UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CASE NO. 14-CR-10367-RGS

UNITED STATES OF AMERICA	)
	)
v.	)
	)
Rxxxxx Rxxxxx RCxxxxx,	)
Defendant	)

DEFENDANT'S SENTENCING MEMORANDUM (amended)

Now comes the Defendant, Rxxxxx Rxxxxx RCxxxxx, in the above captioned matter and submits the following memorandum for this Honorable Court's consideration in anticipation of the Defendant's sentencing hearing on June 28, 2016.

BACKGROUND

The Defendant faces charges of conspiracy to possess heroin with intent to distribute under 21 U.S.C. § 841(a) and conspiracy to commit money laundering under 18 U.S.C. § 1956(h).

In 2002, the Defendant immigrated legally to the United States and became a US citizen in order to achieve a better life for his six-month old daughter.[1] The Defendant began his Algeresque journey at the bottom floor, working as a meatpacker, following in the footsteps of scores of others who came to American shores with hopes of building a better life. After a year of butchering raw meat in the small hours of the morning,

[1] The Defendant swears to the facts contained in this memorandum in his attached affidavit.

the Defendant took a job at Hxxxxxx Multiservice, a small market in Lawrence.

In 2007, the Defendant purchased Hxxxxxx Multiservice from the owner. As a small business owner, he earned the respect of his community in Lawrence. A life-long participant in charitable organizations, the Defendant now participates in numerous charities including: Son Angeles, a foundation that provides wheelchairs for people with disabilities; Christmas in July, an organization that helps underprivileged children; Movement City, an afterschool arts program for children; the International Book Fair; church groups; and little league sponsorships.

The Defendant's reputation as a caring, charitable individual has spread throughout his community. Aside from the charities in which he participates, the community knows the Defendant as a person willing to help in an emergency. When his friends, acquaintances, and even strangers face crises, such as an inability to pay rent or medical bills, the Defendant provides advice, help, and even money.

Not content with his own contributions, the Defendant teaches his two young children the importance of giving back to their community. Every October, his children participate in a fair for handicapped children, doing face painting and other activities with less fortunate children.

Unbeknownst to the Defendant, impending disaster simmered just beneath the surface of his life and would erupt on December 22, 2014 when federal agents arrived at his home with a warrant for his arrest for his participation in a drug conspiracy which Daniel Pxxxxx Dxxxxxxx led.

In 2013, the Defendant encountered Daniel Pxxxxx Dxxxxxxx at a barbershop. He knew Pxxxxx Dxxxxxxx as a customer who had cashed checks at Hxxxxxx Multiservice several years before, in 2005, but had not seen him for years thereafter. When Mr. Pxxxxx Dxxxxxxx asked him if he still worked at Hxxxxxx, the Defendant replied that he did.

Over the next few weeks, Pxxxxx Dxxxxxxx came into Hxxxxxx several times to make wire transfers. Eventually, he became a frequent customer. The Defendant believed that Pxxxxx Dxxxxxxx worked as a nightclub promoter because he would occasionally see Daniel Pxxxxx Dxxxxxxx associating with nightclub owners. Other than that, Pxxxxx Dxxxxxxx shared the anonymity of most Hxxxxxx customers.

The course of the Defendant's life changed when he gave Daniel Pxxxxx Dxxxxxxx his personal phone number. As Mr. Pxxxxx Dxxxxxxx began calling the Defendant at home, the nature of his transactions changed. Mr. Pxxxxx Dxxxxxxx began instructing the Defendant to wire large amounts of money in quantities small enough to avoid detection. The Defendant went along with Mr.

Pxxxxx Dxxxxxxx's instructions. He knew that structuring transactions to avoid reporting requirements was illegal, but he considered it a de minimus, technical violation. At the time he began structuring transactions for Mr. Pxxxxx Dxxxxxxx, the Defendant did not know the more sinister nature of his business. Candidly, the Defendant considered the transactions an acceptable risk, so as not to lose the business to his many competitors, any of whom who would have done the same without hesitation.

Over time, the Defendant began to develop suspicions about Mr. Pxxxxx Dxxxxxxx's money. The only business ventures that Mr. Pxxxxx Dxxxxxxx ever discussed were various nightclubs in which he was involved. Believing that nightclubs were largely cash-based businesses, the Defendant suspected that this was the source of Mr. Pxxxxx Dxxxxxxx's money. Although the Defendant additionally began to suspect that Mr. Pxxxxx Dxxxxxxx could be involved in illegal drugs, he never conceived of the scope of Mr. Pxxxxx Dxxxxxxx's vast, international drug trafficking organization. As the Defendant's suspicions grew, so did his fear that the more he knew, the more he was involved. As a result, the Defendant decided it was better to not ask questions.

