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WESTERN DIVISION  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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16 UNITED STATES OF AMERICA,

17 Plaintiff,

18  
19 vs.

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21 HEON CHEOL CHI,

22 Defendant.  
23

CASE NO. 16-824(A)-JFW

DEFENDANT’S SENTENCING  
POSITION AND OBJECTIONS TO  
THE PRESENTENCE REPORT AND  
RECOMMENDATION;  
DECLARATION; EXHIBITS 1-4

Hearing Date: October 2, 2017

Hearing Time: 9 a.m.

24 Defendant Heon Cheol Chi by and through his counsel of record hereby files

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1 his Objections to the Presentence Report and Recommendation and Sentencing  
2 Position; Declaration of Bednarski and Exhibits 1 to 4.

3 DATED: September 11, 2017 Respectfully Submitted,  
4

5 By:           /S/ Marilyn E. Bednarski            
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

This position paper sets forth why a sentence of 6 months, a sentence that will permit Dr. Chi to be home with his family by the end of the year, is reasonable in light of all of the 3553(a) factors. Between the time he served in custody before bonding out, and the time between his self-surrender and sentencing, a sentence of 6 months will essentially have been served. He is 58 years old and has no prior criminal record. His professional life is destroyed by this conviction. His personal life has significantly suffered. He will never regain the financial security he built over a lifetime of hard work. He is unemployed, and it is reasonable to conclude unemployable in his field. For all of the reasons argued below, a sentence that requires no additional time in custody “sufficient and not greater than necessary” to achieve the goals of sentencing.

**II.**

**OBJECTIONS TO THE PSR**

PSR at p. 1 “Release Status and p. 4, ¶6.

Dr. Chi was arrested in San Francisco on December 12, 2016, not January 6. That later date is when he first appeared in the Central District. Dkt. Entry No. 1, 16-MJ-71637-MAG-1 (N.D.Ca.).

PSR at ¶9

Dr. Chi worked with KIGAM as a researcher for his entire career from 1994 through his arrest December, 2016. KIGAM terminated him on August 3, 2017. PSR at ¶64; Decl. Bednarski ¶9. Regarding being a director: his personnel records reflect that at *various* and not continuous periods of time, he would serve in the administrative capacity as director of the earthquake division. Govt. Trial Exh. 1 (Chief of Center 2011; Laboratory Director/Chief 2014, VP/Laboratory Director

1 2016). The Division’s structure is like academic institution’s hierarchical structure:  
2 a professor who acts as department dean is still a professor. Decl. Bednarski ¶10.

3 PSR ¶9 states that KIGAM “is an official testing center that certifies seismic  
4 instruments which are sold to and used by KIGAM and other government and  
5 private entities in Korea.” This statement implies too much. KIGAM only  
6 performed certification testing for a few years, starting in 2010 and lasting to 2015.  
7 Decl. Bednarski at ¶11. Moreover, for part of that term another entity, KRISS, also  
8 provided certification testing for seismic equipment. *Id.* Additionally, witnesses Dr.  
9 Park testified at trial that Dr. Chi did not conduct any certification testing, did not  
10 influence the testing, and did not alter the testing or any results. Decl. Bednarski ¶4.

11 PSR ¶11a -d

12 The defense disagrees with the characterization of the business advantages as  
13 described in PSR¶¶11a thru d, however agrees with ¶11e. See below.

14 PSR ¶12

15 The defense disagrees with the inferences and conclusions the presentence officer  
16 draws from the three emails referenced. See below argument.

17 PSR ¶¶20-25

18 The defense disagrees with the guideline calculations in the PSR. See below.

19 PSR ¶69, 73

20 The Taejeon apartment is Dr. Chi’s wife’s sole and separate property. It is her asset,  
21 and her mortgage. Decl. Bednarski at ¶14.

22 PSR at ¶76

23 The PSR had a typographical error here, misstating Dr. Chi’s wife’s monthly  
24 income as a real estate agent to be \$30,000, it is \$3,000. PSR ¶ 69 correctly states  
25 her monthly income (combined \$2,500 and \$650 (rental)).

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**III.**  
**GUIDELINE CALCULATIONS**

The decision for this Court, in determining what sentence is reasonable and not greater than necessary to serve the purposes of sentencing, must be based upon consideration of all of the 3553(a) factors. *Id.*

**A. DEFENSE POSITION REGARDING GUIDELINE CALCULATION**

The guideline calculations are only one of the 3553 factors to consider when imposing sentence. Title 18 U.S.C. § 3553(a); *Gall v. United States*, 552 U.S. 38, 58 (2007). This is a difficult case in which to apply the sentencing guidelines, and the difficulty highlights why strict adherence to the guidelines here would be antithetical to effective and conscientious sentencing. The presentence officer calculates the advisory range by starting with guideline §2S1.1 (normally applied in money laundering cases), and then based on the language in §2S1.1(a)(1) calculates the sentencing guidelines by cross reference to §2C1.1<sup>1</sup>. PSR at 20.

**1. U.S.S.G. §2C1.1 Should Not Be Used**

The defense position is that §2C1.1, the guideline applied to U.S. bribery under Title 18 U.S.C. 201(b) should not be used because Dr. Chi has not been convicted of bribery under U.S. law which requires a corrupt intent and therefore is a more serious crime than Korean bribery which requires only an exchange of payment in return for an official act and does not require corrupt intent. Cf. Ninth Circuit Model 8.13 (elements 18 U.S.C. §201(b)(2) and Court’s Jury Instruction No. 22 (elements Korean bribery). Presumably corruption is the reason for §2C1.1’s

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<sup>1</sup> Section 2S1.1(a)(1) directs the court to use the offense level for the underlying offense from which the laundered funds were derived if (a) the defendant committed the underlying offense (here bribery) and (b) the offense level for that offense can be determined. Seemingly that would direct this Court to use the bribery guideline §2C1.1. The defense position is that §2C1.1 should not be used. The Ninth Circuit reached that conclusion but for different reasons and on different facts than proposed here in *United States v. Chou Fan Xu*, 706 F. 3d 965 (9<sup>th</sup> Cir. 2013).

1 high starting base offense level of 14. Fraud, embezzlement and theft start at level 7  
2 (§2B1.1), counterfeiting at level 9 (§2B5.1), money laundering at 8 (§2S1.1 (a)(2))  
3 and conflict of interest/receipt of unauthorized compensation at level 6 (§2C1.3).  
4 Thus rather than applying the guideline that would otherwise have applied to U.S.  
5 bribery, the defense position is that the §2S1.1 money laundering guideline should  
6 be used.

7       It is further the defendant's position that if this Court disagrees and applies the  
8 §2C1.1 guideline (and its starting base offense level of 14), that the adjustment for  
9 monetary increase should be limited to +6 (\$56,000). Two common methods of  
10 valuing the offense are the benefit to the briber and the value of the payments to the  
11 bribe. Here, the first method cannot be used as it is not possible to value the benefit  
12 to the companies and in any event would overstate the offense, and the second  
13 method –while the payments can be totaled—is not an appropriate method because it  
14 is not a fair measure of the offense for several reasons. The defense proposes for the  
15 reasons articulated here that only the funds that are the subject of Count 6 be used as  
16 a fair measure of the nature of the offense.

17       Similar factors that existed in *United States v. Ring*, 811 F. Supp. 2d 359  
18 (D.D.C. 2011) support why here the value of the “benefits” to the companies not be  
19 used as the measure of the offense. *Ring* involved a dishonest services scheme in  
20 which the conduct was bribery. The district court did not add an adjustment for  
21 “value of benefits” because it could not reasonably be calculated. The District Court  
22 noted significant problems with valuation of benefits received by the briber  
23 including the “attenuated, if not nonexistent, causal link between these  
24 appropriations and corrupt lobbying.” *Id.* at 377. The court explained, that in  
25 determining the value of benefits received in return for the payment the “court must  
26 take care to take into account benefits that would have been received in any event.”  
27 *Id.* at 378, citing *United States v. Whitfield*, 590 F. 3d 325, 368 (5<sup>th</sup> Cir 2009). Other  
28 problems existed that could not be overcome in determining the net value accruing

1 to Ring’s clients as a result of the payments including: there were no specific  
2 contracts to quantify value received; it was hard to value the projects including the  
3 larger jail, transportation projects, a future water project; and, even if gross value  
4 could be determined, costs would have to be subtracted to determine net value.  
5 *Ring*, 811 F. Supp. 2d 359.

6 The alternative method of valuation for the monetary enhancement under  
7 §2C1.1 is to determine the value of the corrupt payments themselves. *Ring*, 811 F.  
8 Supp. 2d at 378. Here, this method of valuation would also be flawed because not all  
9 of the payments were necessarily corrupt—the fundamental factor in the application  
10 of the enhancement. The jury verdict on Count 6 does not support a finding of  
11 corruption for all payments received by Dr. Chi. The government did not have to  
12 prove corruption in its case (Instruction No. 22) and the evidence does not support  
13 that all the funds paid to Dr. Chi were corrupt.<sup>2</sup>

14 Not all of the money paid him was illicit, unearned or even undeserved. Dr.  
15 Chi was paid well for his technical advice, but indeed that advice was very valuable  
16 as Natalie Pearce and Chris Potts testified. Decl. Bednarski ¶7-8. Pearce also  
17 testified that Dr. Chi wore two hats: one as a KIGAM employee and the other  
18 providing technical advice to GSL. Decl. Bednarski ¶8. In addition to direct witness  
19 testimony, the evidence circumstantially shows the improvement of GSL products  
20 over the years as the company with Dr. Chi’s assistance developed software that  
21 made GSL products perform better in Korea etc. The companies paid him  
22 lucratively, but he also put in a lot of time and was invaluable to the product  
23 improvement. A summary of this work for GSL was prepared by Cansun Guralp’s  
24 lawyers for GSL’s lawyers. Att. Exh. 4, Letter. It is the defendant position that the

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26 <sup>2</sup> Nor do references in multiple emails over the years by Dr. Chi using the word  
27 “illegal” support that all the funds paid to him were briborous. It is reasonable to conclude that his  
28 use of the word “illegal” may have been a reference to violation of his company’s regulations or to  
violations of Korean tax law. He had several reasons to hide his earnings from his colleagues, his  
company and his country, all of which are short what is required to satisfy “corruption” in the  
context of US bribery.

