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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 CR 368 (DLC)

5 MARK MARMILEV, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 December 12, 2014
10:00 p.m.

10 Before:

11 HON. DENISE COTE,

12 District Judge

13 APPEARANCES

14 PREET BHARARA,
15 United States Attorney for the
16 Southern District of New York
17 ANDREW D. GOLDSTEIN
18 CHRISTINE MAGDO
19 Assistant United States Attorneys

20 SETH GINSBERG
21 Attorney for Defendant

22 ALSO PRESENT:

23 TATE JARROW, Secret Service Agent
24 JEREMIAH HAYNIE, IRS Criminal Investigations
25 KEVIN MOSLEY, Department of Justice

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1 THE DEPUTY CLERK: United States of America versus
2 Mark Marmilev.

3 Is the government ready to proceed?

4 MR. GOLDSTEIN: We are.

5 Good morning, Your Honor. Andrew Goldstein, for the
6 government, and with me at counsel table is Kevin Mosley from
7 the Department of Justice, Assistant United States Attorney
8 Christine Magdo, Special Agent Tate Jarrow from the Secret
9 Service, and Special Agent Jeremiah Haynie from IRS Criminal
10 Investigations.

11 THE DEPUTY CLERK: For the Defendant Marmilev, are you
12 ready to proceed?

13 MR. GINSBERG: Yes.

14 Good morning, Your Honor. Seth Ginsberg, on behalf of
15 Mark Marmilev, who is standing with me in court today.

16 THE COURT: Thank you.

17 Let me ask you, Mr. Ginsberg, have both you and your
18 client read the presentence report?

19 MR. GINSBERG: Yes, Your Honor.

20 THE COURT: And you have discussed it with each other?

21 MR. GINSBERG: Yes, in detail.

22 THE COURT: Do you have any objections to it other
23 than what might be contained in your written sentencing
24 submissions to me?

25 MR. GINSBERG: No, Your Honor.

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1 THE COURT: Thank you.

2 The presentence report is made part of the record in
3 this case and placed under seal. If an appeal is taken,
4 counsel on appeal may have access to the sealed report without
5 further application to this Court.

6 I have a sentencing submission from the government
7 dated December 9th, and that's been filed on our ECF system?

8 MR. GOLDSTEIN: It has, Your Honor.

9 THE COURT: Thank you.

10 And I have a sentencing submission from the defendant
11 dated December 2nd. Has that been filed, Mr. Ginsberg, on our
12 ECF system?

13 MR. GINSBERG: Yes, Your Honor.

14 THE COURT: Thank you. My chambers contacted counsel
15 yesterday about time constraints here. I don't believe that's
16 going to be an issue at all, if we don't finish this morning,
17 we can continue this afternoon, but I was concerned about
18 whether or not we'd have enough time given an order I issued
19 yesterday requiring defense counsel to specifically identify to
20 the government those passages in the government's sentencing
21 that the defendant took issue with.

22 And then I received a letter, also on ECF, late
23 yesterday indicating that the defendant does not seek a Fatico
24 hearing here with respect to any statements in the government's
25 sentencing submission. Therefore, unless the defendant changes

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1 its position this morning, I'm going to accept all those
2 statements as true and not being disputed in a way that would
3 require me to receive evidence more directly and make a finding
4 based on that evidence.

5 Now, we are constrained here by the nature of the
6 defendant's plea. He pled guilty to a count that carries a
7 maximum term of imprisonment of 60 months, or five years. The
8 guidelines range for this crime is far higher, it is 135 to 168
9 months. There is no dispute that that is the appropriate
10 guidelines range, but because of the statute, the highest
11 sentence I'm permitted to impose today would be the five-year
12 sentence, and indeed that becomes the guideline sentence
13 because of the interaction between the guidelines regime and
14 the federal criminal statutory maximums.

15 This is a case in which the defendant played a
16 critical role in an Internet money transfer system. It touted
17 itself, that is Liberty Reserve, as the Internet's largest
18 money transfer system. 15 percent of the user accounts that
19 had an identification of a country of origin are accounts from
20 the United States, so a substantial portion of its business
21 directly related to U.S. commerce. And that includes at least
22 \$2 billion of transactions conducted through Liberty Reserve,
23 and the business of Liberty Reserve, as I understand it, and
24 it's undisputed, involved transactions in excess of
25 \$16 billion.

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1 It's also undisputed that there was very extensive use
2 of Liberty Reserve by criminals and little to no use by any
3 legitimate online businesses. And if that was in dispute, I'd
4 be happy to have a Fatico hearing.

5 Of the busiest websites referring traffic to Liberty
6 Reserve -- and this is, of course, a subset, but it is the
7 busiest -- half were websites trafficking in stolen credit card
8 data and related illegal businesses. So a very substantial
9 portion of the business of Liberty Reserve was directly
10 involved in fraud.

11 But it wasn't just stolen credit card data and
12 associated illegal trafficking, but also online Ponzi schemes,
13 and they're sometimes referred to as high-yield investment
14 programs, but approximately \$1.4 billion of transactions, so
15 the Liberty Reserve system can be tied to such classes of
16 illegal activity. And indeed, that ties in directly with the
17 defendant's plea, which contained a carefully crafted
18 allocution related to knowledge or conscious avoidance with
19 respect to the Ponzi schemes or the high-yield investment
20 programs.

21 This defendant worked with two founders of the Liberty
22 Reserve system since 2003, which was before Liberty Reserve
23 itself was founded. That earlier business, Gold Age, was also
24 a digital currency exchange, and it was subjected to a federal
25 search in January of 2006. Certain key participants,

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1 Mr. Budovsky and Mr. Katz, were arrested by New York State
2 authorities in 2006, and they received probationary sentences,
3 I believe, that year.

4 And then in 2007, the U.S. Attorney's Office for the
5 District of Columbia indicted certain individuals related to
6 Gold Age.

7 MR. GOLDSTEIN: Your Honor?

8 THE COURT: Yes.

9 MR. GOLDSTEIN: Just to make sure the record is clear,
10 the search that was done in 2006 was of the Eagle offices,
11 which was the larger digital currency system that Gold Age was
12 an exchanger for. We don't -- there's nothing in the PSR about
13 Gold Age offices being searched.

14 THE COURT: Thank you. Thank you for that
15 clarification.

16 So by 2006, the defendant and others with whom he was
17 associated were well aware of law enforcement's interest in
18 digital currency exchange activities in this country, and they
19 moved their business offshore to Costa Rica. In 2006,
20 Mr. Budovsky and Mr. Katz incorporated Liberty Reserve in Costa
21 Rica.

22 Defendant thereafter worked to help establish the
23 Liberty Reserve business. His principal role was administering
24 the website and maintaining a technical infrastructure for
25 Liberty Reserve. As a reward for his important contribution to

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1 its business, he was given a 30 percent ownership share in
2 2010.

3 In 2010, he worked with other principals to design
4 ways to deceive the Costa Rican authorities, particularly the
5 agency that issues licenses for money-transmitting businesses.

6 There are particular passages of the government's
7 sentencing memorandum that deal with the defendant's deep
8 involvement in the illegal activities of Liberty Reserve and
9 its deceit of Costa Rican authorities, and I flagged three
10 passages, and as I understand from defense counsel's letter of
11 December 11th, the information here is not being disputed. So
12 let me direct this -- counsel's attention to these specific
13 passages.

14 The first one is page 14. And the fourth and fifth
15 full paragraphs on that page, I'll read a portion of that:
16 "For instance, on June 24th, 2010, Marmilev sent an email to,
17 among others, Defendants Budovsky and Chukharev. The documents
18 set out the purpose and function of the GAA," a reference to
19 the government administrative area, "on Liberty Reserve's
20 computer system. The email indicated that the GAA would allow
21 the Costa Rican government to view a few statistics, but the
22 majority of these statistics are going to be fake."

23 The next passage is on page 10 -- I'm sorry, I skipped
24 over one. It's on page 12, at the very top of the page, and it
25 describes information from a cooperating witness that Marmilev

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1 would open user accounts on high-yield investment program
2 related websites and discussion forms posing as an HYIP user
3 and offer testimonials praising Liberty Reserve's service, and
4 then it goes on to give examples.

5 And then the third set of materials that I draw
6 counsel's attention to specifically is the material on pages 20
7 and 21, and of course, the attached documents in support of
8 this description from which quotations are taken. The
9 government presents its argument here, and facts in support of
10 it, that Marmilev knew that CARDI and HYIP websites, among
11 other criminal enterprises, were a key part of Liberty
12 Reserve's clientele, and he specifically promoted Liberty
13 Reserve on HYIP discussion forums.