Mr. Pxxxxx Dxxxxxxx never volunteered any information to the Defendant and never discussed the narcotics he was importing

or the structure of his organization.[2] He never brought heroin into Hxxxxxx. He never paid the Defendant any sum of money for his involvement aside from the 1% fee the Defendant earned from all wire transfers. The Defendant ignored his suspicions and stuck his head in the sand, not realizing that burying his head only planted the seeds of complicity.

While the Defendant began to suspect that Mr. Pxxxxx Dxxxxxxx's money might have derived from illegal activity, members of the Drug Enforcement Administration ("DEA") had been harboring suspicions of their own.

Beginning in 2013, DEA agents began investigating a drug trafficking organization which Daniel Pxxxxx Dxxxxxxx led. After conducting months of surveillance, obtaining cell phone data, and intercepting countless telephone calls, agents uncovered Pxxxxx Dxxxxxxx's ring. Through intercepted telephone calls and execution of a search warrant, they learned that the Defendant had been laundering money for Mr. Pxxxxx Dxxxxxxx and his associates, structuring transactions and using fake names to wire money, undetected, to Mexico and the Dominican Republic.

Despite the seriousness of his offenses, the Defendant never made a conscious, purposeful decision to get involved in international drug distribution. This was no Faustian bargain,

[2] During his proffer, Pxxxxx Dxxxxxxx corroborated the Defendant's assertion that the Defendant never asked about the source of the money, and Pxxxxx Dxxxxxxx never told him it came from heroin sales. See DEA-6 Report, Timothy J. O'Connell, April 8, 2015, paragraph 8(b), attached.

but, rather, the Defendant became trapped on a glue board for a tiny morsel of cheese. He realized the nature of his captivity when he woke up on the morning of December 22, 2014 to the sound of federal agents at his door and realized that his suspicions about Mr. Pxxxxx Dxxxxxxx have proven true. Despite his utter lack of a prior criminal record, despite having never seen or sold a single gram of heroin in his entire life, and despite having no concrete knowledge of the nature of Dxxxxxxx's business, the Defendant found himself facing charges of conspiracy to possess heroin with intent to distribute and conspiracy to commit money laundering.

Following the Defendant's arrest, Magistrate Judge David H. Hennessy ordered the Defendant detained pending a detention hearing. Subsequently, Magistrate Judge Hennessy granted the Government's motion for pretrial detention. The Defendant appealed Justice Hennessy's detention order. On March 25, 2015, this Court, the Honorable Justice Richard G. Stearns, ordered the Defendant released on conditions including the posting of a $250,000 bond with equity in his real estate securing the same. However, United States marshals did not release the Defendant from custody until May, 2015.

The United States estimates that the Defendant laundered $2,426,805 between January 2012 and December 2014. The United States used several criteria for discerning the Defendant's

"suspicious" money wire transactions from his licit ones. Some of these criteria link a wire transaction to evidence of illegality more directly than others. For example, the Government deemed transactions suspicious if the Defendant sent the transaction to a recipient listed on a ledger recovered from the Defendant's business or if the Defendant discussed the transaction on the phone with Pxxxxx Dxxxxxxx.

However, the Government identified transactions as "suspicious" based on more attenuated methods of proof.

For example, if a sender's name was ever used to wire money to a payee on a ledger recovered from Hxxxxxx, then, by virtue of that fact, the Government designated that sender's prior and subsequent transactions as "suspicious."

If the phone number of the sender or payee was found on a list seized from Hxxxxxx, the transaction was identified as "suspicious." Once the Government identified a sender or payee as "suspicious" because that sender or payee was involved in a transaction involving a certain phone number, the Government then assumed that that sender or payee's prior and subsequent transactions were also "suspicious."

The Government identified other transactions as "suspicious" because police located a printed receipt for the transaction in Hxxxxxx. From the existence of a receipt, the Government then hypothesized that prior and subsequent

transactions bearing the sender, payee, or phone number found on that receipt were also "suspicious."

The Defendant asserts that the Government's calculation of the total amount of money he laundered is over-inclusive. He estimates the total amount of money he laundered at around $1,200,000.

