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Attorneys for Defendant Mikael Rivera

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States of America,)	CR23-00009 JMS
Plaintiff,)	
)	SENTENCING MEMORANDUM
vs.)	
)	
Mikael Salvador Rivera)	
Defendant.)	
)	
)	
)	

NOW COMES Defendant, Mikael Rivera, pursuant to CrimLR32.2(e), and submits this Sentencing Memorandum. Mr. Rivera requests this Court sentence him to the 60-month sentence recommended by probation.

MEMORANDUM OF POINTS AND AUTHORITIES

This Court is required to craft a sentence “sufficient, but not greater than necessary, to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)].” 18 U.S.C. § 3553(a). The sentence must be crafted using a combination of Sentencing Guidelines recommendations and non-guidelines factors. “It is both important and legally necessary under 18 U.S.C. § 3553(a) and under *Booker* that the district court conduct parallel analyses – first employing the Guidelines, and then considering non-guideline sentencing factors under § 3553(a).” *United States v. Mix*, 457 F.3d 906, 913 (9th Cir. 2006).

I. Advisory Federal Sentencing Guidelines Calculation

Probation calculated an advisory guideline sentence between 30 and 37 months, based on a total offense level of 19 and a Criminal History Category I. ECF 103, PSR ¶ 147. Probation recommended an upward variance to an above-guideline sentence of 60 months. *Id.* at p. 35. Mr. Rivera agrees that the recommended 60-month sentence reflects the seriousness of his offenses and provides just punishment.

II. 18 U.S.C. § 3553 Factors

A. Nature and Circumstances of the Offense

The offense details are documented in the Pre-Sentence Report. ECF 103, ¶¶ 16-53. There are many reasons why it is illegal for a prison guard to have a physical

relationship with a prisoner, and the offenses involving LT are a demonstration of why this law is imperative. After intense reflection over the years since these incidents occurred, Mr. Rivera understands that even though he never used physical force or direct threats, his abuse of authority to get sexual favors was wrong. Mr. Rivera looks forward to sex offender treatment and additional mental health treatment to continue learning and understanding why his actions were so harmful.

B. History and Character of Mr. Rivera

Mikael Rivera was born in the Philippines in 1977. At age 17, he and his family immigrated to the United States and he became a naturalized citizen. He married his wife, Juliet, in 2004 and they have two children. Mr. Rivera is extremely close with his family. While he was living separate from his wife and children at the time of his arrest in December 2024, he remains devoted to them, and they visit him at FDC Honolulu as much as they are allowed.

Mr. Rivera joined the U.S. Army in 1999. He was honorably discharged in 2003, but rejoined the Army National Guard in 2004. Except for a one-year period, from 2021 until 2022, when he retired and then reenlisted, he has served this country honorably since 1999, even being deployed twice to the Middle East. His first deployment was in 2004 to Iraq and Kuwait. At the end of the tour, he was asked to extend for a second tour, and Mr. Rivera agreed. He didn't return home until 2006. His second deployment was in 2008. He was again asked to extend, but this time Mr.

Rivera declined, as he wanted to get home to his wife and young children. In 2009, he returned to Honolulu.

Prior to this offense, Mr. Rivera led a quiet, hard-working life. He was well-liked in his position as corrections officer at FDC Honolulu. He was devoted to his parents and brother, his wife, and his children. He had no prior criminal record and worked hard to support his family. All of Mr. Rivera's family, including his parents and brother, remain supportive of him and will be in contact with him while he is serving his sentence, and will be there to help him once he is released from prison.¹

Mr. Rivera is deeply ashamed of his actions and the hurt he has caused, both to the victims in this case and to his family. His letter to the Court is attached as Exhibit 1. He has accepted responsibility for what he has done and acknowledges the terrible mistakes he made. Additionally, he understands the problems he caused by his mental health break in December 2024, when he failed to appear for trial.

Nothing in Mr. Rivera's past suggests that he is a sexual predator. Rather, the circumstances support the conclusion that this was a crime of opportunity and that Mr. Rivera is unlikely to reoffend. Outside of these charges, Mr. Rivera has led a quiet, law-abiding life. As part of his plea agreement, he agreed that he will not seek

¹ Mr. Rivera's hope is to be designated to a facility that will allow him to get the sex offender and mental health treatment that he needs, but that will also allow him to work. His goal is to not have to rely on his family to provide him with money while he is incarcerated, but to be able to spend the money he earns through working at his facility.

employment with the federal government ever again, it is highly unlikely he will ever be in this sort of situation again where there is such an imbalance of power.

