

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA)
)
VS.) CR No. 1:18-cr-00159-JJM-LDA
)
MONIQUE BRADY)

MONIQUE BRADY’S SENTENCING MEMORANDUM

Monique Brady was born Ha Thanh Nguyen in Saigon (now Ho Chin Minh City), Vietnam, on February 4, 1975, two and half months before it fell to the North Vietnamese Army of PAVN (the People’s Army of Vietnam). She has no memory of the war itself, but was a victim of it nonetheless. A first wave of refugees fled in 1975, but in the late 1970s, a second, larger group who came to be known as the “boat people,” navigated treacherous waters to escape. They paid exorbitant fees and risked abduction, rape, and death at sea to escape the reeducation camps that had sprung up after the northern victory over the south.¹²³

Ha’s father, Hung, fled the country for Indonesia when she was three. He served in the South Vietnamese Army of ARVN (Army of the Republic of Vietnam) and feared that he would be killed or imprisoned in a re-education camp if he stayed. But he promised to send for his wife and daughters when he reached America. In 1979, President Jimmy Carter announced he would double the number of refugees

¹ <https://qz.com/670921/forty-one-years-ago-the-us-took-a-big-gamble-on-vietnamese-refugees/>

² <https://wtkr.com/2017/04/27/the-journey-of-vietnamese-boat-people/>

³ <https://www.wbur.org/hereandnow/2015/09/09/vietnamese-boat-people-refugees>

from Vietnam, Cambodia, and Laos accepted into the United States from 7,000 per month to 14,000. It was illegal to leave the country, but Ha's mother Nancy, seized the opportunity to save herself and her girls. Ha was only four but recalls being roused out of bed by in the middle of the night and being carried onto a dilapidated fishing boat. Around 800,000 boat people are believed to have fled Vietnam by sea during this time.

The boat began sinking soon after it reached the open waters on the South China Sea and panic ensued. The cries and screams of fellow passengers filled the night air before they were rescued by a Dutch freighter. They were placed in a refugee camp in the Philippines before they made their way to the United States and were reunited with Hung in California. In the United States, Ha was given the opportunity to choose a new first name, an "American" name. She chose "Monique" after an older cousin that she idolized. Her sister chose the name, Ann. The family eventually settled into a small apartment but their reunion was short lived. A year later, Hung learned that his wife was having an affair. As her parents argued, Monique watched as her father cut off his ring finger. He left his wife and took the girls in the middle of the night. Monique waited for her mother to come for her, but she never did. Hung soon took his daughters to Houston to his sister's home. Monique's aunt became her and her sister's primary caregiver because her father worked three jobs. Her aunt and father used corporal punishment as a means of discipline, hitting the girls with a

wooden spoon. Again, Monique waited for her mother to arrive, sure that she would want to be with her girls. That day never came.

[REDACTED]

[REDACTED]

Monique did not speak English when she arrived in America and English was not spoken in her home, but she excelled academically. Her father could not communicate with her teachers or help her with homework, so Monique learned to rely on herself. She visited her mother in California occasionally but never felt that she wanted her there. After her father was able to move them into their own apartment, Monique and Ann, were tasked with running the household. The girls did all of the cooking and cleaning and translating for their father.

The family moved to Virginia and then Rhode Island, settling in Warwick where the girls both attended high school. Their father remarried and that softened his temperament. Their mother didn't attend their high school graduations. Monique met her future husband, Tom, the following summer. She also visited a casino for the first time at age eighteen and won a few hundred dollars. She left feeling euphoric and eager and to return. Monique worked her way through the University of Rhode Island, paying her own tuition and fees. But she also used student loan money to fund her burgeoning gambling habit. She had to leave school temporarily to work full-time because she couldn't afford it. She saved up enough money to return to school where she increased her course load so she could graduate on time.

