A) FACTORS CONCERNING THE
 NEED FOR THE SENTENCE IMPOSED 9

 1. THE SERIOUSNESS OF THE OFFENSE..... 9

 2. THE NEED TO PROVIDE JUST PUNISHMENT
 AND PROMOTE RESPECT FOR THE LAW 10

 3. THE NEED TO PROTECT THE PUBLIC..... 10

 C. KINDS OF SENTENCES AVAILABLE 11

IV. CONCLUSION 13

TABLE OF AUTHORITIES

PAGE(S)

U.S. SUPREME COURT CASE

Gall v. United States

552 U.S. 38 7, 12

Kimbrough v. United States

552 U.S. 85 6

United States v. Knights

534 U.S. 112 13

FEDERAL CASES

Simon v. United States

361 F. Supp. 2d 35 10

United States v. Adelson

441 F. Supp. 2d 506 8

United States v. Peppel

707 F.3d 627 8

United States v. Rodriguez

527 F.3d 221 7

United States v. Spigner

416 F.3d 708 9

United States v. Wilson

350 F. Supp. 2d 910 10

FEDERAL STATUTES

18 U.S.C. § 1425(a) 3

18 U.S.C. § 3551 11

18 U.S.C. § 3553 6, 10

18 U.S.C. § 3553(a) 4, 6, 7, 11

18 U.S.C. § 3553(a)(1) 7

	PAGE(S)
1	
2	
3	
4	
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6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
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18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

U.S. SENTENCING GUIDELINES

U.S.S.G. § 2L2.2(a)	3
U.S.S.G. § 2L2.2(b)(4)(A)	3

OTHER SOURCES

S. Rep. No. 98-225, at 75-76 (1983)	10
William J. Sabol et al., Prisoners in 2006, Bureau of Justice Statistics Bulletin, Dec. 2007	11

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18 Defendant.) **MEMORANDUM**
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19 **TO THE HONORABLE JOHN F. WALTERS, UNITED STATES**
20 **DISTRICT JUDGE, AND TO ASSISTANT UNITED STATES ATTORNEY**
21 **ANNAMARTINE SALICK:**

22 Defendant, Vallmoe Shqaire (“Mr. Shqaire”), by and through his counsel of
23 record, WERKSMAN JACKSON & QUINN LLP, hereby files Defendant’s Sentencing

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26 ///
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1 Memorandum.

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3 DATED: April 9, 2019

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Respectfully submitted,

5

WERKSMAN JACKSON & QUINN LLP

6

7

/s/ _____

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I.
INTRODUCTION

On January 14, 2019, Mr. Shqaire pleaded guilty, pursuant to a one-count Indictment, to Unlawfully Procuring United States Citizenship in violation of 18 U.S.C. § 1425(a). In accordance with the written Plea Agreement, Mr. Shqaire agreed to relinquish his United States citizenship; stipulated to a judicial order of removal; agreed to assist the Department of Homeland Security (“DHS”) in his removal; and agreed to never return to the United States. In exchange, the government agreed to recommend a two-level reduction for acceptance of responsibility, and agreed that it would not seek a sentence of imprisonment above the high-end of the applicable Sentencing Guidelines range. (Doc. 91, 4:8–9.)

The parties further agreed to a base offense level of 8 (U.S.S.G. § 2L2.2(a)); and a five-level enhancement under U.S.S.G § 2L2.2(b)(4)(A).¹ Both parties agreed not to seek any other specific characteristics, adjustments, or departures related to the offense level imposed. However, each reserved the right to seek a sentence outside the sentencing range established by the Sentencing Guidelines.

On February 14, 2019, Probation filed its Presentence Investigation Report (“PSR”) and Disclosed Recommendation Letter. The Probation Officer’s sentencing calculations and findings comport with the parties’ agreement, resulting in a total offense level calculation of 11. (PSR ¶ 24.) Probation calculates a total criminal history score of two points, placing Mr. Shqaire in the criminal history category of II—with a resulting guidelines range of 10 to 16 months imprisonment.

