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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CASE NO. 1:23-cr-00003-TMB
)
CRISTOBAL MAGNO RODRIGO,)
)
Defendant.)
)

TRANSCRIPT OF IMPOSITION OF SENTENCE
BEFORE THE HONORABLE TIMOTHY M. BURGESS, DISTRICT JUDGE
Monday - August 28, 2023
8:14 a.m. - 10:15 a.m.
Juneau, Alaska

FOR THE GOVERNMENT:
Office of the United States Attorney
BY: JACK S. SCHMIDT
709 West 9th Street, Room 937
Juneau, Alaska 99801
(907) 796-0402

FOR THE DEFENDANT:
Newton and Hall
BY: BRADLEY G. BARSHIS
610 Central Avenue South
Kent, Washington 98032
(253) 852-6600

Probation Officer: Eva Barbee

SONJA L. REEVES
Registered Diplomat Reporter
Certified Realtime Reporter
Federal Official Court Reporter
222 West 7th Avenue, #4
Anchorage, Alaska 99513
Transcript Produced from the Stenographic Record

1 (Call to Order of the Court at 8:14 a.m.)

2 DEPUTY CLERK: All rise. His Honor, the Court, the
3 United States District Court for the District of Alaska is now
4 in session, the Honorable Timothy M. Burgess presiding.

5 Please be seated.

6 Your Honor, we're on record in Case No.
7 1:23-criminal-3-1, *United States of America versus Cristobal*
8 *Magno Rodrigo*.

9 Counsel, please state your appearance for the record.

10 MR. SCHMIDT: Jack Schmidt for the United States here
11 with Special Agent Matt Sherrell.

12 MR. BARSHIS: Bradley Barshis on behalf of
13 Mr. Rodrigo, who is present to my left.

14 THE COURT: Good morning, everybody. This is the time
15 set for the imposition of sentence. I have a number of
16 questions about the case, any agreement that you all have
17 crafted in this case.

18 And just to remove any surprises, I'm not inclined to
19 accept the plea agreements in this case. I don't feel that
20 it's appropriate for the Court's hands to be tied like this. I
21 don't agree with the proposed dispositions that have been
22 negotiated in this case, but I'll obviously give you a chance
23 to argue why I should.

24 But under the terms of the plea agreements entered in
25 this case, as I understand it broadly, the only person who is

1 looking at any jail time is the defendant present here in the
2 courtroom. His wife is looking at a probationary sentence,
3 which I think is inappropriate considering her role in this
4 offense. Their young son, who is now an adult, maybe -- it may
5 be the parties' argument that he not do jail time because his
6 parents got him involved in this is appropriate, but I still
7 think there needs to be more consequences to him as a result of
8 what he did.

9 I'm concerned about the, what I consider, mysterious
10 numbers in this case. The government says that this case
11 involved over a million dollars in loss for purposes of the
12 sentencing guidelines and their activities, yet the fine
13 doesn't -- the fine and restitution don't come anywhere close
14 to that, so I need -- I'm going to need answers to those
15 questions.

16 I'm concerned that only \$10,000 is going to go to the
17 Indian Arts Fund administered by the Department of Interior.
18 I'm concerned about that, because the affected Native community
19 is the Alaska Native community, and I think that money should
20 be going back to Alaska Native artists, not to a pot in
21 Washington, DC that gets distributed around the country, unless
22 there is a way that that can be targeted to come back to
23 Alaskan artists.

24 I have other concerns, but I wanted to highlight some
25 of them for you. I'm happy to hear -- and I know you have

1 indicated you have individuals who have come from Washington,
2 DC, so I'm certainly happy to have them go on the stand and we
3 can create a record with whatever testimony you want to elicit
4 from them so they don't have to make a return trip here, but I
5 will have to tell you, in reviewing the conduct in this case,
6 the breadth and the scope of the misconduct that went on --
7 and, again, I think what's been identified as the victims in
8 this case is probably not broad enough because there has now
9 been deep distrust created for those who want to buy this type
10 of art, not knowing if it's real or not real, which has an
11 impact on Alaska Native artists.

12 There is the competing stores that sold actual Alaska
13 Native art who lost out because of the defendants' conduct in
14 this case. This was an elaborate, well thought out,
15 international conspiracy to rip people off.

16 And I just -- as I read this file today, I am not
17 willing to have my hands tied as to what sentences I mete out
18 to defendants in this case. So that's my opening statement.
19 I'm happy to hear from the parties.

20 MR. SCHMIDT: Well, first thing I would point out to
21 the Court that we had a defendant by the name of Mr. Bulgan
22 that was before the Court. I had negotiated a fine in that
23 particular case, and he had a probationary sentence that was
24 agreed upon, and this Court basically gave him a probationary
25 sentence with a donation to the ICAB.

1 They had basically the same type of conduct. We
2 weren't able to prove as much fraud as we had in this
3 particular case; however, based on that and the defendant's
4 willingness to come in and accept responsibility and basically
5 negotiated with us a resolution to this particular sentence.

6 THE COURT: If I made a mistake in that case, it
7 doesn't mean I'm going to make a mistake in this case.

8 MR. SCHMIDT: In looking at the guidelines, we looked
9 at the guideline fines between \$10,000 and \$95,000. We did a
10 midline guideline sentence on that.

11 THE COURT: If I read the PSR though, they are
12 essentially paupers, they don't have any money to pay a fine.
13 And in fact, I think the probation office, if I remember
14 correctly, suggested that they not be ordered a fine because
15 they don't have any money.

16 MR. SCHMIDT: Well, they have created businesses. I'm
17 sure that they will get back and earn funds. They have some
18 skills. And Ms. Rodrigo has been successful in the past with
19 other types of businesses.

20 THE COURT: Ms. Rodrigo states that she was unemployed
21 in 2021, when in fact she -- what she says is she hasn't been
22 employed since 2020, when in fact the PSR, unobjected to, the
23 PSR says that in 2021, she and her husband were shilling fake
24 art to tourists. Well, she was making money then.

25 MR. SCHMIDT: The shilling was done by Mr. Rodrigo.

1 THE COURT: That's not what the PSR says.

2 MR. SCHMIDT: She was the one that was doing the books
3 and running the business and doing all the other stuff. She
4 wasn't doing any of the actual sales.

5 THE COURT: Well, maybe I'm misremembering, but I
6 thought I read in the PSR that she, and it might have been her
7 son, but it may have been her husband, actually negotiated at
8 least two sales in July of 2021, but let me -- let's just go to
9 the PSR. I don't want to misspeak.

10 Paragraph 23, "On July 12, 2021, Cristobal and Glenda
11 sold a Philippine-produced stone carving of a bear and a salmon
12 signed by Kilit for \$1,000, and they gifted the buyer a small
13 standing stone carving of an eagle signed by Junior. Cristobal
14 represented the carvers of both carvings as Alaska Native
15 artists."

16 July 15, three days later, at that store, "She also
17 participated in selling a signed salmon carved by Kilit for
18 \$1,600."

19 This is all at the time when she is telling probation
20 that she was unemployed, she didn't have any job, yet she's out
21 here committing this crime, making money. So you understand
22 why I'm troubled, I hope.

23 MR. SCHMIDT: I certainly can see that, Your Honor.
24 And as for paragraph 23, she was in the store at the time, and
25 this has been charged as a conspiracy, but the --

1 THE COURT: This was a conspiracy by proximity?

2 MR. SCHMIDT: By her assistance of the business and --

3 THE COURT: That is not what the PSR says, and neither
4 one of you, neither the defense nor the government objected to
5 the representation that she was involved in those two sales,
6 when she also tells probation, "Oh, by the way, I was
7 unemployed."