14 And then there are quotations from some of the posts
15 in which the defendant, using his pseudonym, assures people on
16 the site that, among other things, Liberty Reserve is much more
17 tolerant towards shady businesses than one of its competitors.

18 So I say that because I want to make clear here, and
19 not wait until the end of this proceeding, to advise all
20 counsel of how I read everything in the presentence report,
21 defense counsel's submission, and the government's submission.
22 I don't want to be silent here and surprise you with my reading
23 of where this is going, and I'll give everyone an opportunity
24 to be heard. I would have, and still will, give the defendant
25 an opportunity for a Fatico hearing if he wishes one, but

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1 that's how I understand this material.

2 So first, let me turn to -- well, I'm sorry,
3 Mr. Ginsberg, you wanted to rise?

4 MR. GINSBERG: No. The government -- if you'd like to
5 hear from the government first, that's fine.

6 THE COURT: Well, I'm going to turn now to the entire
7 sentencing proceeding, and I'll hear from the government first,
8 then defense counsel, and then your client.

9 MR. GINSBERG: Well, with respect to the three
10 passages that the Court has pointed out, then, I would like to
11 respond.

12 As indicated in the letter that I submitted to the
13 Court yesterday, there are certain underlying facts that we do
14 not dispute. For example, the Court pointed out the email that
15 Mr. Marmilev sent regarding the government administration area.
16 The contents of that email is not disputed. The purpose of
17 creating that administrative area is something that we take
18 issue with and is something that I have argument about. I
19 don't know that a factual hearing about it is required.

20 THE COURT: Well, I don't have evidence from you, I
21 have argument, and if you wanted to present evidence, I'd be
22 happy to give you a right to do so in a Fatico hearing.

23 MR. GINSBERG: Well, I appreciate that, Your Honor,
24 but if I may respond briefly to that. The government has
25 presented an email, and the government has said on multiple

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1 occasions that that email was designed to obscure the total
2 volume of transactions going through Liberty Reserve. I don't
3 quarrel with that. The government has then, without evidence,
4 said that that leads to the conclusion that Liberty Reserve was
5 trying to hide money laundering from Costa Rican authorities.
6 That's argument, there's no evidence behind it. We have
7 argument on the other side.

8 I don't know that there's any evidence one way or the
9 other. If the Court thinks that a hearing is required to
10 determine that, then perhaps a hearing should be held. If the
11 Court wants to hear arguments from both sides and make a
12 determination as to what conclusions should be drawn from the
13 evidence that the parties have presented, that's another
14 matter.

15 With respect to the web postings that the Court --

16 THE COURT: Well, let me just deal with that. I don't
17 want there to be any surprise here. I'm happy to have a
18 hearing. I've read the materials presented by the government
19 and defense counsel in which you present your arguments. This
20 sentencing proceeding is not concluded until you also have an
21 opportunity to be heard orally. So I'm absolutely happy to
22 hear anything you have to say today as well, but I want you to
23 understand that based on my review of the material submitted to
24 me so far, I'm prepared to find that your client understood the
25 illegal nature of the business with which he was associated and

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1 worked to promote that business understanding that it would be
2 used by criminals in a variety of different ways.

3 Now, you may change my mind with your oral advocacy
4 today, but I don't want there to be a surprise about where your
5 submissions have -- the totality of the submissions have led me
6 to today.

7 MR. GINSBERG: I'd like to make one statement and then
8 confer with my client, but if that's the case, then perhaps we
9 need to have a full-blown Fatico hearing on every single
10 allegation in the presentence report, because as I indicated in
11 my submission to the Court, first of all, the presentence
12 report was written not by probation, but by the government.
13 The defense-conduct narrative was drafted by the government,
14 there's no dispute about that. It was adopted wholesale by
15 probation. It does not provide an independent investigation
16 for the Court.

17 That narrative is intertwined with many differential
18 conclusions that are essentially advocacy on the part of the
19 government, unsupported by evidence. And there are a lot of
20 things in the report, underlying facts, that we don't dispute.
21 Did the government do an investigation and find there were 1300
22 or so websites that had the name Hard, or Carter, or CVV, or
23 were involved in forex trading or high-yield investment
24 programs? I'm sure they did, I don't really dispute that.

25 Was that something that was necessarily known to

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1 Mr. Marmilev? I do dispute whether he knew all of that
2 information.

3 Was the self-evident nature of those --

4 THE COURT: When you say you do dispute that, so
5 you're in a position and would like to put on evidence at a
6 Fatico hearing in which you would dispute that?

7 MR. GINSBERG: No, I would like to challenge the
8 government's evidence. It's their burden to prove it, and I
9 don't believe they've presented evidence sufficient to do so.
10 If the government has witnesses that want to testify as to
11 how -- what was in my client's mind, I'd be happy to
12 cross-examine them, but based on the evidence that they've
13 presented, I don't think that they've met their burden.

14 A Fatico hearing, as I understand it, is a chance for
15 the government to meet its burden. These are allegations
16 propounded by the government. The burden is entirely on the
17 government to prove them by a preponderance of the evidence.
18 In my view, they've not done it in terms of the conclusions
19 that they want the Court to draw. I'm comfortable with many,
20 many of the facts, and that's why I suggested that perhaps
21 argument about the conclusions from those facts would be
22 helpful, because I don't know that there is a witness from the
23 government who can stand up there and say, we know from someone
24 that Mr. Marmilev not only had access to Google Analytics data,
25 but used it in exactly the manner that we suggest he could have

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1 used it.

2 There's a lot of information that's missing. They
3 refer to Google Analytics data and its ability to provide, for
4 example, information about the types of merchants that were
5 using Liberty Reserve. They don't point out to the Court that
6 Google Analytic data provides approximately a hundred data
7 points per user per use of the website compounded over many,
8 many years, and the volume and density of that data is
9 phenomenal. And Mr. Marmilev, as a technical expert, used that
10 data for an entirely different purpose than the government
11 suggests.

12 If they have someone that can say not only that he had
13 access to it, but that he used it for that purpose, I'd be
14 happy to hear that, and to cross-examine them, and test the
15 validity of that.

16 With respect to the --

17 THE COURT: Excuse me. So you're prepared to put on
18 evidence with respect to the use that your client made of
19 Google Analytics and show that it is a different use than the
20 government papers suggest?

21 MR. GINSBERG: Perhaps. I would have to hear the
22 government's evidence in the first instance. Again, the
23 government has not presented any evidence of how my client used
24 it. All the government has done is said --

25 THE COURT: Well, I don't know that it hasn't

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1 presented any evidence. I don't want to make this -- I issued
2 the order yesterday. I don't want to make this proceeding more
3 complicated than it needs to be.

4 MR. GINSBERG: Nor do I.

5 THE COURT: Okay. But I don't want there to be any
6 suggestion of unfair surprise here, because I want your client
7 to have a full opportunity to be heard in connection with this
8 sentence. And that's why I asked yesterday that you identify
9 in the government's memorandum those specific passages with
10 which you took issue, so we could analyze with specificity if
11 there really was a dispute and what that dispute concerned.
12 And then today, I've pointed out three specific passages that
13 have to do with your client's specific behavior and to just
14 make sure we're focusing with care on the factual evidence.

15 MR. GINSBERG: I understand that, Your Honor. I
16 received the Court's order, I considered it carefully. The
17 difficulty that I have, frankly, which is why I submitted the
18 letter that I did, is that the way that this presentence report
19 is written and the way that the government's sentencing
20 memorandum is written, every fact is intertwined with a
21 corresponding conclusion.

22 So the government is correct in its sentencing
23 memorandum that in many instances, we don't dispute the
24 underlying facts, but rather the conclusions that should be
25 drawn from them. I indicated to the Court, and my intention in

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1 doing so was that -- I indicated to the Court that that's true,
2 a lot of the underlying facts are not in dispute, but the
3 conclusions that should be drawn from them are in dispute. I'm
4 now hearing from the Court, I believe, that the Court is
5 adopting all of the conclusions that the government has
6 suggested.

7 What I --

8 THE COURT: Why I spoke at some length was to give you
9 a sense of, in outline form, a summary form of my understanding
10 of what happened here and my conclusion that your client had
11 full knowledge of the way in which Liberty Reserve supported
12 and thrived upon the assistance it provided to criminals who
13 needed or desired money transfer services.

14 MR. GINSBERG: And I respectfully suggest that the
15 only way the Court could have come to that conclusion is by
16 accepting the conclusions that were suggested by the
17 government. For example, the government says -- I'll use
18 Google Analytics again. The Court said you don't believe the
19 government has presented no evidence. Well, I don't know what
20 evidence it's presented other than to say Google Analytics
21 provided certain data, Mr. Marmilev had access to it. The data
22 is voluminous. No one has said Mr. Marmilev used the data to
23 make certain conclusions.