The Government's calculation includes transactions from legitimate customers predating Mr. Pxxxxx Dxxxxxxx's involvement with Hxxxxxx, transactions sent by Mr. Pxxxxx Dxxxxxxx before the Defendant became aware that Mr. Pxxxxx Dxxxxxxx was structuring his transactions to avoid detection, failed transactions in which no money was actually sent or received, and licit transactions sent by other customers during the time period of Mr. Pxxxxx Dxxxxxxx's involvement.

Additionally, although some of the ledgers police found in the Defendant's business contained lists of recipients of Mr. Pxxxxx Dxxxxxxx's money, the Defendant asserts that he also kept handwritten lists of legitimate money transfers for other customers.

The Defendant chose to plead guilty prior to trial, and attended to proffer session with federal agents in August and October of 2015. During these sessions, he discussed his strategies for wiring money in order to avoid detection, and using legitimate customers' drivers' licenses to conceal the

true origins of his transactions. He also discussed his knowledge of various members of Mr. Pxxxxx Dxxxxxxx's organization.

Following these proffer meetings, Assistant United States Attorney Katherine Ferguson ("AUSA Ferguson") proposed a plea agreement in which the conspiracy to possess heroin charge would be dismissed. See Draft Plea Agreement, 12/7/2015, attached. However, the agreement required the Defendant to agree to a 6 level enhancement pursuant to § 2S1.1(b)(1)[3] and a 4 level enhancement pursuant to § 2S1.1(b)(2)(C)[4] (business of laundering funds). See id. On advice of counsel, the Defendant rejected the proposed agreement.

After months of fighting motions to suppress, attempting to mitigate his offense through cooperation, and attempting to negotiate with the Assistant United States Attorneys, the Defendant now pleads guilty to indictments for conspiracy to possess heroin with intent to distribute and conspiracy to commit money laundering.

SENTENCING GUIDELINES

[3] Section 2S1.1(b)(1), which applies when a defendant knew or believed that laundered funds derived from drug distribution, is discussed on page 20, infra.

[4] Section 2S1.1(b)(2)(C), which applies to defendants who are "in the business of laundering funds," is discussed on page 20-25, infra.

A defendant's sentence is determined by his "relevant conduct." USSG § 1B1.3.[5] A defendant's relevant conduct in situations of jointly undertaken criminal activity such as a conspiracy includes, "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." § 1B1.3(a)(1)(B).

"The focus is on the specific acts and omissions for which the defendant is to be held accountable . . . rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator." § 1B1.3, Application Note 1. Thus, the scope of a defendant's culpable conduct for sentencing purposes is "significantly narrower than the conduct embraced by the law of conspiracy." United States v. Perrone, 936 F.2d 1403, 1416 (2nd Cir. 1991), clarified on other grounds, 949 F.2d 36 (2nd Cir. 1991).

In order to determine a defendant's culpability for acts and omissions of co-conspirators, the court must first determine "the scope of the specific conduct and objectives embraced by the defendant's agreement." United States v. LaCroix, 28 F.3d 223, 227 (1st Cir. 1994); see also § 1B1.3, Application Note 2. Then, "the court must determine to what extent others' acts and omissions that were in furtherance of jointly undertaken criminal activity likely would have been foreseeable by a

[5] The court must use the Guidelines Manual in effect on the date that the defendant is sentenced. § 1B1.11.

reasonable person in defendant's shoes at the time of his or her agreement." Id. Where conduct was not within the scope of a defendant's agreement or reasonably foreseeable in connection with the criminal activity a defendant agreed to jointly undertake, it may not be factored into a defendant's base offense level. § 1B1.3, Application Note 2.

The Government bears the burden of proving disputed facts at sentencing by a preponderance of the evidence. USSG § 6A1.3, Commentary. However, no facts show the amount of heroin reasonably foreseeable to the Defendant.

The Defendant had no direct participation in the distribution of heroin. His involvement in Mr. Pxxxxx Dxxxxxxx's organization consisted solely of structuring wire transaction for Mr. Pxxxxx Dxxxxxxx. His agreement with Mr. Pxxxxx Dxxxxxxx and his associates encompassed only structured transactions and money laundering. Mr. Pxxxxx Dxxxxxxx never brought illegal drugs into Hxxxxxx Multiservice, and never discussed drugs with the Defendant. The Defendant remained ignorant of the structure, scope and specific purpose of Mr. Pxxxxx Dxxxxxxx's organization.