8 So you're telling me she was keeping the books for
9 this conspiracy in 2021, yet she says she's unemployed?

10 MR. SCHMIDT: That -- I would not say that that is
11 factually incorrect, that she was saying that she was
12 unemployed at the time. She was employed running the
13 businesses during that time in 2021.

14 THE COURT: That's not what's been represented. So
15 look, we can get down in the weeds and argue all of these
16 points. Everybody has taken the time to come here today. I
17 want to give you the opportunity to make whatever pitch you
18 want to make as to why my concerns are inaccurate and that I
19 should accept this deal and we can move forward, but I'm
20 telling you it's not only the defendant before me right now
21 that I'm concerned about, I'm concerned about the other two
22 defendants.

23 And my reading of the totality of the facts in this
24 case is that it leaves me with the impression I'm not inclined
25 to accept a (C) agreement where my hands are tied and I have to

1 accept the resolution brokered by the parties in this case.

2 And if we have to have a trial, we have a trial.

3 That's why we have courthouses. So the other part of this is I
4 know you brought people in from out of state. I'm happy if you
5 want to put them on to make the record with them so they don't
6 have to travel back again, because then we'll have that
7 information.

8 So do you all need a moment to talk, you and defense
9 counsel?

10 MR. SCHMIDT: It would be appreciated.

11 THE COURT: Because I know I have pulled the
12 tablecloth out from under all the China and you probably need a
13 few minutes to the talk. So I'll go back here and tell me when
14 you're ready to go forward.

15 DEPUTY CLERK: All rise. This court stands in a brief
16 recess.

17 (Recessed from 8:25 a.m. to 8:41 a.m.)

18 DEPUTY CLERK: All rise. His Honor, the Court, the
19 United States District Court is again in session.

20 THE COURT: Do we know where the defendant is?

21 DEPUTY CLERK: He just stepped out. He's walking back
22 in. My apologies.

23 Please be seated.

24 THE COURT: You don't have to apologize.

25 How are we doing?

1 MR. BARSHIS: Your Honor, I was trying to speak with
2 my client in the hallway to discuss what the government and I
3 just discussed, and then was called back in here, so I haven't
4 had an opportunity to discuss it with my client.

5 THE COURT: I'm not trying to get into the middle of
6 your negotiations, but I need to know if we're going forward
7 today or not.

8 MR. BARSHIS: I believe we're attempting to.

9 MR. SCHMIDT: We made an adjustment to the plea
10 agreement and he's got to discuss that with his client.

11 THE COURT: He has three clients in this case. And as
12 I indicated, my problem isn't only with the plea agreement for
13 this defendant; my problem is with the plea agreements for all
14 the defendants.

15 MR. SCHMIDT: Understood.

16 THE COURT: So how much time do you think you need to
17 finish your discussions?

18 MR. BARSHIS: I was hoping for at least five to ten
19 minutes in the hallway that I could discuss this with my client
20 since --

21 THE COURT: Okay. And then, again, don't lose track
22 of my offer. If you have people from the East Coast, we can
23 put them on, but I have scheduled a certain amount of time for
24 today's hearing, and when we run out of time, we run out of
25 time.

1 So I'll go back and give you -- we'll resume in
2 15 minutes.

3 MR. BARSHIS: Thank you.

4 THE COURT: Thank you. Let's just say 9:00.

5 DEPUTY CLERK: All rise. This court stands in recess
6 and will begin at 9:00 a.m.

7 (Recessed from 8:43 a.m. to 9:05 a.m.)

8 DEPUTY CLERK: All rise. His Honor, the Court, the
9 United States District Court is again in session.

10 THE COURT: Have a seat, everybody. Where are we at?

11 MR. SCHMIDT: Your Honor, we are going to increase the
12 cap to 24 months and all the other provisions will stay the
13 same. We'll go forward with sentencing and I'll make my pitch
14 to you, and whether or not you accept it, that's up to you.
15 It's the low end of the guideline range.

16 THE COURT: Again, I have got enough other problems
17 with your plea agreement, I'm not going to accept it. So if
18 you want to go -- if he wants to go forward with open
19 sentencing today, that's fine, but I'm concerned about the fine
20 structure, concerned where the money to the Indian -- no,
21 what's the name of the Department of Interior's --

22 MR. SCHMIDT: That I don't think is as big of an
23 issue. Department of Interior can actually designate that
24 money to wherever they want.

25 THE COURT: That's not what the plea agreement says.

1 MR. SCHMIDT: It goes to them and they would dole it
2 out. If you want to make a specific recommendation as to where
3 the money should go --

4 THE COURT: Have you looked at other options? There
5 is an arts fund in Alaska. Have you looked at that?

6 MR. SCHMIDT: We could give it to Central Council
7 here, Tlingit Haida, and they can dole it out.

8 THE COURT: How did you come up with \$10,000? Was
9 that plucked out of the air, because --

10 MR. SCHMIDT: Typically, we make that monetary amount
11 based on the expense of the investigation, the moneys that we
12 expend to investigate the case.

13 THE COURT: Look, I don't think the defendant, and I
14 don't want the defendant to make a rushed decision on something
15 that could impact his life for more than two years, actually,
16 up to 30 months.

17 And I have, as I have stated before, I have other
18 problems with the plea agreement; for instance, this \$50,000
19 fine, which probation says they can't afford, and you say in
20 your sentencing memorandum this is critical that there be a
21 fine so that there be a message sent to those who would commit
22 this in the future.

23 And so I'm just -- I'm not inclined to have my hands
24 tied in this case. And even under your modification, which I
25 appreciate the effort, I'm still -- you're still proposing a

1 (C) agreement, in which I am limited as to what I can do. I'm
2 not trying to forecast for you that I'm going to go to the top
3 of the guideline range, but I'm also trying to tell you I'm not
4 willing to have my hands tied.

5 Okay. So do you want to go forward with an open
6 sentencing or do you want to --

7 MR. BARSHIS: No.

8 THE COURT: How long is this case going to take to
9 try?

10 MR. SCHMIDT: I would say a couple of weeks. Maybe
11 three weeks. There is a lot of documentation in this
12 particular case.

13 And I would also point out to the Court, while the
14 defendant has agreed to the monetary amount of the loss, that
15 was based on receipts and that was an agreement that we had
16 made, but we have, for restitution purposes, it's \$54,000.

17 THE COURT: So explain to me the -- can you explain to
18 me the finances when in your sentencing memorandum you say that
19 it's over a million dollars in losses, yet, even the losses
20 listed as losses that are going to be reimbursed to the
21 victims, it's \$54,000.

22 MR. SCHMIDT: So the amount of loss, which was agreed
23 upon for sentencing purposes, was \$1 million based on the
24 receipts for that particular year that we had evidence for. As
25 for the particular loss of individuals, we had sent out notices

1 and tried to contact as many witnesses as we had. There was
2 some damage to some of the documents that resulted in us not
3 knowing who they were or being able to track them down. The
4 ones we did track down, we sent out letters to them and they
5 sent letters back to us. And then they either wanted
6 restitution or they didn't want restitution or they wanted to
7 submit a letter to the Court.

8 THE COURT: I reviewed the letters, and you're right,
9 I mean, it was only a couple that said they didn't want some
10 sort of restitution.

11 And then another question I have about the facts as
12 laid out in this case were that there were some local
13 individuals, some of whom, I assume from the descriptions, were
14 Alaska Natives, who were part of the scheme.

15 MR. SCHMIDT: Correct.

16 THE COURT: And I don't know --

17 MR. SCHMIDT: There is one that's coming up for
18 sentencing or change of plea before Your Honor -- or before the
19 district court.

20 THE COURT: In this case?

21 MR. SCHMIDT: Yes, that's Mr. Macasaet.

22 THE COURT: Go ahead.

23 MR. BARSHIS: Your Honor, I would just note that as a
24 part of the plea agreement, my client came in and was willing
25 to assist in all of those cases involving the Alaska Natives

1 that were a part of this common scheme, so that was part of the
2 thought process that went into all of these negotiations. My
3 client has flown up here on multiple occasions, but
4 specifically to sit down with the government and agents to
5 discuss what they knew and how they could help.

