

DAO91 (Rev. 12/03) Criminal Complaint

UNITED STATES DISTRICT COURT 2007 APR 30 PM 2:17

DISTRICT OF VERMONT

CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA
V.
SORIN VELCU

CRIMINAL COMPLAINT

Case Number: 2:07-mj-40-1

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about April 29, 2007 in Franklin County, in the District of Vermont defendant(s) did,

(Track Statutory Language of Offense)

reentered the United States after having been previously denied admission, excluded, deported or removed without obtaining consent of the Attorney General of the United States for readmission into the United States and that he entered the United States at a time and place other than as designated by immigration officers

in violation of Title 8 United States Code, Section(s) 1326(a) and 1325

I further state that I am a(n) Lead Border Patrol Agent for DHS and that this complaint is based on the following facts:

Official Title

See attached Affidavit

Continued on the attached sheet and made a part of this complaint: Yes No

James B Brant
Signature of Complainant

James Bradley Brant
Printed Name of Complainant

Sworn to before me and signed in my presence,

4/30/2007
Date

at Burlington Vermont
City State

Jerome J. Niedermeier U.S. Magistrate Judge
Name of Judge Title of Judge

Jerome J. Niedermeier
Signature of Judge

I, James Bradley Brant, being duly sworn, state as follows:

1. I am a lead Border Patrol Agent with the Department of Homeland Security, U.S. Border Patrol, stationed in Swanton, Vermont. I have been an Agent in the Border Patrol since 1998. I was stationed in Douglas, Arizona from September of 1998 to September of 2005, when I transferred to Border Patrol Headquarters in Washington, DC. I was promoted to the position of Lead Border Patrol Agent in October of 2006.

2. This affidavit is offered to demonstrate that probable cause exists to believe that SORIN VELCU, an alien, was found in Alburg, Vermont, after having been previously denied admission, excluded, deported or removed from the United States, and had not obtained the consent of the Attorney General of the United States for readmission into the United States, in violation of 8 U.S.C. § 1326(a) and that he entered the United States at a time and place other than as designated by immigration officers, in violation of 8 U.S.C. § 1325.

3. On April 29, 2007 at approximately 4:00 PM, Swanton Sector Radio notified Swanton Station Border Patrol Agents that two vehicles had entered the United States at the Blair Road near Alburg, Vermont. The Blair Road allows vehicle access between the United States and Canada and does not have a Port of Entry located on it. Vehicles that cross into the United States at the Blair Road are advised to report for inspection at the Alburg Port of Entry.

4. Border Patrol Agent Oquendo, of the Swanton Border Patrol Station, attempted to perform a vehicle stop on the Blair Road in order to determine the immigration status of the vehicles' occupants. The second of the vehicles fled back into Canada, while the lead vehicle continued south onto US Highway 2, traveling east towards Alburg, Vermont. To be inspected at the Alburg Port of Entry, as required, the vehicle should have turned north onto Route 225.

5. Agent Oquendo performed a vehicle stop of the vehicle that continued traveling eastbound on Highway 2 towards Alburg. He discovered that the vehicle contained 3 occupants: SORIN VELCU, the male driver, ALISA SARDARU, the female passenger and 16 year old wife of the driver, and a two-year old boy.

6. Both VELCU and SARDARU produced Canadian immigration documents. Neither of them possessed immigration documents allowing them to enter or remain in the United States. All three of the vehicle's occupants were transported to the Swanton Border Patrol Station for processing.

7. Records checks revealed that the McAllen Border Patrol Station in McAllen, Texas arrested VELCU on 8/26/05. VELCU was scheduled for a hearing before an Immigration Judge on 2/2/06. VELCU did not appear at this hearing and was ordered removed in absentia on 2/8/06.

8. Records checks show that after his arrest in Texas, VELCU was warned that if he failed to appear at the scheduled hearing, he might be ordered removed.

9. Records checks also revealed that on 9/9/05, the Royal Canadian Mounted Police apprehended VELCU as he was being smuggled north into Canada.

10. I advised VELCU of his Miranda Rights per Form I-214, using Interpretalk interpreter # 1150 (Romanian) at 9:00 PM on April 29, 2007. VELCU stated that he was willing to answer questions and make a statement.

