



range, it encompasses the medical testimony of Dr. John Kirby and Dr. John Manenti, and it addresses the severity and scope of the defendant's crimes.

## **I. BACKGROUND**

On August 1, 2012, a grand jury in the Eastern District of Pennsylvania returned a 23 count indictment charging Joseph Vito Mastronardo, Jr., with RICO conspiracy, in violation of 18 U.S.C. § 1962(d), conducting an illegal gambling business, in violation of 18 U.S.C. § 1955, four separate conspiracies to launder money, in violation of 18 U.S.C. § 1956(h), aiding and abetting interstate travel in aid of racketeering, in violation of 18 U.S.C. §§ 2 and 1952, transmission of wagering information, in violation of 18 U.S.C. § 1084, and structuring transactions to avoid a reporting requirement, in violation of 31 U.S.C. § 5324(a)(1) and (d)(2). The charges arise from an internet bookmaking ring that Mastronardo operated from January 1, 2005, through January 1, 2011. The bookmaking ring utilized the websites [www.betroma.com](http://www.betroma.com) and [www.betrose.com](http://www.betrose.com).

On January 31, 2014, the defendant pled guilty to Counts One through Fifteen and Twenty-Three of the Indictment.

## **II. SENTENCING CALCULATION**

### **A. Statutory Maximum Sentence.**

The maximum sentence is up to 152 years in prison, up to \$4,850,000 in fines, up to three years of supervised release, and a \$1,600 special assessment.

### **B. Sentencing Guidelines Calculation.**

The Probation Office correctly calculated the defendant's advisory guideline range as follows: Total Offense Level of 20, Criminal History Category of II, and **a guideline range of 37-46 months in prison.**

### III. ANALYSIS

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) suggests that the most appropriate sentence is at the top of the advisory guideline range.

The Supreme Court has declared: “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” Gall v. United States, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

This Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).<sup>1</sup>

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<sup>1</sup> Further, the “parsimony provision” of Section 3553(a) states that “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” The Third Circuit has held that “district judges are not required by the parsimony

A. Consideration of the 3553(a) Factors

**1. Nature and circumstances of the offenses**

*“Think about it. A thousand customers that I have in my place in football, now how could I possibly do work for a thousand customers.”* Joseph Vito Mastronardo, Jr., speaking to co-conspirator Harry Murray on April 13, 2006; 38-4, Call 222.

*“I didn’t wanna risk my website for that fucking stupid shit.”* Joseph Vito Mastronardo, Jr., speaking to an unknown person on March 12, 2010; 38-3, Call 543.

The internet changed everything for the Mastronardo Bookmaking Operation (hereinafter the “MBO”). When the defendant boasted in 2006 that he had “a thousand customers . . . in my place in football,” he meant he had a 1,000 bettors wagering on [www.betroma.com](http://www.betroma.com) during football season. In 2006, the MBO was enormous.

In 2010, the MBO was bigger than enormous. The website [www.betrose.com](http://www.betrose.com) replaced [www.betroma.com](http://www.betroma.com) after the Montgomery County District Attorney’s Office arrested Mastronardo in 2006. His arrest, and the conviction and sentence that followed, was a speed bump for Mastronardo. After clearing the speed bump, he didn’t hit the brakes . . . he hit the gas. By 2010, the MBO employed co-conspirators in Pennsylvania, New Jersey, Florida, and in Costa Rica. The Costa Ricans worked in shifts in an office, and were paid an hourly rate (plus bonuses) for their efforts. The defendant kept notes on his computer highlight the best, and worst, of his Costa Rican employees. He used a web cam, Skype, and cellphones to constantly

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provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . “[W]e do not think that the “not greater than necessary” language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.” United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

communicate with co-conspirators about his business. In numerous intercepted phone conversations, the defendant discussed his need to work as a bookmaker. On March 5, 2010, he boasted “I work a lot. I’m still brilliant.” 38-3, Call 213. On March 24, 2010, he noted “you know what I do for a living, I gotta work.” 38-3, Call 1281. On March 29, 2010, with his computer temporarily broken, the defendant lamented “I’m crippled here without being able to work.” 38-3, Call 1521. The defendant’s “work” was bookmaking, which is a crime that he devoted his life to.