Additionally, Mr. Rivera will be required to register as a sex offender. The support of a defendant's family is one of the biggest factors that contributes to recidivism, so Mr. Rivera is lucky that he will continue to have the support of his family after his release, as that will further decrease the chances of reoffending.

Mr. Rivera agrees with probation's identification of mitigating factors (no prior contact with law enforcement; prior prosocial member of the community; college graduate; strong work history; no illicit drug history; strong family relationships; remorse for his actions; and good prognosis for his future), and that "[the] identified mitigating factors lower his risk of recidivism and indicate that he may be amenable to rehabilitation." ECF, PSR p. 38.

C. Mr. Rivera's Mental Health

As the Court is aware, Mr. Rivera's mental health became an issue in December 2024. One of the reasons that Mr. Rivera suffered this mental health crisis at that time was because he had kept his family in the dark about what was going on in his criminal matter. He had not shared the potential sentences he was facing, or any of the details of his case, because he was so deeply ashamed of what he had done and was hoping to spare his family from the whole ordeal. He wanted to protect them from the hurt and pain he knew his actions caused them. When it finally became clear

to Mr. Rivera that he would not be able to shield them from what he was going through, he experienced a mental health crisis. The photos from the hotel room where he was staying show how close he came to ending his life. He notes that only thoughts of his wife and children kept him alive. Exhibit 2.

While being arrested and going into custody has been incredibly difficult, Mr. Rivera's mental health has improved, mainly because he is not keeping secrets from his family anymore. He is now relying on his support system, and they are giving him the love and support that he needs. They now know what he is facing, were supportive of him accepting responsibility and pleading guilty, and will be there to assist him once he is released. Mr. Rivera still wants and needs mental health treatment, but all evidence supports that it was the stress of the case that caused the crisis last year.

D. Other Factors

Mr. Rivera offers a few other factors for the Court to consider. Mr. Rivera was arrested on December 3, 2024. Once he was processed in at FDC Honolulu, he was placed in the SHU (Special Housing Unit) on suicide watch. Within approximately 48 hours, however, the psychiatrist felt comfortable removing him from suicide watch. However, because of his past employment at FDC Honolulu, he has remained in the SHU ever since, apart from a few hours when he was placed in general population, not long after his arrest. As the Court is aware, the SHU is meant for disciplinary

housing. It is extremely isolated, with no access to the commissary, visitation, email, or phone calls. Recognizing that Mr. Rivera was not in the SHU for disciplinary reasons, he has been given two contact visits per month, can make phone calls three days per week, and he has access to his CorrLinks email account. However, those allowances are a far cry from what he would have received in general population. Although Mr. Rivera and counsel have made numerous requests for him to be moved to general population, FDC Honolulu decided that he needed to stay in the SHU for security reasons. While Mr. Rivera respects their decision, understands that it is a complicated situation, and has not challenged it given all of the considerations, it has made life much more difficult. Mr. Rivera requests the Court take into consideration that his entire seven months in custody so far has been in disciplinary segregation. For someone who was in the middle of a mental health breakdown when he was arrested, he has had to try to heal despite being in the SHU.

Additionally, Mr. Rivera is unlikely to be designated at a camp because of his prior employment as a corrections officer. While his designation won't be known until after sentencing, of course, for safety reasons, the BOP is likely to place him in a higher security classification, which will mean he will not have access to programming and other benefits he would have if his employment had been different.

Probation has recommended a sentence of 60 months for each count, to be served concurrently. Mr. Rivera agrees with this recommendation and also requests

the Court sentence him to concurrent sentences. If Mr. Rivera had been convicted of only one count, his guidelines would have been calculated based on a Total Offense Level of 14. With a Criminal History Level of I, that results in a guideline range of 15 to 21 months. Essentially, the multiple count adjustment under USSG §3D1.4 doubled his guideline range. Thus, this increase takes into account the multiple offenses and makes consecutive sentences superfluous. For these reasons, Mr. Rivera requests concurrent sentences.