1 fair market value of the work done by Dr. Chi must be subtracted from the payments  
2 made to him. *See, Ring*, 811 F. Supp. 2d at 380 (in valuing payments made,  
3 government conceded that the Court had to subtract fair market value of work done  
4 from the payments). But it would be impossible to do that since he did not keep  
5 time sheets. He did not have to because the contracts contemplated paying him a  
6 percentage of sales making timesheets unnecessary.

7 While loss calculations need not be precise, and the Guidelines require only  
8 that the Court “make a reasonable estimate” of these values. §2B1.1 cmt. n. 3(C),  
9 still the proponent of the enhancement –here the government -- “bears the burden of  
10 supporting its loss calculation with reliable and specific evidence,” and it may not  
11 simply guess where such evidence is unavailable. *United States v. Gupta*, 463 F.3d  
12 1182, 1200 (11th Cir. 2006) (While “generally a district court's ‘reasonable estimate  
13 of the intended loss will be upheld on appeal’ ... such calculation may not be mere  
14 speculation.”) In sum, as the presentence officer concluded, holding Dr. Chi  
15 accountable for the \$56,000 in laundered funds which can precisely be calculated  
16 and which is supported by the jury’s verdict, is a reasonable measure of the offense  
17 conduct. PSR at ¶23.

18 **2. The §2C1.1(b)(3) Adjustment For High Level Government Official**  
19 **Should Not Apply.**

20 The defense position is that the adjustment of +4 levels under §2C1.1(b)(3)  
21 does not apply. In the event this Court disagrees the arguments support that the  
22 enhancement overstates Dr. Chi’s culpability and therefore a downward variance of -  
23 4 is appropriate. As argued above, the application of guideline §2C1.1 --which only  
24 applies to bribery involving “public officials” – is strained to begin with. Dr. Chi is  
25 unlike any U.S. “public official.” He is only considered a “public official” by  
26 application of a Korean law which makes a researcher at an institution receiving  
27 Korean government funding, a “public official” under Korean bribery law. The  
28 application of the (b)(3) +4 enhancement is even more strained.



1 Section §2C1.1(b)(3) applies if the offense involves a public official in a high  
2 level decision making or sensitive position. Application note 4(A) defines high level  
3 decision making or sensitive position as a position characterized by a direct authority  
4 to make decisions for a government department or agency, or by a substantial  
5 influence over the decision making process. U.S.S.G. §2C1.1(b)(3) cmt. 4(A).  
6 Application note 4(A) gives examples of a public official in a high level decision  
7 making position, and Dr. Chi is dissimilar to all of the 4(A) examples: prosecutor,  
8 judge, agency administrator, or any other public official with a similar level of  
9 authority. Application note 4(B) gives examples of a public official in a sensitive  
10 position, and Dr. Chi is dissimilar to all of the 4(B) examples: juror, law  
11 enforcement officer, election official and any other similarly situated individual.  
12 What distinguishes these above categories of people is that it is their very position is  
13 essential to obtaining the service in exchange for the bribe. U.S.S.G. 2C1.1(b)(3)  
14 cmt. 4(B).

15 Neither the purpose of the adjustment nor the facts support its application  
16 here. The enhancement of +4 for “high level or sensitive position” public officials is  
17 aimed only at those involved in a crime of “high-level” corruption. Not all public  
18 officials deserve the enhancement. *See* Haines, Bowman, Woll, “Federal Sentencing  
19 Guidelines Handbook” at p. 498 (Thompson Reuters, 2013) (“Under §2C1.1(b)(3) ,  
20 if the payment was for the purpose of influencing an official act by certain officials,  
21 the offense level is increased by 4 levels.”). *See, United States v. Barraza*, 655 F.3d  
22 375 (5<sup>th</sup> Cir 2011) (the four-level enhancement should be applied “if the payment  
23 was for the purpose of *influencing an official act* by certain officials, U.S.S.G.  
24 §1B1.3 cmt. background. Here, the payment Barraza [judge] solicited was for the  
25 purpose of influencing the way he handled a criminal case in his capacity as an  
26 elected state judge.”)(emphasis added). *See also, United States v. Santos*, 501 Fed.  
27 Appx. 630, 634 (9<sup>th</sup> Cir 2012) (unpublished)( noting enhancement aimed only at  
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1 those involved in “high level” corruption and is distinct from “individual official’s  
2 breach of public trust.”)

3 Secondly, the facts do not support the application here. The payments were  
4 not made for the purpose of high level corruption. The companies making the  
5 payments sought to improve their products and the performance of those products in  
6 Korea. They paid Dr. Chi because he was a very qualified researcher,  
7 knowledgeable, smart and passionate about earthquake warning. He in fact  
8 performed extensive work which was “invaluable” to the improvement of the  
9 products and their performance. PSR at ¶14 a to g (provided services including  
10 hardware and software monitoring troubleshooting, research and development of  
11 new features and ideas, updates on technological and regulatory changes,  
12 coordination of technical support in Korea including remote places); Exh. 4, C.  
13 Guralp Lawyer letter, describing such services in detail.

14 Additionally, the timing of the contracts circumstantially supports that the  
15 contracting parties’ intent was the objective improvement of products and  
16 performance, not briborous intent. The contracts were entered into at times when  
17 Dr. Chi was a young researcher in the early years of his career (1996 KMI contract  
18 and 2003 GSL contract). Moreover the inventors of the products/company  
19 presidents engaged Dr. Chi out of mutual scientific interest and respect, not because  
20 of any key position within KIGAM. Both companies needed help on the ground in  
21 Korea with technical problems and it was cost effective to have someone there rather  
22 than send a team. The weight of evidence shows that the majority of services he  
23 provided could have been provided by other civilian seismologists not an “official.”  
24 In fact, as explained above, many of Dr. Chi’s technical services were merely in  
25 place of more costly GSL technicians who were clearly not themselves public  
26 officials. Dr. Chi was one of many researchers in the Earthquake division for the  
27 entire period of time involved in this case. They analyzed data of seismic movement  
28 from natural and human causes. On occasions they would bid on seismic projects

1 and in such cases would assemble a team, project manager etc. At times the  
2 researchers would work on projects either as a member of a team or as a project  
3 manager. Dr. Chi's personnel records show the periods of time when he was a  
4 project manager, were few and far between over his 25 years of service. Govt. Trial  
5 Exh. 1, Personnel File. Also at times the researchers would be called upon to take  
6 on administrative duties as the Director of the earthquake center. This author has  
7 found little support in case law for extending the enhancement this far to someone  
8 like Dr. Chi, who was consistently a researcher not on any board, not on the  
9 Procurement Agency in Korea that decided public bids, was only occasionally a  
10 project manager, and irregularly over his career had the administrative position of  
11 director.

12 In *United States v. Whiteford*, 676 F. 3d 348, 365 (3<sup>rd</sup> Cir. 2012), the +4  
13 enhancement was applied to the defendant, an Army officer who was the project  
14 officer for the Coalition Authority in Iraq, because he "was an integral participant in  
15 the bidding, and contracting and payment process. . . .[h]is signatures had to be on  
16 recommendations for projects before they went to the contract officers for review...."  
17 In *United States v. Watkins*, 691 F. 3d 841 (6<sup>th</sup> Cir 2012), affirming the application  
18 of the +4 enhancement under (b)(3) applied to defendant Watkins, supervisor of  
19 security systems contracts for a school district in Ohio who solicited and obtained  
20 payments from a contractor of security cameras. Watkins was found to have  
21 substantial influence over the selection process: he would take 10 to 15 vendors,  
22 narrow them to a smaller group to present, and then recommend a particular vendor  
23 and could singlehandedly stop payment on invoices. In *United States v. Smith*, the  
24 defendant was a civilian Army employee who served as Water and Petroleum  
25 Program Manager for many years. He reviewed contract bids and supervised  
26 contractor performance for the Army's water purification equipment and services.  
27 He compiled contract requests, statements of work and costs estimates and based on  
28 that work and his experience made recommendations to the Army. In the case of

1 *United States v. Stephenson*, the court concluded that the defendant, an export  
2 licensing officer in the Department of Commerce, was not subject to the  
3 enhancement. Although his job of deciding whether to approve applications to  
4 export high-technology equipment to the Soviet Union and China “involved some  
5 degree of discretion and required him to possess a security clearance,” the court  
6 concluded that he was not different “from a multitude of personnel in the federal  
7 service.” 895 F.2d 867, 878 (2d Cir. 1990).

8 This enhancement exists to address people who push their weight around in an  
9 official capacity, not because of merit, or knowledge but undue influence. Thus, this  
10 enhancement is directed at only those in “high-level” or sensitive positions.” The US  
11 Geological witness testified at trial that their seismologists also make  
12 recommendations about strengths or deficiencies of products when asked. Indeed  
13 the testimony established that Dr. Chi consulted USGS persons for their opinions on  
14 equipment. Decl. Bednarski ¶12 (referencing inquiries of the USGS seismologists  
15 about their use and opinion of the GSL borehole sensor and Geosig instruments).

16 Dr. Chi had the ability to request purchase of equipment for research  
17 purposes, to request equipment on occasional projects he managed, and to give his  
18 opinion to others at KIGAM as well as other agencies working on projects involving  
19 seismology. However these facts do not support “direct authority” to make  
20 decisions for his agency within the meaning of §2C1.1(b)(3). When he was a project  
21 leader for instance, it would have been his job to choose the appropriate equipment,  
22 to include the pricing in the budget, to submit the budget with the bid, and if  
23 approved, the purchase would be made by the purchasing department. Mr. Byung  
24 Chul Kim, who worked as an agent for GSL and KMI (through Korea EMT and  
25 Heesong) bidding on seismology projects, testified that because of how the Public  
26 Procurement Service in Korea operated, that Dr. Chi could not have, and did not  
27 affect the bidding process. Decl. Bednarski ¶16. Mr. Kim further testified that the  
28 decision makers on that Service consisted of very qualified experts who decided the

1 bids and that Dr. Chi was not one of them. *Id.* There is no showing that he had any  
2 substantial influence over that body. These facts compare starkly to examples from  
3 cases in which the defendants to which the enhancement was applied were the  
4 decision makers and thus in a “high level” or sensitive position. *See, United States*  
5 *v. Hill*, 645 F. 3d 900, 908 (7<sup>th</sup> Cir 2011) applying the +4 because the defendant as  
6 Deputy Liquor Commissioner exercised substantial influence of the decision making  
7 process, in that he reviewed and accepted liquor license applications, conducted  
8 background checks, and like a law enforcement officer had authority to do  
9 inspections, issue citations for violations and direct license holders to make changes  
10 to comply with the code. *See also* the facts in *United States v. Jacobs*, a Ninth  
11 Circuit memorandum opinion, which although unpublished, has persuasive value.  
12 506 Fed. Appx. 558, 560 (9<sup>th</sup> Cir 2013 (unpub))(Jacobs was an immigration officer  
13 who adjudicated petitions for residency and citizenship and supervised and  
14 controlled other officers in adjudication of benefits).