Additionally, the Defendant knew Mr. Pxxxxx Dxxxxxxx to be involved in the ownership and operation of nightclubs, another cash-based business. See Linesheet session 144, 10/2/14, attached, (discussion between Pxxxxx Dxxxxxxx and another

individual in which he discusses plans for his nightclub); Linesheet session 283, 10/6/2014, attached, (Pxxxxx Dxxxxxxx discusses money he made from a nightclub); Linesheet session 512, 10/11/2014, attached, (Pxxxxx Dxxxxxxx discusses radio station promotion for a nightclub and his broken smoke machine); Linesheet session 1107, 10/23/2014, attached, (Pxxxxx Dxxxxxxx discusses the minimum age required for admission to his nightclub).

Where the Defendant's involvement in the conspiracy consisted solely of an agreement to structure wire transfers, "the specific acts and omissions for which the defendant is to be held accountable" are limited to the structuring of wire transfers. § 1B1.3, Application Note 1, supra. The Defendant's awareness of the activities of Mr. Pxxxxx Dxxxxxxx's organization never rose above suspicion. Even where the Defendant's ignorance of the nature and scope of Mr. Pxxxxx Dxxxxxxx's drug organization results partially from the Defendant's willful blindness, the fact remains that no evidence exists that shows he knew the extent of Mr. Pxxxxx Dxxxxxxx's criminal activity. Consequently, he could not have reasonably foreseen the large quantity of heroin, between 10 and 30 kilograms, distributed by Mr. Pxxxxx Dxxxxxxx's organization.

Moreover, no facts show that the Defendant could have anticipated the amount of narcotics that the money he laundered

would have funded. The facts instead show the opposite; the Defendant has never endeavored to purchase or distribute drugs. Consequently, he could not have reasonably foreseen the quantity of heroin that would correlate with the amount of money he laundered for Mr. Pxxxxx Dxxxxxxx.

Stated differently, the Defendant does not know the retail or wholesale price of heroin. Without such knowledge, he lacked the ability to estimate the amount of heroin Mr. Pxxxxx Dxxxxxxx's organization imported and distributed.

The Probation Department's Presentence Investigation Report concurs that the quantity of heroin that the Defendant could reasonably foresee remains unclear. See Presentence Investigation Report, ¶ 80, n. 1, attached.

Considering the limited scope of the Defendant's agreement with Mr. Pxxxxx Dxxxxxxx, and the limited scope of his actual participation in Mr. Pxxxxx Dxxxxxxx's organization, his relevant conduct for which he should be sentenced on the conspiracy to possess heroin charge remains ambiguous. Where the evidence here is absent or ambiguous, such that the Government cannot establish the Defendant's relevant conduct by a preponderance of the evidence, the Defendant respectfully

requests that the Court look only to the conduct as it relates to the money laundering charge.[6]

Pursuant to § 2S1.1(a)(2),[7] a defendant's sentence for money laundering is calculated by adding 8 levels to the number of offense levels from the table in § 2B1.1 that corresponds to the value of the laundered funds. § 2S1.1(a)(2).

The Government alleges that the Defendant laundered $2,426,805.06. The corresponding level for this amount is 16. § 2B1.1. However, the Government arrived at this total through dubious methods.

The Government used several criteria for discerning the Defendant's "suspicious" money wire transactions from his licit ones. Some of these criteria link a wire transaction to evidence of illegality more directly than others. For example, the Government deemed transactions suspicious if the Defendant sent the transaction to a recipient listed on a ledger recovered

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[6] If this Honorable Court sentences the Defendant for the conspiracy to possess heroin charge, the parties agree that the Defendant meets the requirements for the "safety valve," which overrides any mandatory minimum. § 2D1.1(b)(17).

[7] Section 2S1.1(a)(1) does not govern the Defendant's base offense level because § (a)(1) is appropriate for offenders who committed the underlying offense that generated the laundered funds, or who would be accountable under § 1B1.3(a)(1)(A) for the underlying offense. See U.S.S.G. supp. to app. C, amend. 634 at 222 (2003). Section 2S1(a)(2) applies to "third party money launderers," who did not commit the underlying offense that generated the laundered funds. Id. The Defendant's involvement in Mr. Pxxxxx Dxxxxxxx's drug conspiracy consists solely of his participation in money laundering. Consequently, because the Defendant did not otherwise participate in the heroin distribution that generated the laundered funds, he is a "third party money launder," and should be sentenced as such under § 2S1(a)(2).

from the Defendant's business, or if the Defendant discussed the transaction on the phone with Mr. Pxxxxx Dxxxxxxx.