The FBI and IRS interviewed dozens of bettors who used [www.betroma.com](http://www.betroma.com) and [www.betrose.com](http://www.betrose.com). The bettors lived in Pennsylvania, New Jersey, Delaware, New York, Connecticut, Maine, Missouri, Florida, Indiana, and Colorado. Some of these bettors lost hundreds of thousands of dollars to the MBO. The defendant frequently argued with his co-conspirators about how to handle these bettors. For example, on March 8, 2010, the defendant chided co-conspirator Harry Murray to never call Bettor 1487, noting that Bettor 1487 “always calls you when he wants to send a wire.” 38-3, Call 307. Sure enough, from 2008 through 2010, Bettor 1487 sent wires for \$44,000, \$110,000, \$150,000, \$100,000, \$150,000, \$100,000 and \$200,000 to international bank accounts to pay for his betting losses. Notably, Bettor 1487 never met the defendant in person and never spoke with the defendant on the phone. The defendant seemed to know almost everything.

The websites [www.betroma.com](http://www.betroma.com) and [www.betrose.com](http://www.betrose.com) never reported their link to the defendant, but he has never denied his role as the boss (“I didn’t wanna risk *my website*”). Indeed, the defendant conceded he was a leader or supervisor and received a four-level sentencing enhancement pursuant to USSG § 3B1.1.

The defendant worked every day for 5 ½ years to grow his illegal gambling business. The fruits of his labor can be measured – in part – by the money that law enforcement seized. In 2006, the seizures included \$505,600 hidden in the trunk of a car and \$1,019,220 hidden in a safe and a secret compartment inside his home. In 2010, the seizures included \$180,810 hidden in a safe inside his home and \$1,120,300 hidden in PVC pipes buried in his backyard. Further, as part of his guilty plea, the defendant agreed to forfeit over \$1,700,000 in seven Vist Bank accounts that he (and his wife and son) held.

It is clear the defendant made a staggering amount of money breaking the law. His crimes were not the product of a momentary lapse of judgment, but rather, a prolonged, selfish, and systematic approach to enriching himself.

## **2. History and characteristics of the defendant**

*“If you’re not committed to the bookmaking business, like my son, then you have too much free time and you just get in trouble.”* Joseph Vito Mastronardo, Jr., to co-conspirator Kenneth Cohen on March 3, 2010; 38-3, Call 98.

According to the defendant’s twisted logic, committing a crime (i.e., being “committed to the bookmaking business”) is a way for his son to stay out of trouble. This statement highlights a fundamental flaw in the defendant’s character: he ignores reality. To him, bookmaking is a good thing because it gives him a direction and purpose. Along those lines, the defendant’s sentencing memorandum references his nickname “the Gentleman Gambler.” This nickname ignores an important reality about the defendant. He isn’t being prosecuted for gambling, he is being prosecuted for taking bets on games (i.e., bookmaking).

The simple reality is the defendant is a lifelong criminal. He was convicted of racketeering and bookmaking in 1987 and sentenced to 18 months in federal prison. He violated

his supervised release in 1991 and served another 24 months in prison. In 2006, he pled guilty to conspiracy and bookmaking charges in Montgomery County. His conduct after his plea - in 2007, 2008, 2009, and 2010 - violated his Montgomery County probation. Accordingly, in 2012, he was sentenced to 8 to 59 months in prison.

Putting aside this court history, what did the defendant do between the end of his federal case (in June 1995) and the beginning of his Montgomery County case (in May 2006)? He worked as a bookmaker every single year. The defendant broke the law for those 11 years, and he got away with it. He likely began to think he was above the law. That attitude speaks to a level of arrogance that is part of who he is. His arrogance was displayed in a letter he wrote to his Montgomery County probation officer on September 1, 2007.

*“With regard to my travel to San Jose, Costa Rica, the weather there is perfect for my health, 82 degrees and HUMID every day. I travelled at least fourteen times to San Jose last year, 2006, from August through January, leaving on Friday and returning Monday . . . Betting is an integral part of my income, and in order to maintain that, San Jose is legal venue for all types of gambling . . . by restricting my betting to Costa Rica and other offshore betting venues where betting is 100% legal, I will be allowed to make a living doing what I do best and love without being in violation of my probation.”*

San Jose, Costa Rica, is where the defendant set-up his website [www.betrose.com](http://www.betrose.com). San Jose is where the staff that ran [www.betrose.com](http://www.betrose.com) lived and work. The defendant lied to his probation officer to explain his frequent trips that were – in fact – being used expand his criminal enterprise. This deceit is extremely troubling.