15       Clearly, Dr. Chi had influence because of his unique and superior technical  
16 knowledge and passion for seismology. Undoubtedly other seismologists might put  
17 great weight on his recommendations. But the ability to influence directly or  
18 indirectly because of intellectual capabilities must be distinguished from the exercise  
19 of official authority, the key factor in the assessment of a high level public official  
20 for enhancement purposes. The central factual determination to consider is what  
21 was Dr. Chi’s level of responsibility in his position and whether his exercise of  
22 responsibility in that position lacked further authorization or review above him.

23       Here there is insufficient evidence to conclude he made or substantially  
24 influenced decisions linked to all or even the majority of payments. There are  
25 emails suggesting he influenced other scientists in Korea to favorably consider GSL  
26 or KMI products, but there is an absence of evidence to show his honest factual  
27 recommendations were nefarious. Countering any inference that his  
28 recommendations translated into payments, there is evidence from trial witnesses

1 that others, not Dr. Chi, made the official decisions. For instance Dr. Shin, who was  
2 project director of the High Speed Rail project from 2005 to 2007 testified that he  
3 made the decision about purchasing GSL equipment for the train project and did so  
4 because KIGAM could purchase GSL materials directly and without paying an agent  
5 fee. Dr. Park was in charge of certification testing at KIGAM. Dr. Park testified that  
6 Dr. Chi did nothing to influence testing/certification results or the reporting of those  
7 tests.<sup>3</sup> Decl. Bednarski at ¶4. There was also evidence from Mr. Kim (of GSL’s  
8 agent Heesong) that Dr. Chi did nothing to influence the bidding process, that GSL  
9 would sometimes lose competitive bids, and that the price of GSL products did not  
10 change substantially after the relationship between GSL and Dr. Chi ended. *Id.* ¶6.

11 There is no case finding that this high level public official enhancement would  
12 apply to a researcher like Dr. Chi, someone who at times was a project manager, at  
13 other times had some administrative functions as the director of the earthquake  
14 division. The government can not prove that while he was in those positions, there  
15 was a connection between any payment and any “official” action taken by virtue of  
16 his position. Indeed the government did even prove any increase in overall  
17 compensation from KMI or GSL tied to Dr. Chi’s irregular positions of director or  
18 project manager.

19 The reasons the presentence officer gives in support of the enhancement in  
20 PSR ¶11a to ¶11d are based on a misunderstanding of the facts and therefore lead  
21 to erroneous conclusions and, with respect to ¶11e, is insufficient to support the  
22 enhancement. The PSR says that Dr. Chi advocated the purchase and use of KMI  
23 and GSL products “at the expense of their competitors. . . .” PSR at ¶11a. That  
24 conclusion is not supported: there is no evidence of loss of sales or even proof that

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26 <sup>3</sup> This trial testimony from Dr. Park and Mr. Byung Kim contradicts the  
27 statement in the presentence report at PSR ¶11c that he “influenced KIGAM to  
28 undersigned is unaware of any evidence to support that statement and believes it is  
factually incorrect. Decl. Bednarski ¶¶4, 6.

1 “competitors” lost jobs or money because Dr. Chi did not help them. That  
2 conclusion is speculative and not supported in fact. *See, e.g. United States v.*  
3 *Clinton*, 825 F.3d 809, 812 (7th Cir. 2016) (reversing enhancement and rejecting as  
4 speculation the conclusion that a gun was paid for with drugs merely because it was  
5 sold by a drug addict to a drug dealer); *United States v. Bradley*, 628 F.3d 394, 400  
6 (7th Cir. 2010) (due process requires that sentencing determinations be based on  
7 reliable evidence rather than speculation or unfounded allegations). Moreover, Mr.  
8 Kim (of GSL’s agent Heesong) testified that he too, would provide advance notice if  
9 he heard of upcoming projects that could be bid and feedback on the testing process.  
10 Decl. Bednarski ¶6. The evidence does not support that any competitors lost any  
11 project or bid because of any action Dr. Chi took. There were times he criticized  
12 faults or weaknesses in competitor’s products, and there were times he told GSL or  
13 KMI if a competitor was bidding on a project, but that does not support the  
14 conclusory statement of probation that he advocated the use of KMI and GSL at the  
15 expense of competitors.

16 Next the presentence officer asserts in support of the application of the  
17 adjustment that Dr. Chi “advocated the use of the companies” products to other  
18 organizations in Korea, including through his participation in an earthquake  
19 monitoring committee in which he served in an official capacity. The presentence  
20 officer references particular emails but extends their content too far, misconstruing  
21 his references to “being on a committee” and the fact that the committee in some  
22 way referenced seismological equipment, to decisions that resulted in illicit  
23 payments to him. PSR at ¶11b, 12. More information is needed to understand that  
24 the emails do not mean what the probation officer concluded.

25 Dr. Chi states in the first email that he was on a committee that had accepted  
26 certain standards for equipment. Dr. Chi reported what KIGAM was using to that  
27 committee. In that 2003 email (Government Trial Exh. 63), Dr. Chi told Dr. Guralp  
28 that sensors CMG-3TB and CMG-40T “are registered” as the standard sensors in the

1 committee and that he told the committee they were reliable. *Id.* Dr. Chi also said  
2 that he could not say that about the recorders and other equipment he had not  
3 installed/used. *Id.* The committee Dr. Chi spoke of is a reporting committee within  
4 KMA. Decl. Bednarski ¶15. Annually KMA would gather information from  
5 institutions concerning seismology and publish that information in a report. *Id.* The  
6 institutions would report to that committee the seismology instruments they were  
7 and would be using in the future. *Id.* Ten years later in a 2013 email from Dr. Chi to  
8 Outhay Viengkhou at KMI (Government Trial Exh. 228), Dr. Chi explains that  
9 KMI's broadband sensor STS-2 is only used in Korea by KIGAM, KMA and some  
10 nuclear related organizations and that the main concern was quality not price.  
11 Therefore, the email goes on, he told the agent to recommend STS-2 for broadband  
12 sensors at permanent stations. The inference is clear in the email that KMI's higher  
13 quality [compared to GSL's] broadband sensors were appropriate for those  
14 installations and that he had said so. He refers to the policy of that committee, that  
15 higher quality but more expensive KMI broadband sensors would be used at the  
16 permanent stations. While the email reflects he provided such information to the  
17 KMA "committee," neither the 2013 or 2003 emails support that the presentence  
18 officer's inherent conclusion: that the committee made decisions (relevant to his  
19 payments), what those decisions if any were, nor that Dr. Chi's accurate and  
20 supported information/opinions influenced any decision of that committee (relevant  
21 to his payments).

22       The third email that the presentence officer references is a 2011 email that  
23 vaguely references some "official advisory committee." In that email Dr. Chi writes  
24 to Nathan Pearce that he is back to being the head of the research center and  
25 therefore must be officially cautious because he "would be involved in the "official  
26 advisory committee." (Govt. Exh. 148) The email is so vague that it is not possible  
27 to determine what his "involvement" would be, what decisions if any the "advisory"  
28 committee made, nor what his information/opinions he would give or what if any



1 particular decision of that committee would be influenced, or if it had any  
2 connection whatsoever to his payments. In sum, there is no actual proof that he  
3 misused any authority on any such committee to “advocate or promote” KMI or  
4 GSL’s products. Cf. PSR ¶11-12.

5 It is actual, not apparent, authority that is relevant for purposes of the  
6 enhancement. *United States v. Hill*, 645 F. 3d 900, 907 (7<sup>th</sup> Cir 2011). There is no  
7 case precedent applying the enhancement based on anything at all similar to the facts  
8 here: a scientist who says there is an official committee; that he has reported to that  
9 committee an opinion or information; and an absence of evidence that committee  
10 took any action based on that information connected to any illicit financial benefit.

11 Next probation says that he influenced KIGAM to certify the companies’  
12 products even when they were otherwise not working. PSR at ¶11c. This is simply  
13 an incorrect statement. The undersigned is unaware of any such evidence. Decl.  
14 Bednarski ¶13. Additionally, the enhancement is not supported by the allegation in  
15 PSR ¶11d that that Dr. Chi provided the companies with market intelligence and  
16 bidding information to allow the companies to better position their products over  
17 their competitors. PSR ¶11d. What happened here is a far cry from the PSR’s  
18 implication that he traded on confidential information. The information Dr. Chi  
19 provided about upcoming public projects and the type of equipment that those  
20 projects would need was not confidential information. Mr. Byung Chul Kim from  
21 Korea EMT (formerly of Heesong) testified in sum that the third party agents knew  
22 ahead of time what projects would be coming up in Korea and advised their clients  
23 as well. Decl. Bednarski ¶6.

24 The defense does not dispute the allegation in PSR ¶11e, that Dr. Chi  
25 provided technical advice to GSL and KMI, so as to increase the chance of sales.  
26 PSR ¶11e. That evidence alone is not sufficient to support the application of the +4  
27 enhancement in §2C1.1 (b)(3) because Dr. Chi’s provision of technical advice in  
28

1 whole or at least significant part did not require “high level” or “sensitive” access or  
2 decision making within the meaning of §2C1.1(b)(3).

3 **3. U.S.S.G. §2S1.1 Should Be Used and The Loss Adjustment Limited to**  
4 **\$56,000, The Dollar Amount in Count 6, For An Adjustment of +6.**

5 The defense position is that if this Court applies the §2S1.1 guideline (which  
6 starts at a base offense level of 8), then the loss adjustment should be limited to +6,  
7 the adjustment for conviction under 1957 (+1) be applied, and no adjustment under  
8 Chapter 3 be applied, for a total adjusted offense level of 15.

