

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
VS.)	2:20-cr-0057-JDL
)	
RYAN LYNCH,)	
DEFENDANT)	

RYAN LYNCH’S SENTENCING MEMORANDUM

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BACKGROUND

Mr. Lynch was charged by a one-count complaint with Distribution of Fentanyl in violation of 21 USC §841(a)(1) and 841(b)(1)(C) on June 27, 2019. *ECF #3, 6*. Mr. Lynch made his first Federal appearance on August 1, 2019. *ECF #11*. Mr. Lynch was released from Federal custody on August 9, 2019. *ECF #22*. He was indicted on July 30, 2020. *ECF #40*. He entered a ‘not guilty’ plea on August 6, 2020. *ECF #44*. Mr. Lynch filed a Motion to Suppress on November 2, 2020. *ECF #53*. A hearing was held

on August 24, 2021. *ECF #89*. The Court denied that Motion by Order dated September 22, 2021. *ECF #91*. Mr. Lynch entered a ‘guilty’ plea on February 24, 2022. *ECF #102*. Sentencing is set for August 4, 2022. *ECF #113*.

According to the Amended Presentence Report, the Guideline Range is 10-16 months incarceration. *ECF #108 ¶61*

1. Summary of Position

We ask the court to impose a below-guidelines sentence of time served and three-years of supervised release. Taking into consideration supervision rather than incarceration, Mr. Lynch’s work history and conduct since release, agreement to plead by video, substance-related issues, and the current pandemic as well as other factors discussed *infra*, this sentence is “sufficient but not greater than necessary” based on variances and application of the sentencing factors set forth in 18 U.S.C. §3553(a), in particular, the nature and circumstances of the offense and Mr. Lynch’s characteristics.

2. Agreement for Purposes of Sentencing

Mr. Lynch and the Government have no sentencing agreement.

3. Pre-Sentence Report and Advisory Guidelines

The PSR establishes a total offense level of 10 and a criminal history III, with an advisory guideline range of 10 to 16 months. *ECF #108 ¶61*. Notwithstanding other factors, Probation identified that Mr. Lynch might be entitled to reduction for his agreement to plead guilty by video.¹ *Id. at ¶77*.

4. Introduction to Ryan Lynch

Ryan Lynch was born to Dale and Nancy Lynch on June 9, 1976 in Portsmouth, New Hampshire. He is an only child of his parents. His mother recalls that he was a big baby.

“Nothing was ever small with Ryan,” she shared with a laugh.

His parents resided in Kittery, Maine and he was raised in that community. His family remembers Ryan’s childhood filled with friends.

“As a young boy, there were always other children around. Ryan had lots of friends. When it came time for dinner, we always had extra plates set out,” recalled Nancy.

Ryan does not recall anything problematic or unusual about his childhood. He was a happy child. He was social but not an academic.

¹ Mr. Lynch also expressed willingness to participate in sentencing by video.

“I wasn’t that smart. I mean book smart. I didn’t really care about school except the social part. I’ve taught my children to feel differently about that. Like my daughter. She’s so smart,” Ryan said.

Ryan attended high school but hated it. Despite being big and athletic, he didn’t play high school sports, although he played many with friends. It is a decision he regrets.

“Most of my childhood friends played sports so I kinda lost touch with them. I was into cars and they were into sports.”

In fact, it was cars that actually kept Ryan in high school. While he did not like the academic aspect, he loved cars so he did the high school vocational program in Portsmouth so that he could graduate from high school, which he did in 1994. He was lucky to have graduated from high school considering what occurred shortly before his senior year.

“I lost my way a little bit. I was big and think I wasn’t that nice a few times.”

One time resulted in an incident that changed his life. When Ryan was 17, two students attacked him with a baseball bat. He suffered a broken jaw, lost four sets of teeth, and was in the hospital for two days. He also reports that his back was never the same after the incident. Neither was his psyche.

“I became a little more weary of people. Less trusting. I started dating Tina [Richette] and kinda turned my life towards her. Somehow I hurt my back and it was never quite right after that.”

Ryan received some money based on the incident. He used that money to purchase a property and moved in with his girlfriend, Tina. One year later, they were married, a marriage that would last just under ten years, although they were separated after only six.

“We were married really young. If I look back, I wasn’t ready and she probably wasn’t either. I also was using substances for most of the marriage. I worked a lot and was always in pain.”

Ryan has always worked long hours when pain hasn’t interfered. Part of the issue is that he works in the fishing/lobster trade which requires difficult physical labor and incredibly hours during season. Both of these contributed to the end of his marriage. The marriage, though, did produce two children, Mikaylah and Ryan. Both of them rave about who their father is today and how much he has changed since he stopped using substances. And Ryan is extremely proud of them too.