6 THE COURT: All right. So your proposal is that the
7 plea agreement would be modified to raise the top of the
8 range --

9 MR. SCHMIDT: Correct.

10 THE COURT: -- from 18 to 24 months, which is the
11 bottom of the range?

12 MR. SCHMIDT: Bottom of the guideline range, yes, sir.

13 THE COURT: And then the fine would still remain
14 \$50,000?

15 MR. SCHMIDT: That's correct.

16 THE COURT: And \$10,000 would still go to --

17 MR. SCHMIDT: Indian Arts and Crafts Board.

18 THE COURT: Is there a representative from the board,
19 or do we know if there is somebody here?

20 MR. SCHMIDT: She's the director and she's here.
21 She'll be making a statement.

22 THE COURT: Again, I don't want -- I don't want that
23 amount to be -- I would prefer that money be spent assisting
24 Alaska Native artists.

25 MR. SCHMIDT: If the Court wants to do that as an

1 additional donation, I don't really care if it's a fine or not.
2 I would be willing to modify that to have \$60,000 go to the
3 ICAB, and then you can make the determination to give it to
4 those particular programs. I would be fine with that.

5 THE COURT: Instead of a fine?

6 MR. SCHMIDT: Yes.

7 THE COURT: And I do think that's not inconsistent
8 with probation's recommendation of no fine.

9 Didn't you recommend no fine?

10 PROBATION OFFICER: That's correct, Your Honor, based
11 on the financial investigation.

12 THE COURT: All right. Well, I think with those
13 modifications, I would certainly -- probably in this case, it
14 doesn't -- he has no criminal history, so I would be
15 disinclined to sentence him to anything above of the bottom
16 range in any event.

17 So I think with those modifications, I'm willing to go
18 forward with this defendant, but I will tell you that I'm not
19 so inclined with his wife and his son, and we can talk about
20 that more when we finish with this case.

21 MR. SCHMIDT: That's fine.

22 THE COURT: I'm looking at defense counsel. I
23 understand you're saying it's fine. He's the one who is going
24 to have to let me know what he wants to do or what his clients
25 want to do.

1 And I mean, the reason I raise this now is I don't
2 know if this is an all-for-one and one-for-all or not.
3 Obviously, each defendant has to make their own individual
4 decision. So are you prepared to go forward with your client?

5 MR. BARSHIS: Yes, Your Honor.

6 THE COURT: Okay. All right then. Give me a second.

7 The defendant pled guilty to one count of conspiracy
8 in violation of 18 United States Code Section 371. It's a
9 Class D felony, as well as Count 2, misrepresentation of Indian
10 produced goods and products in violation of 18 United States
11 Code Section 1159(a), which is also a Class D felony. A
12 presentence report has been prepared from which no information
13 has been withheld.

14 Mr. Rodrigo, sir, have you had a chance to read
15 through the presentence report and talk it over with your
16 counsel?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. When imposing sentence today, I'll
19 be relying upon the information in the presentence report as
20 well as any -- well, as well as the written submissions of the
21 parties and any additional arguments or statements made here
22 today.

23 And as I noted earlier, but I want to just make sure
24 that I'm clear, when I look at the presentence report, I see
25 no -- well, there were some changes made to the draft, but as

1 far as the final PSR, there's no outstanding objections to the
2 PSR; is that correct?

3 MR. SCHMIDT: Correct.

4 MR. BARSHIS: That is correct.

5 THE COURT: In that case then, I do find an adjusted
6 offense level of 17 with a criminal history category of I. It
7 calls for a sentencing range -- well, the maximum is five years
8 of imprisonment, the sentencing guideline range is 24 to
9 30 months; supervised release of one to three years on both
10 Counts 1 and 2; a fine range of \$10,000 to \$95,000; restitution
11 in the amount of \$54,204.81; and a \$100 special assessment for
12 each count for a total of \$200.

13 And then if we can just turn our attention briefly to
14 the plea agreement. This is an agreement under 11(c)(1)(A),
15 (B) and (C), and thus, if I accept the plea agreement, I'm
16 bound to the recommendations of the parties.

17 My understanding, and I just want to be clear on the
18 record, is that there has been two modifications, as I
19 understand it. One is that the period -- the parties agree
20 that the -- well, what it says here is that the government will
21 not seek a period of incarceration of more than 18 months to
22 serve, which is not the same thing as limiting my ability to
23 sentence him, which is why I had a question mark next to this.

24 I think what the parties really --

25 MR. SCHMIDT: It was a cap of 18 months.

1 THE COURT: It was a cap of 18 months. And so the
2 parties today have, based upon concerns that I have raised
3 about the agreement, have agreed to raise the cap to 24 -- up
4 to 24 months, which is the bottom of the guideline range. Is
5 that correct?

6 MR. SCHMIDT: Correct.

7 MR. BARSHIS: That is correct.

8 THE COURT: Have you had a chance to talk this over
9 with your client? He understands that?

10 MR. BARSHIS: I did, Your Honor.

11 THE COURT: And then there is one other modification,
12 which is there is a fine -- there is a \$10,000 donation to the
13 Indian Arts Fund, and then there is also a \$50,000 fine. The
14 government is fine with restructuring that and not imposing any
15 fine, but rather that the defendant would be obligated to
16 provide, I guess, jointly and severally with the other
17 defendants in this case; is that correct?

18 MR. SCHMIDT: These are individual as to the Indian
19 Arts and Crafts Board donations. Now, the restitution is joint
20 and several.

21 THE COURT: The restitution is joint and several. So
22 then -- well, we'll address the other defendants when we come
23 to it, but rather than a \$50,000 fine, the modification I
24 thought I heard you indicate was \$60,000 in total as a
25 donation -- as a payment to the Indian Arts Fund.

1 MR. SCHMIDT: Yes. Correct. To the Indian Arts and
2 Crafts Board for the Court to designate to whatever programs
3 that you would want.

4 THE COURT: Again, this is a chicken and an egg thing
5 here. I know you have a representative from the board here,
6 but I would like the proceeds to go to the Alaska Native arts
7 community, because that's the arts community that was impacted
8 by this crime, not -- I mean, I know there is other crimes
9 committed in appropriation of American Native art, but I want
10 the harm remediated here.

11 MR. SCHMIDT: I think I could do that -- President
12 Peterson with Tlingit Haida Central Council indicated that they
13 would be willing to accept the funds and designate it for that
14 particular purpose.

15 THE COURT: It would have to go through the national
16 fund for the Department of Interior, would it not?

17 MR. SCHMIDT: Unless you designated the donation to go
18 to them specifically, that way you cut out the middleman.

19 THE COURT: Have you spoken with the representative of
20 the arts fund who flew all the way up here to tell me why I
21 should follow through on this going to them as opposed to what
22 you just proposed?

23 MR. SCHMIDT: She agrees with me it's the cleanest way
24 to do it.

25 THE COURT: It would go to the Tlingit Haida --

1 MR. SCHMIDT: Central Council.

2 THE COURT: I don't want it to go to the Tlingit Haida
3 Central Council for them to do whatever they want. The
4 intention is to remediate the harm done by this type of conduct
5 which is impacting Alaska Native artists.

6 MR. SCHMIDT: Stand by.

7 (Pause)

8 MR. SCHMIDT: President Peterson indicated to me you
9 could designate it to the Tlingit and Haida Central Council
10 Vocational Center, and that is --

11 THE COURT: And they teach art skills there?

12 MR. SCHMIDT: Yes, and then they could --

13 THE COURT: Any objection to that?

14 MR. BARSHIS: No, Your Honor.

15 THE COURT: So we'll make that additional adjustment
16 in this case.

17 So again, you both have talked -- I mean, I can't
18 write the plea agreement for you, but this is an adjustment
19 you're making to your plea agreement?