11. VELCU stated that his name was Sorin VELCU and that he was born in Craiova, Romania. He also stated that he currently lives in Montreal. VELCU stated that when he encountered the Border Patrol today, he was looking for a place to go camping and to buy camping equipment. He also stated the second vehicle was driven by his friends Traian and Mihela, who also planned to go camping with them. The vehicle driven by VELCU did not contain any equipment or clothing one would normally take camping. In fact, most of the female clothing contained within the vehicle appeared to be very formal in nature. VELCU stated that he could not read French or English and did not realize he had driven across the border between the United States and Canada.

12. VELCU also stated that he had traveled from Romania to Mexico and crossed the border into the United States, where the police arrested him. He then stated that he asked for asylum and was given papers that gave him the right to be in the United States and that scheduled him for an interview. He then stated that he did not go to the interview. Instead he traveled to Canada, where the Canadian police arrested him. He stated that he asked for political asylum in Canada, because his wife and child lived there.


13. I asked VELCU why he didn't appear for his immigration hearing and VELCU stated that he had always planned to travel through the United States and into Canada to be with his wife and child. VELCU stated that he was not aware that he had been ordered removed in absentia.

14. Records checks conducted since VELCU's most recent arrest show that after his 2005 arrest in Texas, VELCU stated that he had entered the United States to escape his cruel neighbors and that he intended to reside in Washington, D.C..

15. Based on the foregoing, there is probable cause to believe that Sorin VELCU has committed the crimes of reentering the United States after being excluded, in violation of 8

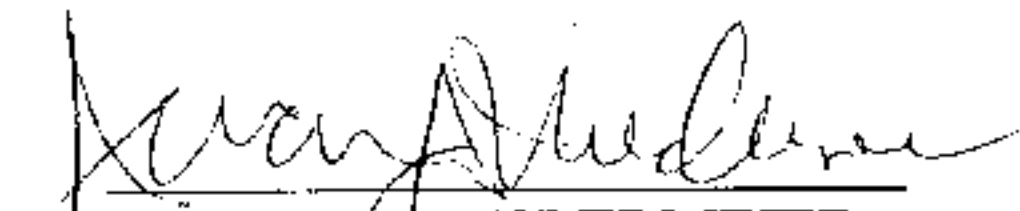
U.S.C. § 1326, and entering the United States at a time and place other than as designated by immigration officers, in violation of 8 U.S.C. § 1325.

Dated at Burlington, in the District of Vermont, this 30th day of April, 2007.



JAMES BRADLEY BRANT
Lead Border Patrol Agent
U.S. Border Patrol

Sworn to and subscribed before me this 30th day of April, 2007.



JEROME J. NIEDERMEIER
United States Magistrate Judge

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

2007 MAY 10 PM 4:40

BY lw
DEPUTY CLERK

UNITED STATES OF AMERICA)

v.)

SORIN VELCU)

Criminal No.

1:07-CR-56-1

INDICTMENT

COUNT 1

The Grand Jury charges:

On or about April 29, 2007, in the District of Vermont, SORIN VELCU, the defendant, reentered the United States after having been previously denied admission, excluded, deported or removed without obtaining the consent of the Attorney General for readmission into the United States.

(8 U.S.C. § 1326(a))

A TRUE BILL

F

Thomas D. Anderson (WJC)
THOMAS D. ANDERSON
United States Attorney

Burlington, Vermont
May 10, 2007

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

6/18/07
JUL 18 10 26 AM '07
Docket No. 1:07-CR-56 *hll*

UNITED STATES OF AMERICA

v.

SORIN VELCU

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Docket No. 1:07-CR-56

PLEA AGREEMENT

The United States of America, by and through the United States Attorney for the District of Vermont (hereafter "the United States"), and the defendant, SORIN VELCU, agree to the following in regard to the disposition of pending criminal charges against SORIN VELCU.

1. SORIN VELCU agrees to plead guilty to the Indictment charging him with illegal reentry into the United States after having been previously been removed, without obtaining the consent of the Attorney General for readmission, in violation of 8 U.S.C. § 1326(a).

2. SORIN VELCU understands, agrees and has had explained to him by counsel that the Court may impose the following sentence on his plea: not more than 2 years of imprisonment, pursuant to § 1326(a); not more than a 1 year period of supervised release, pursuant to 18 U.S.C. § 3583(b); not more than a \$250,000 fine, pursuant to 18 U.S.C. § 3571; and a \$100 special assessment.