“I am so lucky. I have great, successful kids. The older ones all went to school. They have great jobs.”

In 2002, while separated, Ryan met Kelly Niles. They started dating immediately and have remained together ever since. They have two children, Colin who is 18 years-old and recently joined the marines and Madison, who is 9.

“Kelly and I worked from the start. She has also stuck with me through some really hard times.”

And indeed Kelly has. Ryan's pain only worsened with age which led to his use of Oxycodone to assist with pain. Ryan was diagnosed with disk issues in 2012 although he continued to work. When his pain worsened, he took on the role as the stay-at-home parent for two years while Kelly worked. Ryan liked that job more than any other.

"If I didn't have to work because of finances, I would have kept doing that. It was my favorite 'job.'"

But it was also during this time when Ryan started to use opiates more and more to mask the pain. He would work sporadically. Since 2019, Ryan has returned to work and last year was his highest earning year yet, although he is clear it was an aberration.

"I haven't earned nearly as much this year and also, I haven't worked as many hours. My family is too important especially considering what Kelly is going through."

Ryan is referencing the loss of Kelly's brother, Kevin, who died due to an overdose and her mother who died recently. Ryan cannot even speak about Kevin without breaking down just as he did when interviewed by the police in 2019.

Kelly is very clear as to Ryan's importance to his family especially now.

"Madison absolutely adores him. He is so good to her. The amount of change I have seen in Ryan since 2019 is incredible. He always was a good person but now he has really pulled everything together. I think his positive attitude is also helping his back. Ryan has always been a gentle giant with his family. Now, he's a teddy bear."

Non-Guideline or Variant Sentence

The Supreme Court stated in *Pepper v. United States* that "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to 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 the punishment to ensue." 562 U.S. 476 (2011) quoting *Koon v. United States*, 518 U.S. 81, 113, 116 S. Ct. 2035, 135 L. Ed. 2d 392 (1996)). Courts need not adhere to the rigidity of the Sentencing Guidelines. *United States v. Booker*, 543 U.S. 220 (2005). In fact, the district judge "may not presume that the Guidelines range is reasonable" *Gall v. U.S.*, 552 U.S. 38, 39 (2007); see *Nelson v. U.S.*, 129 S.Ct. 890, 891 (2009) (per curiam) (guidelines are "not to be presumed reasonable"); *Peugh v. U.S.*, 133 S.Ct. 2072, 2080 (2013) ("The court may not presume that the Guidelines range is reasonable.")

A departure and/or variant sentence is appropriate in this matter based on the application of the sentencing factors in 18 U.S.C. §3553(a) which provides in pertinent part:

"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. The Court, in determining the particular sentence to be imposed shall consider-

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;*
- (2) the need for the sentence imposed—*
- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;*
- (B) to afford adequate deterrence to criminal conduct;*
- (C) to protect the public from further crimes of the defendant; and*
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.*

ARGUMENT

I. A SENTENCE OF TIME SERVED IS APPROPRIATE BASED ON THE HISTORY AND CHARACTERISTICS OF RYAN LYNCH

1. FACTORS SUPPORTING A DEPARTURE

1. Mr. Lynch Should Receive a Departure Based on Untreated Substance Abuse Issues

5C1.1 Imposition of a Term of Imprisonment, App. Note 6 Application Note 1 to §5C1.1 states that a departure from the sentencing options authorized by the guidelines for Zone C may be appropriate to accomplish a specific treatment purpose in cases where the court finds: (A) the defendant is an abuser of controlled substances or

alcohol, or suffers from a significant mental illness, and (B) the defendant's criminality is related to the treatment problem to be addressed.

As reported in the PSR, Ryan has a lengthy history of substance abuse. *Id.* at ¶52. Like many individuals, he began to use alcohol and marijuana in high school. *Id.* While his use of marijuana was recreational, Ryan's drinking escalated and he abused alcohol for a number of years. *Id.* During that time, he also used cocaine periodically. Circa age 30, he began to use Oxycodone to address pain. *Id.*; see also Section Four, *supra*. Ryan became addicted and then moved on to abusing heroin and then fentanyl. At the peak of his addiction, the defendant used multiple grams of those substances on a daily basis. *Id.*

Notably, Ryan didn't engage in any meaningful substance abuse treatment before committing the instant offense. That changed shortly after his arrest in August 2019. *Id.* at ¶53. At that time, Ryan realized his drug problem and related behavior had placed him in danger of losing his family as he was facing a very substantial prison sentence. Accordingly, he agreed to a substance abuse evaluation where he was diagnosed with Opioid Use Disorder and Cocaine Use, in remission. *Id.* He then engaged in an Intensive Outpatient Program (IOP) from which he successfully graduated in September 2019. He then moved on to medication assisted treatment and counseling, and he continues receiving those services even today. *Id.*

Ryan's primary motivation for committing the instant offense was not to earn substantial profits. Instead, he engaged in this conduct to help support his expensive drug

habit. A review of the financial summary in the PSR supports this point as it shows Ryan has no assets and a negative net worth.