Monique was the first member of her family to go to college. She was accepted to Roger Williams University School of Law and Tom join the fire department. They got married and Monique gave birth to twin girls, Lauren and Lindsey, before her law school graduation in 2002. A son, Thomas Jacob (TJ) was born a year later. Their daughter, Caitlin, was born in 2004; that same year TJ was diagnosed with severe autism.

Monique was determined to be the kind of mom to her kids that her mother never was. She wanted them to have the carefree childhood that they deserved, the one that she never had. She took charge of the finances which allowed her to keep her gambling habit from Tom for a time. When he learned of her addiction and the money she had lost, Tom threatened divorce. Monique promised him that she would quit and he promised that he would stay in the marriage if she kept her word. As Tom later told U.S. Probation in this case, that threat likely prevented her from reaching out for help when she needed it most.

Monique started her own business, MNB, LLC, doing property preservations for homes in foreclosure. She was very successful and made a lot of money in the beginning, during the recession. Her career allowed her to buy nice things for herself and her family and her friends. When TJ was diagnosed with severe autism, she spared no expense in finding the best therapists for him. She threw herself into fundraising for autism charities as well. When her youngest child Caitlyn was an infant, she suffered a stroke. This required extensive treatment and eventual brain surgery in

New York City when she was fifteen months old. To the casual observer, it seemed that Monique could handle anything. She had four children in three years, twins and then two more kids, both with serious medical challenges. She seem to easily juggle motherhood, marriage, and a successful business. But she was also sneaking away to the casinos every chance she got.

One of Monique's victims in this case wrote in her impact letter,

“She would tell me how her day would begin at 3AM with work until her 4 children would get up for school at which point she would get them ready, including her autistic son. Her day would then continue with work. I now know and believe none of that to be true.”

Monique's best friend since 9th grade, Carolyn Young made the following statement to the FBI agent investigating this case:

“Young recalls one time Brady called her asking for money and Young did not loan her money. Young was going through a divorce at the time and did not have the money to loan Brady. Brady had been on the side of the road near Mohegan Sun when she called Young. Brady was in hysterics. Brady needed money for something gambling related. Young said Brady sounded suicidal. Young called Tom after Brady asked for money the second time, and Tom told Young not to give her any money.”

[REDACTED]

Monique sought treatment for her gambling addiction a year a half before she was committed to custody in this case. She was prescribed medication for anxiety but also self-medicated with wine. Monique has been a gambling addict for over twenty-five years. She knows that when she is eventually released from prison she will have to focus on her sobriety and she will need help to do so.

Monique is determined to do that and to make up for what she has done to so many people in this case. She knows that she has utterly betrayed the people who trusted her with their money, including her own family. As she dug herself deeper and deeper into this scheme, she kept telling herself that she could figure out a way to pay

⁴ [REDACTED]

them back. She believes that she does have the ability to make a living when she is out of prison and to make restitution payments to her victims, starting with her share in the sale of her home which she has forfeited in this case.

Of course, no amount of money will make up for the anguish Monique has inflicted on her own four children. Her daughter, Lauren wrote the following in her letter to the Court:

“This year I started working every day, we moved across the state, I barely saw friends. I felt like a burden and an inconvenience. I rarely found time to do things for myself. Only being able to talk to my mother through a sheet of glass or waving at her in a courtroom filled with reporters. This has been so hard. The hateful mail and messages we’ve received. The unwanted home visits from reporters, or hateful social media posts targeting my family and I. As silly as it is when I have a boy problem all I want to do is talk to my mom about it and I just can’t. It is heartbreaking when I tuck my brother into bed at night and he scream cries yearning for “mommy’s hugging”. I wish I could give him that. I can make his lunch for school and I can trim his nails or give him a bath. I can pick out his outfits, or clean up after him, but I am not his mother.”

Monique knows that she is responsible for the pain and humiliation her children are experiencing. Her teenage daughters shouldn’t be targeted by online bullies or harassed in their own front yard. TJ is seventeen but has the mental capacity of a small child. He doesn’t understand why his mother is locked up and away from him, but Monique knows. She knows that she is to blame and she knows that she will continue to be separated from her children during the time they need her the most because of her actions.