¹ This “special offense characteristic” applies if “defendant committed any part of the instant offense to conceal the defendant’s membership in, or authority over, a military, paramilitary, or police organization that was involved in a serious human rights offense during the period in which the defendant was such a member or had such authority.” U.S.S.G. § 2L2.2(b)(4)(A).

1 (PSR ¶81.) Probation recommends a 5-month period of incarceration, followed by
2 a three-year term of supervised release. (Doc. 99 at 1.)

3 As set forth herein, a consideration of the numerous mitigating factors
4 enumerated in 18 U.S.C. § 3553(a) militates towards a sentence of probation.

5 **II.**
6 **STATEMENT OF FACTS**

7 **A. FACTS RELATING TO MR. SHQAIRE’S LIFE**

8 Mr. Shqaire was born on September 17, 1967 in ‘Ein Arik—a small village
9 in the Palestinian West Bank. Mr. Shqaire, the middle child in a family of eleven
10 children, was born shortly after his family was rendered homeless and displaced in
11 the aftermath of the June 1967 “Six-Day War” between Israel and its neighboring
12 Arab nations. Thus, Mr. Shqaire spent much of his childhood in a small makeshift
13 apartment in a refugee camp in ‘Ein Arik, provided by humanitarian relief
14 agencies.

15 Mr. Shqaire’s mother was a homemaker and his father found work where
16 available—at first as a chef, and later as a laborer in construction. The family was
17 poor because Mr. Shqaire’s father had difficulty finding steady work in the West
18 Bank. Frustrated with the lack of opportunities, Mr. Shqaire’s father eventually
19 travelled abroad in search of work to support his family of 13. Therefore, for much
20 of Mr. Shqaire’s childhood, his father was absent, living and working in Saudi
21 Arabia and the United Arab Emirates (“UAE”) and sending money back home to
22 his family in the West Bank. In 1978, Mr. Shqaire’s family were finally able to
23 save up enough money from his father’s work abroad to build their own home in
24 ‘Ein Arik.

25 Mr. Shqaire attended high school in the West Bank and graduated on or
26 about 1985. Mr. Shqaire then began working towards an accounting degree at a
27 college in Amman, Jordan, but only completed two years before returning to the
28 West Bank in 1987. Shortly after Mr. Shqaire’s return from college in Jordan, the

1 “First Intifada” broke out—with mass protests occurring throughout the West Bank
2 against Israeli occupation. This was a very tumultuous and violent time, and many
3 of the men and boys in Mr. Shqaire’s neighborhood were arrested by Israeli
4 Defense Forces (“IDF”).

5 Like most of the people around him, Mr. Shqaire participated in some
6 political protests, walking alongside large crowds of protestors and waving flags.
7 Because his involvement in the protests was minimal, Mr. Shqaire was shocked
8 when Israeli military forces raided his home and arrested him in June 1988. Mr.
9 Shqaire recalls that his arrest and detention were very traumatic experiences. He
10 was blindfolded for long periods of time and subjected to a great deal of physical
11 and psychological discomfort at the hands of IDF soldiers. After approximately
12 eighteen days in military custody, Mr. Shqaire agreed to become an informant for
13 the Israeli military in exchange for his release.

14 Upon being released, Mr. Shqaire realized that if he was caught spying on
15 the Palestinian rebellion, he and his family would surely be tortured or killed by
16 the Palestinian insurgents. Fearful for his life, Mr. Shqaire fled the city and decided
17 to hide out in the mountains. While he was in hiding, his family suffered grave
18 consequences because of his decision to flee. His father was repeatedly arrested
19 and interrogated about Mr. Shqaire’s whereabouts by the IDF, and his brother,
20 mistaken for him, was shot by Israeli soldiers. Mr. Shqaire’s home was also
21 “sealed” by Israeli military authorities as punishment for Mr. Shqaire’s actions,
22 and his family once again became homeless, forced to find shelter with friends and
23 neighbors.