There is no doubt that Ryan's current criminality is directly related to his substance abuse issues.² Substance abuse programs will be required during his supervised release and he will cooperate with any such requirement or any other that is recommended. No matter the options that are available in jail, the most effective treatment occurs out of jail. See *United States v. Perella*, 273 F.Supp.2d 162, 164 (D.Mass. 2003)(observing that if substance addiction creates a propensity for crime, rehabilitation and treatment go a long way to preventing recidivism. Statistics suggest recidivism rate is less for substance abuse offenders who receive treatment while in prison or jail, and still less for those treated outside of prison setting) citing Lisa Rosenblum, *Mandating Effective Treatment for Drug Offenders*, 53 Hastings L.J. 1217, 1220 (2002).

2. FACTORS SUPPORTING A VARIANT SENTENCE

1. A Variance is Appropriate in this Matter due to the Cost of Incarceration Instead of Supervision

The annual cost of detaining federal prisoners before trial and after sentencing is significantly higher than the cost of supervision in the community, according to figures

² It is noteworthy that Ryan started abusing substances based on self-medicating due to pain.

compiled by the Administrative Office of the U.S. Courts. In fiscal year 2016, detaining an offender before trial and then incarcerating him post-conviction was roughly eight times more costly than supervising an offender in the community. Placing an offender in a residential reentry center was about seven times more costly than supervision. United States Courts, published on August 17, 2017, found at <http://www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision>.

This is also summarized (and updated) in the PSR. *PSR at ¶69*. As the graph shows, it costs over \$3000 more per month to incarcerate Mr. Lynch as opposed to supervising him. *Id.* See also Speech of Attorney General Eric Holder delivered on August 12, 2013 before the ABA convention in San Francisco: “Our current incarceration polity “imposes a significant economic burden — totaling \$80 billion in 2010 alone — and it comes with human and moral costs that are impossible to calculate.” found at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>.

To calculate specifically, a 10-month sentence in this matter would cost \$36,880 while a three-year period of supervised release would cost \$13,362.00. *PSR at ¶69*.

Courts that have addressed this issue have cited these findings when imposing sentences. See *U.S. v. Moreland*, 366 F.Supp.2d 416, 422 (S.D.W.Va.,2005)(imposition of guideline sentence would cost the taxpayers an enormous amount of money) *remanded on other issue*; *U.S. v. Angelos*, 345 F.Supp.2d 1227 (D. Utah 2004) (“Given that holding a person in federal prison costs about \$23,000 per year... . [M]oney could also

be spent on other law enforcement or social programs that in all likelihood would produce greater reductions in crime and victimization”); *U.S. v. Chavez*, 230 F.3d 1089, 1092 (8th Cir. 2000) (Bright, J., concurring) (“It costs the United States government and its taxpayers approximately \$22,000 per year to keep a federal offender in prison. Therefore, it will cost the taxpayers \$836,000 for his incarceration. This sentence is a waste of time, money, and more importantly, a man's life. These unwise Sentencing Guidelines put nonviolent offenders in prison for years, they ruin the lives of the prisoners, their families, and they also hurt our economy and our communities by draining billions of dollars from the taxpayers and keeping potentially productive members of society locked up. The opportunity costs imposed by the Sentencing Guidelines are staggering”)³; *U.S. v. Bernier*, 758 F.Supp. 195 (S.D.N.Y. 1991)(sentencing distortion “produces an economic as well as personal consequence”); *U.S. v. Hughes*, 825 F.Supp. 866, 868 (D.Minn.,1993) (“[L]engthy incarceration substantially diminishes the likelihood that the defendant will be able to become a productive member of society upon his release. Second, the monetary cost to the American taxpayer of this incarceration will exceed \$270,000. Further, the non-rehabilitation purposes of incarceration-retribution, deterrence and incapacitation-would all be more than adequately served by a far shorter sentence. Both society and the defendant will pay a dear cost for this sentence and receive very little in return”); *U.S. v.*

³ It is noteworthy that Mr. Lynch, like Mr. Chavez, was convicted of as non-violent offense.

