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14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
 17 Plaintiff,  
 18 v.  
 19 JERRY NEHL BOYLAN,  
 20 Defendant.

No. CR 22-482-GW

GOVERNMENT'S SENTENCING POSITION

Sentencing Date: May 2, 2024  
 Sentencing Time: 8:00 a.m.

23 Plaintiff United States of America, by and through its counsel  
 24 of record, the United States Attorney for the Central District of  
 25 California and Assistant United States Attorneys Mark Williams,  
 26 Matthew O'Brien, Brian Faerstein, and Juan Rodriguez, hereby files  
 27 its Sentencing Position for defendant JERRY NEHL BOYLAN.  
 28

1 This Sentencing Position is based upon the attached memorandum  
2 of points and authorities, the Presentence Investigation Report and  
3 United States Probation Office sentencing recommendation letter,  
4 victim impact statements, trial testimony and exhibits, the files and  
5 records in this case, and such further evidence and argument as the  
6 Court may permit at the sentencing hearing.

7 Dated: April 18, 2024

Respectfully submitted,

8 E. MARTIN ESTRADA  
United States Attorney

9 MACK E. JENKINS  
10 Assistant United States Attorney  
11 Chief, Criminal Division

12 /s/

13 

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendant JERRY NEHL BOYLAN killed 34 innocent people. These  
4 husbands, wives, fathers, mothers, children, and friends died because  
5 of his reckless conduct. Defendant has never apologized, much less  
6 taken any responsibility for the atrocity he caused. The victim  
7 impact statements filed with the Court make clear how defendant's  
8 conduct devastated dozens of families:

9 *"My family and I were devastated. My parents, who*  
10 *were 94 and 98 at the time, were stunned into grief that*  
*they carried to their own graves."*

11 *"Losing him was not only the worst thing that has ever*  
12 *happened to me in my entire life, but has impacted and*  
13 *devastated so many other people."*

14 *"Boylan's reckless actions shattered the foundation of*  
*our existence and left a trail of devastation and despair."*

15 *"[My loved one's life was] cut short along with 33*  
16 *others because of the sheer laziness and negligence of*  
17 *Jerry Boylan to do his job. She was just 26 years old.*  
18 *Jerry Boylan has had the opportunity to live his life free*  
*for the past 5 years while we have gone through hell,*  
*reliving the tragedy over and over..."*

19 *"On September 2, 2019 my entire world crumbled.*  
20 *Finding the words to encompass the amount of hurt I have*  
21 *endured due to Jerry Boylan's actions and inactions has*  
*been an impossible task."*

22 *"Captain Boylan's blatant and reckless disregard for*  
23 *his duties under maritime law and Coast Guard regulations*  
24 *requiring roving watch when humans are aboard a vessel*  
*overnight blew my life apart in ways I could never have*  
*imagined before September 2nd, 2019."*

25 *"My daughter will not have her father here to walk her*  
26 *down the aisle. My son will never have his father witness*  
27 *the man he has become. The list of losses is endless and I*  
28 *will not share every single one in this statement. As*  
*there are just too many. Jerry Boylan took this all away*

1           ***when he decided to write his own rules of engagement for***  
2           ***his vessel and disregard the law."***

3           ***"For much of your career, you rolled the dice - with***  
4           ***your passengers' lives being the stakes. Except, they, not***  
5           ***being aware of the rules, trusted you with their lives,***  
6           ***unaware of the risks that you and others exposed them to.***  
7           ***These 34 entrusted you to be a responsible mariner, to act***  
8           ***prudently, in accord with best practices and the law. You***  
9           ***failed. And they and we suffered because of that."***

10           ***"Your hopes and dreams shattered in a tragedy that***  
11           ***should have never happened. A disaster that could have***  
12           ***been avoided by the expert who was paid to follow minimum***  
13           ***protections but ignored obligations."***

14           As a seasoned captain with decades of experience, defendant knew  
15 that his core duty was, above all else, to keep his 33 passengers and  
16 5 crewmembers safe. He was the Captain of the ship. He, alone, was  
17 in command of the *Conception* and responsible for the lives of his  
18 passengers and crew on September 2, 2019. Despite this  
19 responsibility, defendant set sail on the Labor Day Weekend trip with  
20 full knowledge of the potentially catastrophic consequences of his  
21 reckless conduct. He knew that his crew was inexperienced and that  
22 he had not trained them to fight a fire. He knew that he had never  
23 conducted a single fire drill with his crew. He knew that he  
24 habitually ignored the most basic tenet of maritime fire safety in  
25 failing to maintain a roving patrol at night.

26           The stakes were life and death. And yet defendant did nothing  
27 to keep his passengers and crew safe -- in the days, weeks, months,  
28 and years leading up to the Labor Day Weekend trip, and on the night  
of the fire itself. Predictably, when the fire started and grew  
without any crewmember awake to detect and contain it, chaos ensued  
amongst his inexperienced and untrained crew. Compounding his  
reckless failures and misconduct in the lead-up to the fire, during

1 the fire defendant failed to alert his passengers of the fire, failed  
2 to direct his crew on how to fight the fire, and failed to attempt  
3 any rescue whatsoever.

4 Instead, defendant saved himself. He was the first to abandon  
5 ship. He instructed his crew to do the same, multiple times. In so  
6 doing, he left all 34 victims onboard the *Conception* to die.