20 MR. SCHMIDT: Yes.

21 THE COURT: It sounds like the defendant does not
22 disagree. So with those modifications, I do now accept the
23 parties' plea agreement.

24 And I'm happy to hear your arguments as to what
25 sentence I should impose in this case, taking into

1 consideration the factors identified in 18 United States Code
2 Section 3553(a).

3 I don't know if you have any witnesses you want to put
4 on before you make your argument.

5 MR. SCHMIDT: Your Honor, I do have some people here
6 that would like to make a statement.

7 THE COURT: If they want to make a statement, they can
8 come up to one of the microphones here. I would simply ask
9 that you state your name and spell your name for the record,
10 and then go ahead and make your statement.

11 MR. SCHMIDT: The first person that will be speaking
12 will be James Johnson. He's a Tlingit artist who resides in
13 Arizona.

14 MR. JOHNSON: James Johnson, Tlingit Indian, born and
15 raised here in Juneau, Alaska.

16 THE COURT: How do you spell your last name?

17 MR. JOHNSON: J-o-h-n-s-o-n.

18 THE COURT: Thank you very much. Go ahead, sir.

19 MR. JOHNSON: (Speaking in Native Alaskan language.)

20 My name is James Johnson, Tlingit Indian, born and
21 raised here in Juneau, Alaska. I belong to the Dakl'aweyidi
22 clan, which is the killer whale clan. My family lineage is
23 from the Xutsnoowu Kwaan. My Tlingit name is Onn-iss-kwah,
24 which means "man who stands alone strong." That name was given
25 to me by my grandfather, Chief Peter Johnson of Xutsnoowu.

1 I'm a Tlingit artist and carver. What I do -- there
2 is no word for art in our language. So everything you see, all
3 these pieces that you see were completely integrated as part of
4 our culture. It explains our history of our people. This is
5 where we came from and this is our lineage that goes back
6 thousands of years in Southeast Alaska.

7 For me, I've dedicated my life to pursuing this art
8 form. I've been carving for 15 years. It's not a hobby that
9 you do. You dedicate everything you have to learning it and
10 carrying it forward.

11 What makes it sacred is the art form went through a
12 period of time where you weren't allowed to do it anymore. So
13 this knowledge that's been passed down for generations was
14 severed completely. Artists today, we're picking up these
15 broken pieces that we have left and carrying this culture and
16 this tradition forward through the art form.

17 And for me, carrying this forward means everything for
18 my lineage. I teach the art form as well here in Juneau,
19 Alaska. I teach in Washington state. I live in Phoenix,
20 Arizona.

21 And so again, like with this art form, it's so much
22 more than just esthetics that are meant for market; it's a
23 history. And those stories and that history is told through
24 any object, told through a paddle, a mask, a bentwood box, a
25 totem pole. All these objects tell that story and that history

1 of our people. This is our lineage.

2 And so like for anyone that pursues this that's
3 carrying along this tradition on their shoulders, more than
4 just trying to create an art piece for market. It's so much
5 bigger than that. And the sale of non-authentic Tlingit art
6 directly impacts artists who have dedicated their life to
7 carrying this forward and bringing this art form back up to
8 what it once was. And it's a culture and it's a tradition.

9 For me, you know, you find your purpose in life, what
10 you're meant to be doing with your life, and whether I chose to
11 do this or it chose me, this is exactly what I meant to be
12 doing by carrying it forward.

13 Born and raised here in Juneau, Alaska, I have been
14 fortunate to make a career out of being a Tlingit artist, but
15 part of the brands and the people I work with, we give back to
16 this community in Juneau, and that's from being an authentic
17 Tlingit artist.

18 I'm an artist for Vans, and we donated a portion from
19 my collection back to Juneau that gets indigenous kids up to
20 Eaglecrest, learn how to ski and snowboard. It's a positive
21 thing that we're creating here through the art form.

22 And, again, like the ripple effect from this, it goes
23 out further than just Alaska. Stealing our culture, stealing
24 our tradition, affects a number of different people all through
25 the chain. I wouldn't be able to do this if it wasn't for my

1 passion and my direction of pursuing the Tlingit art form and
2 bringing this culture back to what it once was. And so it's
3 important -- I know like the details of the case are real
4 specific, what money goes where and this goes there, but we
5 need to set an example that this is not okay. This is not okay
6 for galleries to be selling non-authentic Tlingit art to these
7 consumers, because it's not just art they are selling, they are
8 selling our culture, they are selling a tradition that at one
9 point in time everything that could have been done was done to
10 destroy this culture, and so we're trying to bring that back.

11 And it's so much more than just esthetics of art and
12 trying to create margins from it. And so for me, I'm really
13 happy to come here. I traveled all the way from Phoenix,
14 Arizona to come speak today and share what my journey is and
15 how this affects artists, because what we do is so much bigger
16 than create something for a market. You dedicate your whole
17 life to this art form.

18 And it's hard, carving is hard, drawing is hard.
19 Everything you see visually is difficult to do. And passing
20 that knowledge on to the next generation is also my purpose as
21 well and bringing that forward.

22 And this theft of our culture, this theft of our
23 heritage, affects us deeply, more than just in a monetary
24 sense. So that's why it's really important that we get a grasp
25 on this. And it's not going to be fixed today. It's not going

1 to be fixed tomorrow, but we need to start moving towards
2 solving this issue, and that way we can thrive again, we can
3 bring the culture back again. So that's my piece. That's all
4 I wanted to say.

5 THE COURT: Thank you very much.

6 MR. SCHMIDT: Richard Peterson, President of Tlingit
7 Haida Council.

8 MR. PETERSON: Good morning, Your Honor. My name is
9 Richard Peterson. R-i-c-h-a-r-d, P-e-t-e-r-s-o-n. My Tlingit
10 name is Chalyee E'esh. I'm Kaagwaantaan from the Eagle's Nest
11 House. Telling you who I am, I just told you who my mother is,
12 her mother, her mother, back since time immemorial.

13 It's important to be here today as the President of
14 Tlingit and Haida. Of the 229 tribes in Alaska, we're the
15 largest at over 37,000 tribal citizens worldwide. Of the 574
16 tribes in the country, we're the twelfth largest.

17 I understand that the defendant is from Washington.
18 If you took all the Tlingits and Haidas in Washington state, we
19 would be the third largest tribe in Washington state. So when
20 we speak, we speak with the knowledge of our ancestors that's
21 been passed down since time immemorial.

22 I took off my shirt because I wanted you to see my
23 tattoos, my traditional tattoos, the art of our people. This
24 tells you who I am. Our art is everything to us. It's not
25 just symbols. They are not just items. In the Tlingit

1 language, we refer to these items as atoow; they are sacred,
2 they are with spirit.

3 I was born in Ketchikan, raised on the Island of
4 Prince of Wales in the Village of Kasaan, the oldest of the
5 Haida villages in Alaska, surrounded by totem poles and a
6 massive longhouse that I dedicated my life to restoring, to
7 finding the few artists left who could restore that house.

8 I have dedicated my life to my tribe and my people.
9 Of the Tlingits and Haidas, 37,000 people, we have two fluent
10 Haida speakers left and less than 50 Tlingit speakers left.

11 As we watch our culture and our language dying and
12 working to restore it, it's our art that we also work to
13 restore and to uphold, because it is our art that told you who
14 we are, that told our stories. We didn't have a written
15 language. We had it only oral and through our art.

16 We watched colonization come and we watched the
17 bombardment of villages by the United States Navy, the
18 community of Angoon, which Mr. Johnson is from, almost entirely
19 wiped out. The same for Wrangell. And I'm forgetting Haines.