9 The presentence officer takes a reasonable position concerning a loss  
10 adjustment under the §2B1.1 table, which is that only the funds involved in Count 6  
11 are included in the loss calculation. PSR at ¶23. This is an appropriate conclusion  
12 for several reasons. First, by failing to convict Dr. Chi of counts one through five,  
13 the jury rejected the government’s theory that the funds received in years 2011  
14 through 2016 were all laundered briberous funds. Finally any more egregious  
15 application of the 2B1.1 table—such as the government has posited – to add up all the  
16 funds alleged in the charged six counts-- would result in an overstatement of the  
17 offense severity and would fail to take into account the atypical nature of the  
18 conduct. See below, overstatement argument section.

19 The government’s expected position is that all the money he earned over the  
20 years of the consulting contracts (over a million) should be used to generate an  
21 increase of +14 should be rejected. The government “bears the burden of supporting  
22 its loss calculation with reliable and specific evidence.” *United States v. Gupta*, 463  
23 F.3d 1182, 1200 (11th Cir. 2006). An adjustment which so grossly aggravates the  
24 calculation requires proof of a clear and convincing nature that over a million dollars  
25 in briberous funds were laundered. That being said, the government cannot prove to  
26 a clear and convincing level of proof that over \$1 million payments were briberous  
27 or even to a preponderance level of proof that such funds were briberous as opposed  
28

1 to legitimate. The government cannot separate how much of that was legitimate/fair  
2 value/earned monies and how much was illegitimate/inflated / briberous money.

3 Here the evidence at trial showed that over the years Dr. Chi provided  
4 substantial technical advice to Guralp Systems Limited and Kinometrics (hereinafter  
5 GSL and KMI respectively) which advice and technical contributions contributed  
6 greatly to the improvement of their products and performance of those products  
7 within the Korean seismological networks. Decl. Bednarski ¶¶7-8. The evidence  
8 does not show that all of the monies paid Dr. Chi between 2011 and 2016 (over  
9 \$1M), or any earlier dates, were briberous. Witnesses at trial, including other senior  
10 researchers and two past presidents (Dr. Lee from 2003 when the KMI contracts was  
11 signed, and Dr. Kim from 2015 when Mr. Potts and Dr. Chi discussed a new  
12 contract comporting with rule changes) testified that third party consulting contracts  
13 for researchers were lawful, and that such arrangements were promoted by KIGAM  
14 and engaged in by other researchers (as Dr. Park and Dr. Shin testified). Even if this  
15 Court were to conclude that Dr. Chi was overcompensated for his advice/consulting  
16 that does mean all of the fees paid him were illegitimate.

17 Furthermore, the government failed to connect any payments to specific  
18 contracts KMI or GSL had in Korea much less to any evidence that Dr. Chi  
19 promoted or facilitate those contracts. The evidence did not establish such  
20 connections for the years involved in the indicted counts 2011 through 2016 or any  
21 other un-convicted conduct. *United States v. Ring*, 811 F. Supp. 2d 359, 376 (D.D.C.  
22 Cir 2011)(“ Courts have cautioned, however, that ‘when the benefit calculation is  
23 based largely on conduct for which the defendant was not convicted, the district  
24 court must be careful to explain exactly how the conduct factors into the benefit  
25 calculus.’” quoting *United States v. Anderson*, 517 F.3d 953, 963 (7th Cir.2008)  
26 (citing *United States v. Schaefer*, 291 F.3d 932, 938 (7th Cir.2002)).

27 The sentencing commission’s commentary notes relevant to calculation of  
28 “loss” amount under §2B1.1 and under §2C1.1 are helpful to a certain extent. The

1 notes to §2C1.1 state that “loss” shall be determined in accordance with Application  
2 note 3 to §2B1.1. Those notes direct that where loss cannot be quantified, that “gain”  
3 is an alternative means of calculation. Here however gain suffers the same problem.  
4 How can one calculate how much Dr. Chi gained from briborous conduct?

5 **B. THE LACK OF EMPIRICAL EVIDENCE TO SUPPORT THAT**  
6 **THE GOALS OF SENTENCING ARE ACHIEVED BY THE LOSS**  
7 **ADJUSTMENT WITHIN EITHER §2S1.1 OR 2C1.1 SUPPORTS**  
8 **NOT APPLYING THE ADJUSTMENT AND OR FINDING THAT**  
9 **THE INCREASE OVERSTATES THE OFFENSE**

9 The difficulty posed here of a calculation of a higher guideline range based on  
10 “loss” increase from the §2B1.1 table is consistent with published case law  
11 criticizing the guideline as lacking empirical evidence to support any argument that  
12 such increases achieve any of the goals of §3553(a). The guideline incorporating  
13 the §2B1.1 “loss table amount” should not be followed because it lacks an empirical  
14 basis and was driven instead by Congressional directive. See *Kimbrough v. United*  
15 *States*, 552 U.S. 85, 89 (2007) ( In cases involving application of Guidelines that  
16 “do not exemplify the Commission's exercise of its characteristic institutional role,”  
17 it is “not an abuse of discretion for a district court to conclude when sentencing a  
18 particular defendant” that application of the guideline “yields a sentence ‘greater  
19 than necessary’ to achieve § 3553(a)'s purposes even in a mine-run case.”); *Gall v.*  
20 *United States*, 552 U.S. 38, 73 n. 2 (2007) (noting that not all Guidelines are tied to  
21 empirical evidence, most notably, those for drug offenses). When a guideline is not  
22 the product of “empirical data and national experience,” it is not an abuse of  
23 discretion to conclude that it fails to achieve the § 3553(a)'s purposes, even in “a  
24 mine-run case.” *Kimbrough*, 552 U.S. 85; *United States v. Barsumyan*, 517 F.3d  
25 1154 (9th Cir. 2008) (“Post-Booker, defendants certainly may attack the effect of the  
26 Sentencing Guidelines by arguing that they reflect over-broad or mistaken policy  
27 priorities”—but only after total offense level accurately calculated).  
28

1           The money laundering guideline §2S1.1 suffers the same deficiency in that is  
2 high base offense level and adjustments are inflexible, arbitrary and not reflective of  
3 the actual offense conduct involved. *United States v. Carter*, 538 F.3d 784 (7th Cir.  
4 2008)(where 61 year old defendant convicted of money laundering and tax fraud and  
5 guidelines 87-108 months, district court’s sentence of 24 months reasonable in part  
6 because district court properly found that case was atypical and referred to a 1997  
7 report by the Sentencing Commission. The opinion described that report as  
8 concluding that the “relatively high base offense levels under the money laundering  
9 guidelines,” are “inflexible and arbitrarily determined” without connection “to the  
10 seriousness of the defendant’s actual offense conduct.” *Id.*

11           As many sentencing and appellate review courts have noted, in cases  
12 involving the loss adjustment table, because of the sentencing guidelines arithmetic  
13 approach and also in an effort to appear "objective," the guidelines tend to place  
14 great weight on putatively measurable quantities, such as the weight of drugs in  
15 narcotics cases or the amount of financial loss in fraud cases, without, however,  
16 explaining why it is appropriate to accord such huge weight to such factors. *United*  
17 *States v. Adelson*, 441 F.Supp.2d 506, 508 (S.D.N.Y.,2006); and *United States v.*  
18 *Morris*, 837 F. Supp. 726, 729 (E.D. Va. 1993)(court justified its self-described  
19 “lenient” and well below guidelines sentence in a drug case for a defendant lawyer  
20 in light of his age, health and disgrace before the bar, stating: “[m]echanical  
21 application of the Federal Sentencing Guidelines may yield ‘an illusory  
22 mathematical precision that, when slavishly followed, is antithetical to effective and  
23 conscientious sentencing.’”.

24 Other examples of overstatement in loss cases include: *United States v. Desmond*,  
25 2008 WL 686779 \*2 (N.D.Ill.,2008), the sentencing court found that the loss  
26 adjustment of 20 levels “vastly overstates Desmond's culpability and produces a  
27 Guidelines sentence that is grossly disproportional” to Desmond's participation in  
28 the offense. *See also, United States v. Samaras*, 390 F.Supp. 2d 805, 809-10

1 (E.D.Wis.2005) (sentence below the Guidelines range appropriate where range was  
2 driven by a high loss amount, defendant had no role in setting that amount, and did  
3 not profit from it any more than from his legitimate business dealings).

4 There are many factors supporting that this offense is atypical. When Dr. Chi  
5 entered into the agreements he was a junior researcher with little status and or  
6 authority. Dr. Chi could not have foreseen the great increase in value the business  
7 arrangements would have because he could not have foretold the disastrous events  
8 that the future brought such as the destruction caused by the 2004 earthquake and  
9 tsunami in the Indian Ocean which motivated South Korea to pass legislation  
10 requiring fitting structures with measuring equipment, or the 2011 earthquake that  
11 damaged the nuclear plant in Japan and caused much suffering, or the intensified  
12 nuclear testing activity in North Korea. The fact that forces beyond his control or  
13 foreseeability increased sales and therefore his earnings supports why monetary  
14 compensation is a poor measure of culpability here.<sup>4</sup>

15 Another atypical factor is the economic and social value of Dr. Chi's  
16 scientific/technical contributions to the products developed and improved by the two  
17 companies involved GSL and KMI. Both Dr. Potts and Natalie Pearce testified to  
18 the value of his contributions to GSL. He provided invaluable technical guidance.  
19 Dr. Chi's coworkers testified about the consultation services provided. This  
20 testimony is corroborated in Exh. 4, the letter Dr. Guralp's lawyers provided GSL.

21  
22 <sup>4</sup> Similarly the "loss" amount was a poor measure of culpability in  
23 *Emmenegger*. The court reasoned that the precipitous decline in stock price that  
24 typically accompanies a revelation of fraud generates a multiplier effect that may  
25 lead to guideline offense levels that are, quite literally, off the chart without any  
26 explanation of "why it is appropriate to accord such huge weight to [this] factor[ ]".  
27 *United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004) (The  
28 specific amount of loss is often "a kind of accident" and thus "a relatively weak  
indicator of [ ] moral seriousness . . . or the need for deterrence" most defendants do  
not set out to defraud a specific amount of money; rather, the amount of loss is  
dependent on the security procedures in place and the point in time when the  
ongoing fraud happens to be detected.