24 Mr. Shqaire was in hiding for approximately two years when he was re-
25 captured by the IDF in May 1990. Once again, he underwent severe physical and
26 psychological coercion at the hands of IDF soldiers. Mr. Shqaire eventually
27 pleaded guilty to a variety of crimes before a military tribunal. These crimes
28 included associating with the “Shabiba” or Youth Wing of the Palestinian

1 Liberation Organization (“PLO”), and involvement in a plot to plant a bomb on a
2 bus. Mr. Shqaire was sentenced to ten years in military custody for these crimes.
3 His sentence was later reduced to seven years by the military appellate court. Mr.
4 Shqaire ended up serving a total of four years in military prison before he was
5 freed in 1993, under the peace deal between Israel and Palestine that brought the
6 First Intifada to a close.

7 Several years later, in 1999, Mr. Shqaire decided to visit the United States.
8 Mr. Shqaire immediately became infatuated with the comparative peace and
9 freedom of life in America, becoming determined to immigrate here in search of a
10 better life. Although Mr. Shqaire did not have an extensive education and spoke
11 little English—he was quickly able to build up a diverse network of friends who
12 became his surrogate family in America. (*See* Letter of Pamela C. Malki, attached
13 as Exhibit A; Letter of Joseph R. Sandoval, attached as Exhibit B; Letter of
14 Younes Bennani, attached as Exhibit C.) And despite the significant language
15 barriers, Mr. Shqaire has always been self-sufficient, holding steady jobs
16 alternatively as a valet driver or cook over his two decades of living in the United
17 States. (*See* PSR ¶¶ 47–50.) Most recently, he has been working as a valet driver
18 for V & D Parking Services in Glendale. (PSR ¶ 47.)

19 **B. THE FACTS OF THE INSTANT OFFENSE**

20 The facts of the instant offense are set forth in the stipulated factual basis of
21 the Plea Agreement and are incorporated herein by reference. Additional
22 contextual facts are set forth in *infra* to assist this Court in evaluating the nature of
23 the offense and the need for the sentence imposed, under 18 U.S.C. § 3553.

24 **III.**
25 **SENTENCE CALCULATION**

26 The “over-arching provision” of 18 U.S.C. § 3553(a) is that the Court
27 impose a sentence that is “sufficient, but not greater than necessary” to achieve the
28 goals of sentencing. *Kimbrough v. United States*, 552 U.S. 85, 101 (2007). Under

1 section 3553(a), the factors the Court should consider in making this determination
2 include: 1) the nature and the circumstances of the offense and the history and
3 characteristics of the defendant; 2) the purposes of sentencing; 3) the kind of
4 sentences available; 4) the United States Sentencing Guideline calculation; 5)
5 pertinent policy statements; 6) the need to avoid unwarranted sentence disparities;
6 and 7) the need to provide restitution. 18 U.S.C. § 3553(a). While the Guideline
7 Sentencing Range (“GSR”) is a “starting point and the initial benchmark,” the
8 Guidelines are not the sole, nor even the first among the factors that Congress has
9 commanded the Court to apply pursuant to section 3553(a). *See Gall v. United*
10 *States*, 552 U.S. 38, 49 (2007). Instead, in reaching a decision on what constitutes
11 an appropriate sentence, the district court should “consider all the relevant factors”
12 and “construct a sentence that is *minimally sufficient* to achieve the broad goals of
13 sentencing.” *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008)
14 (emphasis added).

15 As set forth herein, all § 3553(a) factors, considered together, warrant a
16 sentence substantially less than the 5-month term of imprisonment recommended
17 by Probation. These factors show that a sentence of probation better serves the
18 various objectives of sentencing.

19 **A. MR. SHQAIRE’S HISTORY AND CHARACTERISTICS ARE**
20 **MITIGATING AND WARRANT A PROBATIONARY SENTENCE**

21 18 U.S.C. § 3553(a)(1) is a “broad command to consider” the history of the
22 defendant. *Gall v. United States*, 552 U.S. 38, 50 n. 6 (2007). As one court has
23 noted, “[s]urely, if ever a man is to receive credit for the good he has done, and his
24 immediate misconduct assessed in the context of his overall life hitherto, it should
25 be at the moment of his sentencing, when his very future hangs in the balance. This
26 elementary principle of weighing the good with the bad, which is basic to all the
27 great religions, moral philosophies, and systems of justice, was plainly part of what
28 Congress had in mind when it directed courts to consider, as a necessary