7 Both the government and the United States Probation Office  
8 ("USPO") respectfully request that the Court sentence defendant to  
9 the statutory maximum 10-year term of imprisonment. Anything less is  
10 insufficient to achieve the goals of sentencing and appropriately  
11 account for the 34 deaths that defendant caused.

## 12 **II. STATEMENT OF FACTS<sup>1</sup>**

### 13 **A. The *Conception***

14 The *Conception* was a 75-foot, wood and fiberglass passenger  
15 vessel based in Santa Barbara, California. Defendant had been the  
16 captain of the *Conception* for decades and had obtained his Master's  
17 License in 1985. (Trial Exh. 4.) The *Conception* was used to take  
18 passengers on dive trips, wildlife viewing trips, and other  
19 excursions to the Channel Islands. For overnight trips, the  
20 *Conception* operated with six crewmembers -- a captain (almost always  
21 defendant), second captain, two deckhands, and two galleyhands.

22 Passengers slept in the *Conception's* bunkroom, which was located  
23 below the main deck. A staircase led down from the galley on the  
24 main deck into the bunkroom below deck. The *Conception* also had one  
25 emergency exit from the bunkroom -- an escape hatch in the ceiling  
26

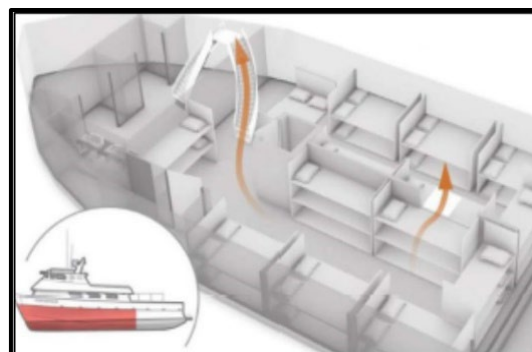
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27  
28 <sup>1</sup> Unless otherwise indicated, the facts described herein are set  
forth in the Presentence Investigation Report ("PSR") filed on March  
28, 2024. (See Dkt. No. 404.)

1 above two of the center bunks, which could be opened to lead to the  
2 salon on the main deck.



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9 **Trial Exh. 60**



**Trial Exh. 119**

10 Despite the vital importance of the escape hatch to passengers'  
11 safety, defendant was dismissive of it. During the "morning  
12 briefings" on the first day of his overnight dive trips (after his  
13 passengers had already slept in the bunkroom while the *Conception* was  
14 docked the night before departure), defendant failed to show his  
15 passengers where to access the escape hatch from inside the bunkroom,  
16 despite the difficulty of finding the escape hatch in the dark. (See  
17 Trial Exh. 93 (video showing how difficult it was to find the escape  
18 hatch from within the bunkroom).)

19 The *Conception* also had a wide range of firefighting equipment,  
20 all of which was in good working order at the time of the Labor Day  
21 Weekend trip. The boat had approximately six fire extinguishers  
22 spread around all three of its decks. There also was a fire axe in  
23 the wheelhouse. The engine room below deck had a specialized  
24 firefighting system in the event of an engine fire. The *Conception*  
25 had smoke detectors in the bunkroom and heat sensors in the galley.

26 The *Conception* also had two firefighting stations located on the  
27 port and starboard sides of the main deck. Each station had a heavy  
28 duty, 50-foot firehose connected to a fire pump that could pump



1 unlimited amounts of water from the ocean through the hoses to fight  
2 a fire. Both fire stations could be used at the same time.

3 At trial, surviving crewmembers testified that defendant never  
4 trained or drilled them on how to use the firehoses onboard the  
5 *Conception*. First Deckhand Milton French had never used or activated  
6 the *Conception's* firehoses nor seen them activated, had never seen  
7 them unspooled from their stations, and had never done a fire drill  
8 on the *Conception*. (Dkt. No. 361 at 170:16-18, 171:2-5, 172:5-6,  
9 172:21-173:2.) Second Captain Cullen Molitor was never instructed  
10 how to use the firehoses, never used or activated one, and had never  
11 done a fire drill on the *Conception*. (Dkt. No. 364 at 75:22-76:9,  
12 77:3-78:4; Dkt. No. 365 at 13:12-14.) First Galleyhand Ryan Sims was  
13 never shown how to use the firehoses or where they were located and  
14 had never done a fire drill on the *Conception*. (Dkt. 363 at 11:1-7.)  
15 And Second Galleyhand Michael Kohls, who was the longest tenured  
16 crewperson on the *Conception* at just under two years as of the time  
17 of the fire, never received training on the firefighting equipment on  
18 the *Conception* and never took part in or saw fire drills on the ship.  
19 (Dkt. No. 362 at 153:18-154:18.)

#### 20 **B. Defendant's Failure to Use a Roving Patrol**

21 Defendant was required to comply with the Coast Guard's "T-Boat"  
22 regulations (so named for Subchapter T of Title 46, Chapter I of the  
23 Code of Federal Regulations) as well as the *Conception's* two-page  
24 Certificate of Inspection ("COI"), which was the ship's operating  
25 license issued by the Coast Guard. The COI hung in a frame in the  
26 *Conception's* wheelhouse, right behind where defendant steered the  
27 ship. The COI set forth the following requirement in capital letters  
28 on the first page:

1           **A MEMBER OF THE VESSEL'S CREW SHALL BE DESIGNATED BY THE**  
2           **MASTER AS A ROVING PATROL AT ALL TIMES, WHETHER OR NOT THE**  
3           **VESSEL IS UNDERWAY, WHEN THE PASSENGER'S BUNKS ARE OCCUPIED.**

4           (See Trial Exh. 26.) This "roving patrol" requirement first appeared  
5           in the *Conception's* COI in 1992 and was included in every COI issued  
6           for the *Conception* since then. (See Trial Exh. 27 (the *Conception's*  
7           COIs over the past three decades).) Coast Guard regulations required  
8           defendant to "be in full compliance" with the *Conception's* COI "when  
9           any passengers are aboard." 46 C.F.R. § 176.100.