So, too, is the defendant’s manipulative use of his friends and associates to launder money. Joseph and Anna Rose Vitelli are co-conspirators who operated J & A Check Cashing in Philadelphia. The couple’s business was struggling to survive in 2005.

Michael Squillante is a co-conspirator who operated Business Travel Services (a travel company) in Florida. His business was struggling in 2008, and he approached the defendant for financial help. Person #1 is a co-conspirator who is owned a restaurant in Philadelphia. His business was struggling in 2009, and he approached the defendant for financial help. In each case, the defendant “helped” by delivering checks to these individuals. The checks were payments of gambling debt, but were always made payable to fictitious payees (i.e., not Joseph Vito Mastronardo). After the checks were deposited into the accounts of J & A Check Cashing, Business Travel Services, and Person # 1’s business account, cash was returned to the defendant (or a co-conspirator). Over \$500,000 of these checks passed through J & A’s account, over \$125,000 of these checks passed through Business Travel Services account, and over \$70,000 passed through Person 1’s account. Speaking generally, the defendant took advantage of the financial woes of others to launder money for the MBO. This criminal behavior suggests the defendant is a manipulative person.

That characteristic is further displayed by the defendant’s relationship with J.N. From 2007 through 2010, J.N. bet and lost on [www.betrose.com](http://www.betrose.com). J.N. paid over \$25,000 of gambling debt with checks that were made payable to fictitious payees and negotiated at J & A Check Cashing. At the defendant’s direction, J.N. paid additional gambling debt by making charitable contributions in Joseph Vito Mastronardo’s name (or Joanna Mastronardo’s name). The payments included \$10,000 in 2008, \$10,000 in 2009, and \$7,500 in 2010. These contributions were made to a religious organization and a school in Philadelphia; notably, the organization and school did not know the original source of the funds (accordingly, they are not being named here). In this scheme, the defendant created the impression that he was a charitable person, but in reality he was re-directing and laundering the proceeds of his crime. J.N. received



credit for the \$27,500 of payments (i.e., the defendant subtracted that amount from his gambling debt), and J.N. sought credit on his tax returns for these three charitable contributions.

### **3. Need to promote respect for the law**

*“I risk my freedom to do this job.”* Joseph Vito Mastronardo, Jr., to Ryan Pensabene on March 12, 2010; 38-3, Call 554.

*“I been in jail three fuckin times. I been in federal prison twice . . . the less settlements, the better for me.”* Joseph Vito Mastronardo, Jr., to Billy LNU on March 15, 2010, 38-3, Call 640.

*“The only person who’s going to fucking jail here is me!”* Joseph Vito Mastronardo, Jr., to his father, Joseph Vito Mastronardo, Sr., on March 17, 2010; 38-3, Call 719.

*“You go take a couple of fucking busts . . . or as many busts I took [sic] and pay as many lawyers as I paid. Probably cost me \$5,000,000 in my lifetime, legal fees, fines.”* Joseph Vito Mastronardo, Jr., to his father, Joseph Vito Mastronardo, Sr., on March 28, 2010; 38-3, Call 1468.

The defendant’s “job” was his work as a bookmaker. As such, in the first quote, the defendant was really saying “I risk my freedom to work as a bookmaker.” Any criminal who articulates the risk of going to jail, and then persists in the commission of their crime, has demonstrated their total lack of respect for the law.

The defendant lamented “I been to jail three fuckin times” in the second quote. A person with common sense and respect for the law would realize this simple truth: following the law is the best way to stay out of jail. This simple truth was lost on the defendant. He concluded “the less settlements, the better for me.” Because a “settlement” is the collection and/or payment of a gambling debt, the defendant was saying he would minimize the number of times he settled debts with other people. Not surprisingly, the defendant frequently sent others to do this work (a

list that includes John Mastronardo, Joseph Vito Mastronardo, Sr., Joseph F. Mastronardo, Erik Woehlcke, Schuyler Twaddle, Michael Loftus, and Person # 1).

In the third quote, the defendant whined that the “only person going to jail here is me!” Ironically, years later, co-conspirators John Mastronardo, Erik Woehlcke, Harry Murray, and Edward Feighan have all entered guilty pleas pursuant to Criminal Rule 11(c)(1)(C). All of these co-conspirators have agreed they will serve jail sentences. All of these co-conspirators are less culpable than the defendant. Of course, since the defendant has no respect for the law, and no respect for the law’s need to hold guilty defendants accountable via jail time, it follows that he would seek to avoid the jail time he deemed inevitable in 2010.