3. The defendant is aware that, if he is an alien (a person not a citizen or a national of the United States), the guilty plea may result in deportation in accordance with the provisions of the Immigration and Nationality Act, including 8 U.S.C. § 1227.

4. It is the understanding of the parties to this agreement that the plea will be entered

under oath and in accordance with Rule 11 of the Federal Rules of Criminal Procedure. The defendant represents that he intends to plead guilty because he is, in fact, guilty of the crime with which he is charged.

5. SORIN VELCU agrees and understands that this agreement is conditioned upon his providing the United States Attorney, at the time this plea agreement is executed, a bank cashier's check, certified check, or postal money order made payable to the Clerk, United States District Court, in payment for the mandatory special assessment of \$100 for which he will be responsible when sentenced. The United States agrees to safeguard and pay the special assessment imposed at sentencing to the Clerk of the Court immediately after sentencing. In the event that this plea agreement is for any reason terminated or the defendant's guilty plea is not accepted by the Court, the special assessment shall be promptly refunded to SORIN VELCU. In the event that the tendered bank check is not honored for whatever reason, the defendant understands that he will still be liable for the amount of the special assessment which the Court imposes. SORIN VELCU understands and agrees that, if he fails to pay the special assessment in full prior to sentencing, the United States' obligations under this plea agreement will be terminated, the United States will have the right to prosecute SORIN VELCU for any other offenses he may have committed, and will have the right to recommend the Court impose any lawful sentence. Under such circumstances, SORIN VELCU will have no right to withdraw his plea of guilty.

6. SORIN VELCU agrees and understands that it is a condition of this agreement that he refrain from committing any further crimes whether federal, state or local and that, if on release, he will abide by all conditions of release.

7. The United States agrees that in the event that SORIN VELCU fully and completely abides by all conditions of this agreement, the United States will:
 - (a) not prosecute him in the District of Vermont for any other criminal offenses known to the United States Attorney's Office as of the date of the signing of this plea agreement committed by him in the District of Vermont relative to transporting illegal aliens;
 - (b) recommend that he receive credit for acceptance of responsibility under Guideline Section 3E1.1, provided that he cooperates truthfully and completely with the Probation Office during the presentence investigation and provided that no new information comes to the attention of the United States Attorney's Office relative to the issue of his receiving credit for acceptance of responsibility.

8. If the United States determines, in its sole discretion, that the defendant has committed any offense after the date of this agreement, or violated any condition of release, or has failed to cooperate fully with the Probation Office, or has provided any intentionally false, incomplete or misleading information to Probation, the United States' obligations under paragraph 7 of this agreement will be void and the United States will have the right to recommend that the Court impose any sentence authorized by law and will have the right to prosecute the defendant for any other offenses he may have committed in the District of Vermont. The defendant understands and agrees that, under such circumstances, he will have no right to withdraw his previously entered plea of guilty.

9. SORIN VELCU fully understands that the sentence to be imposed on him is within the sole discretion of the Court. The defendant may not withdraw his plea because the Court

declines to follow any recommendation, motion or stipulation of the parties to this agreement. The United States does not make any promises or representations as to what sentence SORIN VELCU will receive. The United States specifically reserves the right to allocute at sentencing. There shall be no limit on the information the United States may present to the Court and the Probation Office relevant to sentencing and the positions the United States may take regarding sentencing (except as specifically provided elsewhere in this agreement). The United States also reserves the right to correct any misstatement of fact made during the sentencing process, to oppose any motion to withdraw a plea of guilty previously entered and to support on appeal any decisions of the sentencing Court whether in agreement or in conflict with recommendations and stipulations of the parties.

10. Further SORIN VELCU fully understands that any estimates or predictions relative to the Guidelines calculations are not binding upon the Court and fully understands that the Guidelines are advisory and that the Court can consider any and all information that it deems relevant to the sentencing determination. Thus, the defendant expressly acknowledges that in the event that any estimates or predictions by his attorney (or anyone else) are erroneous, those erroneous predictions will not provide grounds for withdrawal of his plea of guilty, modification of his sentence, or for appellate or post-conviction relief.