24 The government has said, we found 1300 websites that
25 had various words in them, and they didn't acknowledge there

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1 are 62,000 merchants in the Liberty Reserve database, and no
2 one said Mr. Marmilev conducted the kind of search that they've
3 conducted. And these are the kinds of things that I would -- I
4 think a hearing could be avoided if we were provided an
5 opportunity to discuss these things and allow the Court to
6 weigh the arguments on both sides before drawing the
7 conclusions that Your Honor is suggesting it's prepared to
8 draw.

9 THE COURT: Well, as I've said already, the sentence
10 proceeding is not complete until I impose sentence, and before
11 I do so, everyone will have a full opportunity to be heard
12 orally.

13 So let's turn now to the sentencing proceeding itself.
14 I'm hearing no request for a Fatico hearing. Am I right,
15 Counsel?

16 MR. GINSBERG: At this time, I'm not requesting a
17 Fatico hearing, Your Honor.

18 THE COURT: Thank you.

19 Mr. Goldstein?

20 MR. GOLDSTEIN: Thank you, Your Honor. Based on Your
21 Honor's remarks, I won't go on at length.

22 The government believes that a guideline sentence of
23 60 months is warranted here because of the breadth and the
24 scope of the conduct not just of Liberty Reserve, but of
25 Mr. Marmilev, and the impact that that conduct had on real

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1 victims of crimes in this country and around the world. The
2 creation and the use of this digital currency, in the wake of
3 what happened with Eagle, allowed a massive criminal
4 infrastructure to continue and to allow criminals to move their
5 money around the world and to profit from their crimes.

6 And this defendant helped set that up, he helped
7 maintain it, he helped make sure that the technology of the
8 website worked, that users could use it freely. And as we've
9 set forth, I think there is really no way for the defendant to
10 dispute his knowledge of what was happening on the website.
11 The defendant is not going to argue that he was not R-E-D-D,
12 Redd, who was in those talk room chats that Your Honor cited as
13 part of the government's memorandum. It's his own words
14 talking about how Liberty Reserve is more amenable to shady
15 businesses. He knew what Liberty Reserve was allowing itself
16 to be used to do.

17 And to go back in terms of what happened with Eagle,
18 the defendant was part of an exchanger for Eagle, and Eagle was
19 effectively the predecessor to Liberty Reserve. The government
20 searched Eagle, it did not shut down Eagle, but the founder of
21 Eagle ended up pleading guilty to money laundering and was
22 sentenced to a light term, largely because he wanted -- and he
23 told the Court -- that he was going to make Eagle legit, he was
24 going to put in the anti-money laundering controls that it
25 didn't have before, and the Court accepted his view that it was

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1 actually -- that Eagle was highjacked by criminal users and was
2 used in that way.

3 What Mr. Marmilev did, along with Mr. Budovsky and
4 Mr. Katz, was to take Liberty Reserve and market itself to all
5 those criminal users that no longer wanted to use Eagle because
6 Eagle was now legit, it was actually going to check people's
7 identities, and to allow the movement of this massive criminal
8 user base from one entity to another with the only change
9 basically being the fiction that it's incorporating in Costa
10 Rica, and it has bank accounts in Costa Rica. That's
11 effectively the only change that was there.

12 Mr. Marmilev stayed in Brooklyn. Mr. Budovsky, for
13 the first several years, stayed in Brooklyn. Mr. Katz stayed
14 in Brooklyn. The only thing that changed was that it was
15 incorporated in Costa Rica, and they put bank accounts in Costa
16 Rica. They marketed themselves to this criminal user base, and
17 that's how they profited, and that's how they made money. And
18 for him to do that and to allow that to happen allowed
19 thousands, and thousands, and thousands of crimes to take
20 place.

21 So we think that given his criminal -- his history --
22 his not having a criminal history score, because he was not
23 convicted, but a zero criminal history score understates his
24 culpability, understates his personal characteristics. And the
25 conduct, in terms of the need to deter both himself and the

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1 need to deter others to set up systems like this, there is a
2 huge public interest in sending a message that this is not
3 acceptable.

4 Finally, Your Honor, 60 months, while a significant
5 sentence, this is a defendant who has the technological
6 capability to start this all up again and to do it from
7 somewhere else that will be harder for the government to get.
8 And given the statements of his attorney and his submission,
9 the sentencing submission here, there is no remorse for the
10 crimes that Liberty Reserve allowed to take place. There is
11 acceptance of responsibility in that he pled guilty, but there
12 is very significant minimization of his own role in what
13 happened.

14 So we believe there is a real risk going forward,
15 without a substantial sentence, that this defendant will be
16 able to set up shop somewhere else, and to do it overseas, and
17 to do it in a way that will, once again, allow this criminal
18 underworld to have access to financial markets.

19 THE COURT: Mr. Ginsberg?

20 MR. GINSBERG: Thank you, Your Honor. I wish I could
21 say I was going to be as brief as the government, but I don't
22 think that's going to be the case. I apologize in advance for
23 that.

24 I have a number of points I want to make, but before
25 I get to my prepared points, I want to briefly respond to a

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1 couple of things the government pointed out that I think
2 warrant immediate attention.

3 Number one, it's not expressed in my sentencing
4 memorandum submitted to the Court, but I personally don't
5 believe that it's my job to express Mr. Marmilev's remorse. He
6 will do that. I disagree with the government that there's no
7 remorse, and the Court will hear from Mr. Marmilev about his
8 personal remorse for his failure to take stronger action to
9 prevent criminals from using Liberty Reserve.

10 I can say that from my own experience of witnessing
11 Mr. Marmilev over 19 months in the Metropolitan Correctional
12 Center, he's sorry for what he did, and he realizes that what
13 he did is a serious crime, and he understands that he's been
14 punished thus far and that he's going to be punished regardless
15 of what the Court does today. He's going to be deported, most
16 likely, he's going to spend additional time in immigration
17 jail. It's not just that he's sorry that he's been punished,
18 but the fact of the punishment itself and the process of the
19 legal system has caused him to reflect substantially on what
20 he's done, and he's extremely remorseful. The fact that the
21 sentencing memorandum doesn't address remorse has nothing to do
22 with Mr. Marmilev's personal feelings of regret over his
23 conduct.

24 Eagle -- I'll talk about that probably more than once,
25 but I believe that the government has mischaracterized what

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1 occurred in Eagle with respect to the sentences in that case.
2 There were, I believe, three or four defendants who were
3 sentenced in that case. The owner of Eagle pled guilty to
4 money laundering and was sentenced to home confinement for six
5 months. His plea agreement with the government -- not in this
6 district, but still the United States Attorney's Office for the
7 District of D.C. -- negotiated a plea in which his guidelines
8 were between 12 and 18 months, and the government agreed not to
9 seek a sentence greater than 14 months, and that was not based
10 simply on the fact that he was going to go legit. The
11 government wanted to put him in jail. The Court chose not to
12 put him in jail because the defendant indicated that he
13 intended to continue his company and try to get it on the right
14 track, and that would not be well served by placing him in
15 jail. But the government itself, from the outset -- not the
16 Court, the government -- agreed to a very, very low sentence in
17 that case, which the government now trumpets as the flag that
18 should have warned Mr. Marmilev and his colleagues as to the
19 dangers of the business in which they were embarking.

20 The government also makes a lot -- today they brought
21 it up, in the presentence report, it's in their sentencing
22 submission -- about their location in Costa Rica. Liberty
23 Reserve was incorporated in Costa Rica. Liberty Reserve at
24 some point along the way did physically move its operations to
25 Costa Rica and was there for a substantial period of its

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1 existence.

2 The idea that by moving its business to Costa Rica, it
3 was intentionally trying to evade U.S. law enforcement in order
4 to facilitate criminality is an inferential leap that I do not
5 believe is supported by the evidence. Many, many United States
6 businesses operate around the world specifically to avoid
7 particular regulations in the United States. Companies have
8 businesses in other countries to avoid tax issues, companies
9 have businesses in other parts of the world to avoid labor laws
10 in the United States. There are many, perhaps not morally
11 ideal, but perfectly legal reasons for having your business
12 operate in other countries.

13 After seeing what happened to Liberty Reserve, and
14 after being prosecuted themselves, Mr. Katz and Mr. Budovsky,
15 in the United States, they were wary of operating a business in
16 the United States. More importantly, their business model was
17 not designed primarily for United States customers, it was
18 designed for customers around the world who do not have access
19 to the mainstream financial system because they don't have
20 credit cards, they don't have bank accounts, and they're not
21 able to participate in the global digital economy like the rest
22 of us are.