10           In addition to the COI's requirement for a roving patrol, Coast  
11           Guard regulations also required defendant to use a roving patrol:

12           The owner, charterer, **master**, or managing operator of a  
13           vessel carrying overnight passengers **shall have a suitable**  
14           **number of watchmen patrol throughout the vessel** during the  
15           nighttime, whether or not the vessel is underway, **to guard**  
                  **against, and give alarm in case of, a fire**, man overboard,  
                  or other dangerous situation.

16           46 C.F.R. § 185.410 (emphasis added). The purpose of the roving  
17           patrol was to ensure that a crewmember was awake and patrolling the  
18           boat at night to spot a fire or identify any other emergencies.

19           When defendant became a licensed Captain in 1985, he swore an  
20           oath, "according to my best skill and judgment, and without  
21           concealment or reservation, [to] perform all duties required of me by  
22           the laws of the United States." (Trial Exh. 4 at 4.) Despite his  
23           oath and the Coast Guard's requirements, defendant never used a  
24           roving patrol -- not on the night of the fire, nor on hundreds of  
25           prior voyages, despite the catastrophic risk of a fire while at sea.

26           **C. Defendant's Failure to Train and Drill His Crew**

27           Coast Guard regulations made clear defendant's duty as the  
28           master to train his crew in firefighting. Most notably:

1 Fire Fighting Drills and Training. The **master shall**  
2 **conduct sufficient fire drills** to make sure that each crew  
3 member is familiar with his or her duties in case of a  
4 fire.

4 46 C.F.R. § 185.524(a) (emphasis added). Likewise:

5 Crew Training. The owner, charterer, **master** or managing  
6 operator **shall instruct each crew member, upon first being**  
7 **employed and prior to getting underway for the first time**  
8 **on a particular vessel and at least once every three**  
9 **months, as to the duties that the crew member is expected**  
10 **to perform in an emergency** including, but not limited to,  
11 the emergency instructions listed on the emergency  
12 instruction placard required by § 185.510 of this part and,  
13 when applicable, the duties listed in the station bill  
14 required by § 185.514 of this part.

11 46 C.F.R. § 185.420(a) (emphasis added).

12 Despite his duty to do so, defendant failed to train his crew  
13 for the Labor Day Weekend trip regarding firefighting and to ensure  
14 each crewmember was aware of their duties in the event of a fire, as  
15 Truth Aquatics' internal Loss Control Program required him to do.  
16 (Trial Exh. 127.) And, as explained above, defendant failed to  
17 conduct any fire drills on the *Conception*. This was particularly  
18 egregious given that his crew had very little experience working on  
19 the *Conception* (or any other boats).

20 **D. The Labor Day Weekend Dive Trip in 2019**

21 The destination for the Labor Day Weekend trip was Santa Cruz  
22 Island, a remote location in the Channel Islands. The *Conception* was  
23 scheduled to depart Santa Barbara Harbor at 4:00 a.m. on August 31,  
24 2019, the normal departure time for overnight dive trips. As was  
25 defendant's practice, he permitted passengers to board the vessel on  
26 the night before the trip, even though no crewmembers were onboard.

27 On both the *Conception's* final voyage and prior voyages,  
28 defendant waited to give his "morning briefing" to passengers until

1 several hours after the *Conception* had sailed from the dock at Santa  
2 Barbara Harbor (i.e., after passengers already had slept overnight in  
3 the bunkroom without a roving patrol). This is akin to a flight  
4 attendant waiting until after an airplane is airborne to give the  
5 safety briefing. Defendant's practice violated Coast Guard  
6 regulations, which required the passenger safety orientation to be  
7 given "before getting underway on a voyage." 46 C.F.R. § 185.506(a).

8 During the first two days of the Labor Day Weekend trip,  
9 passengers went scuba diving each day, ate their meals together in  
10 the salon on the main deck, and each night slept in the bunkroom.



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17 **Trial Exh. 155**



18 **Trial Exh. 186<sup>2</sup>**



19 **Trial Exh. 171**

20 On September 1, 2019, the night before the fire, the passengers  
21 and crew had a birthday party in the salon on the main deck. Tia  
22 Nicole Adamic-Salika (pictured above in sunglasses with her friend  
23 Berenice Felipe during the Labor Day Weekend trip) celebrated her  
24 17th birthday with cakes for the occasion. Tia and Berenice were on  
25 the trip with Tia's parents, Diana Adamic and Steven Salika. The  
26 Quitasol family -- sisters Angela, Nicole, and Evan Quitasol, their

---

27 <sup>2</sup> Several photographs contained herein were marked as government  
28 trial exhibits but not admitted into evidence. The Court may, of  
course, consider any "information concerning the background,  
character, and conduct of a person convicted of an offense" for  
purposes of sentencing. 18 U.S.C. § 3661.

1 father, Michael, and stepmother, Fernisa Sison -- celebrated  
2 Michael's 62nd birthday at the party as well.