1 Another atypical factor is that there is no victim<sup>5</sup>. The companies benefited  
 2 economically because their products improved. These were not lesser products that  
 3 would otherwise not have been used, nor did the product placement jeopardize  
 4 anyone's safety. Quite the contrary was shown at trial: the products and were  
 5 appropriate products to install and benefited Korea as well as the companies that  
 6 improved and manufactured the products.

7 **C. THE U.S.S.G §3B1.1 ENHANCEMENT FOR ABUSE OF POSITION**  
 8 **OF TRUST SHOULD NOT BE APPLIED**

9 Finally, no adjustment of abuse of position of trust or special skill under  
 10 §3B1.1 is applicable to the §2S1.1 calculation. Note 2c to that guideline sets forth  
 11 that the application of the Chapter 3 adjustments is determined based on the money  
 12 laundering offense, not on the underlying offense from which the funds were derived  
 13 [Korean bribery]. U.S.S.G. §2S1.1, cmt. (n. 2c). Here Dr. Chi did not have any  
 14 special skill or position of trust with regard to the banking transfer. He was not a  
 15 bank employee or financial manager. He was only a customer of Bank of America  
 16 and of its investment division Merrill Lynch.

17 **D. SUBSTANTIAL MITIGATING EVIDENCE SUPPORTS**  
 18 **DEFENDANT'S REQUEST FOR A SENTENCE OF SIX MONTHS**

19 Having calculated the applicable guidelines this Court must then consider all  
 20 of the sentencing factors listed in 18 U.S.C. § 3553(a)(4) and undertake "an  
 21 individualized assessment based on the facts presented." *Gall v. United States*, 552  
 22 U.S. 38, 49–50 (2007). Title 18 U.S.C. §3661 allows sentencing courts to receive  
 23 without limitation information concerning a defendant's "background, character, and  
 24 conduct." *Pepper v. United States*, 562 U.S. 476, 489 (2011) ("Permitting sentencing  
 25

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26 <sup>5</sup> The government's theory that other companies were disadvantaged is  
 27 speculative. No company has sued Dr. Chi, GSL or KMI for unfair competition.  
 28 GSL and KMI continue to manufacture their products and sell heartily in Korea.  
 There is no evidence of any slowdown in sales now that Dr. Chi is not involved.  
 Decl. Bednarski ¶6.

1 courts to consider the widest possible breadth of information about a defendant  
 2 ‘ensures that the punishment will suit not merely the offense but the individual  
 3 defendant.’ ”[citation omitted].”). There are numerous positive characteristics  
 4 applicable to Dr. Chi which are recognized as mitigating either as the basis of  
 5 “variance” from the guidelines or under 18 U.S.C. §3553. The presentence officer  
 6 identified that numerous factors warranted a variance from the guidelines. (PSR  
 7 ¶95: work history, lack of criminal history, family circumstances and health issues).  
 8 The presentence officer recommends a variance from the calculated range to a  
 9 sentence of 18 months. PSR Recommendation Letter at p. 5 The defense  
 10 respectfully recommends a sentence of 6 months. This sentence is supported by Dr.  
 11 Chi’s extraordinarily positive mitigating circumstances, which address all of the  
 12 goals of sentencing without necessity for any greater prison sentence, including:

- 13 ■ Dr. Chi’s lifelong scientific career distinguished by extraordinary  
 14 contributions to his profession, his country and his region of the world (vis-a  
 15 vis his creation of the early warning earthquake system in Korea and detection  
 16 and analysis of nuclear activity by the North Koreans);
- 17 ■ Lifelong Responsible Personal Behavior;
- 18 ■ Collateral Consequences Have Been Very Severe: financially, professionally  
 19 and personally;
- 20 ■ Dr. Chi’s medical condition (age related macular degeneration); and,
- 21 ■ Harsher Consequences as a Foreigner

22 **1. Dr. Chi’s Loss of Reputation, Job, and Future Employability Are**  
 23 **Collateral Consequences That Mitigate Against Additional Prison Time**

24 Dr. Chi has dedicated his life to seismology and sharing his knowledge in  
 25 Korea and the international community. Numerous cases support that it is  
 26 appropriate to consider loss of reputation, loss of business and/or work and future  
 27 earning ability as collateral consequences that are harsh punishment and achieve  
 28 some of the objectives of sentencing. *See United States v. Redemann*, 295 F. Supp.



1 2d 887 (E.D. Wisc. 2003) (adverse publicity in small town and ruination of  
2 defendant's business supported departure); *United States v. Gains*, 829 F.Supp. 669  
3 (S.D.N. Y. 1993) (departure granted in part because the destruction of the  
4 defendant's business); *United States v. Stewart*, 590 F.3d 93, 141 (2d Cir.) *reh'g*  
5 *denied*, 597 F.3d 514, *cert. denied*, 559 U.S. 1031 (2009)(20 month sentence in face  
6 of range of 78 to 97 not unreasonable because the conviction made it doubtful  
7 defendant could pursue his career as an academic or translator, lessening the need  
8 for further deterrence and protection of the public); *United States v. Anderson*, 533  
9 F.3d 623 (8th Cir. 2008)(reduction of defendant's sentence in case of insider trading  
10 and money laundering was reasonable in part because of collateral consequences  
11 defendant suffered such as the loss of his reputation and his company); and *United*  
12 *States v. Pauley*, 511 F.3d 468, 474-75 (4th Cir. 2007)(reduction of sentence because  
13 of defendant's loss of "teaching certificate and his state pension as a result of his  
14 conduct" appropriate and consistent with 3553 a's directive for 'just punishment and  
15 'adequate deterrence.'").

16 None of the cases found even come close to the loss of an entire career, and  
17 the complete destruction of reputation as Dr. Chi has suffered. As Dr. Chi explains  
18 in his letter to this Court, this is especially painful to him because of the critical  
19 events now taking place in the Korean Peninsula. He writes:

20 "It has also been very difficult to receive the news of the latest North Korean  
21 nuclear testing through my wife and news reports. Based on the limited  
22 information that I have received, I do have some reason to think that the nuke  
23 test-related measurements and evaluation are not accurate. And due to the  
24 arrest of me in America, it also seems that the task of reporting on the nuclear  
25 testing has been transferred from KIGAM to KMA. To be in jail and not to be  
26 able to use my knowledge and experience to help my colleagues in Korea  
27 make accurate evaluation has been very difficult for me. I know that I could  
28 help my country, but my own bad behavior now has caused my separation.  
This is my great burden, pain and regret.

Att. Exh. 1 at p. 2 Dr. Chi's letter to Court.

1           The arrest and conviction in this case has already exacted severe punishment:  
2 Dr. Chi has lost most of what he has built in his life including: his great reputation,  
3 his position at KIGAM, his status as an internationally renowned seismologist, and  
4 undermined his financial stability for his remaining years. He cannot draw on his  
5 pension until he is 61, which will only be \$2,000 a month, is unemployed (and  
6 unemployable), and his savings are severely depleted. PSR at ¶76. The desolation  
7 of his career will be with him the rest of his life.

8           His wife writes: “This case has caused him the greatest pain in his life. He has  
9 been discharged from the research center that was the work place and devotion of his  
10 life.” Att. Exh.2 at p. 26-27, Letter of wife, Ki Jeong Seok. His absence from his  
11 wife and family during the duration of this case has been devastating: “the reality  
12 that my husband, who had been the head and center of our family, is no longer with  
13 us is too agonizing for all of us even to the point of hopelessness.” *Id.* The EESK  
14 petition reflects the severity of dismissal from the job he loves so much. “Dr. Shin,  
15 the president of the EESK society has known Dr. Chi since 1997, and writes: “I  
16 heard that Dr. Chi is deeply regretting his actions. I know him so well that without  
17 hesitation I can say he would feel deeply humiliated and sorry for any harm to  
18 KIGAM, his country or the advancement of his field.” Att. Exh.2 at pp. 1-6, EESK  
19 Petition.

20           Dr. Chi’s conviction by jury was so widely published in news print and on  
21 television in Korea, “no one could miss it.” Att. Exh.2 at p. 41, Letter from Hak  
22 Sung Kim (Professor of Political Science). This press has been humiliating to him,  
23 and his family. Professor Kim writes: “his conviction has already punished him to  
24 severe degree; the news report on him undermined seriously his achievements as  
25 well as his reputation which he earned over a long and distinguished career.” *Id.*  
26 Att. Exh.2 at pp. 7-8, Letter from Professor Jaedong Kim “he has suffered severely  
27 professionally because of this criminal case,” and “he and his family have suffered  
28 much personally”). Dr. Chi’s brother, the attorney and former judge writes: “I was

1 embarrassed at the news of his arrest because he is a very fair person and well  
2 thought of here.” Att. Exh.2 at p. 11, Letter Young Cheol Chi. His sister writes “his  
3 sudden arrest was an unbelievable news and great shock to our family.” Att. Exh.2 at  
4 p. 13, Letter Jung Ok Ji. His friend and a professional colleague who now owns and  
5 operates Seoul Stainless Ltd. writes of the harsh negative news in Korea and the  
6 negative effect on Dr. Chi’s lifelong achievements and reputation. Att. Exh.2 at pp.  
7 31-32, Letter from Joong Kyung Sung (“the punishment of his conviction and loss of  
8 his good name and lifelong career is very big”). His sons write:

9 “To such a father and person, the latest events must have been a tremendous  
10 and desperate shock, and he undoubtedly would have suffered and will suffer  
11 from a sense of guilt for making not only us but the rest of the family  
12 members and relatives worry about him. During our telephone conversation,  
13 he has stated how very sorry he was to the people near him and that he  
14 certainly wants to restore the fallen honor- the honor he had built during his  
15 life time. Over his tears, we too earnestly hoped that he surely does regain his  
16 honor. We have never seen him so embarrassed and hurt. He has always been  
17 so respectful to others and himself, and it is heartbreaking for us to hear his  
18 broken spirit and to be so far away from him in his fallen state.”

19 Att. Exh.2 at pp. 37-38, Letter of sons Chang Woon Chi and Chang Youp Chi.

20 The negative publicity-- which caused the loss of his job and career -- will  
21 likely make teaching –something he loves and inspired to after retirement from  
22 KIGAM impossible. His son’s spoke of that dream in their letter:

23 “Our father is born in 1958 and is soon facing retirement. After we became  
24 college students we heard a number of his retirement plans, and one of them is  
25 to become an honorary emeritus based on the expertise he has built over the  
26 years, and foster as many earthquake specialists in Korea and contribute to the  
27 society. Indeed, our father has once taught college students after receiving his  
28 Ph.D. from Texas A&M University in the U.S.A. He is a great teacher; he can  
29 courteously and enthusiastically teach others everything he knows.”