1 sentencing factor, ‘the history and characteristics of the defendant.’ *United States*
2 *v. Adelson*, 441 F. Supp. 2d 506 (S.D.N.Y. 2006).²

3 Mr. Shqaire’s history and characteristics show that his early life was defined
4 by relentless hardship, instability, and conflict. He spent his early childhood living
5 with his large family in cramped temporary housing inside a refugee camp. Then,
6 just as Mr. Shqaire was coming of age, the First Intifada broke out, causing mass
7 upheaval and discord throughout the West Bank, and embroiling Mr. Shqaire in the
8 conflict. As a result, he spent the better part of six years first hiding in mountains
9 and caves, and then incarcerated in Israeli military prison. These experiences, as
10 well as the physically and psychologically coercive interrogations he experienced
11 at the hands of the Israeli military, left him deeply traumatized.

12 By the time Mr. Shqaire arrived in the United States in 1999, he was
13 desperate to get away from the violence and turmoil which marked his life in the
14 Middle East. His determination allowed him to build a successful new life for
15 himself in America, garnering a strong network of friends who view him as a kind
16 and “extremely generous individual.” (Exhibit B; see also Exhibit C.) Due to his
17 generosity and kindness, Mr. Shqaire was able to create a surrogate family for
18 himself in the United States. (Exhibit A.)

19 Unfortunately, in an effort to make a fresh start in the United States, Mr.
20 Shqaire made the incredibly misguided decision to misrepresent his Israeli arrest
21 and incarceration history on his naturalization petition. He now seeks to make
22 amends for that mistake by pleading guilty, agreeing to relinquish his United States
23 citizenship, vowing to assist in his own removal, and never returning to the United
24 States. He respectfully asks that the court take into account his traumatic
25 incarceration history during sentencing, and not subject him to any further custody
26

27
28 ² Rejected on other grounds by *United States v. Peppel*, 707 F.3d 627, 637–38 (6th
Cir. 2013).

1 time. Although never formally diagnosed or receiving treatment, Mr. Shqaire
2 continues to experience lingering effects from his military interrogations and time
3 in Israeli military custody, and is deeply afraid of the prospect of further
4 incarceration. Therefore, in sentencing Mr. Shqaire for this crime, the Court should
5 take into the account the difficult circumstances of his early life; the ways in which
6 he has inspired and contributed to the lives of his friends in the United States; and
7 the immense suffering he will experience from leaving the home he has built for
8 himself in this country. In light of these considerations, the goals of sentencing will
9 adequately be met by a probationary sentence, without subjecting Mr. Shqaire to
10 the additional trauma of incarceration.

11 **B. SECTION 3553(A) FACTORS CONCERNING THE NEED FOR THE**
12 **SENTENCE IMPOSED**

13 The next factors under section 3553(a) concern the need for a particular
14 sentence. The mandatory principle of section 3553 is a limiting one, the sentence
15 must be “*sufficient, but not greater than necessary,*” to satisfy the need for the
16 sentence imposed:

17 (A) to reflect the seriousness of the offense, to promote respect for the
18 law, and to provide just punishment for the offense; (B) to afford
19 adequate deterrence to criminal conduct; (C) to protect the public from
20 further crimes of the defendant; and (D) to provide the defendant with
21 needed educational or vocational training, medical care, or other
22 correctional treatment in the most effective manner.

23 18 U.S.C. § 3553(a)(2) (emphasis added).

24 Courts across the country have recognized that they must honor this
25 parsimonious provision. *See, e.g., Carty*, 520 F.3d at 991; *United States v. Spigner*,
26 416 F.3d 708, 711 (8th Cir. 2005).