3 Defendant then moved the boat to Platt's Harbor near Santa Cruz  
4 Island, where they anchored around 10:30 p.m. The crew and  
5 passengers went to sleep. As was defendant's practice, there was no  
6 roving patrol that night.

7 **E. The Fire**

8 In the middle of the night on September 2, 2019, a fire started  
9 while defendant and his crew were asleep. After a crewmember saw the  
10 fire and woke up defendant, several crewmembers lowered themselves to  
11 the main deck where the fire had started. Second Galleyhand Kohls,  
12 the first crewmember to reach the main deck, ran past the fire  
13 station on the port side of the main deck twice, not knowing that the  
14 fire station was there or how to use it. Instead of giving his crew  
15 meaningful direction (especially in light of his prior failures to  
16 train or drill them), or going to the main deck to fight the fire or  
17 assist his crew, defendant made a Mayday call from the wheelhouse and  
18 then jumped off the ship -- he was the first person to jump  
19 overboard. He then ordered his crew to jump overboard as well, even  
20 though 34 people were alive in the bunkroom, waiting to be rescued.

21 At no time did defendant use, or direct or assist any crewmember  
22 in using, the fire axe, fire extinguisher, or fire hoses to fight the  
23 fire. While defendant told First Galleyhand Sims to grab a fire  
24 extinguisher in the wheelhouse, defendant did not help him do so and  
25 quickly told Sims to abandon ship when Sims was unable to find it.  
26 (Dkt. No. 363 at 16:4-5, 17:12-14.) And although defendant called  
27 the Coast Guard -- despite the fact that rescuers were miles away --

28

1 defendant failed to use the ship's public address system to alert the  
2 passengers about the fire or provide any directions to anyone.

3 All 34 people in the bunkroom were killed in the fire due to  
4 smoke inhalation. At trial, the jury found that defendant's gross  
5 negligence and misconduct before and during the fire caused the  
6 deaths of the 34 victims aboard the *Conception*.



13 **Trial Exh. 229**

14 **F. The Victims**

15 The victims ranged in age from sixteen to 62-years-old. Many  
16 embarked on the *Conception* with their families, partners, or friends  
17 for the Labor Day Weekend diving excursion; others traveled alone.  
18 (Dkt. No. 360 at 109:23-114:7). All trusted defendant to keep them  
19 safe, putting their lives in his hands.

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**Trial Exh. 296**

During the fire, after defendant abandoned them, the victims were awake and awaiting rescue. Many were found wearing shoes (including at least one victim with mismatched shoes) -- proving that the victims were awake and trying to escape from the bunkroom. One victim was recovered holding a cell phone, and another was holding a flashlight. Divers recovered several victims' bodies clutching each other so tightly that it was difficult to separate the bodies. These victims had been hugging each other when they were killed.

Divers also found an empty fire extinguisher with the pin pulled in the wreckage. (Trial Exh. 271.) Because the surviving crew members told investigators that none of them used a fire extinguisher during the fire, the fire extinguisher must have been used by someone in the bunkroom. Indeed, the recovered extinguisher was the same model as the extinguisher that had been stored in the bunkroom.

The FBI was able to recover a video from the iPhone of Patricia Beitzinger, one of the victims. The damaged iPhone had been found in her coat pocket in the wreckage on the seafloor. Metadata that the

1 FBI recovered from the iPhone showed that she had taken the video at  
2 3:17 a.m. on September 2, 2019 - i.e., three minutes after defendant  
3 had made the Mayday call and jumped overboard. The video confirmed  
4 that the 34 victims in the bunkroom were awake during the fire and  
5 could have been rescued were it not for defendant's failure to: (1)  
6 use a roving patrol, (2) train and drill his crew in firefighting,  
7 (3) direct and assist his crew on the night of the fire, and (4)  
8 attempt to fight the fire himself. Victims can be heard saying  
9 "there's gotta be a way out," "there's got to be more extinguishers,"  
10 "unless we can get outta here," and "we're gonna die." (Trial Exh.  
11 180A.)

12 The video (Trial Exh. 180) is disturbing to watch, but is  
13 perhaps the most compelling evidence of defendant's reckless  
14 disregard for human life: had defendant taken even the most basic  
15 safety precautions in the lead-up to the fire as he was required to  
16 do, or acted with any courage or composure during the fire, some or  
17 all of the 34 people in the bunkroom could have been saved.

18 **III. THE USPO'S PRESENTENCE INVESTIGATION REPORT AND RECOMMENDATION**

19 The PSR and sentencing recommendation letter were filed on March  
20 28, 2024. (Dkt. Nos. 403 and 404.) The USPO found that a Sentencing  
21 Guidelines range of 87-108 months applies (based on an offense level  
22 29 and criminal history category I), and recommends that the Court  
23 sentence defendant to 10 years in prison, a three-year term of  
24 supervised release, and a special assessment of \$100. (Dkt. No. 403,  
25 pp. 1-2.) The USPO also recommends that the Court schedule a  
26 deferred restitution hearing after imposing the sentence. (Id.)

27  
28



1 The government concurs with the USPO's Guidelines calculations  
2 (discussed further below) and recommended sentence, and does not  
3 object to the PSR.

4 Defendant filed objections to the PSR on April 15, 2024, in  
5 which he objects to the Guidelines calculations as well as factual  
6 assertions in the PSR. (Dkt. No. 415.) The government will respond  
7 to defendant's objections in a separate filing.