However, the Government identified transactions as "suspicious" based on far more attenuated methods of proof.

For example, if a sender's name was ever used to wire money to a payee on a ledger recovered from Hxxxxxx, then, by virtue of that fact alone, the Government designated that sender's prior and subsequent transactions as "suspicious."

The Government identified transactions as "suspicious" because the phone number of the sender or payee was found on a list seized from Hxxxxxx. Once the Government identified a sender or payee as "suspicious" because that sender or payee was involved in a transaction involving a certain phone number, the Government then assumed that that sender or payee's prior and subsequent transactions were also "suspicious."

The Government identified other transactions as "suspicious" because police located a printed receipt for the transaction in Hxxxxxx. From the existence of a receipt, the Government then hypothesized that prior and subsequent transactions bearing the sender, payee, or phone number found on that receipt were also "suspicious."

These methods of identifying transactions as "suspicious" pose several problems. First, these methods do not show a direct connection to illegal conduct. Unlike transactions which

involve either a direct connection to a ledger or intercepted phone conversation, these methods of proof require greater inferential leaps.

Second, in making such inferential leaps, the Government misidentifies lawful transactions as illegal ones. For example, the list of 990 supposedly illegal transactions includes transactions beginning in January of 2012. However, the Defendant's involvement with Mr. Pxxxxx Dxxxxxxx did not begin until the summer of 2013. In fact, references to the Defendant or Hxxxxxx Multiservice do not appear in intercepted telephone conversations until 2014. The Government identified many of the transactions predating the Defendant's involvement with Mr. Pxxxxx Dxxxxxxx as "suspicious" for the attenuated reasons discussed above, and not because of a direct link to a ledger or intercepted phone call.

Even the transactions that directly link to a ledger or intercepted phone call inaccurately represent the Defendant's criminal conduct.

The Government has little information on the origins of the lists recovered from Hxxxxxx Multiservice, other than that police found them in the Defendant's desk and the conspirators discussed some of them on the telephone and in texts. But in addition to lists naming payees in Mr. Pxxxxx Dxxxxxxx illegal transactions, the Defendant also kept records of transactions

for other customers at the same desk. A review of the Spreadsheet revealed to the Defendant that the Government included information from lists which had nothing to do with Pxxxxx Dxxxxxxx's money laundering. As a result, the inclusion of these transactions does not accurately represent the Defendant's culpable conduct.

Additionally, when sending money on behalf of Mr. Pxxxxx Dxxxxxxx, the Defendant typically used fictitious sender information to conceal the money's origin. However, he did not invent the sender's information out of thin air. Instead, he used names, addresses, and phone numbers of his licit customers in his transactions for Mr. Pxxxxx Dxxxxxxx. Consequently, a sender's name can appear in both lawful and illegal transactions. However, the Government postulated that if an illegal transaction used the name of a particular sender, then it assumed that the sender's prior and subsequent transactions are illegal. Consequently, the Government's list of illegal transactions erroneously included lawful transactions.

The Government's calculation of illegal transactions also includes transactions that the Defendant sent for Mr. Pxxxxx Dxxxxxxx, which the Defendant believed to be lawful. When Mr. Pxxxxx Dxxxxxxx first started wiring money at Hxxxxxx, the Defendant interacted with him as he did with all other customers, ignorant of the fact that Mr. Pxxxxx Dxxxxxxx designed his

transactions to avoid reporting requirements. It was only over time that the Defendant understood Mr. Pxxxxx Dxxxxxxx's intention to structure transactions. Because the Government did not take into account the time before the Defendant realized Pxxxxx Dxxxxxxx's intentions, the Government's calculation is over-inclusive.

The Government's calculation of illegal transactions also includes failed transactions. In these transactions, no money was successfully wired. Consequently, the amount of these attempted transactions should not count towards the total amount of laundered money attributable to the Defendant.

Further, the calculation of the total amount of money the Defendant laundered rests on the sum of "suspicious" wire transfers. See Presentence Investigation Report, ¶53. Although a transaction might very well seem "suspicious," it does not follow that the Court can predicate punishment on the Government's mere suspicions. See USSG § 6A1.3. While the Government need not establish the Defendant's culpability by proof beyond a reasonable doubt, "the rights of the parties must turn not upon suspicions, but upon facts established by a fair preponderance of the evidence before the court." Talty v. Rosenthal, 14 F.2d 239, 240 (D. Mass. 1926).