11. It is further understood and agreed by the parties that should the defendant's plea not be accepted by the Court for whatever reason, or later be withdrawn or vacated, this agreement may be voided at the option of the United States and the defendant may be prosecuted for any and all offenses otherwise permissible. If the plea is withdrawn or vacated on motion of the defendant, the defendant herein expressly agrees that the entire period of time that elapses

between the signing of this agreement and the withdrawal or vacatur of the plea shall be disregarded in calculating whether the prosecution of any charges is timely under the applicable statute of limitations. The defendant also expressly agrees to waive any defense to the reprosecution of charges that he might have under the Speedy Trial Act, the speedy trial guarantees of the Constitution, or any other constitutional or statutory provision.

12. It is further understood that this agreement is limited to the Office of the United States Attorney for the District of Vermont and cannot bind other federal, state or local prosecuting authorities.

13 Both parties are free to move for a departure under the Guidelines and to argue for a sentence outside the advisory sentencing range, except as otherwise set forth in this agreement.

14. SORIN VELCU agrees that he will provide a copy of any financial affidavit prepared during the course of the Probation Office's presentence investigation to the United States at the same time that it is provided to the Probation Office. In addition, he specifically hereby authorizes the Probation Office to provide the United States a copy of any and all financial affidavits submitted to it by him.

15. In voluntarily pleading guilty to the charges in the Indictment, SORIN VELCU acknowledges that he understands the nature of the charges to which the plea is offered. He also acknowledges that he has the right to plead not guilty or to persist in a plea of not guilty; that he has the right to be tried by a jury; that he has the right to be represented by counsel - and if necessary have the court appoint counsel- at trial and at every other stage of the proceeding; that at trial he has the right to confront and cross-examine adverse witnesses; that he has the right to be protected from compelled self-incrimination; that he has the right to testify and present

evidence and to compel the attendance of witnesses; that if a plea of guilty is accepted by the Court, there will be no further trial of any kind, so that by pleading guilty he waives the right to a trial and the other rights enumerated here.

16. SORIN VELCU expressly states that he makes this agreement of his own free will, with full knowledge and understanding of the agreement and with the advice and assistance of his counsel, Thomas Niksa, Esq. SORIN VELCU further states that his plea of guilty is not the result of any threats or of any promises beyond the provisions of this agreement. Furthermore, SORIN VELCU expressly states that he is fully satisfied with the representation provided to him by his attorney, Thomas Niksa, Esq., and has had full opportunity to consult with his attorney concerning this agreement, concerning the applicability and impact of the sentencing guidelines (including, but not limited to, the relevant conduct provisions of Guideline Section 1B1.3), and concerning the potential terms and conditions of supervised release.

17. No agreements have been made by the parties or their counsel other than those contained herein.


18. It is agreed that a copy of this agreement shall be filed with the Court before the time of the defendant's change of plea.

Dated at Burlington, in the District of Vermont, this 18th day of June, 2007.

UNITED STATES OF AMERICA

THOMAS D. ANDERSON
United States Attorney

By:

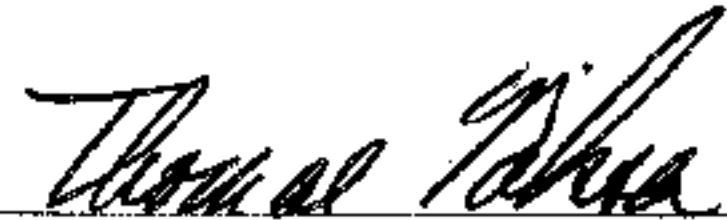

NANCY J. CRESWELL
Assistant U.S. Attorney

18-6-07
DATE


SORIN VELCU
DEFENDANT

I have read, fully reviewed and explained this agreement to my client, SORIN VELCU, and I hereby approve of it.

6/18/07
DATE


THOMAS NIKSA, ESQ.
Counsel for the Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA)	
)	
V.)	Docket No. 1:07-CR-56
)	
)	
SORIN VELCU)	

GOVERNMENT’S SENTENCING MEMO

Sorin Velcu illegally reentered the United States after a previous removal, deportation or exclusion. 8 U.S.C. § 1326(g). He has pled guilty to that felony violation. The Government has no objection to the Pre-sentence Report and recommends that Velcu be sentenced to time served based upon his criminal history known to date.¹ If the Government learns of a foreign conviction prior to sentencing that would change this position, it will supplement or modify this memorandum.