8 **IV. SENTENCING GUIDELINES ANALYSIS**

9 The USPO found that the following Guidelines apply:

10 Reckless operation of			
11 means of transportation:	22	USSG § 2A1.4(a)(2)(B)	
12 Abuse of position of trust:	+2	USSG § 3B1.3	
13 Multiple unit adjustment:	+5	USSG § 3D1.4	
14 Total offense level:	29		
15 Guidelines range:	87-108 months		

16  
17 The government concurs and provides the following analysis  
18 regarding the applicable substantive Guidelines sections and a one-  
19 level upward departure/variance that is warranted in this case.

20 **A. Reckless Operation of Means of Transportation**

21 Guidelines section 2A1.4(a)(2)(B) applies a base offense level  
22 of 22 if defendant is found to have recklessly operated a means of  
23 transportation, including a boat. Application Note 1 to section  
24 2A1.4 defines "reckless" as follows:

25 **"Reckless"** means a situation in which the defendant was  
26 aware of the risk created by his conduct and the risk was  
27 of such a nature and degree that to disregard that risk  
28 constituted a gross deviation from the standard of care  
that a reasonable person would exercise in such a  
situation. "Reckless" includes all, or nearly all,

1 convictions for involuntary manslaughter under 18 U.S.C.  
2 § 1112.

3 U.S.S.G. § 2A1.4, cmt. N.1.

4 Defendant requested (and obtained) a jury instruction at trial  
5 requiring a unanimous finding that defendant acted recklessly. The  
6 jury instructions confirm that the jury found (beyond a reasonable  
7 doubt) that defendant acted "with wanton or reckless disregard for  
8 human life." (See Dkt. No. 320 (Final Jury Instructions) at 4.)  
9 Indeed, the Court instructed the jury, at defense counsel's request,  
10 that "[t]o establish reckless disregard for human life, it must be  
11 shown that (1) Defendant was aware of the serious risk to human life  
12 which his conduct created, or Defendant knew of facts which, if  
13 considered and weighed in a reasonable manner, indicate a substantial  
14 and unjustifiable risk to human life; and (2) he deliberately  
15 disregarded that substantial and unjustifiable risk of creating a  
16 potentially life-threatening condition of which we was aware." (Id.)  
17 In other words, the heightened standard imposed by the Court -- and  
18 found by the jury beyond a reasonable doubt -- was actually higher  
19 than the "reckless" standard encompassed within Section  
20 2A1.4(a)(2)(B).

21 Moreover, Application Note 1 recognizes that "'reckless'  
22 includes all, or nearly all, convictions for involuntary manslaughter  
23 under 18 U.S.C. § 1112." U.S.S.G. § 2A1.4, cmt. N.1. Throughout  
24 this case, defense counsel and the Court have repeatedly analogized  
25 seaman's manslaughter (18 U.S.C. § 1115) to involuntary manslaughter  
26 (18 U.S.C. § 1112). The Court dismissed the original indictment  
27 specifically because it did not satisfy the pleading requirements of  
28 18 U.S.C. § 1112. (See Case No. 20-CR-600-GW, Dkt. No. 79.) The

1 government obtained a new indictment in this case alleging, among  
2 other things, that defendant "acted with a wanton or reckless  
3 disregard for human life by engaging in misconduct, gross negligence,  
4 and inattention to his duties on [the *Conception*]." (Dkt. No. 1 at  
5 2.) The indictment further alleged that defendant knew "that his  
6 conduct was a threat to the lives of others, and kn[ew] of  
7 circumstances that would reasonably cause him to foresee that his  
8 conduct might be a threat to the lives of others." (Id. at 5.) And  
9 the Court, at the defense's request, has borrowed from and used jury  
10 instructions, elements, and standards from involuntary manslaughter  
11 cases throughout this proceeding, including in the final jury  
12 instructions. Accordingly, the base offense level is 22 because the  
13 jury necessarily found beyond a reasonable doubt that defendant acted  
14 recklessly (as defined by the Guidelines and its ordinary meaning),  
15 and he did so operating the *Conception*, a means of transportation.

16 Consistent with the jury's finding that defendant acted with a  
17 wanton and reckless disregard for human life, the evidence also  
18 establishes that defendant acted recklessly as that term is defined  
19 in Section 2A1.4. In addition to defendant's numerous failures  
20 described above, that evidence also includes the following:

- 21 • There were fires on the *Condor Express* (the *Conception's*  
22 neighbor at the Santa Barbara dock) and a fire involving  
23 charging batteries onboard the *Vision* (the *Conception's* sister  
24 ship), which put defendant on notice of the (obvious) risk of  
25 fire at sea, but defendant did not change his behavior one bit  
26 in response to those fires. (PSR ¶ 23.)
- 27 • Despite the obvious risk that overcharging of batteries posed  
28 every night on the *Conception*, defendant failed to instruct his

1 passengers not to charge their batteries overnight or to  
2 implement a roving patrol at night -- as the COI and regulations  
3 required him to do -- while the batteries were charging.