The Defendant's sentence under the Guidelines depends on the amount of money he laundered. See USSG § 2S1.1(a)(2); USSG §

2B1.1. The Government bears the burden of proving the amount he laundered by a preponderance of the evidence. USSG § 6A1.3, Commentary. However, the Government has yet to assert a calculation of the Defendant's illegal conduct that meets even this minimal standard.

The Defendant estimates that he illegally laundered $1,200,000 - roughly half the amount that the Government calculated. If sentenced for this amount, 14 offense levels will be added to the base level of 8, for a total of 22 points.[8]

In the event that Court accepts the total amount of laundered money as stated in the Presentence Investigation Report, the Defendant respectfully requests an evidentiary hearing.

The Defendant's offense level should not increase under § 2S1.1(b)(1). This subsection provides for an increase of 6 levels if a defendant knew or believed that the laundered funds were proceeds of illegal drug distribution. § 2S1.1(b)(1).

The Defendant had no actual knowledge that the laundered funds were proceeds of illegal drug distribution. Further, the Defendant did not believe that the laundered funds derived from

[8] In his objections to the Probation Department's Presentence Investigation Report, the Defendant represented that sentencing based on $1,200,000 would result in the same offense level as the Government's estimate of $2,426,805.06. However, this assertion was incorrectly based on the 2014 version of the Guidelines, which indicates that 16 offense levels apply to amounts more than $1,000,000 but less than $2,500,000. See USSG, 2014, § 2B1.1(b)(1). The 2015 Guidelines, currently in effect, indicate that 14 offense levels apply to amounts more than $550,000 but less than $1,500,000. See USSG, 2015, § 2B1.1(b)(1).

illegal drug distribution. Belief requires "a state of mind that regards the existence or truth of something as likely or relatively certain; conviction about the truth of something." Black's Law Dictionary (10th ed. 2014). The Defendant possessed no such conviction.

Far from certain about the origin of Pxxxxx Dxxxxxxx's money, the Defendant only suspected that portions of the money derived from drug sales, though he admittedly willfully blinded himself to those suspicions. However, the Defendant also suspected that portions of the money also derived from Pxxxxx Dxxxxxxx's participation in nightclub business.

A 6-level increase for the Defendant's suspicion that Mr. Pxxxxx Dxxxxxxx participated in, among other things, illegal drug sales, over-represents his culpability for drug distribution. Consequently, this increase should not apply to the Defendant.

The Defendant's offense level should not increase under § 2S1.1(b)(2)(C) because he was not "in the business of laundering funds."

The First Circuit has declined to adopt a firm definition of what it means to be "in the business of laundering funds." United States v. Lucena-Rivera, 750 F.3d 43, 52 (2014). Instead, the First Circuit directs district courts to consider the non-

exhaustive list of factors in the sentencing guidelines. Id. Those considerations include whether:

> (i) The defendant regularly engaged in laundering funds.
> (ii) The defendant engaged in laundering funds during an extended period of time.
> (iii) The defendant engaged in laundering funds from multiple sources.
> (iv) The defendant generated a substantial amount of revenue in return for laundering funds.
> (v) At the time of the offense, the defendant had one or more prior convictions [for money laundering offenses]
> (vi) During the course of an undercover government investigation, the defendant made statements that the defendant engaged in any of the conduct described in subdivisions (i) through (iv).

§ 2S1.1, Application Note 4(B).

In the instant case, factors (v) and (vi) do not apply to the Defendant, because he has no prior criminal convictions and made no statements to undercover government officers. Further, the Government has not charged the Defendant with laundering funds from any source other than Mr. Pxxxxx Dxxxxxxx's drug ring, thus excluding factor (iii) from the calculus against the Defendant.

Considering factor (i), no facts indicate the Defendant regularly engaged in laundering money for Mr. Pxxxxx Dxxxxxxx and his associates.

As discussed supra, the Government has presented no evidence that coherently distinguishes between the Defendant's

licit and illicit transactions. The Defendant had other customers conducting licit wire transfers from Hxxxxxx. Thus, the Government cannot prove the regularity of the Defendant's illegal transactions by a preponderance of the evidence.