Mr. Rivera has also not contested the two-point enhancement for obstruction of justice (ECF 103, PSR ¶¶ 65, 71, 77, 83, 89, & 95), or the denial of the third point in the decrease for acceptance of responsibility. ECF 103, PSR ¶ 103. While suffering from a mental health crisis, and certainly not intentionally attempting to obstruct justice, he understands the time, resources, and stress that were expended, both in preparing for a trial that did not proceed, and in law enforcement's attempts to find him. This combined three-level increase resulted in nine to ten months being added on to his guideline range. Since his final guideline range has already taken into account his actions, he asks that his sentence not be raised even higher for these factors.

Probation also did not recommend that Mr. Rivera be ordered to pay the \$30,000 in a special assessment pursuant to the Justice for Victims of Trafficking Act of 2015. Mr. Rivera's objections to the assessment are documented in his Sentencing

Statement (ECF 102) and will not be repeated here. However, Mr. Rivera does note that he still owes a substantial amount in his civil settlement with one of the victims in this case.² As the money in the settlement goes directly to LT (and another person that he did not face criminal charges for), he hopes that his focus can be on paying the settlement and not paying a considerable amount in a special assessment.

IV. CONCLUSION

Most defendants stand in front of the Court at sentencing asking the judge to sentence them to less time, and requesting a downward variance from the guidelines. However, given the totality of the circumstances, Mr. Rivera agrees with probation that a sentence of 60 months is an appropriate and just sentence, and requests the Court to impose that sentence.

Respectfully submitted: June 27, 2025, Honolulu, Hawai'i.

/s/ Caroline M. Elliot

Caroline M. Elliot

R. Hermann Heimgartner

Attorneys for Defendant

² The exact amount of money still owed toward the civil settlement is unknown. However, the outstanding amount has been requested and the Court will be updated if and when that information becomes available.

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2025, I filed the Original with the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic

Filing to the following CM/CEF registrants:

Sara D. Ayabe, Esq.
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Trial Attorney
Public Integrity Section, USDOJ
1301 New York Avenue, NW
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Sara Nieling (via email)
Senior U.S. Probation Officer

/s/ Caroline M. Elliot

Caroline M. Elliot
Attorney for Defendant

Exhibit 1

June 25, 2025

Dear Judge Seabright:

I am Mikael Rivera, 48 years old. First of all, I would like to apologize to the victims of what I have done. I have use my authority as CO to take advantage of the victims, I should have not done that. I even have trained by BOP and yet I violated the policy. I am sorry that I caused stress and pain for the victims. I take fully responsibility for my actions and I know I was wrong to do what I did.

For over 25 years, I have been law abiding citizen and serve my country in military. This is my first and last offense. I know I was wrong and use my authority to break the rules. I regret what I did. I know that there is no such thing as consensual between prison guard and inmate. I should have known better before I step inside the cell. I admitted and am guilty on those charges. These were serious offenses that will haunt me for the rest of my life. I will register as sex offender. It affected my career, military and civilian job.

I also want to apologize to my family and friends and coworkers. I am held accountable for my actions. I have failed my family, especially my wife, kids and my parents. With my actions, I lost my credibility, cause stress to my family, lost our house, lost my job, cannot get promoted to higher rank/position in miliary, facing a discharge or separation once in custody.

I am a person who committed a crime against another person. Even though I've been in FDC 7 months I don't have angry feelings about being locked up for what I did, because I know I was guilty and I deserve punishment. I am sorry and I feel regret, shame, embarrassment for hurting other people. I became aware that my actions had affected a lot of other people. Not just the victims, but coworkers as well as my own parents and friends, not to mention my own life. For the first time in my life, I felt suicidal. I felt that I didn't deserve to live. I didn't ever have the courage to commit suicide, but I struggled with self worth. Now I understand that suicide would have just been trying to find way out of having to deal with feelings. Doing the session of book I received from chaplain that I realized that everyone has a second chance and self worth. The House of Healing/self forgiveness. It was the beginning of a kind of change. As I write this, the tears of happiness and love flow from my eyes in gratitude to Lord God, that self forgiveness is one way of healing process.

I burden my family. I can't be there when they need me to help, plus I am the main provider for my family, especially financially. Everyday I pray to God for forgiveness for what I have done, pray for forgiveness from the victim, and pray for forgiveness from my family.