- 4 • When galley crewmember Ryan Sims asked defendant to discuss  
5 safety measures on the *Conception* on the day before the fire,  
6 defendant was dismissive, "chuckled," and told Sims: "When we  
7 get to it, Ryan." (Dkt. No. 363 at 13:4-11, 46:20-25.)
- 8 • When passenger Mark Copple complained to defendant that a  
9 passenger's beer cooler was blocking the bunkroom's escape  
10 hatch, defendant told Copple that there was nowhere else on the  
11 75-foot ship to put the beer cooler. (PSR ¶ 22, 22 n.1.)
- 12 • Defendant, a smoker, failed to give his passengers any guidance  
13 on where and when they could smoke cigarettes or how to dispose  
14 of their cigarette butts. (Id. ¶ 28.)
- 15 • It would have cost nothing for defendant to train and drill his  
16 crew regarding the location of the fire hoses and how to use  
17 them. And it would have taken only 10 or 15 minutes to do so,  
18 including during leisure time the surviving crewmembers  
19 testified they and other crewmembers had while working on a  
20 trip. (See Dkt. No. 362 at 48:8-12, 129:14-130:12; Dkt. No. 341  
21 at 11:11-12:5, 13:17-14:8.)
- 22 • It would have cost nothing to use a roving patrol. The  
23 *Conception* had six crewmembers on overnight trips -- defendant  
24 easily could have implemented a roving patrol using two-hour  
25 shifts for each crewmember throughout the night, as other  
26 captains routinely did. (One such captain, David Harvey,  
27 testified about the ease of implementing a roving patrol on a  
28 comparable dive boat.) (See, e.g., Dkt. No. 352 at 50:15-53:9.)

- 1       • The *Conception* was a relatively small ship -- all that a roving  
2 patrol would have needed to do was patrol the main deck and  
3 periodically check the salon, bunkroom, engine room, and  
4 wheelhouse for a fire. A fire at night would have been easily  
5 visible to anyone.

6       Yet defendant did nothing to mitigate the risk of a catastrophic  
7 fire on the *Conception*. Instead, he acted recklessly by disregarding  
8 his legal obligations to use a roving patrol, to train and drill his  
9 crew regarding firefighting, and to ensure his passengers' safety.

10       **B. Abuse of Position of Trust or Use of Special Skill**

11       Section 3B1.3 provides for a two-level upward adjustment if  
12 defendant "abused a position of public or private trust, or used a  
13 special skill, in a manner that significantly facilitated the  
14 commission or concealment of the offense." This enhancement applies  
15 for at least two reasons.

16       First, defendant abused his position of private trust (if not  
17 also public trust) as a licensed captain authorized to take  
18 passengers out to sea. He swore an oath to uphold the law, including  
19 complying with Coast Guard regulations and the *Conception's* COI, for  
20 the benefit of his passengers and crew. In turn, they trusted that  
21 he would do so to keep them safe in the remote waters of the Pacific  
22 Ocean. Defendant exercised virtually unfettered "professional [and]  
23 managerial discretion (i.e., substantial discretionary judgment that  
24 is ordinarily given considerable deference)" in his operation of the  
25 *Conception*. U.S.S.G. § 3B1.3 cmt. n.1. This exercise of discretion  
26 is the "decisive factor" and "explicit focus" in the application of  
27 the abuse of trust enhancement. United States v. Contreras, 581 F.3d  
28 1163, 1166 (9th Cir. 2009), aff'd in part, vacated in part en banc,

1 593 F.3d 1135 2010 (citations omitted). As the Master of the  
2 *Conception*, defendant owed a duty of care to his crew and the victims  
3 who entrusted their lives to him over the Labor Day Weekend trip.  
4 United States v. Technic Servs., Inc., 314 F.3d 1031, 1048 (9th Cir.  
5 2002) (position of trust “established from the perspective of the  
6 victim”). Defendant betrayed that trust, not only through his  
7 failures on the night of the fire but also in his abdication of his  
8 duties to train and drill his crew.

9 Second, as a licensed captain, defendant also had a “special  
10 skill” that falls within Section 3B1.3. Application Note 4 states  
11 that “special skill” “refers to a skill not possessed by members of  
12 the general public and usually requiring substantial education,  
13 training or licensing. Examples would include pilots, lawyers,  
14 doctors, accountants, chemists, and demolition experts.” (Emphasis  
15 added.) The enhancement specifically contemplates “licensing,” which  
16 is exactly what defendant needed to obtain every five years in order  
17 to continue captaining the *Conception*. See Technic Servs., Inc., 314  
18 F.3d at 1051 (defendant’s “license renders him eligible for an  
19 enhancement under the ‘special skill’ prong” where it “appears that  
20 he had the expertise and opportunity to commit his crimes only  
21 because of this specialized skill”). If an airplane pilot is within  
22 the scope of Section 3B1.3, a commercial boat captain must be as  
23 well. Both operate means of transportation with dozens of  
24 passengers, and require special training for the safe navigation of  
25 their vessels. See, e.g., United States v. Calderon, 127 F.3d 1314,  
26 1339 (11th Cir. 1997) (“[W]e are convinced that captaining a vessel  
27 on the high seas is the type of activity that requires skills not  
28 possessed by members of the general public, and, therefore, requires

1 'special skills' within the meaning of section 3B1.3."); United  
2 States v. Ibarguen Palacios, 815 F. App'x 481, 485 (11th Cir. 2020)  
3 (Section 3B1.3 applies to defendant piloting a boat).

4 But for his privileged position as a licensed captain, defendant  
5 could not have committed this crime: the reason why he was entrusted  
6 with the lives of his 33 passengers and five crewmembers was his  
7 special status as a credentialed mariner. Armed with his special  
8 skill as a licensed captain and the imprimatur it carried with his  
9 passengers and crew, defendant nonetheless operated the *Conception*  
10 with little regard for regulations or safety requirements. His  
11 special skill provided him the "expertise and opportunity" to commit  
12 his crime through his recklessness and misconduct. Technic Servs.,  
13 Inc., 314 F.3d at 1051. Defendant's abuse of his special skill and  
14 position of trust shows why the two-level enhancement applies.