Furthermore, even the Government's calculation of the Defendant's illegal wire transfers fails to establish that factor (i) applies. As the Probation Department indicated in the PSR, the transactions deemed "suspicious" by the Government comprise only about 10% of the Defendant's wire transfer business. See PSR, Objection #1, p. 31.

Considering factor (ii), the Government alleges that the Defendant laundered funds from January of 2012 through December of 2014. However, the Defendant has owned Hxxxxxx Multiservice since 2007. Consequently, the time period in which the Government alleges the Defendant illegally laundered money represents only a fraction of time at Hxxxxxx.

Moreover, for reasons discussed supra, the Government employed an inaccurate method of identifying illegal wire transactions. The Defendant maintains that Mr. Pxxxxx Dxxxxxxx did not begin wiring money through Hxxxxxx Multiservice until the summer of 2013. Even then, Mr. Pxxxxx Dxxxxxxx wired money through Hxxxxxx for a period of time before the Defendant even began to suspect that he was anything other than an ordinary customer. If the Government cannot accurately establish the

timeline in which the Defendant knowingly participated in illegal money laundering, it cannot prove factor (ii) by a preponderance of the evidence.

Considering factor (iv), the Defendant did not generate substantial revenue in return for laundering funds. The Defendant earned only the 1% fee he earned from all wire transactions. He received no additional fee from Pxxxxx Dxxxxxxx's organization in compensation for his involvement. Assuming that all of the transactions alleged by the government to constitute fraudulent transactions are in fact fraudulent, the Defendant's revenue totals roughly $24,297 over the course of three years. At an average of roughly $674 per month, the Defendant did not even earn enough from his illegal activities to cover a mortgage payment. See Nationstar Mortgage Statement; Freedom Mortgage Statement, attached.

On balance, a review of the factors relevant to this enhancement reveals that three of six factors absolutely do not apply. Moreover, the Government cannot prove the other three factors by a preponderance of the evidence. As a result, the factors reveal that the Defendant is not culpable for the type of conduct this enhancement seeks to punish.

The United States Sentencing Commission added §2S1.1(b)(2)(C) to punish individuals acting as a "professional fence," because they encourage the commission of additional

criminal conduct. See U.S.S.G. Supp. to App. C, Amend. 634, supra, at 223 (2003). A professional fence is a criminal entrepreneur, operating an "underworld business," thus injuring the community. United States v. Mitchell, 613 F.3d 862, 869 (2010).

Conversely, the Defendant is no criminal entrepreneur. Mr. Pxxxxx Dxxxxxxx began wiring money through Hxxxxxx Multiservice like any other customer. Only later - and gradually - did the Defendant come to suspect that portions of Mr. Pxxxxx Dxxxxxxx's money derived from illegal activities. Although the Defendant eventually became an active participant in structuring transactions to avoid detection, he did not seek out illegal activity for profit. Consequently, the "business of laundering funds" enhancement does not apply to the Defendant.

Because the Defendant is pleading guilty under 18 U.S.C. § 1956, the Court should increase the Defendant's offense level by 2 points, to a total of 24. § 2S1.1(b)(2)(B).

The Defendant's offense level should be reduced by 4 points because he was a minimal participant in Mr. Pxxxxx Dxxxxxxx's organization. § 3B1.2(a). This reduction applies to defendants "among the least culpable of those involved in the conduct of a group." § 3B1.2(a) Application Note 4.

On April 30, 2015 the Commission adopted amendments to 3B1.2, which became effective November 1, 2015[9]. These amendments were prompted by the Commission's view that: "Overall," the "mitigating role is applied inconsistently and more sparingly than the Commission intended." 80 Fed. Reg. 25792 (2015).

Particularly apropos of this matter, the Commission observed that:

> "In economic crime cases, the study found that the adjustment was often applied in a limited fashion. For example, the study found that courts often deny mitigating role to otherwise eligible defendants if the defendant was considered 'integral' to the successful commission of the offense." Id.

This prompted the Commission to Append to Application Note 3 the following language:

> "The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity."

Also among the important changes contained in these Amendments, the Commission resolved that the defendant's conduct must be compared to participants in the actual offense, thus abrogating 1st Circuit law which additionally required comparison to "the universe of persons participating in similar crimes" in

[9] http://www.ussc.gov/federal-register-notice-submission-congress-amendments-federal-sentencing-guidelines-effective-2

addition to the actual participants. United States v. Santos, 357 F.3d 136, 142 (1st Cir. 2004). 80 Fed. Reg. 25793 (2015).