1. Preliminary Statement

As described in the presentence report, Velcu, a Romanian national who has refugee status in Canada, entered the United States by driving a sports utility vehicle down an unguarded farm road near Alburg, Vermont. He was followed by a mini-van driven by Train Dumitrut, also a Romanian national. Dumitrut, when apprehended, turned his vehicle and drove back to Canada at a high rate of speed nearly hitting a Border Patrol agent in the process. Although Velcu

¹ The Probation Office has requested that the Office of the United States Attorney make a request to INTERPOL to determine if this defendant was involved in a post office raid in Londonderry, Northern Ireland, on October 24, 2003. An INTERPOL request has been made but a response has not yet been received.

reported that he intended to go camping, he had no camping equipment in his vehicle.

Previously, in August of 2005, Velcu was arrested in McAllen, Texas. With a number of other people, Velcu had left Romania, flown to Mexico from Paris, France, and had walked across the Rio Grande River into the United States. He failed to appear for a Texas immigration removal hearing and was ordered removed. Thereafter, he was smuggled into Canada in September of 2005. He was granted refugee status in Canada on September 4, 2005.

Although Velcu has no history of criminal convictions in the United States, it appears that he has been associated with a number of “diversion” robberies in Canada and elsewhere. Apparently, no convictions have yet resulted, however. Velcu was involved in a raid on a Post Office in Northern Ireland in 2003, however, and it is not presently known whether he was convicted for that crime. When the United States receives a response to its INTERPOL request, as noted above, it will notify the Court.

2. The Sentence

Under the United States Sentencing Guidelines, which of course are advisory, the range of imprisonment for Velcu is zero to six months based upon a criminal history category of I. The Guidelines do provide, however, that an upward departure is appropriate if “reliable information” indicates that the defendant’s criminal history category substantially underrepresents the seriousness of defendant’s criminal history or the likelihood that he will commit other crimes. USSG 4A1.3(a). A prior sentence for a foreign offense is the type of information that will support an upward departure. USSG 4A1.3(2)(A). If the United States receives information that Sorin Velcu was convicted in Ireland for a raid on a Post Office in 2003, that conviction would provide a basis for an upward departure in this case.

In the absence of such information, the United States would recommend that Sorin Velcu be sentenced to time served as he has been in custody since his arrest on April 29, 2007—a period of over four months.

Although 18 U.S.C. § 3571(a) provides that the Court may be sentenced to pay a fine of not more than \$250,000 (for a felony, as here), it does not appear that Velcu has the financial ability to pay a fine as he has never been employed and received public assistance from the Province of Quebec prior to his arrest.

3. Conclusion

The Government has taken steps, as requested by the Probation Office, to determine whether Sorin Velcu has a foreign conviction in Ireland. As soon as that information is available, the Court and Probation will be notified. In the absence of such a foreign conviction, the United States recommends that Sorin Velcu be sentenced to time served.

Dated at Burlington, in the District of Vermont, this 7th day of September, 2007.

Respectfully submitted,

UNITED STATES OF AMERICA

THOMAS D. ANDERSON
United States Attorney

By: */s/ Nancy Creswell*
NANCY J. CRESWELL
Assistant U.S. Attorney
P.O. Box 570
Burlington VT 05402-0570
(802) 951-6725

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 1:07-CR-56
)
SORIN VELCU)

CERTIFICATE OF SERVICE

I, Stacie Brosky, Legal Assistant for the U.S. Attorney's Office for the District of Vermont, do hereby certify that on September 7, 2007 I electronically filed GOVERNMENT'S SENTENCING MEMO with the Clerk of the Court using the CM/ECF system.

I hereby certify that on September 7, 2007, I have mailed by United States Postal Service, the same document(s) to the following non-registered participant, Thomas Niksa, Esq., 92 South Main Street, 1B, St. Albans, VT 05478, attorney for the Defendant.

/s/ Stacie Brosky
Legal Assistant
United States Attorney's Office
P.O. Box 570
Burlington, VT 05402-0570
(802)951-6725

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

2007 SEP 10 A 10:47

UNITED STATES

)

) 1:07-CR-56-01

v.