27 **1. THE SERIOUSNESS OF THE OFFENSE**

28 Mr. Shqaire understands the seriousness of his offense and is deeply
regretful of his actions. In repentance, Mr. Shqaire has voluntarily agreed to
relinquish the United States citizenship he procured through misrepresentation, has

1 agreed to assist in his own removal from the country where he has lived for over
2 two decades, and has agreed never to return. These painful punishments will serve
3 as a reminder of his mistake for the rest of his life, and there is no need to add
4 further punishment to make Mr. Shqaire understand the seriousness of his offense.

5 **2. THE NEED TO PROVIDE JUST PUNISHMENT AND**
6 **PROMOTE RESPECT FOR THE LAW**

7 18 U.S.C. § 3553 mandates that the court consider the need for the sentence
8 imposed to provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A). In
9 order to determine whether a punishment is “just,” a number of factors need to be
10 considered. A “just” punishment is punishment that “fits the crime.” *Simon v.*
11 *United States*, 361 F. Supp. 2d 35, 43 (E.D.N.Y. 2005). The punishment should not
12 be unreasonably harsh under all of the circumstances of the case. *See United States*
13 *v. Wilson*, 350 F. Supp. 2d 910 (D. Utah 2005) (citing S. Rep. No. 98-225, at 75-76
14 (1983), as reprinted in 1984 U.S.C.C.A.N. 3182, 3258–59.)

15 Mr. Shqaire’s unlawful actions in this case arose from a deep desire to start a
16 new life in America, away from the turmoil, poverty, and conflict of his life in the
17 Middle East. Mr. Shqaire wanted nothing more than to be an American and to
18 contribute positively to American society. Therefore, the punishment of
19 relinquishing the American citizenship he so coveted, agreeing never to return to
20 the home he has built for himself in this country, and willingly returning to Jordan,
21 a place he has not spent any significant time, and to which he has no connection or
22 familial ties, is punishment enough. Thus, because Mr. Shqaire has already
23 suffered enormously as a result of this conviction, there is no need to impose
24 further punishment, and further punishment would be gratuitous.

25 **3. THE NEED TO PROTECT THE PUBLIC**

26 Another factor to consider in determining the need for the sentence imposed
27 is whether or to what extent society needs to be protected from the defendant. Mr.
28 Shqaire poses no risk to the community.

1 Over the course of this case, Mr. Shqaire has demonstrated to this Court that
2 he can be compliant with court-ordered supervision. Since his release on bond in
3 October 2018, Mr. Shqaire has remained in strict compliance with the terms of his
4 pre-trial release and has followed all court orders. Thus, there is no reason to worry
5 that he will not continue to strictly comply with future court orders. Additionally,
6 according to the terms of the Plea Agreement, Mr. Shqaire will never be able to
7 return to the United States once removed. Therefore, there is little likelihood that
8 he will pose any kind of danger to the people of the United States in the future.

9 **C. KINDS OF SENTENCES AVAILABLE**

10 18 U.S.C. § 3553(a) requires consideration of the “kinds of sentences
11 available.” Thus, this Court should consider whether a term of imprisonment is
12 necessary in the instant case. This Court has at its disposal every sentencing option
13 in framing a just sentence for Mr. Shqaire, including probation with some form of
14 restriction on Mr. Shqaire’s liberty, and/or a period of home detention or halfway
15 house.

16 Although custody time is permissible in the instant case, it is relevant to note
17 that in enacting the Sentencing Reform Act of 1984 (“SRA”), Congress intended
18 that “prison resources [would be], first and foremost, reserved for those violent and
19 serious criminal offenders who pose the most dangerous threat to society,” and that
20 “in cases of nonviolent and nonserious offenders, the interests of society as a
21 whole as well as individual victims of crime can continue to be served through the
22 imposition of alternative sentences, such as restitution and community service.”
23 *See* Pub. L. No. 98-473, § 239, 98 Stat. 1987, 2039 (1984) (codified at 18 U.S.C. §
24 3551).³ Thus, in determining what type of sentence is available, this Court can

25
26 ³ Despite the statutory goals of Congress, Guideline sentences have resulted in a
27 larger prison population. As of year-end 2006, the Bureau of Prisons was 37
28 percent over capacity. William J. Sabol et al., *Prisoners in 2006*, Bureau of Justice
Statistics Bulletin, Dec. 2007, at 5-6, Available at

1 consider that Congress was disinclined to devote resources to nonviolent, non-
2 serious offenders like Mr. Shqaire. This logic is all the more applicable to Mr.
3 Shqaire's case as he has voluntarily agreed to be removed from the United States
4 and has agreed never to return. As such, devoting prison resources to incarcerating
5 Mr. Shqaire in lieu of allowing him to voluntarily leave the United States would, in
6 addition to being excessive punishment, amount to an unnecessary waste of
7 government resources. Furthermore, this would only serve to delay Mr. Shqaire's
8 expeditious removal.