United States Probation has calculated a guideline range in this case of 78 to 97 months, plus 24 months consecutive for Count 10 with a total offense level of 28.

This range is based primarily on the loss amount, which increased the offense level of 6 by 18 points. It also includes increases for specific offense characteristics of obstruction and financial hardship to five or more victims. This guideline has been increased significantly since the guidelines were introduced in 1987.

On January 16, 2015, the U.S. Sentencing Commission promulgated a series of proposed amendments to the economic crime guideline, U.S.S.G. §2B1.1 and invited public comment. Professor Frank Bowman was Special Counsel to the Sentencing Commission on detail from the Department of Justice, a member of the Commission's Practitioners Advisory Group, and an academic advisor to the Criminal Law Committee of the U.S. Judicial Conference as it considered the economic crime package. He offered an extensive commentary on the proposed amendments and the history of these guidelines:⁵

If the Commission is indeed determined to solve the problem of unreasonably high guideline sentences in high-loss cases - those identified by Judge Saris as involving loss of more than \$1 million - the amendments proposed in this cycle do very little to accomplish that end.

The combination of the direct and indirect increases effectively doubled the guideline sentences of some high-loss defendants, a result few of the participants in the drafting process consciously foresaw.

We failed to consider carefully the *combined effect* of the very large increases at the mid-to-high end of the new loss table and all the specific offense characteristics that survived the transition from the old separate guidelines to the new consolidated one.

⁵ <https://www.uscc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20150312/Bowman.pdf>

The original fraud and theft guidelines were designed to change the pre-guideline status quo, in which virtually all white collar criminals customarily received probation, to a new state of affairs in which significant white collar criminals were sentenced to prison. See U.S.S.G. §2F1.1 (1988). The base offense level for a fraud conviction was then 6, and the highest loss accounted for by the original table was \$5 million. Offenders who stole that much or more were subject to an offense level increase of 11, producing a total offense level of 17 and a resultant sentencing range for a first-time offender of 24-30 months. Moreover, the original fraud guideline contained only one non-loss sentencing factor, an enhancement of two levels for more than minimal planning *or* multiple victims *or* a false claim to have acted on behalf of a charity *or* violation of a judicial order. Thus, the maximum possible offense level for a first-time offender under the original §2F1.1 was 19, which translated to a sentencing range of 30-37 months. See U.S.S.G. §2F1.1 (1988).

The Commission proposes a newly separate enhancement which would add 1, 2, or 3 offense levels based on a finding of substantial [financial] hardship to 1, 5, or 25 victims. I understand the theory of this amendment inasmuch as I proposed the basic idea back in 1998. That proposal for a free-standing financial hardship adjustment mutated during the debate over the post-Sarbanes-Oxley round of amendments into an alternative means of triggering the four-level adjustment for endangering the safety or soundness of financial institutions or large companies now found in §2B1.1(b)(16)(B) (2014). I no longer think that a separate adjustment for imposing substantial financial hardship makes good practical sense, particularly if it is a multi-level adjustment scaled (necessarily somewhat arbitrarily) to particular numbers of victims. At a moment when we should be trying to reduce the number of difficult-to-exactly-define aggravators in §2B1.1, this amendment would add one. Moreover, the imposition of substantial financial hardship surely correlates to some degree with large loss amount. Consequently, whatever ameliorative effect on high-loss cases the proposed amendment to the victim table of §2B1.1(b)(2) may have, the new substantial hardship enhancement will take away in at least some cases. In short, the new amendment will serve primarily to add yet another to the proliferating list of SOCs that can boost the sentences of fraud defendants generally, and high-loss defendants in particular.

If Monique Brady was sentenced for these crimes under old the guidelines, she would be facing a range of 30-37 months. Today, she is facing 102 to 121 months, given the mandatory consecutive 24 month sentence for aggravated identity theft.