)

) **THE HONORABLE**

SORIN VELCU

) **WILLIAM K. SESSIONS**

**SENTENCING MEMORANDUM
ON BEHALF OF SORIN VELCU**

Through counsel, the Defendant, Sorin Velcu, files the following Sentencing Memorandum setting forth all factors that the Court should consider in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a):

The Defendant does not have any violent record, and is not a member of a criminal or suspect organization. While he may have burdened the Border Patrol with his intrusion, he has not actually compromised U.S. security.

Sentencing under *Booker*

On January 12, 2005, the Supreme Court ruled that its Sixth Amendment holding in Blakely v. Washington, 124 S. Ct. 2531 (2004) and Apprendi v. New Jersey, 530 U.S. 466 (2000) applies to the Federal Sentencing Guidelines. United States v. Booker, 125 S. Ct. 738, 756 (2005). Given the mandatory nature of the Sentencing Guidelines, the Court found "no relevant distinction between the sentence imposed pursuant to the Washington statutes in Blakely and the sentences imposed pursuant to the Federal Sentencing Guidelines" in the cases before the Court. Id. at 751. Accordingly, reaffirming its holding in Apprendi, the Court

concluded that

[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.

Id. at 756.^{1[1]}

Based on this conclusion, the Court further found those provisions of the federal Sentencing Reform Act of 1984 that make the Guidelines mandatory, 18 U.S.C. § 3553(b)(1) or which rely upon the Guidelines's mandatory nature, 18 U.S.C. § 3742(e), incompatible with its Sixth Amendment holding. Booker, 125 S. Ct. at 756. Accordingly, the Court severed and excised those provisions, "mak[ing] the Guidelines effectively advisory." Id. at 757.

The primary directive in Section 3553(a) is for sentencing courts to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2." Section 3553(a)(2) states that such purposes are:

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

^{1[1]} It should be noted that the fact-of-prior-conviction exception to the Apprendi rule is based on Almendarez-Torres v. United States, 523 U.S. 224 (1998). But the continued vitality of this case and the exception it created has been called into question not only by the broad reasoning of Booker itself, which would seem to apply to all enhancement facts, including facts of prior conviction, but also more recently by Shepard v. United States, 125 S. Ct. 1254 (2005). Shepard sharply limits the Almendarez-Torres exception to the fact of prior conviction as determined by the judicial record, and excludes facts about the conviction which are not contained in such conclusive records. As Justice Thomas notes, moreover, five justices agree that Almendarez-Torres was wrongly decided. 125 S. Ct. at 1264 (Thomas, J., concurring).

In determining the minimally sufficient sentence, § 3553(a) further directs sentencing courts to consider the following factors:

- 1) "the nature and circumstances of the offense and the history and characteristics of the defendant" (§ 3553(a)(1));
- 2) "the kinds of sentences available" (§ 3553(a)(3);
- 3) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" (§ 3553(a)(6); and
- 4) "the need to provide restitution to any victims of the offense." (§ 3553(a)(7).

Other statutory sections also give the District Court direction in sentencing. Under 18 U.S.C. § 3582, imposition of a term of imprisonment is subject to the following limitation: in determining whether and to what extent imprisonment is appropriate based on the Section 3553(a) factors, the judge is required to "recogniz[e] that imprisonment is *not* an appropriate means of promoting correction and rehabilitation" (emphasis added). Under 18 U.S.C. § 3661, "*no limitation* shall be placed on the information concerning the background, character, and conduct of [the defendant] which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence" (emphasis added). This statutory language certainly overrides the (now-advisory) policy statements in Part H of the sentencing guidelines, which list as "not ordinarily relevant" to sentencing a variety of factors such as the defendant's age, educational and vocational skills, mental and emotional conditions, drug or alcohol dependence, and lack of guidance as a youth. *See* U.S.S.G. § 5H1.