I will never do this again. It's hard being away from family, and not be able to support them and comfort them. Even though I have cause burden, sin, embarrassment to my family, they are still there supporting me and forgive me of what I have done, and I am thankful and grateful for the unconditional love and support they have.

For the past 7 months, while in custody, I've been in solitary confinement the whole time. I have learned more and appreciated more how to be free outside these walls, because being lock-up was hard. At the same time, I have become closer in relationship to God with my family. Learning how to appreciate things around me and be content.

Sincerely,

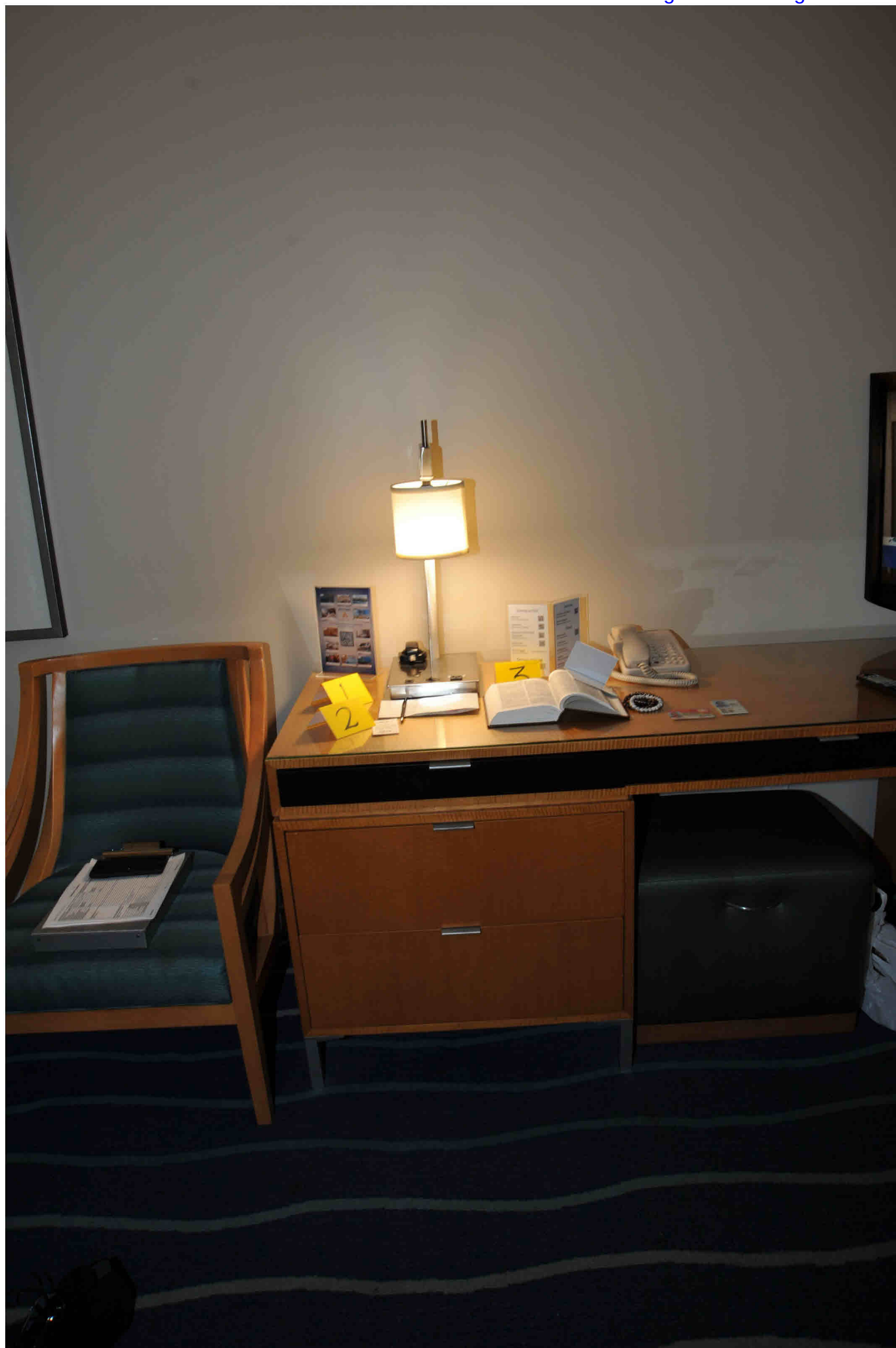
Mikael Rivera

Exhibit 2

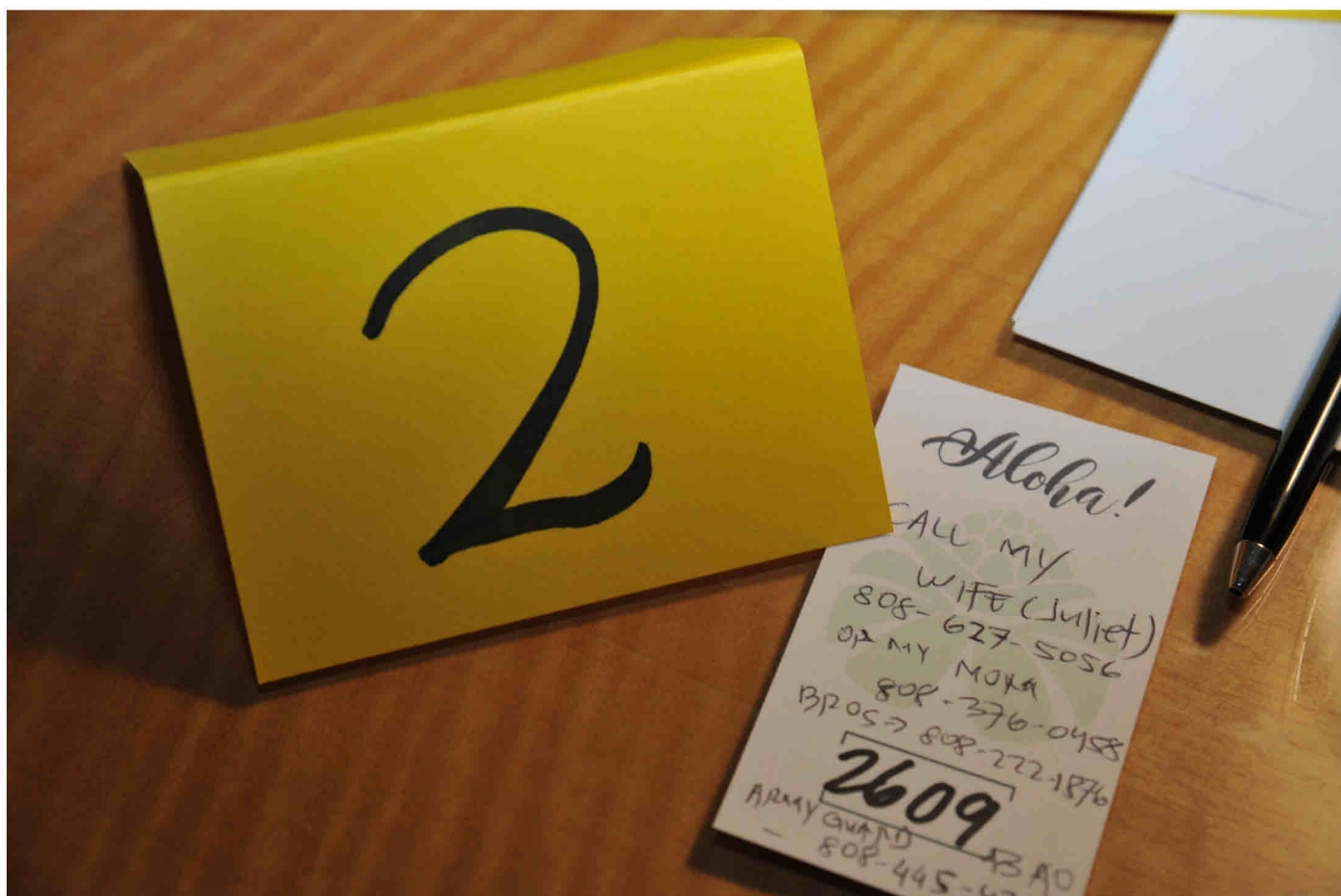












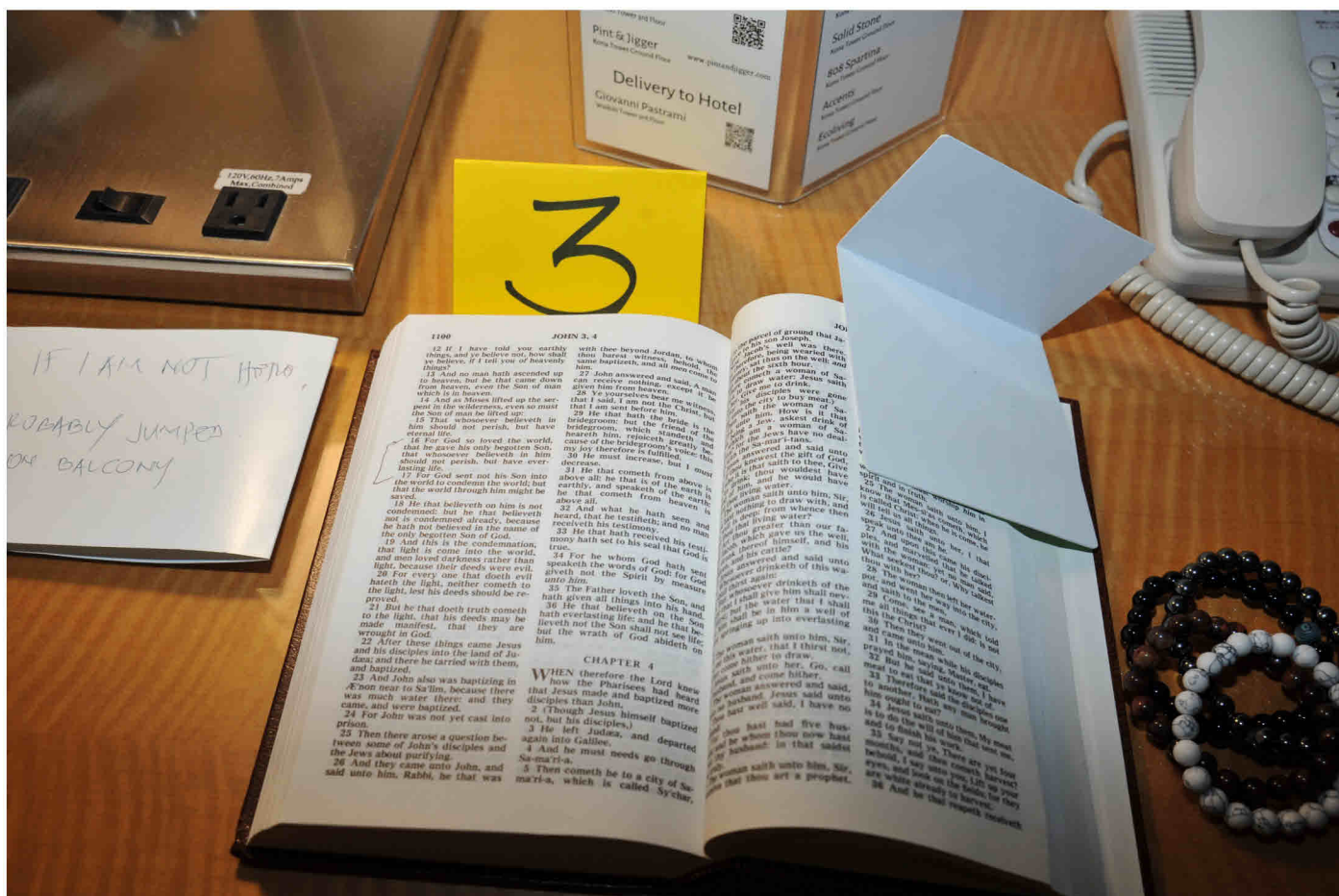










Exhibit 3

Dear Honorable Judge Seabright,

My name is Juliet Rivera. I am writing a letter of character reference for my husband, Mikael Rivera, whom I have been married to for almost 21 years. We have two children together. I am 43 years old this year and work as a cashier at Sam's Club. I came from the Philippines as a legal immigrant and became a US citizen of the United States of America in 2008.