23 And, in fact, I submitted to the Court remarks by the
24 undersecretary for the Office of Terrorism and Financial
25 Intelligence, and the secretary himself indicated that there is

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1 tremendous enthusiasm for virtual currencies, and one of the
2 things that he pointed out, he said that it flows from a belief
3 shared by consumers, businesses, and investors alike that
4 virtual currencies have enormous potential to empower users,
5 lower transaction costs, increase access to capital, and bring
6 financial services to many unbanked individuals around the
7 world.

8 And that is precisely what Liberty Reserve was seeking
9 to do when it began its business. It was not setting out, as
10 the government has posited, to capture all of the criminal
11 clientele that Eagle was no longer able to serve. It was
12 setting out to be a competitor to PayPal in countries around
13 the world where people didn't have bank accounts and credit
14 cards and weren't able to avail themselves of the system that
15 the rest of us have access to. So the idea that they moved to
16 Costa Rica simply to evade law enforcement, I do not believe is
17 supported by the evidence.

18 The Court pointed out early on in this proceeding
19 that -- I believe the word was "limited," or "constrained" or
20 in some way the parameters of this case are confined by the
21 statutory maximum penalty of 60 months. The probation
22 department and the government, in their own ways, have both
23 said that the 60-month cap already provides Mr. Marmilev with a
24 substantial reduction below the guidelines that would otherwise
25 apply. Probation mentioned that that was a tremendous benefit

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1 because Mr. Marmilev wasn't required to plead to money
2 laundering. I submit that he didn't plead to money laundering
3 because there's no evidence to convict him of money laundering,
4 and that's irrelevant.

5 The government didn't make that argument. The
6 government simply stated that by allowing him to plead guilty
7 to Section 1960, or, more accurately, Section 371, for
8 violating -- the conspiracy to violate Section 1960, the
9 60-month cap already accounted for a substantial discount below
10 the otherwise applicable guidelines.

11 I think this argument misses the point. Congress
12 determined that no one, no matter how much money is involved,
13 should be punished for more than -- by more than 60 months'
14 imprisonment for a violation of this law. That's what Congress
15 decided. Congress could well have increased the statutory
16 maximum penalty to ten years, fifteen years, twenty years. It
17 is part of the government's efforts to stem money laundering.
18 It could well have had a much higher statutory maximum penalty,
19 but Congress determined that violations of Section 1960 should
20 not exceed 60 months.

21 To me, that suggests that only the most serious
22 violations of Section 1960 should warrant the maximum penalty.
23 The question then becomes, in my mind, whether Mr. Marmilev's
24 conduct ranks among those who are the most serious violators of
25 the law. I suggest that it does not. I suggest that people

ECCKMARS

1 who are transmitting money for terrorists, narcotics
2 traffickers, arms traffickers, and other serious crimes of that
3 nature fall into the category of people who are the most
4 serious violators, people with extensive criminal histories.
5 Mr. Marmilev has zero criminal history points, as the
6 government has acknowledged. Those are people who fall into
7 the category of most serious violators and warrant the highest
8 penalty that the statute allows.

9 There are cases where people were -- the government
10 cites one, United States versus Bariek, in its memorandum for a
11 different proposition, the proposition that the entire amount
12 of money transmitted by a money-transmitting business should be
13 calculated under the guidelines, and we understand that's the
14 law. What the government doesn't point out in that case is,
15 number one, that the money being transmitted by the individual
16 in that business was going to Iran, Pakistan, and Afghanistan,
17 and despite those facts, that defendant got a nonguideline
18 sentence.

19 There are other cases in which there was clear
20 evidence that the defendants were involved in terrorism, and
21 they received higher sentences. These, to me, are the
22 defendants whose conduct is the most serious violation of
23 Section 1960.

24 Now, there's no dispute that Liberty Reserve involved
25 a substantial amount of money, a staggering amount of money.

ECCKMARS

1 And whether it's 16 billion or not, I'm certainly not seeking a
2 hearing as to the quantity of money ultimately involved, but I
3 think it's worth elaborating on that number. The \$16 billion
4 does not mean that \$16 billion actually entered Liberty
5 Reserve. What it means is that money was transferred back and
6 forth from one user, to another user, to another user, to
7 another user, so, yes, there was a substantial amount of money
8 in the system, but I don't believe there was ever \$16 billion
9 in the system, or that even over the course of its existence,
10 \$16 billion actually moved through the system. In fact, even
11 with respect to the money involved specifically with
12 Mr. Marmilev's offense, \$209 million that was used for purposes
13 of the plea agreement, that number was calculated based on the
14 money that entered Liberty Reserve through exchangers from
15 customers who identified the United States as their country of
16 origin, or exited Liberty Reserve through exchangers to
17 customers in the United States, or who identified their country
18 of origin as the United States. The government cites a
19 \$2 billion figure for these same customers, but, again, that
20 involves double, triple, quadruple, perhaps more counting of
21 the same dollars going back and forth.

22 But the government, in its presentation to the Court,
23 it ignores a lot of evidence. It focuses entirely on the
24 negative evidence and totally ignores any of the positive
25 evidence. It also -- although it gives lip service to the fact

ECCKMARS

1 that Mr. Marmilev was primarily responsible for the technical
2 infrastructure of the company, it ignores the fact that
3 Mr. Marmilev was not a compliance officer, was not schooled in
4 the rules of compliance, and was not responsible for that area
5 of the company. There are suggestions that he, nonetheless,
6 knew about these things, and I am going to provide, I hope,
7 evidence to persuade the Court otherwise.

8 The government, I believe, paints this case as a very
9 black-and-white picture, but I think the reality is, it's a
10 much grayer picture than the government would have the Court
11 believe.

12 The government has suggested, and the Court has made
13 note of it, that because of Eagle, and because of prior
14 experience, Mr. Marmilev was undoubtedly aware of the need to
15 register in the United States, but there is evidence to the
16 contrary.

17 One of the things that the Court should be aware of, I
18 believe, is the virtual currency industry is an industry in
19 which things are changing very rapidly, and the rules really
20 are not all that clear. The undersecretary, who I referenced
21 earlier, in the remarks that he made in March of this year, he
22 began jokingly, I understand, but nonetheless, his point is
23 well taken, saying, "I should begin by admitting that I
24 hesitated to draft remarks for today. Developments in the
25 virtual currency world occur so rapidly, I was concerned that

ECCKMARS

1 anything I wrote would be overtaken by events before I got
2 here."

3 He then went on to discuss the FinCEN guidance that
4 was issued in March of 2013, exactly a year prior to his making
5 these remarks, remarked that FinCEN guidance, which the
6 government dismisses in its sentencing submission as merely
7 clarifying existing law. Well, maybe it was clarifying
8 existing law, but I think it's significant that the agency
9 that's charged with enforcing this law considered that there
10 was sufficient confusion around the need for virtual currencies
11 to register, that it issued guidance. It doesn't issue
12 guidance every day, it's a significant event.

13 And the undersecretary went on to explain that the
14 guidance was issued so that administrators, such as Liberty
15 Reserve and the exchangers that it used, constitute money
16 transmitters that must register and keep certain records with
17 the Department of the Treasury, which by virtue of the need for
18 the guidance, was apparently unclear to people beforehand.

19 And the idea that because of Eagle and Gold Age,
20 Liberty Reserve necessarily knew that it had to register, I
21 think, is also mistaken. In 2011, FinCEN issued a final rule,
22 which was a rule about money services businesses in general,
23 not virtual currencies at all, but as late as 2011, July of
24 2011, FinCEN felt it necessary to clarify with a final rule,
25 not simply guidance, the registration requirements for

ECCKMARS

1 foreign-based money services businesses, such as LR, Liberty
2 Reserve.

3 These things were not so obvious to people in the
4 industry, and the fact that watching a company such as Eagle be
5 prosecuted and deciding we'd like to be in similar business,
6 but we don't want to take the risks of being in the United
7 States and getting prosecuted, we prefer to set up our business
8 in another country and work with authorities there who might be
9 more amenable to working with us to obtaining a license, is a
10 perfectly legitimate thing to do. And I think the evidence
11 shows that that's, in fact, what they did. Liberty Reserve
12 went through a multiyear process with the Costa Rican
13 authorities. It was not simply, do A through Z, and you'll get
14 a license.