The directives of Booker and § 3553(a) make clear that this court may no longer uncritically apply the guidelines. Such an approach would be "inconsistent with the holdings of the merits majority in Booker, rejecting mandatory guideline sentences based on judicial fact-finding, and

the remedial majority in Booker, directing courts to consider all of the § 3553(a) factors, many of which the guidelines either reject or ignore.” United States v. Ranum, 353 F. Supp. 2d 984, 985-86 (E.D. Wisc. Jan. 19, 2005) (Adelman, J.). In sum, a sentencing court must now consider all of the § 3553(a) factors, not just the guidelines, in determining a sentence that is sufficient but not greater than necessary to meet the goals of sentencing. And where the guidelines conflict with other sentencing factors set forth in § 3553(a), these statutory sentencing factors should generally serve to trump the guidelines.

**Application of the Statutory Sentencing Factors
to the Facts of this Case**

In the present case, the following factors must be considered when determining what type and length of sentence is sufficient, but not greater than necessary, to satisfy the purposes of sentencing:

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Offender

(a). Nature and Circumstances of Offense

Mr. Velcu was arrested on April 29th after driving a car across an unguarded border crossing near Alburg and failing to report to the nearest Port of Entry. Previously in February 2005 he failed to appear before an Immigration Removal Hearing in Harlington, Texas, in February 2006, and was declared deported. Mr. Velcu did not resist arrest at the time of the current arrest. His offense was in violation of 8 U.S.C. § 1326(a).

(b). History and Characteristics of Mr. Velcu

Defendant offers no substantial disagreement with the lengthy personal and criminal history as described in the Presentence Report, --with the exception of the items alleged under Paragraph 27 and 28, which he emphatically denies.-- Strict proof of an arrest in the way of fingerprints

or a mug shot is requested for consideration of these alleged arrests in sentencing; and according to *Booker*, supra, an admission from the Defendant or record of arrest would be needed to support upward deviation.

As relate in the August 28 Presentence Report, Mr. Velcu has admitted his offense in the present matter and pled guilty to the crime charged, therefore satisfying the Acceptance of Responsibility provision of U.S.S.G §E1.1.

Mr. Velcu has had to be separated from his young family for four months, without warning and leaving them without a means of support. The purpose of punishment as delineated under 18 USC § 3553(a)(2) has been well satisfied.

2. The Kinds of Sentences Available

In *Booker*, the Supreme Court severed and excised 18 U.S.C. § 3553(b), the portion of the federal sentencing statute that made it mandatory for courts to sentence within a particular sentencing guidelines range. *Booker*, 125 S. Ct. at 756. This would render the sentencing guidelines advisory. Under 8 § 1326(a), the Defendant may be sentenced to imprisonment for up to two years. Under the guidelines, as noted in the Probation Department's report, he may be sentenced to from 0 to 6 months. He has already served four months.

3. The Restitution Factor

The Presence Report reveals that Mr. Velcu's ability to pay is problematic. It states that he possesses only a vehicle which only a rough estimate of value can be obtained. No physical damage was done by the Defendant in commission of his crime. It should also be noted that upon release, Mr. Velcu is subject to a detainer precedent to deportation by the U.S.C.I.S, he will very likely have no need for a halfway house or probationary supervision.

4. Summation.

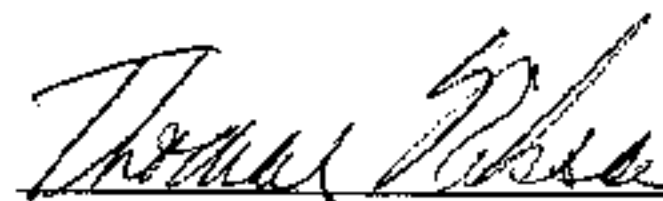
In view of the fact that 1). there has been no attempted breach of national security alleged against defendant; 2). the lack of ties of the defendant to any discernable criminal gang or terrorist organization; and 3) the fact that Defendant will immediately be turned over to USCIS for deportation to Canada, where he has refugee status, or to Romania, it is determined that he may justifiably received a sentence below that of the guideline range, and sentence him to time already served.

Conclusion

For the foregoing reasons, Sorin Velcu respectfully submits that a sentence of time served – as of the scheduled 17 September 2007 date, that would be one hundred and forty one (141) days - is sufficient, but not greater than necessary, to comply with the statutory directives set forth in 18 U.S.C. § 3553(a) and the ends of justice.

Respectfully submitted,

Dated: 5 September 2007



Thomas Niksa, Esq.
Counsel for the Defendant
92 S. Main Street
St. Albans, VT 05478
(802) 527-1010