30 Att. Exh.2 at pp. 37-38, Letter of sons Chang Woon Chi and Chang Youp Chi.

1 Dr. Chi's past nine months (including 5 months on electronic monitoring with  
2 curfew) have been very difficult, and are part of the consequences already suffered.

3 Dr. Chi writes to this Court:

4 "For nine long months, from my arrest at the airport, bailout, trial to self-  
5 surrender, my most painful feeling was my disappointing those who trusted  
6 and supported me and my being separated from my loved ones. Each and  
7 every day, through the loneliness and shamefulness, I utterly regret and  
8 painfully look back at my greed and stupidity. I truly missed seeing my  
9 mother, wife, my babies, my brother, sister and friends. I lost everything in the  
10 world and gave up everything as well. My only remaining hope is that I will  
11 live to love all my loved ones and I want to love them more and more and  
12 more."

13 Att. Exh.1, Letter Dr. Chi to Court at p.2.

## 14 **2. The Financial Consequences of the Case and Conviction Are Devastating 15 And Further Mitigate Against Prison Time**

16 In addition to the devastating personal and professional consequences to his  
17 and his family reputation, the case has had huge financial consequences, including:

18 **\$690,000:** Dr. Chi will lose 6 years of income from KIGAM (from his arrest  
19 to when he would have had to retire at age 64). Based on an approximate  
20 yearly income of \$115,000 per year, that totals a minimum of \$690,000 of lost  
21 KIGAM income.<sup>6</sup>

22 **\$56,000: the amount of the criminal forfeiture** resultant from Count 6.

23 **\$ 110,334:** \$403, 657 was the value of the assets in the financial accounts at B  
24 of A and Merrill Lynch at the time of the notice of seizure. That seizure and  
25 civil asset forfeiture case that followed is expected to result per the anticipated  
26 settlement agreement in the government keeping approximately \$110,334.

27 \_\_\_\_\_  
28 <sup>6</sup> There would also be additional earnings from future years of sharing  
income from of 23 patents he developed with KIGAM, which are owned by KIGAM  
and which until now was entitled to share, an entitlement he lost when fired. PSR at  
¶62, 64. This amount cannot be quantified.

1           **\$250,000 to \$300,000.** Several hundred thousand dollars remains unpaid by  
2           GSL and KMI. Even though those companies would agree that pursuant to  
3           the contracts funds between \$250,000 and \$300,000 are owed to Dr. Chi, they  
4           will likely never be paid because the government accuses those companies, as  
          it did Dr. Chi, with any funds from the contracts being bribes.

5           In conclusion, Dr. Chi has suffered huge financial losses due to this case.

6           Those amounts as referenced above are very substantial exceed the earnings he made  
7           from the contracts. Given his age, and loss of his job and reputation, it is reasonable  
8           to conclude that he will never recover from the financial losses of this case.

9           The President of the Earthquake Engineering Society of Korea (EESK) and 15  
10          additional signatories of great intellect and stature (directors, leaders, and professors  
11          of the esteemed educational institutions) prepared and submitted the attached letter  
12          to Judge Walter which sets forth:

13                   “Dr. Chi is permanently dismissed<sup>7</sup> from office of KIGAM due to the current  
14                   case. It is not only his personal misfortune but also a great disruption to  
15                   Korean earthquake research that Dr. Chi's research activity was suspended due  
16                   to the conviction. Furthermore, we are losing a great driving force in the  
17                   development of Korea's seismic observation technology, which is very  
                    unfortunate for both national and societal perspectives.”

18          Att. “Combined Dr. Chi Sentencing Letters Packet,” hereinafter “Packet” at p. 1-6.

19          This Petition from the Earthquake Engineering Society (hereinafter EESK)

20          submitted by President Shin and 15 Signatories. The EESK Petition describes Dr.

21          Chi’s immense contribution to the science and the country:

22                   “Dr. Chi is a talented seismologist in Korea and has greatly contributed not  
23                   only to the development of EESK but also to the advancement of seismology  
24                   in Korea. In particular, Dr. Chi has accomplished many research achievements  
25                   in detection of North Korea's nuclear test, observation of earthquakes and  
26                   development of analytical techniques. Many seismologists have used his  
                    research findings and techniques to carry out further studies. We are in  
                    incessant need of Dr. Chi's experience and contributions to Korean earthquake

27                   \_\_\_\_\_

28                   <sup>7</sup> Dr. Chi’s institute advised him on August 3, 2017, after the guilty  
                    verdict that he is dismissed from his job at KIGAM. Decl. Bednarski ¶9.

1 research. I cannot even count how many other seismologists' work is built on  
2 the foundations of what Dr. Chi was himself developed and created.”

3 *Id.* Att. Exh.2 at p. 1-6.

4 Dr. Chi's lifelong friends hold the same opinion expressed in the EESK  
5 petition, that Dr. Chi is devoted to the advancement of his science and what he can  
6 contribute to improve society through his work. “He is devoted to doing what he  
7 can to improve society for the better.” Att. Exh.2 at p. 7-8, Letter from Prof.  
8 Jaedong Kim (friend of 44 years). “Dr. Chi was carrying out very important works  
9 for Korea distinguishing North Korean experiences in nuclear weapons from natural  
10 earth movement activity. Att. Exh.2 pp. 9-10, Letter from Dr. Moonsu Sung (friend  
11 of 40 years). Dr. Sung asks the court to consider Dr. Chi's achievements and  
12 contributions to society. *Id.* Att. Exh.2 p. 12, Letter Pyungwoo Jang, physics  
13 professor, high school and college friend (“he is a very important person to South  
14 Korea and US who have been paying attention to nuclear crisis provoked by North  
15 Korea government and have cooperated to keep Korean peninsula peaceful without  
16 war”).

17 Dr. Chi's life is characterized by generous contributions of his time and  
18 intellect to scientists and scientific pursuits; his earnings in this case are due to his  
19 special talent and intellect not due to any avaricious nature—in fact the contrary  
20 appears to be true of him: that he is not a greedy person. He chose a career because  
21 he loved the science; seismology is known to be a field that does not reap great  
22 economic rewards.

23 Friends and family who have known him his entire life can speak to his  
24 lifelong nature and character. His younger brother, Young Cheol Chi --also highly  
25 educated and smart --describes Heon Chi: “He has a great vocation [aptitude] for  
26 science and studied hard,” a highly competitive national standardized university  
27 admission test score was so high he could have gone to medical school. Att. Exh.2  
28 at p. 11, Letter Young Cheol Chi (brother/attorney) and Att. Exh.2 at p. 13 Letter

1 Jung Ok Ji (sister/doctor). He was admitted to Seoul National University, reputed to  
2 be the best university in Korea. He chose engineering over medicine, and after  
3 earning his Bachelor of Science, studied and earned his PhD in seismology in the  
4 U.S. He then returned to Korea, and was hired as a researcher at KIGAM, a position  
5 he chose for his love of seismology -- not its earning potential. Att. Exh.2 at p. 14-  
6 14, Letter from Bok Jae Chung, chemical engineer, businessman and friend of 40  
7 years (seismology does not bring economic benefits but is a discipline for humanity  
8 and society), Att. Exh.2 at pp. 16-17; Letter from Inmock Choi businessman and  
9 friend since 1974 (when he started at KIGAM no one in Korea thought much about  
10 earthquakes, his field was not a high income area compared to energy sciences  
11 where one earns more).

12 Dr. Chi sacrificed much personally to his career: Dr. Chi spent his entire  
13 career at KIGAM, a research institution, where as noted above his salary was modest  
14 and, as explained above, less than he could have earned as an energy engineer or  
15 businessman. His scientific contributions as a researcher at KIGAM were of great  
16 social value. He is credited by those who worked with him for his passion in  
17 developing the earthquake early warning system in Korea and supporting the safety  
18 of the people by his work and analysis in detecting military activity by the North  
19 Koreans and his participation in the CTBTO.

20 “Dr. Chi has attained brilliant research and academic achievements in the field  
21 of earthquake that was once a wasteland in academics in Korea. As far as I  
22 know, Dr. Chi had devoted and led a life that concentrated all of his time and  
23 energy into research and studies, without much social life of his own.”  
Att. Exh.2 at 18, Letter from Hag Soo Kim (junior classmate Seoul Nat’l Univ.).

24 Over the many years he worked at KIGAM he invented many improvements  
25 within his profession as reflected in the 23 patents that he shares with KIGAM. PSR  
26 at ¶62. He was a highly respected scientist in Korea and in the international  
27 community of seismologists. His friend of 40 years, engineer and now board  
28 member of a Mining Company, Dr. Changhun Lee writes “Dr. Chi's expertise and

1 experience have helped ensure the safety and maintain the peace of the Korean and  
2 other peoples who have benefited from his many contributions.” Govt. Trial Exh. 1,  
3 Personnel File; Att. Exh.2 at pp 19-21. Letter Changhun Lee, engineer, director of  
4 Samtan and friend of 40 years (speaking of how Dr. Chi has helped with regard to  
5 earthquake safety and North Korea’s pursuit of nuclear weapons as a threat to peace  
6 in the Korean Peninsula).

7 As was established at trial, Dr. Chi was his country’s representative to the  
8 Comprehensive Nuclear Test Ban Treaty Organization “CTBTO” and was the  
9 respected advisor to South Korea’s president/government on military ballistics and  
10 nuclear testing by North Korea. As also established by testimony and photographs,  
11 at trial and referenced in sentencing letters to the Court, Dr. Chi has appeared on  
12 national TV and radio news broadcasts discussing North Korea nuclear missile  
13 testing and called upon to calm the public after large earthquakes in or near South  
14 Korea, for example concerning the 2011 and 2016 large earthquakes in Japan,  
15 analyzing size and strength, offering preparatory and recovery plans, and calming  
16 the public where appropriate. Att. Exh.2 at pp. 22-25, Letter of Jae Goo Shim (a  
17 friend of forty years).