20 How our stories and how our culture survived were the
21 few artifacts that were remaining, that were hidden, that were
22 passed down, or those that were stolen and you now find in
23 museums across the country in Russia and Europe. Our
24 connection to our art is very much the core of who we are.
25 It's not just a symbolic thing.

1 Again, this next weekend, I'm traveling to Wrangell,
2 Alaska where we're going to return over 20 items to the
3 community, and we have been doing this over the years. When we
4 see our atoow, our items come back, our sacred objects, we see
5 a cultural revitalization. We're seeing clans tell their
6 stories openly again. We're hearing people use our language
7 again. And we're seeing pride in the faces of our young people
8 come back.

9 Our artists are sacred to us. They keep us alive, and
10 our traditional ways, they were themselves sacred. They were
11 honored and considered a treasure unto themselves. In the
12 traditional times, our whole clan would take care of these
13 artists because they did this important work.

14 In modern times, they have to take care of themselves,
15 and they do that through their artwork so that they can keep
16 that alive, this sacred activity that keeps our culture, that
17 tells our stories, tells us who we are, where we come from.
18 How we honor our deceased, how we honor our clans, how we lift
19 each other up, it is all done through our art.

20 You see beautiful totem poles being carved. When I
21 moved to Juneau to become the President of Tlingit and Haida
22 nine years ago, there were probably less than five or six totem
23 poles openly displayed in Juneau. Now you see them all over,
24 not because there is so many, but because there is such a rich
25 dedication to bringing back our art and telling who we are and

1 where we come from. I testified once to the City and Borough
2 of Juneau, and I was told, well, you know, Juneau wasn't even a
3 traditional place, it's not where the Tlingits were from. And
4 I just spoke back and said, "That's funny, your building is on
5 top of the old village. If you walk through your own building,
6 you will see the pictures of the village here that you pretend
7 didn't exist."

8 And they are able to pretend we didn't exist here
9 because there weren't totem poles, because we weren't telling
10 who we are, where we're from, whose land this is. Do you know
11 that we're on the Aak'w Kwa'an? Do you know our neighbors, the
12 T'aaku? We know because of our stories passed down to our
13 lineage through our art, through our totem poles. We know who
14 we are. We know where we come from. And we're able to
15 represent that because of our art.

16 Today, Tlingit and Haida people can be doctors,
17 lawyers, and everything in between. Yet today we still revere
18 our artists the most, because they are upholding who we are,
19 they tell who we are, they represent who we are with pride.

20 I wondered if I would come in and reading the papers
21 if I feel sorry for the defendants. I can tell you I do not.
22 I don't care that this is your first crime, because it's a
23 crime that's been committed to our people now for generations.

24 I come from a long history of village on my Haida side
25 where Walt Kasaan was pillaged. People literally took our

1 carvings. They took pieces of our longhouses. Sometimes they
2 took our whole longhouses. They dug up graves from our highest
3 chiefs so that they could profit, so they could sell them in
4 their curio shops.

5 And what you, sir, and your family are doing today is
6 no different than what those people have done to us since the
7 time of colonization. I worked very hard on behalf of my
8 people. Many of our people work very hard on behalf of our
9 people to keep our culture alive, to make sure that we're
10 recognized, we know who we are, and we do through our art.

11 Our artists only survive because they are able to
12 market and sell their art, and when you take that from then, we
13 lose. Just like we're losing our languages, we lose our
14 artists. And our artists are who can still speak for us and
15 tell us who we are.

16 I thank you, Your Honor, and I appreciate you for
17 being here.

18 THE COURT: Thank you.

19 MR. SCHMIDT: Your Honor, the next person that's going
20 to make a statement is Wayne Price. He's a Tlingit totem
21 carver and he's from Haines, and also a UAS professor.

22 THE COURT: Sir, state your name and spell your last
23 name for the record.

24 MR. PRICE: My name is Wayne G. Price. My Tlingit
25 name is Aayaank'i.

1 I'm an artist. I have been for my whole life. I have
2 38 totem poles standing in Southeast Alaska alone. I'm also
3 responsible for the creation of 15 dugout canoes.

4 I'm here today to tell you that our art is our voice.
5 It belongs to us. Has been for all time. And I have dedicated
6 my whole life.

7 I'm also a professor at the University of Alaska
8 Southeast here in Juneau. I'm just preparing for another
9 semester. Our art is our voice. It means a lot to us. Has
10 been our art for thousands of years. It had meaning. It's our
11 connection to the seen world, to an unseen world, and it went
12 like that for thousands and thousands of years.

13 Of course the sailing ships came and a big change
14 happened. It happened to all of us. That change was not very
15 good for us, but we're recovering now. We're coming back.
16 There is a resurgence.

17 I just returned from a 180-mile canoe journey from
18 British Columbia down into Washington in my dugout canoe.
19 We're touching our culture, we're bringing it back. We asked
20 to be left alone.

21 Our work, our art has deep connections with the water,
22 the earth, the sky, it goes way back for a long time, always
23 will. And so much has been taken. We lived in a time of take,
24 take, take. Now, the resurgence, because all of us are working
25 together, are standing together, we're bringing it back. Our

1 language, our art, our dances, it's finally coming back. It
2 was not that long ago it was illegal to do these things, but
3 this is a change now.

4 We're in a new time. Our people are bonded together.
5 We're standing up. We'll be counted. And you know, you have
6 your culture, I have mine. Honor yours as I honor mine.
7 That's all we ask.

8 I'm here to speak in an honorable way for my people,
9 my culture, my heritage that we stand up and let us be counted.

10 THE COURT: Thank you.

11 MR. SCHMIDT: Your Honor, the final person that will
12 be making a statement here is Meridith Stanton with the Indian
13 Arts and Crafts Board, who is the director.

14 THE COURT: Thank you.

15 MS. STANTON: I can't be nearly as eloquent as these
16 people before me. My name is Meridith Stanton,
17 M-e-r-i-d-i-t-h, S-t-a-n-t-o-n. I am the director of the
18 Indian Arts and Crafts Board at the U.S. Department of
19 Interior. I have been working for the board for over 40 years.

20 I have been involved with Indian Arts and Crafts Act
21 issues since the 1990 act was enacted, and I wrote the
22 regulations for the act, for entry to subsequent amendment.

23 As I believe you know, the Indian Arts and Crafts Act
24 basically says that unless an art or craft product is made by
25 an American Indian or Alaska Native it cannot be sold, should

1 not be sold as an authentic Alaska Native or American Indian
2 art product.

3 For many people in the Alaska Native communities, and
4 certainly in the Lower 48, in addition to the importance of
5 carrying on traditions from one generation to the next, it is
6 also a very key part of their economies. Alaska Natives and
7 American Indians rely on the production of art not only to put
8 food on the table, to pay for transportation and other critical
9 family needs, so when counterfeit work is entered into the
10 marketplace, it has a devastating impact on multiple levels.

11 I know that oftentimes some folks may look at the
12 Indian Arts and Crafts Act violations as minor crimes, but in
13 fact, counterfeit Indian and Alaska Native art really tears at
14 the soul of Alaska Native and Indian communities. It is not
15 just an economic crime, but it is also something that has a
16 detrimental effect on passing down traditions from one
17 generation to the next, as eloquently described by James and
18 Mr. Peters and Wayne Price.

19 These crimes are very significant, not only in Alaska,
20 but the Lower 48. And I can tell you that many times people
21 will come up to us from both communities and thank us for our
22 work and encourage us to continue on in our efforts to rid
23 counterfeit Alaska Native and American Indian art from the
24 marketplace in which they must compete.

25 So, again, this is not a minor crime, and we really

1 believe that the Court, and I believe your opinion is that
2 these crimes should be taken very seriously. So I want to
3 thank you for this opportunity to express the concerns of the
4 Indian Arts and Crafts Board and the U.S. Department of the
5 Interior.