I have always known my husband, Mikael Rivera, as a hard-working, honest, and responsible person. Throughout our marriage, he has never given me any reason to doubt him. He doesn't smoke or drink, and he has always strived for a better future with me. Especially when we had our two kids, [REDACTED] and [REDACTED]. Despite being a respected veteran of the Army, he applied and worked multiple jobs just to provide us with a better life. He always said that he wanted his children to have an easy life and a better future, and he doesn't want them experiencing the hardship that he had growing up. Mikael Rivera is a good husband and father. Even with his busy schedule, he found ways to spend time with his family. He was always there for us whenever we needed him the most. Doctor's appointments, school activities and events, etc. He has always been our strength mentally and financially. He is our foundation. No matter what he is going through, he always manages to not let us worry about him. He has always been a strong and responsible person, and that is why we love him so much.

I hope this letter finds you well, and I thank you for taking the time to read my letter of character for Mikael Rivera.

Sincerely,

Juliet Rivera

Dear Honorable Judge Seabright,

I hope this letter finds you well. My name is [REDACTED], and I am writing to you on behalf of Mikael Rivera. I've known my father for all of my life, and have always found him to be a loving, sincere, and reliable person.

My father, Mikael Rivera, has always made time for my brother and I, regardless of whatever else he had going on. He was never too busy for us. He would take us out to spend time together every once in a while to get everyone out of the house, all with the purpose of spending our time together. When we moved, he made sure to adjust his work schedule to take us home—so that we didn't have to take the bus home. And on the way home, we'd get some food before he drops us off. Or, we'd just drive around after school to spend time before he had to drop us off.

Even before he retired, my father always made sure to be there as much as he could. We would go on hikes, watch a movie in theaters, or eat at a restaurant. At home—when he could have been catching up on his sleep—he chose to do something small, like watch TV together or talk about one thing or another, with us instead. Whenever we had questions about anything, he was always someone we could try go to for an answer. He may not always had one for us, but he would try and figure out the answer together. There was never a moment where I doubted I'd be able to go to my father for any issue I had.

Thank you for your consideration, I hope my letter gives you a better understanding of my father.

Sincerely,

[REDACTED]

Dear Judge Seabright,

I am writing to provide a character reference for Mikael Rivera. My name is [REDACTED], and I am one of his two children.

My father has been there through my whole life. He would only really leave when he got deployed before he retired. He'd always buy things for me and my sister, even though I knew we weren't in a financially fit position to be making certain transactions. He always made sure that we were happy, disregarding everything else. He would always push for us to join the military, but he would be happy with our decision either way. My father always called to check up on us to see if we were doing all right.

During these last years, whenever we had time, we would plan to go on hikes, even though we couldn't finish them. He made time to spend with us. He would also manage to make the time to drop us off or pick us up from school whenever our mother couldn't. He would try everything in his power not to let us worry about his well-being. He only cared about us. He would deal with and keep his problems to himself.

Thank you for taking the time to read this letter.

Sincerely,

[REDACTED]

June 9, 2025

My name is Randy Rivera, brother of Mila. I'm the third child of the family so i knew well Mila since birth. Side by side we grew up together in thick or thin in the Philippines. Even when i went in the Army in the Philippines, Mila always missed me to come home and see me with full uniform. He keep saying one day he will be doing the same thing.

We migrate to Hawaii, and we work together in Zippys restaurant and we became a trainer on that restaurant. He was working hard and helpful brother to our family at all the co workers that's why when he join the U.S. Army everybody was sad when he left. And even when he was in the Army far away from us, he never stop helping our family. Even when he get his own family, he never stop helping and he never change. He even have part time job he never change towards his family and responsibilities being a father, brother and a son. He work hard for his family and he never have issues or problem to anyone. He was a quite and lovable person.

Randy Rivera

June 9, 2025

This is Mr and Mrs Rivera parents of Mika.

The day he came to our life way back 1977 we was happy and blessed cause we saw this baby that full of potential and happiness. He grew up quite as little young boy, don't go out even he has 3 brothers he always stay home. He so helpful inside the house cause we don't have any girls in our kids.

When we migrate to US he attend Leeward school while he working at Zippys. He really wants to work cause our situation here is so tough. And even when we stay here in US he always quite and helpful to us in the house. He always priority our family that make him push to go join the army for better opportunities. He never stop searching for better job, even he was in the army he still went go part time as a youth developer one of the boot camp for kids that lost their way in their life.

He was responsible child and a father, he work hard he don't drink and don't smoke he always priority us and his family. He always positive and showing his responsibility towards his two kids. He's one of our child that never stop helping us even he get his own family. That's why we LOVE him so much.

Mr. & Mrs. Rivera