Dossie, 851 F.Supp.2d 478, 483 (E.D.N.Y. 2012) (“the drug-offense Guidelines ranges are excessively severe. In formulating those ranges, the Commission decided to jettison its pre-Guidelines data and instead chose to make the sentencing range in every single drug case proportional to the onerous mandatory sentences meant only for leaders and managers.”)

a. Incarceration in this matter will not serve as a deterrence

Empirical studies show there is no relationship between sentence length and general or specific deterrence. See Andrew von Hirsch *et al.*, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999); Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime and Justice: A review of Research* 28–29 (2006); David Weisburd *et al.*, *Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes*, 33 *Criminology* 587 (1995); Donald P. Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders*, 48 *Criminology* 357 (2010) (all concluding there is no correlation between sentence length and crime rates).

Incarceration can be deleterious to public safety for individuals like Mr. Lynch whose convictions are predominately non-violent. *See, e.g., United States Sentencing Commission, Sentencing Options Under the Guidelines* (1996) (recognizing the

“criminogenic effects of imprisonment which include contact with more serious offenders, disruption of legal employment, and weakening of family ties”); Justin Murray, *Reimagining Criminal Prosecution*, 49 American Criminal Law Review (2012) at 1565 (“Rather than rehabilitating prisoners, modern incarceration tends to make prisoners more violent, antisocial, and prone to criminality”). “Most who study prison life believe there are significant brutalizing effects to imprisonment that impair prisoners’ inclination to conform to the law.” *Id.* quoting Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory*, 36 Criminology 442, 465 (1998). See also *United States v. Bannister*, 786 F.Supp.2d 617 (E.D.N.Y., 2011) (“Recidivism may be promoted by the behavior traits prisoners develop while incarcerated.” To survive, they “tend to develop characteristics institutionally selected for survival: circumspection, canniness, coldness, and cruelty.”) Furthermore, according to “the best available evidence, . . . prisons do not reduce recidivism more than noncustodial sanctions.” Francis T. Cullen *et al.*, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S–51S (2011).

Courts across the country are recognizing the value to the defendant and the public of treatment instead of incarceration. They are acknowledging that for certain offenders, probation or home detention with cognitive treatment is the appropriate sentence. *United States v. Duhon*, 541 F.3d 391 (5th Cir. 2008) (where defendant convicted of possession

of child pornography and guidelines called for 33–40 months prison, district court’s sentence to probation reasonable in part because of district court’s “strong emphasis on [defendant’s] general need for treatment”); *U.S. v. Whitehead*, 532 F.3d 991 (9th Cir. 2008) (9th Cir. 2008) (in matter where guidelines of 41-51 months, court’s sentence of probation with community service not an abuse of discretion); *U.S. v. Vega*, 545 F.3d 743 (9th Cir. 2008) (“We agree with the Seventh Circuit that the imposition of... community service conditions will further the statutory goal of providing ‘the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner’ quoting 18 U.S.C. § 3553(a)(2)(D) (“...community service is another opportunity for a defendant to obtain education and vocational training.”))

Finally, in this matter Mr. Lynch, through no fault of his own, will be sentenced nearly four years from the date of the criminal activities. “The deterrent value of any punishment is, of course, related to the promptness with which it is inflicted.” *Coleman v. Balkcom*, 451 U.S. 949, 952 (1981) (Stevens, J., concurring in denial of cert.)

b. There is minimal risk of recidivism

Ryan Lynch is 46 years old. As this Court is aware, age is a major factor when looking at recidivism rates. See *U.S. v. Payton*, 754 F.3d 375 (6th Cir. 2014) (court’s sentence was unreasonable because court did not consider that recidivism greatly

decreases with age. “The Sentencing Commission has observed that “[r]ecidivism rates decline relatively consistently as age increases.”); *U.S. v. Neelum*, 2005 WL 300073 (granting non-Guideline sentence and noting that recidivism rate for defendants between the age of 41 and 50 with a criminal history category of III (like Ryan) is less than half that of defendants under the age of 21).

2. A Variance Is Appropriate in this Matter Based on the Pre-Sentencing Conduct of Mr. Lynch

“In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, *without limitation*, any information concerning the background, character and *conduct of the defendant*, unless otherwise prohibited by law. See 18 U.S.C. §3661.” *USSG §1B1.4* (2010)(emphasis added). In *Pepper v. United States*, the Supreme Court stated that “fundamentally, evidence of Pepper’s conduct since his release from custody in June 2005 provides the most up-to-date picture of Pepper’s history and characteristics.” 562 U.S. 476 (2011).