6 THE COURT: Thank you very much.

7 MR. SCHMIDT: That's all the statements, Your Honor.

8 THE COURT: All right. At this time then I'll hear
9 from counsel as to your recommendation as to an appropriate
10 sentence taking into the consideration the factors identified
11 in 18 United States Code Section 3553(a).

12 So you know, I have read your briefs, so you don't
13 need to repeat what you have in your brief, but if there is any
14 additional arguments you would like to make.

15 I'll start with Mr. Schmidt. Go ahead.

16 MR. SCHMIDT: Your Honor, in looking at fashioning an
17 important sentence, the Court should look at the 3553(a)
18 factors. The Court is well aware of the nature and
19 circumstances of this offense. The defendant had essentially
20 two businesses, one that sold stone carvings and another one
21 selling totem poles that were selling Philippine-made with
22 Philippine labor carvings.

23 This was a business that the defendant had started
24 initially as a carver himself and then basically moved into a
25 production mode where they were able to produce more carvings

1 because of his wife's associations with other people that were
2 in the Philippines and were able to train them to carve as
3 well.

4 THE COURT: Didn't they found a company in the
5 Philippines?

6 MR. SCHMIDT: They did. It was Rodrigo Creative
7 Crafts that was founded by Ms. Rodrigo. And he went over there
8 for a period of time to train them on how to carve and the
9 types of carvings that he wanted. Then they would buy those
10 for \$8, \$10, \$20 apiece, put them in a cargo van, bring them
11 over and import them into the United States.

12 And so because of that corrupt price difference and
13 the demand and the requirements of people that come to Alaska
14 that want authentic Alaska Native artwork, they were able to
15 price those items for thousands of dollars, and if they weren't
16 able to make a sale, they were able to at least undercut
17 whatever -- they could undercut themselves to make the sale,
18 which in turn undercuts everybody else.

19 So they could put a price out of \$5,000, somebody
20 comes in and says, "Yeah, that's just too much. How about
21 this, I'll give it to you for \$3,000 and I'll throw in another
22 piece." It's not really any loss to them. They are making a
23 profit regardless.

24 And it's a business practice that many legitimate
25 Alaska Native artisans can't compete with, nor even just honest

1 Alaska artisans, where artisans that actually do carve, they
2 don't misrepresent their artwork, they produce artwork and sell
3 items -- we have heard stories of people selling items and
4 people coming back and saying, "I gave you an authentic Alaska
5 Native piece over here and why don't you give me a discount or"
6 -- and it's cheaper.

7 And they say, "Look, I carved that, I'm not Alaska
8 Native, but I put the energy into this," and they get
9 undersold, even if they tell them that they think it's fake.

10 THE COURT: I read one of the letters, and I think
11 that's the only source I saw where the defendant -- actually, I
12 think it's the son, was cold calling former customers to sell
13 even more art. Did I read that correctly?

14 MR. SCHMIDT: That is correct. And that was during
15 the COVID years when there was no cruise ship traffic and they
16 were trying to make sales by contacting other customers that
17 had previously bought items, and the defendant had done that
18 too, as well as his son.

19 And so, you know, the circumstances of this was a
20 pretty sophisticated fraudulent scheme that they had been
21 engaged in.

22 The history and characteristics of the defendant, he
23 doesn't have any prior criminal history. This is a white
24 collar offense. As I said before, it is a fairly sophisticated
25 operation that occurred over the course of years. He doesn't

1 have any substance abuse or any other criminal convictions. I
2 think the negotiated sentence previously for 18 months was an
3 appropriate sentence, given the fact he had come in and
4 basically taken responsibility and was willing to take the hit.
5 However, the Court has up to a cap of 24 months that it may
6 impose.

7 The seriousness of the offense, this is a serious
8 offense. As stated by Ms. Stanton and our other speakers,
9 first and foremost, it's a truth and advertising law. You
10 know, there is rampant misrepresentation throughout Southeast
11 Alaska. I can tell you that half the businesses probably
12 misrepresent at some point or another to make a sale. I mean
13 it really comes down to it's a money game and you can make a
14 lot of money.

15 And when you have 20,000 people come off cruise ships
16 and you have a portion that want authentic artwork, it's not
17 that hard to say a few words and say that guy is an authentic
18 artist, Alaska Native artist that made that piece, and they are
19 able to make those sales.

20 There is victimizing of the people that are the
21 customers who believe they are purchasing authentic artwork and
22 willing to pay premium. There is the economic effects over the
23 overall industry. It creates an unlevel playing field for
24 legitimate businesses selling authentic Alaska Native art by
25 out-pricing them and other legitimate Alaska artisans who

1 actually follow the law, and they can't compete either.

2 And this type of scheme and this type of industry is
3 very successful. They were able to make a million dollars in
4 sales in one year. And the overall industry probably makes
5 tens of millions just here in Southeast Alaska.

6 So I think that the effect is not just to the artisans
7 themselves, but it is widespread. It's much more than a
8 typical white collar crime where somebody commits an online
9 offense and defrauds people out of some money, you have that
10 particular individual that's defrauded. Here it's that victim,
11 the culture, the entire business community. It's way more
12 widespread than your typical white collar offense.

13 Also creating a mistrust in the market where people
14 who do want to seek out these things have a hard time
15 determining what is authentic and what is not, and they may not
16 buy things because of that, and that also affects Alaska Native
17 artisans.

18 And I know the Court and I have had many discussions
19 about deterrence and deterrence of others. I believe that a
20 jail sentence and the donation and a felony conviction is going
21 to at least deter this defendant, but it also will deter
22 others. One of the things that these types of cases really get
23 from the media is that they pick up on these stories, and this
24 is an important story because the type of effect that happens
25 and the people that it affects. It does create a deterrence of

1 others.

2 THE COURT: Let me ask you a question about that,
3 because your plea agreement only calls for the publication for
4 two weeks in the local Ketchikan newspaper, which seems an
5 awfully myopic message to send when you just noted that this
6 occurs all throughout Alaska and to Native artists.

7 Why would you focus on a local newspaper in Ketchikan
8 when there is certainly --

9 MR. SCHMIDT: I'm not saying in Ketchikan. I think
10 all of Alaska, I mean, there was --

11 THE COURT: No, no. What I'm saying is your plea
12 agreement calls for the defendant to pay for two weeks of
13 publication in a very small narrow market when you just said
14 this is much broader throughout Alaska. Why are you limiting
15 yourself --

16 MR. SCHMIDT: That was the area where the offense was
17 committed, in Ketchikan, Alaska, and so that would be the
18 request and has been for many of our other cases where we
19 have -- where the offense occurs, and then it can be taken from
20 there from news agencies that want to print that.

21 THE COURT: Go ahead.

22 MR. SCHMIDT: And so I think that the agreed -- the
23 sentence that we had previously discussed will do that. And I
24 think that deterrence of others is an important aspect and
25 actually probably one of the most important aspects of trying

1 to get rid of fake art and also to strengthen the Alaska Native
2 Indian art community by making sure that things that are being
3 sold and represented as such are what they are.

4 And I put two examples where once these types of cases
5 have come out, you know, agents go through and they do kind of
6 like spot checks, it does reduce the number of people that are
7 able to misrepresent. Now, there is going to be people that
8 are going to continue to misrepresent, and those are the people
9 we end up focusing on for future prosecution. However, I think
10 that the deterrent effect for others is quite high in this
11 particular case.

12 So I would ask the Court to impose the sentence that I
13 had previously, the 18 months. The Court can go up to
14 24 months. We had modified the agreement for the \$60,000
15 donation to Tlingit Haida Central Council Vocational Center,
16 and they don't have to pay a fine, and he'll be on supervised
17 release.