15 **C. Grouping / Multiple Unit Adjustment**

16 Pursuant to Section 2A1.4(b)(1), the one count of violating  
17 Section 1115 must be treated as 34 counts, i.e., one putative count  
18 for each person killed. Because there is no basis to group the 34  
19 putative counts under Section 3D1.2, they count as 34 separate units  
20 under Section 3D1.4. Section 3D1.4 contains a ceiling of five  
21 additional levels for an offense involving more than five units,  
22 regardless of the 34 units (i.e., 34 deaths) here, so only a five-  
23 level enhancement applies pursuant to Section 3D1.4. Nonetheless,  
24 Section 3D1.4 provides that, "[i]nasmuch as the maximum increase  
25 provided in the guideline is 5 levels, departure would be warranted  
26 in the unusual case where the additional offenses resulted in a total  
27 of significantly more than 5 Units." U.S.S.G. § 3D1.4 cmt. As the  
28

1 USPO recognizes, given the scale of death and devastation caused by  
2 defendant's recklessness and misconduct, this is that unusual case.

3 **V. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

4 The *Conception* fire was the worst maritime disaster in  
5 California history. It was not an "accident" or "tragedy," as those  
6 terms are normally used and as the defense unsuccessfully argued to  
7 the jury, because it was entirely preventable and was a predictable  
8 result of defendant's reckless conduct. A strong message needs to be  
9 sent to ship captains and the dive-boat industry that misconduct such  
10 as defendant's will result in severe punishment. The recommended 10-  
11 year prison sentence serves that purpose.

12 An above-Guidelines sentence is appropriate here for numerous  
13 reasons, discussed above and below. Perhaps most of all, the  
14 Guidelines simply do not account for the manslaughter of 34 victims.  
15 The grouping enhancement pursuant to Sections 2A1.4(b)(1) and 3D1.4  
16 corresponds to only five deaths being caused by a manslaughter.  
17 Here, defendant's misconduct and gross negligence killed 34 people --  
18 34 people who all put their lives in defendant's hands when they  
19 stepped aboard the *Conception*. The gravity of defendant's offense  
20 should be measured by the number of lives he caused to be lost.

21 The Guidelines do not account for such a massive scale of death,  
22 and contemplate such situations where the offense level understates  
23 the seriousness of the offense. See generally U.S.S.G. § 5K2.0(a)(3)  
24 ("A departure may be warranted in an exceptional case, even though  
25 the circumstance that forms the basis for the departure is taken into  
26 consideration in determining the guideline range, if the court  
27 determines that such circumstance is present in the offense to a  
28 degree substantially in excess of, or substantially below, that which



1 ordinarily is involved in that kind of offense."). Indeed, the  
2 Guidelines specifically provide that "[i]f death resulted, the court  
3 may increase the sentence above the authorized range." U.S.S.G.  
4 § 5K2.1. Section 5K2.1 lists, as several of the factors to be  
5 considered, "whether multiple deaths resulted" and "the extent to  
6 which death or serious injury was intended or knowingly risked." Id.  
7 Through his recklessness, defendant knowingly put at risk the lives  
8 of the 34 victims whose deaths he caused on September 2, 2019 (not to  
9 mention the lives of countless other passengers in the past).<sup>3</sup>

10 The factors set forth in 18 U.S.C. § 3553(a) also necessitate a  
11 sentence of 10 years' imprisonment here.

12 **A. Nature and Circumstances of the Offense**

13 The 34 deaths onboard the *Conception* were preventable. None of  
14 the victims should have died in the small fire that started in a  
15 trash bin onboard the *Conception*. There was not an explosion. The  
16 fire did not flashover in seconds. The expert testimony presented at  
17 trial established that the fire started small and took time to  
18 develop.<sup>4</sup> The Court acknowledged this during trial, stating that  
19 "[t]here is no evidence of a fast-starting fire." (Dkt. No. 372 at  
20 51:24-25.)

21 The victims died because they were trapped in the bunkroom --  
22 trapped because defendant had not ordered a roving patrol to protect

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24 <sup>3</sup> A 10-year sentence equates to a one-level upward departure or  
25 variance from the Guidelines range -- specifically, from a range of  
26 87-108 months (offense level 29) to a range of 97-121 months (offense  
level 30). This one-level increase would be the equivalent of just  
one additional unit, or death, under section 3D1.4 (for a total of  
six victims), and not defendant's 34 victims.

27 <sup>4</sup> The fire experts testified that the fire started small. Fire  
28 tests took an average of 27.5 minutes to develop to the point where  
the crew would have first observed the fire from the upper deck.  
(Dkt. No. 366 at 38:3-21, 132:17-22.)

1 them from and alert them to emergencies at night. A roving patrol  
2 would have detected the fire, quickly started to fight it, alerted  
3 the passengers, awoken other crewmembers, or taken other fast and  
4 simple steps that would have saved lives. Had defendant simply  
5 followed the law, the COI, and prudent seamanship and put a roving  
6 patrol in place, some or all of the victims would have survived.  
7 Although the victims all died due to smoke inhalation, it was  
8 defendant's unlawful and reckless practices that killed them.