15 This is a new area, and SUGEF, the authority in Costa
16 Rica responsible for these things, worked with Liberty Reserve
17 over a period of time. Liberty Reserve would submit certain
18 materials, a compliance manual, a know-your-customer
19 questionnaire, and documents of that sort, applications for
20 their exchangers, user agreements, and SUGEF would respond
21 stating we've reviewed this document, it's fine in these
22 elements, but you need to make these corrections. Liberty
23 Reserve then responded in turn, we've made these corrections,
24 we've made these additional corrections, and it went back and
25 forth like that for a number of years. And this process didn't

ECCKMARS

1 end voluntarily, as the government suggests in its sentencing
2 submission, because Liberty Reserve decided it didn't want to
3 comply with SUGEF's requirements. I don't think there's really
4 any question that this process ended because FinCEN sent a
5 notice to SUGEF indicating that Liberty Reserve was
6 facilitating criminality, and, in particular, terrorism. It
7 used the specter of terrorism to destroy a company.

8 It didn't go to Liberty Reserve and say, you know, we
9 know you've helped law enforcement in a few other instances,
10 we've got -- and it wasn't just one, I present to the Court
11 with at least three instances in which Liberty Reserve
12 voluntarily assisted law enforcement in their efforts to track
13 down bad users of their services. But FinCEN didn't go to
14 Liberty Reserve and say, hey, we have evidence that there are
15 bad users using your company, number one, you need to register
16 with the Department of the Treasury, so why don't you get that
17 done, and, number two, if you work with us, we can track down
18 even more of these criminals, rather than shut you down,
19 opening the flood gates for Bitcoin and let them all run free,
20 we could work with you, would you be interested in doing that?
21 No, FinCEN didn't do that. Instead, they sent a notice in
22 secret to SUGEF saying that they were involved in allowing
23 criminals to use their services, including terrorists, which,
24 by the way, there's no evidence that terrorists used Liberty
25 Reserve. In fact, the government dropped that allegation from

ECCKMARS

1 its indictment. It's not in the indictment, it's not in the
2 presentence report, it's not in the sentencing submission, and
3 certainly we never found it in the 32 terabytes of discovery
4 that was provided to us. So it seems to me that the approach
5 that the government took, not the people sitting here, but the
6 FinCEN officers, was to go after Liberty Reserve to shut them
7 down, I suspect, because of a hostility towards virtual
8 currencies, and new technologies are frequently not welcomed by
9 existing technologies.

10 I don't pretend to know the intricacies of what went
11 on behind the scenes, but I think it's a fair bet that the
12 mainstream banking industry that has quite a lot of pull in
13 Washington had some interest in not seeing virtual currencies
14 thrive. Perhaps that had something to do with it, I don't
15 know.

16 What I do know is, the government's been telling me
17 for more than a year that, yeah, the notice was sent in secret,
18 but Liberty Reserve knew. Well, you know what, I think they
19 did know. I think SUGEF told Liberty Reserve, we got this
20 notice, we can't give you a license, there's no point in going
21 forward anymore, the United States has targeted you, and
22 there's nothing we can do about it at this point, we can't give
23 you a license. And so at that point, Liberty Reserve
24 voluntarily withdrew its application, much as government
25 officials resigned.

ECCKMARS

1 They were forced from Costa Rica by U.S. pressure on
2 the Costa Rican government to eliminate Liberty Reserve. There
3 was no effort to work with Liberty Reserve, there was no effort
4 to try to engage Liberty Reserve to stop the criminals that it
5 states were rampant on Liberty Reserve's system, despite the
6 evidence that Liberty Reserve was willing to work with the
7 authorities, including the FBI and law enforcement officials in
8 other countries. Why they wouldn't even attempt to avail
9 themselves of that opportunity, I don't understand, but they
10 didn't.

11 THE COURT: I note you're pausing, Counsel, and I want
12 you to feel free to take as much time as you'd like, but I want
13 to remind you of the notice I gave yesterday that this
14 proceeding must end at 11:30, and if it needs to be continued,
15 it will be continued this afternoon.

16 MR. GINSBERG: I appreciate that, Your Honor.

17 The government also points to the fact that it's
18 identified approximately 1300 websites that have either the
19 word Carter, or CVV, or are engaged in foreign exchange
20 trading, or online gambling, I think, was one of them, and
21 proxy servers, which they say are used for Internet privacy,
22 and they've identified these sites as self-evident criminal and
23 likely criminal and indicate that Mr. Marmilev would certainly
24 have to have known of their existence.

25 We pointed out in our sentencing submission that there

ECCKMARS

1 were 5 million user accounts by the government's count, and so
2 1300 or so of these accounts is not a substantial number. The
3 government responded saying, these are merchant accounts, not
4 just user accounts. Okay, there's about 62,000 merchants on
5 Liberty Reserve's website. Still -- it's a far more
6 significant number than 1300 out of 5 million, but it's still
7 not the kind of number that the government would have the Court
8 believe is just blatantly obvious to anyone who looks.

9 Beyond that, the government says, well, forex traders,
10 that's clearly criminal. Really? If you go on Google right
11 now, same with high-yield investment programs, by the way, type
12 in forex, type in high-yield investment program, the Court's
13 going to find hundreds, if not thousands, of forex traders and
14 high-yield investment programs.

15 Number one, as far as I'm aware, there's no law
16 enforcement action against those companies to shut them down.
17 If they're so obviously criminal, one wonders why they're
18 continuing to exist. How, if the government can't stop them,
19 was Ms. Magdo supposed to know as a technical officer, by the
20 way, that they were obviously criminal in nature?

21 Proxy servers? The fact that people want to have
22 offshore web hosting or use virtual private networks to ensure
23 their privacy makes them criminals? I personally find that a
24 bit offensive, frankly. I understand that criminals seek
25 privacy, but the converse is not true. People are entitled to

ECCKMARS

1 priory regardless of whether they're criminals, and in this
2 post-9/11 world, I've learned to accept that our country has
3 collectively made a decision that a little less privacy is
4 acceptable in exchange for a little more security. Frankly, I
5 think that's a bad bargain, but be that as it may, the
6 suggestion that the government's making that promoting
7 businesses that allow people to maintain their privacy on the
8 Internet automatically means that you're promoting criminality,
9 I think, is beyond the pale.

10 And if only criminals are interested in privacy, I
11 suggest the government go speak to the people who posted the
12 billboard on Canal Street that says your data belongs to you,
13 BitTorrent. BitTorrent is one of these Internet service
14 providers that helps people secure the privacy of their data.
15 I don't think there's a billboard on Canal Street that's aimed
16 solely at criminals. I think there are plenty of people in the
17 United States and around the world who want their information
18 to remain private despite the fact that they're not criminals.

19 The government uses a broadbrush -- high-yield
20 investment program, criminal; forex, criminal; proxy server,
21 criminal; betting site, criminal. Maybe here, not everywhere.

22 The government also says, well, Liberty Reserve really
23 had no anti-money laundering policy at all, it was a fig leaf
24 designed to hide what was really going on, was the term that
25 the prosecutor used in its sentencing submission.

ECCKMARS

1 We submitted documents that show that Liberty Reserve
2 required its exchangers to go through extensive verification.
3 It required passports, notarized copies of their passports,
4 with official translations of their passports, account
5 information to verify their addresses and bank accounts,
6 know-your-customer questionnaires that were required to be
7 submitted. And this wasn't just for a single exchanger, this
8 was for many exchangers. The government seems to think that
9 that's completely irrelevant.

10 There were multiple exchangers. They were required to
11 fill out this documentation. We submitted an exhibit in which
12 Liberty Reserve sent out an email to all of its exchangers
13 saying that additional verification requirements were
14 necessary, and if they weren't met by a particular date, all of
15 their accounts were going to be frozen. That's verification,
16 that's an anti-money laundering policy.

17 SUGEF required Liberty Reserve to comply with the
18 United States SDN list, list of specially designated nationals.
19 We provided evidence that Liberty Reserve was, in fact,
20 complying with SUGEF's requirement to meet that obligation.

21 Liberty Reserve provided SUGEF with information that
22 it was testing its employees with respect to their knowledge of
23 Costa Rica's anti-money laundering law. The test results were
24 pretty good. Liberty Reserve also provided information that it
25 was testing its employees with their knowledge of the

ECCKMARS

1 know-your-customer rules. Also, test results were pretty good.

2 And Liberty Reserve closed or froze 5,000 accounts
3 that it deemed were suspicious, where in some way they received
4 a customer complaint about them that they were somehow bad
5 actors, they were hackers, they were thieves, whatever the
6 reason may have been. Liberty Reserve froze those accounts and
7 required more verification or more information from those
8 accounts.