Ryan’s criminal conduct was nearly four years ago. He was released from custody on August 9, 2019. *ECF #22*. Since that time, he’s had two positive opiate tests, on July 9 and 14, 2020, which likely occurred from one singular use.⁴ *PSR ¶5*. Additionally, he

⁴ <https://www.goodrx.com/fentanyl/how-long-does-fentanyl-stay-in-your-system>

was with a friend and accidentally fired a crossbow that struck a neighbor's house. *Id.* Ryan admitted to these mistakes and followed all directives of probation. *Id.* No revocations were requested. *Id.* During this period of time, Ryan has been actively employed when he has been physically able. *Id.* at ¶55-57. He has been in substance abuse treatment and voluntarily increased his treatment after his relapse. *Id.* at ¶52-53. He remains on suboxone. *Id.* at ¶50. It is clear that interfering with his treatment by a period of incarceration will have negative repercussions.⁵ *United States v. Perella*, 273 F.Supp.2d 162, 164 (D.Mass.2003)(treatment outside of prison setting is the best method of reducing recidivism where substance abuse is predominant factor in criminal activity). More importantly, Ryan's conduct while on pretrial release clearly shows that there is minimal chance of recidivism. See *U.S. v. Munoz-Nava*, 524 F.3d 1137 (10th Cir. 2008)(defendant's "behavior while on a year-and-a-half pretrial release, which the district court found to be exemplary" shows defendant unlikely to reoffend); *U.S. v. Baker*, 502 F.3d 465 (6th Cir. 2007)(where defendant pled guilty to possession of unregistered firearm arising from altercation with wife during which gun accidentally discharged and guideline range was 27-33 months, below-guideline sentence of probation with one year house arrest proper in part because he behaved "exceedingly well" while under supervision of pretrial services).

⁵ It is also very likely that Ryan would not receive programming while incarcerated. See *Section (B)(7)*, *infra*.

In *U.S. v. Clay*, the Court sentenced the Defendant to one-third of the low end of the guidelines. 483 F.3d 739 (11th Cir. 2007). The Court held that considerations of post offense rehabilitation are appropriate when a district court evaluates the history and characteristics of the defendant and the need to protect the public from further crimes specifically stating that “a departure for post offense rehabilitation reflects that, unlike some other defendants, Clay had fundamentally changed since his offense, poses a lesser risk to the community, and does not require incarceration for too long.” *Id.* at 743. These factors all exist in this matter. See *U.S. v. Johnson* 588 F.Supp.2d 997 (S.D. Iowa 2008)(“The Court views Defendant’s behavior during the three-year period between the seizure of his computer and his indictment as a good indication of what society can expect from him after he completes his sentence [and is a factor court considers in imposing sentence]”); *U.S. v. D.M.* , 942 F.Supp.2d 327 (E.D.N.Y. 2013) (Weinstein, J.)(guidelines 78-90 months, sentence of probation warranted in part because “[e]vidence of a defendant’s efforts at rehabilitation is persuasive. It is indicative of the likelihood that a defendant will not reoffend and will not cause harm to the public”); Brenda L. Tofte, *Booker at Seven: Looking Behind Sentencing Decisions: What Is Motivating Judges?*, 65 Ark. L. Rev. 529, 572-73 (2012) (“[W]hen it comes to sentencing, judges look at what offenders have done to rehabilitate themselves when deciding what kinds of sentences to assign. Accordingly, in the data set . . . sentencing judges were swayed by offenders’ rehabilitation efforts almost as much as they were swayed by offenders’ family obligations and family support.”)

Finally, the proposed period of supervised release and pretrial supervision would be over seven years. In *U.S. v Polito*, the district court's sentence of probation with one year house arrest was reasonable in part because the years of probation would give the community a record of Polito's conduct to measure post offense rehabilitation. 5th Cir. Jan. 31, 2007(2007 WL 313463 (unpub.)

3. Mr. Lynch Should Receive a Variance Based on His Employment History

As discussed *supra*, Ryan currently works full time as a deck hand. Previous to this employment, he also worked on a fishing boat. *PSR ¶55-57*

The only period of time when Ryan was not employed full time, he was a stay-at-home father. *Id.* The fact that he has maintained consistent employment while suffering some debilitating health issues and substance abuse addiction speaks volumes to his work ethic, dedication and character.