9 Defendant swore an oath to follow the law. He broke that oath  
10 when he failed to comply with any of the applicable Coast Guard  
11 safety regulations, and defendant's failures started well before the  
12 fire even began. Defendant did not provide any meaningful fire  
13 training or any drills whatsoever for the inexperienced crew onboard  
14 the *Conception* on September 2, 2019. Defendant also failed to show  
15 the passengers how to use the emergency exit from the bunkroom and  
16 did not take any other basic fire safety precautions, such as  
17 instructing passengers where to smoke cigarettes or not to overuse  
18 outlets for charging batteries.

19 After the fire started, defendant worsened an already life-  
20 threatening situation by failing to perform basic emergency actions.  
21 Instead of using the *Conception's* PA system to alert the passengers,  
22 he chose to call the Coast Guard even though he knew any emergency  
23 response was far away from his remote location. Instead of getting  
24 the fire axe or fire extinguisher within arm's distance in the  
25 wheelhouse, defendant jumped off the boat. All the other crewmembers  
26 went down to the main deck; defendant jumped into the water. Even  
27 the trapped passengers attempted to use a fire extinguisher to save  
28

1 themselves. While the victims were fighting for their lives,  
2 defendant was safely in the ocean.

3 Defendant created the deadly situation in which 34 victims found  
4 themselves trapped in a windowless bunkroom. Then he did nothing to  
5 save them.

6 **B. Defendant's History and Characteristics**

7 Although defendant is 70 years' old, he was not too old or  
8 unable to do his job on September 2, 2019. Accordingly, his age does  
9 not justify a lenient sentence here.

10 Defendant was a very experienced captain who failed to comply  
11 with basic regulations and rules of prudent seamanship. Defendant  
12 has held a master's license for decades. (Trial Exhs. 1, 4-10.) He  
13 cannot (credibly) claim that he did not know that the Coast Guard had  
14 safety regulations that applied to him. Defendant also knew, as all  
15 captains do, that fire is a serious danger at sea -- that is why the  
16 *Conception* had numerous fire extinguishers, smoke detectors, a fire  
17 axe, two heavy-duty fire hose stations, and an engine room fire  
18 suppression system. And that is why Truth Aquatics' Loss Control  
19 Program, which defendant signed and acknowledged reviewing, listed  
20 "Fire Fighting Procedures" as the number one set of protocols under  
21 "Emergency Procedures." (Trial Exhs. 127, 128.) Yet defendant chose  
22 to do nothing to safeguard his passengers from fires at night.

23 Perhaps most importantly, defendant has never accepted  
24 responsibility for any of his failures and the devastation he caused  
25 on September 2, 2019. Nor is there any indication that, before or  
26 after his indictment in 2020, defendant has done a single thing to  
27 contribute to his community or to manifest any remorse. Instead, he  
28 has chosen to point his finger at his boss, Glen Fritzler. This sets

1 defendant apart from defendants who take steps to apologize for or  
2 remedy their actions, or otherwise contribute to society.

3 **C. Seriousness of the Offense, Promoting Respect for the Law,**  
4 **and Just Punishment**

5 The 34 deaths that resulted from defendant's conduct warrant the  
6 statutory maximum prison sentence. Captains hold their passengers'  
7 lives in their hands. Miles out at sea, with rescue far away,  
8 captains owe their passengers an incredibly high duty of care to keep  
9 them safe, particularly from serious risks like fires. That includes  
10 following the applicable Coast Guard regulations and a ship's  
11 straightforward operating requirements (i.e., its COI). Defendant  
12 either did not read and follow the applicable requirements and  
13 regulations for fire training, fire drills, and roving patrols before  
14 taking dozens of passengers out to sea on the Labor Day Weekend trip  
15 (much less countless others during his decades-long career), or he  
16 read them and didn't care. Either scenario makes this offense  
17 gravely serious and requires a lengthy sentence to reflect the  
18 seriousness of the offense and promote respect for the law.

19 The sentence must also provide just punishment for the offense.  
20 Defendant's recklessness killed 34 people and forever shattered the  
21 lives of their families and friends -- many of whom came to court  
22 every day of the grueling trial in memory of their loved ones. Their  
23 own words best express the horror and devastation that defendant  
24 brought upon their lives. The government is filing under seal  
25 herewith the victim impact statements it has received thus far. As  
26 is their right, a number of the victims' family members will seek to  
27 be heard in person at the sentencing hearing. 18 U.S.C.

28 § 3771(a)(4).

1           **D.     Deterrence**

2           Finally, general deterrence is a key objective in this case. At  
3 trial, the defense called several witnesses with captain's licenses  
4 to testify that they, too, did not maintain a roving patrol. The  
5 jury saw through defendant's cynical attempt to mount a defense based  
6 on others' violations of their duties as captains. But the apparent  
7 reality remains that some captains are not following critical  
8 requirements for safety at sea. And the potential stakes of that  
9 abdication remain life or death.

10           A light prison sentence would send the wrong message to captains  
11 and excuse defendant's misconduct. When passengers die as a result  
12 of the captain's reckless conduct, the captain must be held  
13 accountable. Under no circumstances may captains abandon their  
14 safety obligations. Nor may reckless captains simply blame their  
15 employers when disaster strikes. Defendant's failure to even attempt  
16 to comply with any of the applicable training, drilling, and roving  
17 patrol requirements underscores the need to send a message to ship  
18 captains, the dive-boat community, and the general public.

19           **VI.   CONCLUSION**

20           For the foregoing reasons, the government respectfully requests  
21 that the Court sentence defendant to (1) 10 years' imprisonment,  
22 (2) a three-year period of supervised release, (3) a special  
23 assessment of \$100, and (4) restitution to be determined at a  
24 deferred restitution hearing.

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