The inflation rate in the United States between 1987 and today has been 132.64%, which translates into a total increase of \$132.64. This means that 100 dollars in 1987 are equivalent to 232.64 dollars in 2020. The loss amount in this case is \$4,788,625. That amount in 1987 dollars, when adjusted for inflation, is equivalent to \$11,140,462.18 today.⁶

The defense is not asking the Court to disregard the guidelines all together but to consider Professor Bowman's commentary. Do these amendments result in unintended "very large increases at the mid-to-high end of the new loss table" as he argues? Monique will serve a mandatory two year term of imprisonment for aggravated identity theft. The government doesn't allege that she stole or assumed someone's identity or defrauded those individuals personally or even damaged their credit score. She created fake emails from lenders and asset management companies and forwarded them to her investors to give herself and her scheme credibility. In a world without mandatory minimum sentences, this Court could take these details, these individual characteristics of the defendant into account. It cannot; it must impose a two year consecutive term. Therefore, if this Court finds that the guideline range in Monique Brady's case is not what was intended by the Sentencing Commission, and/or not appropriate given the totality of the circumstances, a lower term of imprisonment is in order.

⁶ <https://www.inflationtool.com/us-dollar/1987-to-present-value?amount=4788625>

We are asking the Court to impose a sentence of 12 months and 1 day on Counts 1 and 3, plus a term of imprisonment of 24 months on Count 2 to run consecutively. We are asking the Court to impose the maximum term of supervised release, 3 years, with the conditions recommended by United States Probation and Dr. Rocchio. In addition, we ask the Court to order a condition of 400 hours of public service. Monique forfeited her interest in her home as part of the plea agreement in this case. The house sold for \$928,201.07 and she is hopeful that this money will be the first step in making restitution to her victims. Monique's children visit her in custody once a week. These visits are particularly important to TJ. She will likely be classified by the Bureau of Prisons to either FCI Danbury in Connecticut or FPC Alderson in West Virginia. She is asking the Court to recommend Danbury, so TJ can continue his weekly visits; Dr. Rocchio echoed this request in her evaluation.

Monique understands that she was committed to custody in this case because Magistrate Judge Almond was concerned that she was a flight risk. The Government alleged at the detention hearing in this case that her claim that she was flying to Vietnam to visit her sick grandmother was bogus. Monique has insisted throughout this case that her only intention was to visit her dying grandmother in Vietnam and then to book a flight home. Indeed, her grandmother passed away during the pendency of this case, and Monique never had the chance to say goodbye. She wants the Court to know that she would never abandon her children, especially TJ. Her life is here, her future is here. She knows it will take years to address the emotional

damage she has inflicted upon her children and she is resolved to do so. She will never absent herself from her kids' lives again.

Monique is asking the Court to allow her to self-report to whichever BOP facility she is classified to, and to order a GPS or RF bracelet and 24-hour home confinement. The reason for this request is two-fold. It will allow her to spend time with her children and her aging father and to work with Tom on long term care plans for TJ and Caitlin. Next, under the First Step Act Assessment Tool published in July, a prisoner who self-reports to the BOP earns a two point deduction in their score. This score determines whether an inmate is classified as a no or low risk offender and, therefore, eligible for First Step programming and benefits.

Monique Brady marked her 45th birthday in jail on February 5th. She never imagined that she would find herself in this situation. As someone who experienced trauma and poverty as a child, she never imagined that she would someday inflict grief and financial hardship on others. She is deeply remorseful and eager to prove to this Court, her victims, and her family that she is capable of changing and making amends.

In sentencing Monique Brady this Court must address society's need for punishment and deterrence. A term of three years in federal prison, followed by three years of supervised release, with conditions including restitution and public service satisfies that end, but is not greater than necessary to serve the purposes of sentencing. See 18 U.S.C. § 3553(a).

Respectfully submitted
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CERTIFICATION

I hereby certify that a copy of this motion was delivered via electronic mail to Lee Vilker Assistant United States Attorney on February 6, 2020.

/s/ Joanne M. Daley