18 Dr. Chi has also advised on the safety of structure and design of nuclear plants  
19 in Korea. See Att. Exh.2 at p. 24, Letter Jae Goo Shim (“Dr. Chi has served as a  
20 member of the Nuclear Safety Advisory Committee, and has directly participated in  
21 earthquake resistant designs of nuclear plants in Korea”). Dr. Chi’s brother, an  
22 attorney and former judge in Korea, writes: “he is so widely known as a leading  
23 expert of earthquake learning in the geologic field in Korea that even all my students  
24 of Judicial Research and Training Institute know of him well.” Att. Exh.2 at p.11,  
25 Letter Young Cheol Chi.

26 He used his fame to generate donations for victims of earthquake disasters in  
27 Korea, often donating his time and talent on broadcasts to collect donations for  
28 international victims of earthquakes. Packet at p. 26-27, Wife Ki Jeong Seok Letter.



1 Dr. Chi has been a frequent mentor, generously sharing his knowledge for the  
2 progress of others and the science. Inmock Choi, director of a freight forwarding  
3 company, and 40 year friend since high school writes:

4 “Dr. Chi “is passionately dedicated to improving the state of research and  
5 knowledge of earthquakes in Korea. He is always generous with his time,  
6 energy and intellect to his colleagues, fellow academics, students and the  
7 general public.”

8 Att. Exh.2 at pp. 16-17, Letter from Inmock Choi.

9 Mr. Jaedong Kim, engineering professor in the College of Energy and  
10 Resources at Kangwon National University in Korea has known Dr. Chi for 44  
11 years. He writes that Dr. Chi and he share the same belief in the importance of  
12 mentoring juniors and students, that is “a deep commitment to mentor and guide  
13 future engineers so that they may contribute their abilities to analyze and solve  
14 technical problems in a way best for society.” Att. Exh.2 at pp. 28-30, Letter from  
15 Jaedong Kim; Att. Exh.2 at pp. 18, Letter from Hag Soo Kim, underclassman at high  
16 school (“Though all these years I knew him, he has been very generous in sharing  
17 his knowledge and idea” and since I started work as a geophysicist I call him often  
18 for help). Att. Exh.2 at pp. 22-25, Letter from Jaegoo Shim, friend since high school  
19 (Dr. Chi “especially excelled in mathematics, and. . . kindly tutored me in  
20 mathematics when I was lagging behind in class”); Att. Exh.2 at pp. 28-30, Letter  
21 from Jungwan Kim, a still close friend from high school and college (“when we  
22 were in school together, . . . [Dr. Chi] was generous with his time and knowledge.  
23 He studied hard but would not refuse to help someone else to gain advantage. He  
24 succeeded on his own merit while also elevating those around him”).

25 Joong Kyung Sung, owner of Seoul Stainless Steel Ltd, has been a friend of  
26 Dr. Chi’s since 1999 when they met at a seminar. He similarly describes Dr. Chi’s  
27 generous provision of professional help: “I was involved in constructing IT infra-  
28 network over the Korea and he was very generous and helpful with his knowledge  
and ideas.” Att. Exh.2 at pp. 31-32, Letter from Joong Kyung Sung. Dr. Han,

1 professor of philosophy has been a lifelong friend of Dr. Chi, he “know[s] him to be  
2 a scientist and scholar of exceptional quality who generously shares his time, his  
3 work, and creative ideas with other researchers and scholars.” Att. Exh.2 at 33-34,  
4 Letter from Hyong Han. See also, Att. Exh.2 at 28-30, Letter from Jungwan Kim  
5 (Mr. Kim heard from Dr. Chi’s colleagues both senior and junior to him that he  
6 “helped those junior to him without compensation.”)

7 **3. Dr. Chi’s Work and Family Stability Evidence His Substantial Moral**  
8 **Character Which Further Mitigates Against Prison Time**

9 Here the exemplary history and character of Dr. Chi supports the six month  
10 sentence requested, far below the guideline range. Section 3553(a) (1) permits the  
11 Court to consider the history and characteristics of the defendant. *United States v.*  
12 *Autery*, 555 F.3d 864 (9th Cir. 2009) (Courts sentence of probation in child  
13 pornography case with guideline range of 41-51 months was reasonable in part  
14 because of Autery’s positive characteristics such as his having no history of  
15 substance abuse, personal stability, no sociopathic or criminalistic attitude,  
16 motivation and intelligence, and the support of his wife and child); *Stewart*, 590  
17 F.3d at 147 (Lynne Stewart had devoted her life long career as a lawyer to the  
18 defense of the poor and oppressed for little money, thereby providing a service to  
19 her clients and the nation, which history and characteristics justified a sentence of 28  
20 months despite guidelines for her conviction of providing support to terrorists);  
21 *United States v. Carter*, 530 F.3d 565 (7th Cir. 2008) (sentencing courts are charged  
22 with considering as part of the § 3553(a) factors “the history and characteristics of  
23 the defendant,” which would include a defendant’s public service.

24 The majority of the twenty letters in the attached packet are from people who  
25 have known Dr. Chi for 40 years; that factor alone is a testament to his responsible  
26 and respectful nature. Nearly all of those lifelong friends are engineers and  
27 academicians – again a characteristic which speaks to the quality of his character.  
28

1 Dr. Chi is devoted to his work and family. PSR ¶¶48-49, 51 (married since  
2 1986; theirs is a strong and loving marriage; Dr. Chi's wife, sons, siblings, friends  
3 and colleagues are very supportive); see also Att. Exh.2 of Letters at pp. 35-36,  
4 Letter from Jeong Jae Cho (friend of forty years). As discussed in the presentence  
5 interview, Dr. Chi and his wife married thirty one years ago, after being introduced  
6 by their parents through the then common Korean custom of arranged marriage. See  
7 attached notarized marriage certificate and Packet at pp. 226-27, Letter of wife, Ki  
8 Jeong Seok. Together they raised two loving sons who are extremely proud of their  
9 father. *Id.* Despite his demanding job and fame, he continued to devote himself to  
10 his family. *Id.* His wife writes: that while he always studied and worked hard:

11 "My husband is a strong patron and companion whom I can rely on and  
12 always depend upon. We have shared our joys anger, sorrows and pleasure  
13 together, and my husband is the truest friend of mine. . . . He is a very  
14 respectful kind and sharing husband and father."

15 Att. Exh.2 at 26-27, Letter of wife, Ki Jeong Seok. His sister writes: "[he] is the  
16 most beloved son and has frequented the hospital to see mother almost every week,  
17 unless in a foreign business trip." *Id.* and Letter Jung Ok Ji, Att. Exh.2 at 13. Their  
18 mother is elderly (83) and is in the early stage of Alzheimer's disease. *Id.*

19 Dr. Chi is "his family's pride." Att. Exh.2 at pp. 11, Letter Young Cheol Chi.  
20 He is highly regarded in his family, "kind and generous" and "doing his best as the  
21 first son before and after [his] father's death." *Id.* People who have known him  
22 forty years and more are shocked at the conviction because it is inconsistent with the  
23 man they know. Mr. Choi has known Dr. Chi since high school and is the director  
24 of an international forwarding company. This conviction for laundering money  
25 surprised him because he knows Dr. Chi to be a dedicated scientist, a hardworking  
26 person and "not a person who takes an easy way or commits crimes." Att. Exh.2 at  
27 pp. 16-17, Letter of Inmock Choi. Consistent with that character trait, he taught his  
28 sons the value of hard work:

"When he was raising us, he would always tell us that "you can earn only as  
hard as you work" and has shown us that the money earned with hard work is

1 the only true earnings of life. He had considered money as an observable asset  
2 whereas honor is unseen and yet much more valuable asset in life. He had  
3 always regarded honor very highly above anything else in life and had a  
4 strong pride in that. . . [p]erhaps due to his influence, we have dreams to grow  
up and someday become individuals who are respected by people.”

Att. Exh.2 at pp. 37-38, Letter of sons Chang Woon Chi and Chang Youp Chi.

5 Dr. Sung, and professor and chair of the obstetrics and gynecology department  
6 at Inje College of Medicine writes that “[Dr. Chi] is not the person who would  
7 intentionally commit [an] illegal act or conduct himself immorally.” Att. Exh.2 at  
8 pp. 9-10, Letter of Dr. Moonsu Sung. Mr. Cho, a friend of forty years says the man  
9 he knows “does not have corrupt character. . . rather is a complete academician who  
10 does not have the nerve to commit such activities.” Att. Exh.2 at pp. 35-36, Letter  
11 from Jeong Jae Cho (friend of forty years). Att. Exh.2 at pp. 28-30, Letter from  
12 Junggwon Kim (“the judgment is a great shock to us all and a profound  
13 contradiction to the upright and fine character that he has always proven to me , his  
14 friends and colleagues.”) Att. Exh.2 at p. 39, Letter from Kyunghee Lee (friend of  
15 forty years and manager of a paralegal firm for the Korean Judicial System) believes  
16 that Dr. Chi “is not a business man and is not a shrewd character,” is a “hardworking  
17 diligent and dedicated scientist and academic,” and “does not have a criminal  
18 nature”). Mr. Chang, CEO of a mining company in Korea has known Dr. Chi since  
19 college. He knows him to have “an honorable and respectable personality and has  
20 outstanding sense of responsibility and justice who actively seeks and drives forward  
21 what he considers to be just and right.” Att. Exh.2 at p. 40, Letter from Hyunsam  
22 Chang. Dr. Han, professor of philosophy and friend since high school, describes  
23 that his deep friendship with Dr. Chi is reflected in intimate philosophical  
24 conversations about human existence. He recalls “Heon Cheol’s passionate  
25 comments on the core issue of science, his glaring eyes of passion, and his endless  
26 thirst in pursuit of curiosity.”) Att. Exh.2 at pp. 33-34, Letter from Hyong Han.

27 These opinions which in short speak to Dr. Chi’s lack of criminal character,  
28 and substantial moral character, make sense even in light of the evidence that Dr.