Numerous courts have considered current and past employment as a factor for consideration in sentencing. In *U.S. v. Ruff*, the circuit court affirmed the district court's consideration of the defendant's "history of strong employment" in granting a variance from 30-37 months' imprisonment to one day of imprisonment followed by three years' supervised release (to be partially served in a community confinement facility), in part so that the defendant could continue to work. 535 F.3d 999, 1001 (9th Cir. 2008). The Third

Circuit affirmed a below-guideline sentence of probation, community service, restitution, and fine on a conviction for tax evasion, which was based in part on the defendant's employment record. *U.S. v. Tomko*, 562 F.3d 558, 571 (3rd Cir. 2009) (*en banc*) (“{t}his variance took into account his negligible criminal history, his employment record, his community ties, and his extensive charitable works as reasons for not incarcerating the defendant”); *U.S. v. Fuson*, (6th Cir. Feb. 8, 2007) (unpub) 2007 WL 414265 (guideline range of 24-30 months, court's sentence of probation and 6 months home confinement reasonable in part because client's “working and supporting his family ... entitled to some weight”); *U.S. v. Jones*, 158 F.3d 492 (10th Cir. 1998) (where defendant pled guilty to possession of a firearm by a prohibited person, the district court did not abuse its discretion in departing downward by three levels when, as one of eleven factors, it considered the defendant's “long impressive work history ...where good jobs are scarce”); *U.S. v. Alba*, 933 F.2d 1117 (2nd Cir. 1991) (long-standing employment at two jobs); *U.S. v. Jagmohan*, 909 F.2d 61 (2nd Cir. 1990) (exceptional employment history and nature of the crime); *U.S. v. Big Crow*, 898 F.2d 1326, 1331-32 (8th Cir. 1990) (excellent employment record).

4. Mr. Lynch Should Receive a Variance Because of the Impact of Incarceration on an Innocent Dependent

As discussed *supra*, while Ryan is heavily involved in all of his children's lives, he continues to have a significant financial and emotional impact on his remaining minor child, his daughter Madison. Many of those who appear for sentencing before this court are fathers. Most, if not all of them profess their love for their children, but their words ring hollow because they have little active involvement in their lives. In this matter, however, Ryan has demonstrated his ongoing involvement with Madison. He supported her as a stay-at-home father when he was unable to work full time. Now he supports her both emotionally and financially. As this Court is well aware, the loss of a parent for any length of time will cause damage to children both emotionally and financially. Courts have addressed the issue of variant sentences based on family circumstances. A variance can be warranted based on children of the offender, an issue examined in *United States v. Pereira*, 272 F.3d 76 (1st Cir. 2001). The Court found that the relevant question is the impact of incarceration on innocent dependents. *Id.* The *Pereira* Court held that a defendant must be found to be "irreplaceable" to his or her family before the Court can depart downward under this section. *Id.* In *U.S. v. Schroeder*, 536 F.3d 746 (7th Cir. 2008), the Court remanded for resentencing when the sentencing court did not address defendant's claim of extraordinary family circumstances holding "[w]hen a defendant presents an argument for a lower sentence based on extraordinary family circumstances, the relevant inquiry is the effect of the defendant's absence on his family members". *Id.* It

is clear that Ryan's absence in Madison's life presents an "extraordinary circumstance," (see *U.S. v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (affirming a downward variance to probation where the district court found that a prison sentence would negatively affect the defendant's disabled young son); *U.S. v. Mateo*, 299 F. Supp. 2d 201 (S.D.N.Y. 2004) (downward departure granted in heroin case where defendant's two young children were thrust into the care of relatives who reported extreme difficulties raising them); *U.S. v. Antonakopoulos*, 399 F.3d 68 (1st Cir. 2005) (on remand of bank fraud case, district court may consider defendant's role as caretaker for brain-damaged son even though alternative means of care existed); *U.S. v. Owens*, 145 F.3d 923 (7th Cir. 1998) (departure from 169 to 120 months under § 5H1.6 for defendant who maintained good relationship with his children and court believed his active role raising and supporting his family was atypical for crack dealer and imprisonment may have forced wife on public-assistance and defendant also spent time with brother with Downs Syndrome); *U.S. v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (sentence of probation affirmed where justified by the atypical nature and circumstances of the felon in possession case and by the defendant's need to care for her nine year-old developmentally-disabled son); *U.S. v. Bailey*, 369 F. Supp. 2d 1090 (D. Neb. 2005) (post-Booker departure from 24-27 months to probation for defendant convicted of possessing child porn justified by expert testimony showing his presence was critical to his own child's recovery from molestation by a boyfriend of the child's mother, and there was reasonable expert assurance that Bailey was not

dangerous to the public (including children), and the benefit to the public of incarcerating Bailey was outweighed by the harm it would cause to his daughter).

5. Mr. Lynch Should Be Entitled To A Variance Based On His Agreement To Plead By Video To Prevent Unwarranted Sentence Disparities From Similarly Situated Defendants.