18 And I believe that under the 3553(a) factors, that all
19 of those concerns are going to be met with that sentence.

20 Thank you.

21 THE COURT: Thank you.

22 Sir, how do you pronounce your last name again?

23 MR. BARSHIS: Barshis.

24 THE COURT: Thank you, Mr. Barshis. Go ahead.

25 MR. BARSHIS: Thank you, Your Honor.

1 Your Honor, sitting here listening to all of the
2 effects that, I guess, are given, garnered by the conduct of my
3 client, I think he takes that to heart. This was not a crime
4 of malice, but it was one of ignorance. It's one in which my
5 client was taught by an Indian carver, a Native on how to carve
6 these things, and he saw an opportunity.

7 He didn't know the ripple effect. I don't think that
8 he understood the impact it would have on everybody sitting in
9 here today. I don't believe that this is an individual that
10 intentionally went out to harm people.

11 THE COURT: But he and his family intentionally went
12 out to lie, right, because if I understand the facts of this
13 case correctly, they represented themselves as Native Alaskans,
14 as part of a Native Alaskan family who traditionally produces
15 artwork.

16 MR. BARSHIS: They did to an extent, yes, Your Honor,
17 they came up with a story.

18 THE COURT: A story is a euphemistic way of saying a
19 lie.

20 MR. BARSHIS: And I'm a defense attorney, Your Honor,
21 that tries to couch it in the best possible light.

22 THE COURT: I get it, you're doing your job.

23 MR. BARSHIS: You're correct, it is a story that they
24 created. Was it a story that they set out to create to
25 perpetuate this? I don't know that that was the initial

1 intention; however, they met individuals that worked for their
2 shop that were Alaska Natives that sounds like will likely be
3 coming before Your Honor for pleas and sentencings.

4 THE COURT: That's what I heard.

5 MR. BARSHIS: And those individuals provided them with
6 the information and the ability to perpetuate that story,
7 indicating to them that they would be able to sell it for a
8 higher profit should they be able to create this story.

9 In no way am I justifying or de minimizing what they
10 did, but what took place was not just a simple individual that
11 went out to try and create a false narrative on his own to
12 perpetuate this scheme.

13 Your Honor, I think looking at the factors, I think
14 looking at the deterrence effect, looking at all of the
15 negatives that were pointed out that came from this crime, we
16 have an individual here though that I don't believe would ever
17 be back before Your Honor or any court for anything similar to
18 this, or quite frankly any crime ever.

19 This has had a long lasting effect not only on
20 Mr. Rodrigo, but his entire family. They have now succumbed to
21 very minimal means. They work as vendors selling hotdogs
22 outside of Lumen Field. They are working to get their life put
23 back together.

24 My client really is stepping forward because he has no
25 other concern than his family at this point and trying to make

1 this situation right. He was very forthcoming from the very
2 get-go, Your Honor. As soon as their storage unit was seized,
3 they said, "It's yours." They didn't contest the approximately
4 \$3 million in assets that were taken or merchandise. They
5 didn't try and contest the facts that were being presented.

6 In fact, they decided to say, "We will help in any
7 way, shape or form that we possibly can." They now understand
8 the magnitude of what their actions created, the harm that it
9 has done to others, and I don't believe that they will ever put
10 themselves in a situation to be back before this Court or any
11 other doing something similar.

12 What we are asking, Your Honor, is that the 18 months
13 that was originally put before the Court be suggested or
14 converted to electronic home detention in this case. My client
15 currently has a 21-year-old daughter who is suffering from
16 kidney failure. He is trying to be there to support her, not
17 knowing how much of an effect that's going to have on her
18 overall life and longevity.

19 He wants to be there to try and help support his
20 family through not only the financial means, but the emotional
21 support that is needed throughout this process.

22 My client understands his wrongs, and he's willing to
23 take whatever punishment the Court hands down. We're just
24 asking that the Court take into consideration the fact that my
25 client has no prior criminal history, the fact that my client

1 has been very forthcoming once realizing the magnitude of his
2 situation and the ripple effect that it had, and the fact that
3 he was willing to come forward and present information on other
4 individuals that may be carrying out these same practices once
5 he realized the damaging effects that this type of a crime can
6 have.

7 Your Honor, I believe 18 months on electronic home
8 detention would be appropriate in this case. It would be a
9 deterrent. It would take the seriousness of the allegations or
10 the crime into account.

11 So for those reasons, Your Honor, we would ask that
12 the Court follow the recommendation that was originally put
13 before Your Honor; the only difference is we would ask that the
14 Court allow it to be converted from 18 months of prison to
15 18 months of electronic home detention.

16 THE COURT: Thank you.

17 Mr. Rodrigo, you have an opportunity to speak before I
18 impose sentence. You don't have to say anything, but if there
19 is anything you would like to say, this is your opportunity.

20 You don't have to stand, you can just pull the
21 microphone closer.

22 THE DEFENDANT: Your Honor, all those years, I'm stone
23 carving, sir, I am an artist, stone carving. I don't want to
24 carve totem pole. I don't want to -- I operate the gallery for
25 eight years, never I did totem pole, I just bought the totem

1 pole business, sir, so I inherited it. So this business is --
2 I didn't -- there is a guy that put me in this business.

3 His name is John Fathom. He works in Canada now. So
4 over the years he did pay me, then I end up in Ketchikan to run
5 the business. I have to buy that. He owed me money, so I have
6 to come and operate the business.

7 Then this guy, he's like my son, he's a Tlingit guy
8 worked for John Fathom, he came and worked for me. Then she
9 hired all the Native work for the gallery, sir. I never -- I
10 don't know what to say to the art or what the story. They are
11 the ones that created the art, because she said, "Cris, I got
12 it, Uncle."

13 The only thing my role is I own the business, I
14 package. Our only goal, if you ask me, this person, I said, "I
15 don't know what to say, I don't know. I'm a Filipino." We
16 started selling the stone art as made in the Philippines, sir,
17 then they are the ones -- I tell them, "Stop, no, no." Every
18 time I go to the floor, anything, they kick me out, they put me
19 to the back, because they are the ones running the business,
20 the Natives, the Tlingits, they are from Prince of Wales. They
21 are the ones that created all of this. They have their own
22 dialect, sir.

23 So I loved them, sir. One of them robbed a bank.
24 They do anything crazy. I just don't want them to go to that
25 direction, sir. That's why all those years, they get

1 20 percent of the sales.

2 I apologize, sir. I apologize to the Natives. I
3 apologize to everyone, people that pay for the art, sir. I'm
4 sorry. I won't do this again in my life.

5 THE COURT: All right. Thank you.

6 All right. Taking into consideration the factors
7 identified in 18 United States Code Section 3553(a), the first
8 factor that I think is important are the nature and
9 circumstances of the offense, which has to do with really three
10 businesses as I can tell. There is the two stores, one that
11 specialized in totem poles, another that specialized in
12 carvings, stone carvings, and then there was the business.

13 It sounds to me like it was the defendant, but his
14 wife was the principal of the operations in the Philippines,
15 which created all of this. I mean, I think the defendant is
16 still minimizing his conduct in this case, to be honest with
17 you. I think that he's trying to absolve himself of any
18 responsibility for the totem poles when in fact they were
19 having totem poles made in the Philippines and shipped to
20 Alaska to sell.

21 The next factor is the history and characteristics of
22 the defendant. Again, as has been noted, he has no criminal
23 history.

24 To reflect the seriousness of the offense, I think
25 that is one of the most important things in this case. This

1 was a complete and utter cultural appropriation of Native
2 Alaskan culture, for lack of a better way of describing it.

3 It wasn't just that they were appropriating the art of
4 Native Alaskans; they were lying to their customers, they were
5 holding themselves out as Native Alaskans, as a Native Alaskan
6 family, this was all artwork done by this family of Native
7 Alaskans.