1 Chi knowingly undertook a financial arrangement with two private companies  
2 against company regulations, that he did not share money, and that he hid the  
3 activities from the Korean government and his company. People commonly think of  
4 bribery as involving extortion, pressure, and financial bullying, etc. of which there  
5 was no such behavior here. As established at trial, the financial arrangements with  
6 GSL and KMI were cooperatively entered into and were arrangements suggested by  
7 the owners/inventors themselves. Those arrangements were mutually beneficial to  
8 the companies and to Dr. Chi. When first entered into the contracts at issue in this  
9 case, and in the early years of those contracts, Dr. Chi had little status. He was  
10 merely a junior researcher. The companies knew of each other's arrangements with  
11 Dr. Chi. While their products competed as the best in the industry, each improved  
12 their products with the technical assistance of Dr. Chi.

13         Accepting the jury's verdict that money earned and deposited in this case was  
14 the product of Korean bribery, this is an unusual case of money laundering from  
15 bribery as there was no corruption such as commonly seen in bribery cases, such as  
16 "pay to play," threats to harm or end business if the parties did not pay. There was  
17 no evidence that the products were anything other than the most appropriate ones to  
18 use. The evidence was all consistent with the products the companies sold (the basis  
19 used for the payments to Dr. Chi) being the most appropriate products for the  
20 seismology projects they were used for in Korea.

21         Moreover this is an unusual case of money laundering from bribery because  
22 the jury's verdict in other words did not involve an implicit finding of corruption.  
23 Even though the conviction required the jury to find that the money was derived  
24 from bribery, the jury did not have to find the proof of corruption. The jury  
25 instruction on Korean bribery given to this jury did not require proof of, or a finding  
26 of, corruption.

27 //

28 //

1           **4. Dr. Chi’s Medical Condition and 3553(a)(2)(D)’s Directive That The**  
2           **Sentence Must Insure Medical Care In The Most Effective Manner**  
3           **Mitigates Against Further Prison Time**

4           The sentence imposed must ensure that “needed . . . medical care” is provided  
5           “in the most effective manner.” 18 U.S.C. § 3553(a)(2)(D). The Sentencing  
6           Commission now recognizes that “[p]hysical condition . . . may be relevant in  
7           determining whether a departure is warranted,” and has always recognized that “in  
8           the case of a seriously infirm defendant, home detention may be as efficient as, and  
9           less costly than, imprisonment.” U.S.S.G. §5H1.4, p.s..

10           Dr. Chi was diagnosed last August 2016 with age related macular  
11           degeneration. PSR ¶55. His doctor in Korea immediately began injections of  
12           intravitreal injections including Elyea, the same medicine prescribed and injected on  
13           occasion by Dr. Hanscom who saw and treated Dr. Chi while on bond. PSR at ¶55;  
14           Medical Records File, Att. Exhibit 3; Att. Exh.2 at pp.42-47, Letter of Dr. Kwon and  
15           medical records from Dr. Ra and references (attached to Kwon letter).

16           Dr. Ra described the treatment plan for proper treatment of Dr. Chi’s  
17           condition:

18           “The patient is currently receiving regular follow- up examinations in the  
19           Retina clinic and additional intravitreal injections may be needed according to  
20           the examination results. Considering the patient’s disease status if treatment is  
21           not received in the appropriate timing, the risk for blindness in both eyes is  
22           high. It is recommended that the patient undergo minimal physical and  
23           psychological stress as this can contribute to disease progression.”  
24           Att. Exh.2 at p. 43, Medical record from Dr. Ra (attached to Kwon letter).

25           Dr. Chi’s condition was discovered last autumn when his physician sister  
26           became worried that his eyesight was deteriorating and recognized the condition as  
27           the same suffered by their mother. Att. Exh.2 at p. 13, Letter Jung Ok Ji; PSR ¶44  
28           (Dr. Chi’s mother is blind from macular degeneration).

          The condition is very real and serious if there is a lapse and or insufficient  
care and treatment. As the presentence officer concluded, it is reasonable to believe

1 that Chi's vision will further deteriorate in custody as his medication is not listed on  
2 the BOP formulary list." PSR Recommendation Letter at p.4, Dkt. 187. Dr. Chi  
3 suffers from -- macular degeneration-- the same condition that caused his mother to  
4 lose her sight. Att. Exh.2 at p. 11, Letter Young Cheol Chi. His life has been spent  
5 studying, reading, and analyzing his science. As his brother says "I cannot imagine if  
6 he cannot read or see." *Id.*

7 The defense has great concern that the BOP will not give him the regular and  
8 consistent care his eyes need given the BOP well known track record in his case, and  
9 historically toward incarcerated inmates in general. (Bail motion Dkt. No. 156 filed  
10 7/19/17 detailed the lack of care given Dr. Chi while in custody between December  
11 2016 and March 2017).

12 This opinion of the undersigned about the absence of faith in the BOP  
13 providing reliable consistent care for Dr. Chi's eyes is based not only on his  
14 experience but on defense counsel's personal experience over the years and on the  
15 numerous audits and reports written over the years by government agencies  
16 identifying and criticizing inadequate medical care in the BOP. Audits discuss  
17 escalating medical costs in the BOP, use of practical nurses instead of doctors to cut  
18 costs, difficulty in obtaining quality medical professionals to work for the BOP.<sup>8</sup>  
19 The BOP tries to cut costs, for instance by using generic medicines. As applicable  
20

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21 <sup>8</sup> An audit by the Office of the Inspector General found systemic  
22 deficiencies in the Bureau of Prisons' delivery of health services. See U.S. Dep't of  
23 Justice, Office of the Inspector General Audit Division, The Federal Bureau of  
24 Prison's Efforts to Manage Inmate Health Care ii-xix, 32-34 (2008), available at  
25 [www.justice.gov/oig/reports/BOP/a0808/final.pdf](http://www.justice.gov/oig/reports/BOP/a0808/final.pdf). A similar result was obtained in  
26 2016. See Office of the Inspector General U.S. Department of Justice Review of the  
27 Federal Bureau of Prisons' Medical Staffing Challenges Evaluation and Inspections  
28 Division 16-02 March 2016, EXECUTIVE SUMMARY (staffing shortages limit  
inmate access to medical care, result in an increased need to send inmates outside the  
institution for medical care, and contribute to increases in medical costs).

1 to this case, Elyea is not on the BOP published formulary; it is likely that even if the  
2 BOP were to give Dr. Chi regular and appropriate eye exams by qualified  
3 professionals, and determine he needs an injections, he would not the treatment he  
4 needs. PSR at ¶55 (2016 formulary of BOP list revealed that neither medication Dr.  
5 Hanscom prescribed Elyea or Avastin are provided by the BOP).

6 Numerous cases support that it is appropriate for this Court to consider Dr.  
7 Chi's medical circumstances and the need for medical treatment in the most  
8 effective manner. Here the facts are that he has a sensitive condition that if not  
9 appropriately monitored and treated effectively could cost permanent loss of vision  
10 and even blindness. *United States v. Edwards*, 595 F.3d 1004 (9th Cir. 2010)  
11 (defendant convicted of bankruptcy fraud, guidelines range of 27-33 months,  
12 sentence of 7 months, house arrest, fine and restitution justified by defendant's  
13 condition including diabetes and other illnesses. Opinion noted "while the district  
14 court agreed with the Government that the Bureau of Prisons was capable of  
15 providing for Edwards's medical care, it found that a sentence of probation would  
16 satisfy the requirement of providing needed care in the most effective manner. 18  
17 U.S.C. § 3553(a)(2)(D); *United States v. Willis*, 322 F. Supp. 2d 76, (D. Mass. 2004)  
18 (in tax evasion case departure granted from 27 months to probation with six months  
19 home confinement based upon inordinate number of potentially serious medical  
20 conditions, and age (69) where such conditions would have invariably gotten worse  
21 in prison—in response to gov. argument that BOP could care for defendant. Opinion  
22 reflected district court stated: "I have never had a case before me in which the  
23 Bureau of Prisons suggested that it did not have the capacity to care for a  
24 defendant"). *United States v. Baron*, 914 F.Supp. 660, 662-665 (D.Mass. 1995) (in  
25 bankruptcy fraud, departure from range of 27-33 months to probation and home  
26 detention for 76-year old defendant with medical problems which could be made  
27 worse by incarceration); *United States v. Moy*, 1995 WL 311441, Court Sentencing  
28 Order at \*10 (N.D.Ill. May 18, 1995) (departure based upon defendant's advanced



1 age, aggravated health condition, and emotionally depressed state) and *United States*  
 2 *v. Ribot*, 97 F.Supp.2d 74, 84 (D.Mass.1999) (downward departure of seven levels  
 3 justified to preserve medical treatment plan).

4 **5. That Any Additional Sentence Imposed Will Be Harsher For Dr. Chi**  
 5 **Than For A Non-Alien Defendant Is Further Mitigation**

6 There are additional hardships Dr. Chi will suffer as a result of being an  
 7 “alien.” Dr. Chi will not be eligible for a camp placement or halfway house  
 8 placement<sup>9</sup> because of his foreign status. In addition, he will likely face additional  
 9 time in INS custody awaiting his deportation following completion of any BOP  
 10 sentence.<sup>10</sup> In *United States v. Cubillos*, 91 F.3d 1342 (9th Cir. 1996)(the district  
 11 court for the Central District departed from offense level 24 to 21 based on Cubillos'  
 12 increased sentence severity resulting from her status as a deportable alien); *United*  
 13 *States v. Davoudi*, 172 F.3d 1130 (9th Cir.1999) (district court had discretion to  
 14 depart downward because deportable alien in false statements to bank case may be  
 15 unable to take advantage of minimum security designation of the up to six months of  
 16 home confinement authorized by 18 U.S.C. §3624(c)). Thus, if this Court imposes  
 17 any additional sentence it will necessarily be more onerous for Dr. Chi than the same  
 18 sentence imposed upon a U.S. citizen.

19 //

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21 <sup>9</sup> Title 18 U.S.C. § 3624(c), charges the Bureau of Prisons with assuring,  
 22 “to the extent practicable ... that a prisoner serving a term of imprisonment spends a  
 23 reasonable part, not to exceed six months, of the last ten per centum of the term” in a  
 24 halfway house or other community custody program that may include “home  
 confinement.” 18 U.S.C.A. § 3624(c) (Supp.1992).

25 <sup>10</sup> In addition to any prison term, it is likely that he will be incarcerated in  
 26 an INS facility post-sentence or about two months awaiting deportation. *United*  
 27 *States General Accounting Office, Immigration Control: Immigration Policies*  
 28 *Affect INS Detention Efforts* 25 (1992)(average length of INS detention pending  
 deportation post release 59 days).