Due to the backlog of cases during the pandemic, the Government had offered a three-level variance for defendants who plead and were sentenced by video during the period of restricted operations by the Maine District Court.⁶ Mr. Lynch pleaded guilty by video on February 24, 2022. *ECF #102*. The Government has not offered the variance to Mr. Lynch however it is the Court that ultimately makes the decision whether a variance is appropriate. *Gall v. United States*, 552 U.S. 38, 49 (2007). In this matter, the failure of allowing a variance to Mr. Lynch creates unwarranted sentencing disparities for similarly situated defendants who pleaded guilty via video.

Section 3553(a) states that Courts shall consider a variety of factors when imposing a sentence, including: “(1) [Defendant's] personal history and characteristics; (2) his sentence relative to the nature and seriousness of his offense; (3) the need for a sentence to provide just punishment, promote respect for the law, reflect the seriousness of the offense, deter crime, and protect the public; (4) the need for rehabilitative

⁶ The specifics were a one-level variance for agreeing to plead by video and a two-level variance for agreeing to be sentenced by video.

services; (5) the applicable guideline sentence; and (6) *the need to avoid unwarranted sentencing disparities among similarly-situated defendants.*” *United States v. Bryant*, Crim. No. CCB-95-202-3, 2020 WL 2085471, at *4 (D. Md. Apr. 30, 2020)(emphasis added). Mr. Lynch is similarly situated to other defendants who received a variance by agreeing to appear for plea and sentencing by video. See *U.S. v. Smith*, CR07-3038-LTS fn. 25(commenting that defendants were similarly situated based on era of conviction, not the specific convictions).

6. Mr. Lynch Should Receive a Variance Based on the Current Conditions of Incarceration

The severity of a prison sentence has two dimensions: its length, and the harshness of the conditions, and that the harsher the conditions the shorter the sentence should be. *U.S. v. Spano*, 476 F.3d 476, 479 (7th Cir. 2007)(there is enough merit to the argument to allow a sentencing judge to take it into account).

The current pandemic has changed incarceration as society has known it. The United States has been woefully unsuccessful in both containing or minimizing the outbreak of COVID-19, especially in its prisons. *United States v. Federico*, 4:12-cr-00862-YGR-2N.D. California August 14, 2020. Infections spread to many Bureau of Prison facilities and courts have found such facilities and the individuals imprisoned therein to be highly at risk of COVID-19. *Id.* Data shows by that the number of inmates and BOP staff members who have tested positive for COVID-19 nearly doubled during

the pre-vaccine days from November 6, 2020 to 40,533 on January 7, 2021. *U.S. v. Santos*, 2:16-cr-00174-JDL, ECF #183, pg. 3-4. Some studies show those infected in prisons were actually triple. <https://www.cidrap.umn.edu/news-perspective/2022/03/covid-19-us-prisoners-staff-triple-community-rate>. Although the numbers significantly diminished after the introduction of the various vaccines, the variants continue to present an unknown factor.

https://www.prisonpolicy.org/blog/2022/02/10/february2022_population/. The percentages of person's impacted by COVID-19 in the prisons far exceeds those out of BOP custody (approximately 19.7% of the population of BOP while it has infected roughly 4.3% of the general population of the United States). *Id.* BOP is still adhering to modified plans. https://www.bop.gov/coronavirus/covid19_status.jsp

Individuals who are incarcerated are at great risk of contracting the virus-quite simply, the conditions of confinement make social distancing next to impossible.

Basank v. Decker, 2020 U.S. Dist. LEXIS 53191, 17-18 (S.D.N.Y. March 26, 2020); (“{a}ll levels of government nationwide have recently taken drastic measures in light of the COVID-19 pandemic to promote "social distancing" and to prohibit the conRyanation of large numbers of people with one another. But, as is true for most jails and prisons, the conditions of confinement ... are not compatible with these safeguards.”) The Bureau of Prisons has itself acknowledged that the risks of the rapid transmission of contagion in the tight quarters of prisons and jails present significant

challenges in keeping both staff and inmates safe and healthy. See Fed. Bureau of Prisons, Program Statement 6190.04: Infectious Disease Management (2014).

In response to this, BOP has instituted measures designed to reduce the risks of transmissions, but these measures have created isolation, and minimal socialization.

Long before the current pandemic, two Courts noted that these measures significantly increased the harsh prison conditions. See U.S. v. Noriega, 40 F.Supp.2d 1378 (S.D.Fla. 1999)(sentence reduction appropriate because of harsh nature of incarceration – “There is little question that [confinement] is a more difficult type of confinement than in general population. For some, the consequences of such deprivation can be serious.”); McClary v. Kelly, 4 F.Supp.2d. 195, 207 (W.D.N.Y. 1998) (“A conclusion however, that prolonged isolation from social and environmental stimulation increases the risk of developing mental illness does not strike this court as rocket science. Social science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances.”)(internal citations omitted).