In the fourth quote, the defendant notes that his “fucking busts” cost him \$5,000,000 in his “lifetime.” From the first quote (on March 12, 2010) to the fourth quote (on March 28, 2010), the defendant has repeatedly spoken about jail. Simply put, jail is a constant theme for him. And yet, as much as he thinks about jail, he refused to change his criminal behavior because he had no respect for the law.

#### **4. Need to provide just punishment for the offense**

*“I had a great ride. I mean, where can I come from poverty and be worth a fortune and do whatever I want?”* Joseph Vito Mastronardo, Jr., to Kevin McClellan on March 18, 2010; 38-3, Call 752.

The defendant’s criminal conduct is outrageous. From 2005 through 2010, he broke a myriad of criminal laws and made an enormous amount of money. He is clearly proud of his work, noting “I had a great ride” and bragging that he was “worth a fortune.” In this same six-year period, millions of other law-abiding citizens struggled to pay their bills. Those law-abiding citizens didn’t live in a five bedroom, seven bathroom mansions worth \$1,700,000 (with

no mortgage payment). Those law-abiding citizens didn't have \$5,083,708 in securities. Those law-abiding citizens didn't own four cars that were paid in full.

But those law-abiding citizens had something the defendant clearly lacks: an understanding that you cannot do "whatever [you] want." They followed a lawful path, and the defendant chose a very different path. In light of these fundamental differences in behavior, a just punishment must take more than money from the defendant. A just punishment must address the fact he committed these crimes for years, that he acted in a sophisticated manner, that he is a recidivist, and that he had no intention of stopping on his own.

**5. Need to deter defendant from committing similar conduct**

Given the defendant's current health, it is extremely unlikely that he will resume his bookmaking activities.

**6. Need to deter others from committing similar conduct**

*"My name is on that fucking sign, I'm the one who went to jail for that sign, for that business."* Joseph Vito Mastronardo, Jr., to Schuyler Twaddle on April 14, 2006; 38-4, Call 464.

This Court can deter other people from making the same choices the defendant did. The defendant put his name "on that fucking sign." He wanted all the money his crimes brought him; accordingly, he should be willing to take the punishment too. A failure to punish the defendant now with jail time will send a distressing message to others. It will suggest that the criminal justice system is unable or unwilling to punish the most culpable individuals. By sending the defendant to jail, this Court can highlight the reality that the defendant's crimes are simply not worth the potential punishment. That can and will deter others from following the defendant's path.

**7. Need to protect public from defendant**

The public is threatened by violent and non-violent crimes. The defendant committed a myriad of non-violent crimes. He established a criminal enterprise that kept functioning while he was temporarily too sick to work (in 2008) and in jail (in 2010). He established a business that functioned throughout the United States, but was stationed (in large part) in Costa Rica. He, and his co-conspirators, instructed losing bettors to wire money overseas to pay their gambling debts. In total, over \$3,000,000 was wired to bank accounts in Sweden, Malta, and Portugal. All of these factors pose a threat to the public. More specifically, the defendant created a criminal enterprise that could function without him, that committed crimes in the United States but stored key evidence (i.e., the computer server) outside the United States, and that moved criminal proceeds into foreign bank accounts where it was impossible to freeze those funds.

**8. Kind of sentences available**

The guideline range suggests that Sentencing Commission and Congress have deemed 37-46 months of imprisonment as the appropriate sentence. Probation is not a proper sentence because the minimum of the guideline range exceeds nine months. U.S.S.G. § 5B1.1(a).

**9. Applicable guideline range**

The defendant's guideline range is 37-46 months in prison.

**10. Need to provide defendant with training, care, or treatment**

*“I mean, every day for me is a fucking gift now.”* Joseph Vito Mastronardo, Jr., discussing his health with Tony Biello on March 17, 2010; 38-3, Call 723.

The government has never disputed the fact the defendant is facing serious medical issues and needs serious medical attention. The government presented extensive testimony from Dr. John Kirby and Dr. John Manenti to address the defendant’s medical issues. The government also presented a written report from Dr. Kirby that summarized his review of the defendant’s medical records and his independent evaluation of the defendant.

The government will not cite to specific instances of the doctors’ testimony here; rather, the government will note that Dr. Kirby highlighted a series of measures that should be implemented in a prison-setting to treat the defendant. The defense expert (Dr. Perkel) agreed these measures would be important in caring for the defendant, but also claimed the prison was ill-equipped to implement them.