9 The government, in its sentencing submission, said
10 we've never been provided that information. Well, until that
11 sentencing submission, they never asked for it, number one.
12 Number two, if Mr. Marmilev, on an antiquated laptop in the law
13 library of the Metropolitan Correctional Center, was able to
14 conduct a search to find these closed accounts, I'm quite sure
15 that the FBI, with its vast resources and the discovery
16 material that it managed to go through, could have found these
17 accounts. Moreover, had they asked us how that search was
18 conducted and what was necessary to do it, we would have
19 provided them that information.

20 Mr. Marmilev printed out for me a list of the 5,000
21 accounts or so that were closed for various reasons because
22 they were suspected of hacking, because they were believed to
23 be engaged in some bad act. And the list, as Mr. Marmilev
24 points out, as explanations as to why these accounts were
25 frozen, the government just glosses right over that.

ECCKMARS

1 It also ignores the fact that the compliance officer
2 sent a letter to SUGEF about a particular account that Liberty
3 Reserve was pursuing because of their belief that the person
4 was engaged in illicit activities.

5 Liberty Reserve also, Mr. Marmilev himself, created
6 something called Liberty Guard, which was designed to prevent
7 its customers from being victims of identity thieves. And the
8 government says, well, apart from ignoring all of that, it says
9 after they left Costa Rica, after they ceased their application
10 process with Costa Rica, there is no evidence that they
11 continued any anti-money laundering efforts. That's not true.
12 Exhibit 21 and 22 to our sentencing submission are dated in
13 September and December of 2012, and they're both examples of
14 Liberty Reserve going after customers who, for one reason or
15 another, had been identified as engaged in some form of
16 improper activity, and Liberty Reserve froze their accounts,
17 requested additional information, doesn't appear from the
18 documents we reviewed that they ever got it or that the
19 accounts were ever released.

20 So Liberty Reserve, it's not so black-and-white, as
21 the government would have the Court believe. Liberty Reserve
22 did a number of things.

23 But I'm not going to stand here and suggest that
24 there's no bad evidence. If there were no bad evidence,
25 Mr. Marmilev would not have pleaded guilty. There is bad

ECCKMARS

1 evidence, that's why he pleaded guilty, because he is guilty.
2 He stood before the Court, and he admitted that he was in a
3 managerial role in a company that was required to have a
4 license in the United States, which did not, and that he's,
5 therefore, guilty of that crime, and he acknowledged that, yes,
6 Your Honor's correct, it was a carefully negotiated and worded
7 allocution, not to avoid any particular responsibility for his
8 actions, but because it's somewhat of a complicated statute
9 that required that he hit every element of the offense. And we
10 used high-yield investment programs as an example of one type
11 of business that Mr. Marmilev had a pretty good belief were
12 fraudulent and didn't really do anything about it. He did
13 that. And that's why he's here, that's why he's facing the
14 punishment he's facing. We're not hiding from that. We don't
15 suggest that he somehow didn't do that.

16 The government points to web posts that it claims show
17 that Mr. Marmilev was advertising and promoting Liberty Reserve
18 to criminals. I don't know, I admit they're not all ideal, but
19 one of them is a web post in which it says high-yield
20 investment programs, that's a synonym for gambling, the rules
21 are simple, put your money in, get your money out before the
22 company closes. He's not advocating the use of high-yield
23 investment programs. If anything, I read that as a warning to
24 people that high-yield investment programs are likely
25 fraudulent, and people should be careful, and nowhere in that

ECCKMARS

1 post is he saying, I'm from Liberty Reserve or Liberty Reserve
2 is a great place to find these programs, or if you're going to
3 do it, transact your business through Liberty Reserve. There's
4 no promotion of Liberty Reserve there.

5 He acknowledges in that web post exactly what he
6 acknowledged to the Court, that there was a high probability
7 that these high-yield investment programs were fraudulent, and
8 he's warning if you're going to play this game, be careful.

9 Before I address the other web posts, just as an
10 aside, one thing I note is that the government's been telling
11 me for over a year that Mr. Marmilev was on web forums used by
12 criminals advertising and promoting Liberty Reserve, and I kept
13 saying I'm not finding that in the discovery, would you care to
14 direct me to it? I'm not sure we want to give you that
15 information just yet. You know when I got it? When they
16 submitted their sentencing memorandum.

17 When I looked at the web posts, and I saw how many web
18 posts the user name Redd and the user name Vintage had
19 combined, it's over 1200. The government gave you four, Your
20 Honor. I haven't had a chance to go through all of those other
21 posts, but I did find some others, which I'll share with the
22 Court.

23 THE COURT: Give me a sense of how long you're going
24 to be, Counsel.

25 MR. GINSBERG: I can probably finish by 11:30. I

ECCKMARS

1 think we will need to come back.

2 THE COURT: Okay.

3 MR. GINSBERG: I imagine the government's going to
4 want to respond to some of what I am going to say, and
5 Mr. Marmilev is going to need to speak, and Your Honor is going
6 to need to consider everything.

7 THE COURT: I'm considering as we're going along here.
8 How long is your client going to speak?

9 MR. GINSBERG: Maybe ten minutes.

10 THE COURT: Okay. So why don't you wrap it up, then,
11 in another five minutes.

12 MR. GINSBERG: Okay.

13 The other post the government points out is the post
14 regarding the mutual legal assistance treaty between the United
15 States and Costa Rica. That post was a response to a post that
16 was incorrectly put up by probably a competitor of Liberty
17 Reserve in which the person said that due to a mutual legal
18 assistance treaty with the United States, Costa Rica had closed
19 Liberty Reserve, which at the time was not true. Mr. Marmilev
20 corrected that. He didn't say anything that suggests to me
21 that Liberty Reserve was a good place for criminals. He said,
22 in response to the post, which was cited to direct people away
23 from Liberty Reserve, Liberty Reserve is a company that's in a
24 country that's not subject to the United States rules, which,
25 okay, if you want to say that that shows he's trying to evade

ECCKMARS

1 U.S. law, I don't think that that shows he's trying to evade
2 it, I think he shows he believed he was in a country that
3 wasn't subject to it. It turns out he was wrong, but it cuts
4 against the notion that he knew. I think his post at the time,
5 which was back in 2009 or so, demonstrates that at that time,
6 he didn't know that they were supposed to register. He was
7 telling people, you don't need to register.

8 Similarly, in another post, he was asked whether
9 Liberty Reserve was required to or should obtain greater
10 verification of individual users as opposed to merchants. He
11 said, no, that's only required in the United States. The
12 government has responded again saying that shows he's trying to
13 evade U.S. law enforcement. I say, no, it shows that he didn't
14 believe he was subject to law enforcement, again, proving that
15 he was wrong, but also proving that he didn't know back then,
16 as the government would have the Court believe, that he was
17 subject to it.

18 The government also points out that Mr. Marmilev said
19 Liberty Reserve is more tolerant of shady businesses than some
20 other web transfer money company. That's the worst one.
21 Certainly I wish I were not standing here having to defend that
22 particular statement. In any situation like this, there is
23 evidence that you wish didn't exist. Shady, I would submit, in
24 Mr. Marmilev's translation from Russian, really applies more to
25 a gray area of business as opposed to what we would consider

ECCKMARS

1 necessarily illegal business. But, again, Mr. Marmilev
2 acknowledged that he knew that there were bad actors using
3 Liberty Reserve, and he turned a blind eye to it.

4 But that doesn't mean, and I disagree with the
5 government's assessment, that all of or most of the customers
6 using Liberty Reserve were criminals. In fact, we presented
7 evidence to the Court in the form of surveys conducted by
8 Liberty Reserve and an article from the BBC that indicated that
9 there were users, legitimate users, who were using Liberty
10 Reserve.

11 The government said, well, we posted a notice, and 32
12 people came to us and asked for their money back. I don't know
13 why that is. It doesn't mean necessarily, however, that it was
14 because everybody else was a criminal. It could mean that
15 there were a lot of people in countries all over the world, in
16 Africa, in Asia, in various places, that didn't have the
17 wherewithal to contact the United States Attorney's Office to
18 get back what may have been a minimal amount of money in some
19 of their accounts.

20 The government wants to paint this case as
21 black-and-white, as I've said a number of times. It's not.
22 Liberty Reserve was neither all good, nor all bad, and
23 Mr. Marmilev was certainly not all bad. And the fact that he
24 was aware that Mr. Budovsky and Mr. Katz had been prosecuted
25 for operating an exchanger, not a virtual currency company

ECCKMARS

1 itself, but an exchanger, in the United States, was sentenced
2 to probation for not having a New York State license at the
3 time when he was in this country for three years, much younger
4 and less sophisticated than he is now, certainly an intelligent
5 person, but not legally savvy, does not mean that when they
6 created a new company and moved to another country, that he was
7 aware that what they were doing was setting out to achieve the
8 goal of stealing or obtaining the illegal customers that were
9 now homeless because Eagle had been closed down.