9 Additionally, even if this Court declines to grant a variance for the reasons
10 set forth above, under Section 3553(a), the "kinds of sentences" available include
11 the use of probation. 18 U.S.C. § 3553(a)(3).⁴ This finding was reinforced in *Gall*,
12 52 U.S. 38, where the Supreme Court recognized the value of a probationary
13 sentence under the SRA and Section 3553(a), even when probation is not called for
14 by the total offense level. *Id.* at 44. In *Gall*, the Supreme Court admonished
15 sentencing courts to "consider every convicted person as an individual,"
16 remaining mindful that a sentence of imprisonment "may work to promote not
17 respect, but derision, for the law if the law is viewed as merely a means to dispense
18 harsh punishment without taking into account the real conduct and circumstances
19 involved in sentencing." *Id.* at 52, 54 (citations omitted). The *Gall* Court also noted
20 that "Probation is not granted out of a spirit of leniency." *Id.* at 48 n.4 (quoting
21

22 <https://www.bjs.gov/content/pub/pdf/p06.pdf>.; *see also Prisons, Jails &*
23 *Probation*, DrugWarFacts.org, [http://www.drugwarfacts.org/cms/prisons_and_jails](http://www.drugwarfacts.org/cms/prisons_and_jails#sthash.9v336PGw.dpuf)
24 [#sthash.9v336PGw.dpuf](http://www.drugwarfacts.org/cms/prisons_and_jails#sthash.9v336PGw.dpuf) ("The Federal Bureau of Prisons operated at 36% above
25 reported capacity at year end 2010.").

26 ⁴ 18 U.S.C. § 3582(a) provides that "[t]he court, in determining *whether* to impose
27 a term of imprisonment, and, if a term of imprisonment is to be imposed, in
28 determining the length of the term, shall consider the factors set forth in section
3553(a) to the extent that they are applicable[.]"

1 Guides for Sentencing, Advisory Council of Judges of National Council on Crime
2 and Delinquency at 13-14 (1957)). Indeed, “[o]ffenders on probation are . . .
3 subject to several standard conditions that substantially restrict their liberty.” *Id.* at
4 48 (citing *United States v. Knights*, 534 U.S. 112, 119 (2001).) This can include
5 individualized specific conditions to address the issues attendant to a particular
6 case. *Id.* at 48.

7 As a result, notwithstanding the Guideline calculation, this Court should
8 consider whether, based on the unique facts of the instant case and Mr. Shqaire’s
9 voluntary, imminent departure from the United States, a term of probation, or other
10 non-custodial sentence would better achieve the goals of sentencing. In fact, the
11 instant case is one where the “type of sentence” imposed need not be
12 imprisonment. A period of probation, with serious conditions, or a term of house
13 arrest, can adequately meet the goals of § 3553.

14 **IV.**
15 **CONCLUSION**

16 In sum, the Court should consider whether, based on the unique facts of the
17 instant case, a term of probation is appropriate. The instant case is one where a
18 period of supervised release, with serious conditions, can adequately meet the
19 goals of § 3553. For the reasons set forth above, Mr. Shqaire respectfully requests
20 that this Court fashion a probationary sentence that serves the ends of justice and
21 fairness.

22 DATED: April 9, 2019

Respectfully submitted,
WERKSMAN JACKSON & QUINN LLP

24 /s/ _____
25 Mark J. Werksman
26 Kelly C. Quinn
27 Mehrunisa Ranjha
28 Attorneys for Defendant
Vallmoe Shqaire