8 And so not only -- your crime affects the Native
9 Alaskan culture, the art done by that community, legitimate
10 Native Alaskan artists who are trying to preserve their culture
11 and make a living, the other businesses in Ketchikan that were
12 legitimately selling Alaska Native art, because you were
13 undercutting them by selling the stuff you got for very little
14 made over in the Philippines and representing it to be Alaska
15 Native art.

16 And as pointed out today, the impact of your crime
17 isn't a snapshot in time of the five-year period we're talking
18 about, 2016 to 2021, it has a generational impact. The ripple
19 effects of this are going to continue for years.

20 And so for once, at least in recent memory,
21 Mr. Schmidt and I agree on the concept of general deterrence.
22 I'm not a big believer in many crimes of general deterrence.
23 This case is an exception. I think this case cries out general
24 deterrence, that individuals who would consider engaging in
25 this type of conduct know there are consequences for that and

1 those consequences include serving a period of time in prison.

2 And not only has your crime impacted the Alaska Native
3 cultures, but it's impacted your own family, because you're not
4 going to be with your family because you're going to be in
5 jail, not the least of which I find deeply troubling is the
6 fact that you brought your young son into this crime and made
7 him a part of this crime for which he now has -- he's going to
8 be facing the consequences.

9 You know, one of the things that the PSR points out
10 are the, at paragraph 9, Docket 53, are the sort of average
11 sentences for this type of crime, which is the 18 months that
12 you all had proposed to me as a sentence in this case, but this
13 goes beyond that. Those are for white collar crimes that don't
14 have an impact on the culture of a people, in this case, Alaska
15 Natives, which is, again, something that is very difficult to
16 measure, but has a profound impact on them, and I don't think
17 that's taken into consideration by that 18 months.

18 So I just want to make sure, have you had a chance to
19 look at the four special conditions? And actually, we're going
20 to need to modify that, because I'm not going to impose a fine,
21 but in paragraph 3 of the special conditions, Docket 53, page
22 3, paragraph 3 is actually going to be now \$60,000 to the --
23 can you give me the name?

24 MR. SCHMIDT: Tlingit and Haida Central Council
25 Vocational Program.

1 THE COURT: Okay. So with that adjustment, have you
2 had a chance to look at the four other listed special
3 conditions and any objection to those?

4 MR. BARSHIS: No, Your Honor.

5 THE COURT: I'm going to impose those four special
6 conditions.

7 Did you have a request as far as placement is
8 concerned?

9 MR. BARSHIS: We do, Your Honor, we would ask for
10 Sheridan.

11 THE COURT: All right.

12 Pursuant to the Sentencing Reform Act of 1984 and
13 considering the factors found in 18 United States Code Section
14 3553(a), it is the judgment of Court that the defendant,
15 Cristobal Magno Rodrigo, is hereby committed to the custody of
16 the Bureau of Prisons to be imprisoned for a term of 24 months.

17 Upon release from imprisonment, the defendant shall be
18 placed on supervised release for a term of three years.

19 Within 72 hours of release from the custody of the
20 Bureau of Prisons, the defendant shall report in person to the
21 probation office in the district to which the defendant is
22 released. While on supervised release, the defendant shall not
23 commit another federal, state or local crime, shall not possess
24 a firearm or illegal controlled substance, shall comply with
25 the collection of a DNA sample, and shall comply with the

1 standard and special conditions that are included in the
2 judgment issued by the Court.

3 The mandatory condition of supervised release set
4 forth in 18 United States Code Section 3563(a)(5) requiring the
5 defendant to submit to drug testing is suspended as it appears
6 that the defendant is a low risk to future substance abuse.

7 The Court finds the defendant does not have the
8 ability to pay a fine. I am actually going to order -- it
9 seems to me that the appropriate way to phrase this is there is
10 an order of \$56,204.81 [sic] in restitution to some individual
11 customers that purchased artwork from the defendant. And that
12 in addition, there is the \$60,000 donation to the Tlingit and
13 Haida Central Council Vocational Program.

14 Let's see. It is further ordered that the defendant
15 shall -- no fine is being imposed. That obviates the rest of
16 that.

17 So let me just turn to probation. Does that take care
18 of it if I add that \$60,000 as restitution? I mean, it's not a
19 fine.

20 PROBATION OFFICER: Yes, Your Honor, that would be
21 fine. I would just need a list of the payees for the judgment.

22 THE COURT: That is actually attached to the plea
23 agreement if I'm not mistaken.

24 The payees, isn't that part of the plea agreement?
25 There is a whole long list.

1 MR. SCHMIDT: Yes.

2 PROBATION OFFICER: Thank you, Your Honor.

3 THE COURT: If you look at the plea agreement, there
4 is a list of individual customers who have requested
5 restitution, which is where the total amount of \$56,204.81
6 [sic] comes in, plus the additional \$60,000 to the Tlingit and
7 Haida Vocational Program.

8 Were there any charges to dismiss?

9 MR. SCHMIDT: No, Your Honor.

10 THE COURT: Was there a waiver of appeal rights in
11 this case?

12 MR. SCHMIDT: Yes, sir.

13 THE COURT: So, sir, as part of your plea agreement in
14 this case, you agreed to give up your right to appeal if I
15 sentence you in a way that's consistent with your plea
16 agreement, which I have now done.

17 Nevertheless, if you think there is a basis for an
18 appeal, you have 14 days from today to file your notice of
19 appeal.

20 It take it, Mr. Schmidt, you are not going to object
21 to him self-reporting once he is designated?

22 MR. SCHMIDT: That's correct.

23 THE COURT: What's going to happen is the Bureau of
24 Prisons is going to contact the probation office and let them
25 know when and where you have to report. I am going to strongly

1 request that you be considered for placement in Sheridan,
2 Oregon to permit family visitation during your period of
3 incarceration.

4 I'm also going to strongly request that you be
5 considered for placement in a halfway house as early as
6 possible, and they usually do that, I don't know, six months
7 out or so, so they will transition you into a halfway house.

8 Let me ask the government, is there anything else you
9 think I have missed?

10 MR. SCHMIDT: No, Your Honor.

11 THE COURT: Defense?

12 MR. BARSHIS: Your Honor, I would just ask would the
13 Court be willing to consider strongly recommending electronic
14 home detention as early as possible?

15 THE COURT: Yes, I will strongly request electronic
16 monitoring and home detention. And BOP may look at that as an
17 option rather than a halfway house, so, yes, I will make that
18 recommendation.

19 MR. BARSHIS: Thank you.

20 DEPUTY CLERK: Your Honor, was there a special
21 assessment?

22 THE COURT: Yes, there is, \$200, \$100 for each count.
23 I think that covers everything, unless I've missed something.

24 MR. SCHMIDT: That's correct.

25 MR. BARSHIS: Correct.

1 THE COURT: So, again, if you can make sure your
2 client understands they will give him a date and time he has to
3 report. Okay.

4 If there is nothing else, then we will be in a brief
5 recess so we can transition to the next hearing.

6 DEPUTY CLERK: All rise. This matter is adjourned.
7 This court now stands in recess for the next matter on our
8 calendar.

9 (Proceedings concluded at 10:15 a.m.)
10

11 CERTIFICATE

12 I, Sonja L. Reeves, Federal Official Court Reporter in and
13 for the United States District Court of the District of Alaska,
14 do hereby certify that the foregoing transcript is a true and
15 accurate transcript from the original stenographic record in
the above-entitled matter and that the transcript page format
is in conformance with the regulations of the Judicial
Conference of the United States.

16 Dated this 30th day of August, 2023.
17

18 /s/ Sonja L. Reeves
19 SONJA L. REEVES, RDR-CRR
20 FEDERAL OFFICIAL COURT REPORTER
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