10 Liberty Reserve was a pioneering company on the
11 frontier of a new industry. It wasn't the first, and it wasn't
12 the only one, but it was operating in an area where the
13 regulatory agencies themselves acknowledged the law was
14 unclear, there was confusion, there was not certainty, there
15 was not clarity. The law is continuing to develop. There is
16 just now, in New York, the first in the nation proposed license
17 for virtual currencies.

18 The wholesale brushing aside of all of the evidence of
19 the efforts that Liberty Reserve made to impose anti-money
20 laundering policies to comply with Costa Rican rules and
21 regulations and to work with the authorities there, to me,
22 suggests that the government just wants to have it one way. In
23 my view, Mr. Marmilev certainly committed a serious crime,
24 there's no doubt about that. He's before the Court to be
25 sentenced on a felony conviction. There are grades of how

ECCKMARS

1 serious a felony conviction could be, but being in front of a
2 federal judge to be sentenced on a felony conviction is about
3 as serious as it gets in my opinion. He's well aware of that.

4 And I am not trying to minimize the fact that he
5 committed a crime, nor am I trying to minimize the fact that
6 the system was used by a substantial number of people who
7 victimized a substantial number of individuals, but I don't
8 believe that that places Mr. Marmilev at the highest level of
9 the individuals who violate Section 1960. I don't think that
10 places Mr. Marmilev in a position of those who sponsor
11 terrorism and use money-transmitting systems to get money to
12 Iran, Pakistan, Afghanistan, and Yemen directly designed to
13 harm U.S. citizens, physically harm. I don't believe it
14 equates him with people who have extensive criminal records
15 that might have similar guidelines and who face the same
16 maximum penalty. I don't think it equates him with people who
17 are involved in drug trafficking and arms trafficking and use
18 these money services businesses for those reasons.

19 The business perhaps should have been more careful
20 from the outset. It certainly should have had greater legal
21 guidance and tighter compliance efforts, and, yes, there is
22 some evidence here that indicates that Mr. Marmilev knew
23 certain things, was culpable, and that's why he's pleaded
24 guilty. But I respectfully submit that it does not demonstrate
25 that he is among the most serious offenders, and I think that

ECCKMARS

1 the government has tried to completely eliminate anything that
2 shows the good things that Liberty Reserve has done and focused
3 strictly on the negative, and, in my view, the truth is
4 somewhere in between.

5 THE COURT: Thank you very much, Counsel. I
6 appreciate your advocacy for your client.

7 Mr. Marmilev, is there anything that you would like to
8 say upon your behalf?

9 THE DEFENDANT: Yes, Your Honor.

10 Good day, Your Honor. As a computer guy who usually
11 communicates by emails, I'm not very good at public speaking or
12 expressing my feelings in English, and English is not my
13 primary language. Nevertheless, I will try my best to show
14 exactly how I felt for the past 18 months.

15 First of all, I would like to apologize for the size
16 of the memorandum I have submitted. My intentions were to
17 provide you with as much information as possible and show you
18 what really happened. I timed this speech, and it should not
19 take more than ten minutes.

20 In the beginning, I would like to tell you my history
21 and what defines me as a person. Then I will explain my job at
22 Liberty Reserve and where I made my mistakes. As I will
23 explain later, I'm taking full responsibility for my conduct.
24 I regret the decision I have made. I would like to express to
25 all the people that were hurt by my decisions how truly sorry I

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1 am.

2 I would also like to speak about the lessons I've
3 learned and my future plans to pay my debts, both financial and
4 ethical.

5 I was born in Ukraine before it split from USSR. At
6 the age of 10, I immigrated with my mother and grandmother to
7 Israel to avoid the harsh treatment of Jews in Russian army.
8 In Israel, my mother decided to rent an apartment in a middle
9 class neighborhood instead of renting an apartment in a poor
10 area. We lived with roommates for seven years. My mother
11 worked two jobs to support me and my grandmother.

12 I did not understand why we needed to live in such a
13 relatively expensive neighborhood until much later on. My
14 neighbors were doctors, lawyers, professors, and successful
15 businessmen. Imagine getting help with your homework from a
16 professor. Some of them gave me small jobs, like cleaning
17 stairwells -- stairwells, washing cars, and watering their
18 gardens. But the best thing? They gave me the right advices.

19 On one such job, a lawyer named Yakov gave me an
20 advice that changed my life. He said, "Houses, gardens, cars,
21 money will only make you happy for a moment. You have to find
22 something that will make you -- that will never stop making you
23 happy." I was 12, I did not understand what he meant, but I
24 remember his advice. Later in my life, I realized that what
25 makes me happy is to help people by solving the problems that

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1 make them suffer. It's that simple. It might sound naive,
2 stupid or cliché, but if you look at the person who is
3 suffering and then solve the cause of the pain, you will see so
4 much happiness, that it spreads to everyone, including me.

5 I helped different people with different things. I
6 never cared for race, gender, or religious beliefs. I never
7 asked for money or favors, I just helped, and my fee was their
8 happiness. I believe in karma, you do good things to others,
9 and good things will happen to you.

10 After I moved to the United States to study
11 programming in Brooklyn College, I started working in
12 construction to help support the high tuition fee. I never
13 backed down from any job. One evening I dropped a heavy
14 sheetrock on my foot, and I could barely limp back to the car.
15 While driving home, my employer told me to stay home, and that
16 he will call me back. I was out of the job and needed money
17 for the college. Before even I reached home, I received a
18 phone call. It was Arthur Budovsky offering me a job, a
19 customer support job that I can do from home. I ask him how he
20 found me. He told me that mutual friends whom I helped
21 recommended me. Nothing happens for no reason.

22 For a guy that was always -- that always loved
23 computers, it was a dream job. In 2006, I started working with
24 a team of programmers in Ukraine on developing Liberty
25 Reserve's software and infrastructure. I knew that Liberty

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1 Reserve would be successful because its purpose was to allow
2 people who did not have international credit cards to shop
3 online. Back in Israel, I was one of these people. I had to
4 ask my aunt, who was living in the United States, to buy and
5 ship me some things for my computer. Even though I had saved
6 money, I had no way to buy them. Israel merchants did not have
7 those items.

8 During my work, I was requested more and more to
9 investigate hack attempts on our clients' accounts. Hackers
10 were tricking our clients via fake emails and fake websites
11 into giving their login information to Liberty Reserve and
12 other banks. As a person responsible for cyber security of
13 Liberty Reserve, it was my job to make sure that everyone was
14 safe. As someone whose own identity was stolen from an online
15 merchant with sub-par security, I took security of clients'
16 identities and funds very seriously. I traced the attacks, I
17 identified all intrusion methods, I froze hackers' accounts in
18 Liberty Reserve, I contacted their hosting companies and
19 entered them into black lists, but they never stopped. And
20 although we warned and educated our clients as much as possible
21 about these cyber attacks, Liberty Reserve could not protect
22 its clients beyond its website.

23 In my spare time, I created a small program called
24 Liberty Guard to protect the clients, all clients, any person,
25 from hackers and identity thieves. Instead of dealing with

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1 each and every attempt by myself, I recruited the help of our
2 clients. It worked. More and more of our clients started to
3 report these attacks using Liberty Guard instead of falling
4 prey to them. Once a client -- once one client reports a
5 hacking website, all other clients are automatically protected.
6 I was happy, just like Yakov's advice had promised. Liberty
7 Reserve was so impressed with it, that they put it on every
8 page of their website. I kept on working with Liberty Guard
9 and updating it until the last day of my work.

10 During this time, there was another problem, the scale
11 of which I just could not know. Some investment companies
12 utilizing Liberty Reserve were defrauding customers in the same
13 manner as Bernie Madoff did later on. I saw a warning on the
14 front page of Liberty Reserve explaining to our customer what a
15 Ponzi scheme is and to be careful when you invest online.

16 I now guessed the problem was so hard to solve, that
17 Liberty Reserve had to actively warn its clients about it.
18 Liberty Reserve had a compliance department, verification
19 department, and legal department with pretty experienced and
20 bright managers. I did not know how successful they were in
21 stopping or producing Ponzi schemes, but I guess they were too
22 slow to stop them. Not knowing this back then, I willfully
23 ignored this problem and let them do their work alone.

24 As an IT guy, I did not know anything about investing
25 or compliance. I now know that this was a wrong decision and

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1 my biggest mistake, for which I'm standing here in front of
2 you. I promise you, Your Honor, my decision was not malicious,
3 but nevertheless, it was a mistake.