Dr. Manenti, a Regional Medical Director for the Bureau of Prisons (BOP), convincingly rebutted that claim. Dr. Manenti described how the measures Dr. Kirby suggested could be implemented in a BOP medical facility. Dr. Manenti’s testimony made it clear that the defendant would almost certainly be admitted to a Level IV BOP medical facility. A level IV facility treats BOP prisoners with the most serious medical issues. Further, Dr. Manenti explained how the BOP is affiliated with top research hospitals that – when necessary – provide additional specialized care for its prisoners.

It is clear from this record that the defendant will receive first-rate medical care in the BOP. It is understandable that the defendant would prefer to continue consulting his own doctors in Philadelphia. However, the fact the defendant finds himself in this position is entirely

his doing. In 1999, when the defendant was diagnosed with squamous cell carcinoma of his tongue and throat, he knew that a long, healthy life wasn't a guarantee. The defendant was extremely fortunate that his cancer treatment was successful. However, the observation he made in 2010 – that “every day for me is a fucking gift” – was obvious to him from 1999 onwards. How did he behave during those years?

He broke the law in every single one of them.

The defendant was arrested in Montgomery County in 2006, and sentenced on April 30, 2007. He relied heavily on his medical condition as a justification to keep him out of jail. At his sentencing, John Mastronardo spoke on behalf of the defendant, stating to the Court:

I have also been asked to speak with regard to my brother because of his [throat] condition . . . I guess what I can say about my brother . . . I think he has become a very complex guy since his illness . . . I've never really walked in his shoes after his bout with cancer. He was diagnosed with Stage 4 cancer and he probably had about a twenty percent chance of living. I guess when that faces you in your lifetime, it puts a lot of things in perspective.

[K]eep in mind he's extremely sick and I think his illness has taken its toll both physically and mentally on him and I hope your Honor takes that into consideration at our sentencing today. Tr. Pg. 63.

The defendant's attorney that day, Timothy Woodward, also addressed the defendant's illness with the Court, noting:

The truth of the matter is, a cancer survivor survives cancer one day at a time. And this man has no guarantees and all we can do is hope and all we can do is pray is that the devil don't come back into his body and take his from this earth, Stage 4 throat cancer. You've read letters from Dr. Cory Langer, you read a letter from Dr. Hurowitz. He survives a day at a time. Tr. Pg. 73.

The Honorable William J. Furber presided at sentencing, and he noted the following when imposing his sentence:

I am going to offer you house arrest because of the illness that you had. And that is what we call intermediate punishment. You'll be placed on intermediate

punishment for the charge of bookmaking for a period of two years, the first six months of which will entail house arrest, electronic monitoring, which will allow for you to make the visits you need to make with your doctors[.] Tr. Pg 99-100.

The defendant used his health to get a house arrest sentence in 2007. He rewarded Judge Furber's compassion by breaking the law in 2007, 2008, 2009, and 2010. He is attempting to use his health to get another house arrest sentence in 2014. He does not deserve another chance.

#### **11. Need to avoid unwarranted sentence disparities**

The advisory guideline range does not give any consideration for how long the defendant worked in his racketeering enterprise (the MBO), or for how long the defendant supervised his illegal gambling business. In this case, the defendant worked as a bookmaker from 2005 – 2010. The length of this conduct should matter. So, too, should the breadth of the conduct. He created two internet websites to run his illegal gambling business. His crime spread outside of the Eastern District of Pennsylvania with the websites, as well as the bookmaking office set up in Costa Rica and the millions of dollars being wired into foreign bank accounts. This criminal behavior warrants a sentence at the top of the advisory guidelines because it far exceeds the normal bookmaking and RICO cases.

#### **12. Need to provide restitution**

The defendant has agreed to forfeit a large portion of the approximately \$3,700,000 at issue in this case. Despite that considerable sum, there are substantial funds that are still at the defendant's disposal. The fine range for this offense is from \$7,500 to \$2,000,000. The Court should strongly consider imposing the costs of prosecution in this regard, which

include a “term of imprisonment” that is imposed. USSG § 5E1.2(d)(7) and 18 U.S.C. § 3572(a)(6).

**IV. CONCLUSION**

In sum, all of the appropriate considerations of sentencing favor the imposition of a sentence at the top of the advisory guideline range.

Respectfully submitted,

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/s/ Jason P. Bologna  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum has been served by e-mail upon the following:

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