Additionally, and perhaps of greatest concern now, is that programing continues to be limited.

<https://www.bop.gov/coronavirus/#:~:text=BOP%20continues%20to%20collaborate%20with,inmate%20patients%20against%20COVID%2D19.>

If he was incarcerated, it is unclear when or if Ryan would be able to participate in any substance abuse or other programs.⁷

https://www.bop.gov/coronavirus/covid19_status.jsp. Some Courts have noted this indirect impact of the pandemic on incarcerated individuals. See *U.S. v. Derricoatte*, 2020 WL 5629095, at *1 (N.D. Ohio Sept. 21, 2020) (stating that actions “such as cancelling programs and limiting movement,” makes a sentence “riskier and more severe.”)

The culmination of lengthy lockdowns, isolation, unsanitary conditions, and limited programming has resulted in a BOP “Kafkaesque” quarantine policy. *U.S. v. Separta*, (S.D.N.Y. April 19, 2020.) Since the end of March 2020, BOP has instituted increasingly draconian lockdown measures, confining pretrial detainees and convicted inmates in small cells for up to 23 hours per day, and at times up to 72 hours straight, triple-bunking some inmates in two-person cells; sharply curtailing contact with family and friends; cancelling educational and rehabilitative programs; eliminating or reducing needed medical care; and providing misinformation that frightens, destabilizes, and demoralizes. See *Stirling v. Salazar*, No. 20-cv-00712-SB (D. Or. June 30, 2020), ECF No.16; *U.S. v. Tyler Louis Henderson*, No. 3:18- cr-00457, Transcript of Sentencing at 20:6–18 (“the risk that in [a custodial] setting it's difficult

⁷ Not only does this impact Mr. Lynch for effective treatment but it also prevents a reduction in his sentence upon completion of the program if he was to receive a sentence greater than the guidelines.
<https://www.federalprisonstime.com/rdap-information>

to escape COVID-19. It's difficult to do anything to keep it away, the things that the rest of us can do like social distancing and hand sanitation etc.” *Id.* at 20:19–25.

{T}he virus, “quite frequently it's a lot like solitary confinement in prison now, or at least a lot different than it used to be. There are no or reduced programs, and other things make it a far more difficult sentence to serve,” agreeing that these factors should be taking into account “in reducing the sentence here.”) *Id.* at 21:1–7; *see, e.g.,*

Walter Pavlo, *Bureau of Prisons Using Solitary Confinement As A Means To Curb Covid-19 Contagion*, FORBES, July 16, 2020, at

<https://www.forbes.com/sites/walterpavlo/2020/07/16/bureau-of-prisons-using-solitary-confinement-as-a-means-to-curb-covid-19-contagion/#7e2b8fae193a>

(discussing how the “deplorable and [un]sustainable” conditions in the BOP are “causing irreparable harm to ... inmates and their families.”)

SUMMARY

The person this Court sees today isn't the same person who committed the acts four years ago. Ryan has become more involved in his family, has engaged in counseling, has avoided major legal issues, and has continued to maintain meaningful employment. In other words, he is exactly what you would want from a citizen. “If 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.” *U.S. v. Adelson*, 441 F.Supp.2d 506 (S.D.N.Y. 2006). In this moment, with both Ryan and his family’s future in the balance, we ask that this Court sentence Ryan to a time served sentence.

REQUESTED SENTENCING RECOMMENDATIONS

Based on the foregoing, Mr. Lynch makes the following requests for Judicial recommendations at sentencing:

- 1) Ryan be sentenced to time-served with three years of supervised release;
- 2) In the event the Court deems additional incarceration time as necessary, we request it to sentence Ryan to home detention;
<https://www.justice.gov/file/1266661/download>.
- 3) If the Court deems actual incarceration necessary, that Mr. Lynch be placed in New England to be close to his family;
- 4) That only the mandatory assessments be ordered in this matter as Mr. Lynch is not financially able to pay a fine.

Dated this 28th day of July 2022 at Portland, Maine.

Respectfully submitted,

s/David J. Bobrow

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**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
VS.)	2:20-cr-0057-JDL
)	
RYAN LYNCH,)	
DEFENDANT)	

CERTIFICATE OF SERVICE

I, David J. Bobrow, Esq., hereby certify that I have caused to be served via ECF Ryan Lynch's Sentencing Memorandum on the following individuals:

1. Nathans, Johnathan (USAME) Johnathan.Nathans@usdoj.gov
2. All other attorneys of record in this matter.

Dated this 28th day of July 2022 at Portland, Maine.

Respectfully submitted,

s/David J. Bobrow

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