4 I am not an expert in Ponzi schemes, and I am not sure
5 anyone is. Even SEC could not recognize Bernie Madoff's Ponzi
6 scheme for decades, but it doesn't mean I shouldn't have tried.
7 I'm a pretty intelligent and stubborn guy. I will not rest
8 until I solve a problem. I am sure I could have created
9 something for Liberty Guard that utilizes the knowledge of the
10 whole Liberty Reserve user base to single out suspicious
11 investment businesses. I don't know if it would work or not,
12 but that's not the point. I failed to try to fix a problem, a
13 problem that made people suffer. And I am not a guy that lets
14 people suffer. It's not who I am. Now I see it as my personal
15 failure, and I would like to apologize to those that lost their
16 money to criminals.

17 My failure to register Liberty Reserve with FinCEN and
18 the failure to find a solution to Ponzi schemes have made me
19 and my family suffer for 18 months, with a possibility of extra
20 42 months to go in the federal prison, up to one extra year in
21 immigration prison, possible deportation and separation from my
22 family, a complete forfeiture of everything I have and my
23 family have. I'm not a perfect human being, but I'm not a
24 criminal. I have made mistakes, but I am taking responsibility
25 for them. I will continue to pay the price for them for the

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1 rest of my life by being labeled money laundering felon all
2 over the Internet, which is where I actually work.

3 As the only man in a family full of women, I cannot
4 even explain how bad I feel about my actions that left them
5 alone, forced them to get second jobs to support themselves,
6 and worsened their health due to stress. But the worst thing
7 is when my wife could not get a cup of warm tea because of
8 severe hip injury while I was locked behind the thick walls,
9 not able to help her or ease her pain. The pain I felt was
10 ripping me apart, especially when the cause of this pain were
11 my own actions. I will never do anything to experience this
12 pain or hopelessness again.

13 As I said in the beginning, I'm very sorry for my
14 decisions. I never expected those actions to hurt anyone, but
15 they did, and many people, including people very dear to me,
16 got hurt. And it hurts me, more than anyone can imagine, to
17 know that I hurt someone. I will never make this mistake
18 again. It is too painful to bear.

19 I understood my licensing violation in the first
20 meeting with my lawyer when he explained it to me, and I
21 learned a very hard lesson from my mistake. I will continue to
22 help people not only in the way I know, but I will also do my
23 best to educate myself and help people in other ways. Never
24 again I will ignore anything or anyone due to my limitations.
25 No matter what company I will work for, or if I open my own

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1 business, I will always make sure that the company is fully
2 registered and fully compliant with all the laws in all the
3 countries it is accessible from.

4 My plans for the future are already defined. I will
5 finish a website that delivers homemade hot foods to those that
6 cannot get to our family's grocery store, like mothers with
7 small children and older people. Most of the work, I completed
8 before my arrest. I ask Your Honor for leniency and to allow
9 me to serve the public in a more productive way.

10 Thank you.

11 THE COURT: Thank you, Mr. Marmilev.

12 I want to just confirm that there is no forfeiture
13 component as a portion of this sentence?

14 MR. GOLDSTEIN: That's correct, Your Honor. Because
15 of the nature of the assets, the government is going to be
16 filing a civil forfeiture complaint against the assets that are
17 tied to the Liberty Reserve money.

18 THE COURT: This isn't about online currency or
19 digital currency, this was a money transfer system that was run
20 in a way that was of great assistance to a variety of criminal
21 enterprises. And the suggestion by Mr. Marmilev that he didn't
22 understand that and understand the scope of it, I don't find to
23 be credible. I think there is a very serious need for
24 deterrence here, individual deterrence and general deterrence,
25 besides appropriate punishment.

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1 The fundamental facts from which I draw my conclusions
2 are not in dispute, including the passages that I directed
3 counsel to at the beginning of today's proceeding, which is
4 more than an hour and a half ago.

5 Mr. Marmilev, please stand.

6 I am going to impose a term of imprisonment of 60
7 months, to be followed by a term of supervised release of three
8 years, with the following special conditions: That you report
9 to the probation office in the district to which you are
10 released within 72 hours of release from custody; that you not
11 commit another federal, state or local crime; that you not
12 illegally possess a controlled substance; that you submit to
13 the regular drug testing program; that you are prohibited from
14 possessing a firearm or other dangerous weapon; that you
15 cooperate in the collection of DNA as directed by the probation
16 officer; that you pay the fine that I am going to impose; that
17 you comply with the standard conditions of supervised release;
18 that you submit to a reasonable search by the probation
19 department; that you seek and maintain full-time employment;
20 that you comply with the immigration laws and cooperate with
21 the Department of Homeland Security; that you provide the
22 probation department access to any and all requested financial
23 information; that you not incur any new credit card charge or
24 open any new credit line without approval of the probation
25 department; that you notify the United States Attorney's Office

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1 for this district within 30 days of any change of mailing or
2 residence address that occurs while any portion of the fine I'm
3 going to impose remains unpaid; you shall be supervised by the
4 district of your residence; you shall pay a special assessment
5 of \$100. I impose a fine of \$250,000. I'm going to require
6 payment of the fine at the rate of 15 percent of your gross
7 monthly income.

8 Counsel, is there any legal reason why the sentence I
9 have described on the record cannot be imposed as stated?

10 MR. GOLDSTEIN: No, Your Honor.

11 MR. GINSBERG: No, Your Honor.

12 With respect to the fine, however, I would ask if the
13 Court would consider staying any interest on the fine until
14 Mr. Marmilev has concluded his term of imprisonment?

15 THE COURT: Yes, I will stay the interest until he's
16 released from prison.

17 MR. GINSBERG: And the fine becomes due when he
18 becomes released from prison? I couldn't quite hear everything
19 Your Honor said.

20 THE COURT: I said it would be paid at 15 percent of
21 his gross monthly income. If he is employed while in prison in
22 a non-UNICOR work program, he shall pay \$25 per quarter. If he
23 participates in a UNICOR program, he shall pay 50 percent of
24 his monthly UNICOR earnings.

25 MR. GINSBERG: I understand the terms of the Court's

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1 judgment, and what I have seen happening in recent cases is
2 that when there are fines imposed or other financial things
3 imposed, the civil forfeiture division of the United States
4 Attorney's Office then starts serving subpoenas, and seeking to
5 file judgments, and seize assets, and I would ask that those
6 efforts not be able to be done until he's released from prison.
7 If he's working in prison, he will certainly pay it, but the
8 additional aspects of paying the fine, I would ask they be
9 stayed until he's completed his sentence.

10 THE COURT: Your application is denied. Obviously, if
11 something happens, and you have a legal application to make,
12 you have an application that sounds under the law that can
13 respond to a particular act that has taken place, but you
14 have -- I'm not suggesting that you don't have a right to come
15 to court and seek relief, but I'm not going to enter an order
16 denying the government the ability to do whatever it is
17 entitled to do under the law when I don't know specifically
18 what it might undertake.

19 MR. GINSBERG: Well, the government --

20 THE COURT: So, Counsel --

21 MR. GINSBERG: Yes, Your Honor.

22 THE COURT: -- I'm not entering some kind of general
23 injunction against the government or a general stay. I don't
24 think -- I'm not even sure I'd have authority to do that. But
25 if the government acts, and you believe it has acted

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1 inappropriately, I'm not going to suggest that you shouldn't
2 come to court and seek any relief to which you are entitled at
3 that time. And at that time, any court would be in a position
4 to look at precisely what's happened and to understand any
5 legal arguments by the government or by Mr. Marmilev that would
6 relate to that specific action, which is the context in which I
7 think this issue should be addressed, when it's concrete.

8 MR. GINSBERG: Understood, Your Honor.

9 THE COURT: Thank you.

10 I want to advise the defendant of his right to appeal.
11 If you're unable to pay the cost of an appeal, you may apply
12 for leave to appeal in forma pauperis. Any notice of appeal
13 must be filed within 14 days of the filing of the judgment of
14 conviction.

15 I believe there are open counts against this
16 defendant.

17 MR. GOLDSTEIN: Yes. The government moves to dismiss
18 the open counts, Your Honor.

19 THE COURT: Those open counts against this defendant
20 are dismissed.

21 Mr. Goldstein, is there anything else we need to do at
22 this time?

23 MR. GOLDSTEIN: No, Your Honor.

24 THE COURT: Mr. Ginsberg, is there anything else we
25 need to do at this time?

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MR. GINSBERG: No. Thank you, Your Honor.

THE COURT: Thank you.

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