The Commission also created a non-exhaustive list of factors for the Court to weigh in connection with a § 3b1.2 analysis. Those factors include:

> "(i) the degree to which the defendant understood the scope and structure of the criminal activity;
>
> (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
>
> (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
>
> (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
>
> (v) the degree to which the defendant stood to benefit from the criminal activity."

A review of these factors and the purpose of the 3b1.2 adjustment reveals its inapplicability to the Defendant's case.

Here, the Government charged only Mr. Pxxxxx Dxxxxxxx and the Defendant with the money laundering conspiracy. Although Nackely Hxxxxxxxx and Edward Txxxxxxx Cxxxxxx facilitated the money transactions, the Government chose not to include them in the money laundering indictment. See, e.g., PSR Par. 38 - 44, p.

12-14; Linesheet session 705, 8/9/2014; Linesheet session 707, 8/9/2014; Linesheet sessions 253, 12/2/2014; Linesheet session 255, 12/2/2014, attached.

The participants in the money transactions can be separated by roles.

Pxxxxx Dxxxxxxx stood at the apex of the conspiracy, with all other parties fulfilling various functions for his benefit. Pxxxxx Dxxxxxxx orchestrated the laundering of his drug proceeds, directing the activities of his subordinates so that he could freely reap the profit from his crime without fear of law enforcement intervention. As the leader of the conspiracy, as the person that directed the actions of others, and as the person who the laundering was designed to benefit, his offense conduct represents the highest level of culpability in the conspiracy.

The next tier of the money laundering conspiracy included Nackely Hxxxxxxxx and Edward Txxxxxxx Cxxxxxx. These individuals worked for Pxxxxx Dxxxxxxx, and in doing so fulfilled various roles including preparing and transporting narcotics and, at times, facilitating the laundry of those drug proceeds. Pxxxxx Dxxxxxxx compensated Hxxxxxxxx and Cxxxxxx for their services as drug conspirators, which services included laundering of drug proceeds. As relates to that function, Hxxxxxxxx and Cxxxxxx laundered money not only with knowledge of

the provenance of the funds, but with the goal and intention of concealing the same to allow the drug trafficking to continue. Though the profit they derived from assisting Dxxxxxxx was presumably diluted as a function of their subordinate status, their conduct nevertheless represented a conscious choice to launder money to facilitate their drug trafficking. See, e.g., DEA-6, Proffer of Edward Txxxxxxx-Cxxxxxx on March 26, 2015, 5/13/2015, p.2 (Txxxxxxx-Cxxxxxx received between $800 and $1,000 each time he prepared heroin or delivered money for Pxxxxx Dxxxxxxx); DEA-6, Proffer of Daniel Pxxxxx-Dxxxxxxx on March 17, 2015, 4/8/2015, p.4 (Pxxxxx Dxxxxxxx paid Nackely Hxxxxxxxx $1,000 per week to run his drug trafficking organization), id. at 5 (Pxxxxx Dxxxxxxx paid Txxxxxxx-Cxxxxxx to collect money for Pxxxxx Dxxxxxxx's drug customers).

The Defendant dangles from the lowest tier of the money laundering conspiracy. Unlike Pxxxxx Dxxxxxxx, Hxxxxxxxx and Cxxxxxx, the Defendant was not a drug dealer. He did not participate in procurement, packaging, preparation, marketing, or sales of drugs. Indeed, the Defendant had never seen or handled heroin and, throughout the period of his relevant conduct, remained ignorant of the true nature of the conspiracy.

Although the Defendant concedes that, over time, he developed suspicion as to the origin of Pxxxxx Dxxxxxxx's funds, he did not receive confirmation that Pxxxxx Dxxxxxxx was a

criminal - specifically a drug trafficker - until he himself was arrested and charged with complicity. The Government's own evidence demonstrates as much, where Pxxxxx Dxxxxxxx explicitly maintains that the Defendant did not know that the funds involved were attached to the drug trade.

Unlike Pxxxxx Dxxxxxxx, Hxxxxxxxx, and Cxxxxxx, the Defendant did not set out to earn money through crime. Indeed, the Government does not argue that the Defendant's initial interactions with Pxxxxx Dxxxxxxx suggested to the Defendant even a hint of criminality. The Defendant believed Pxxxxx Dxxxxxxx worked as a nightclub promoter. The Defendant's initial interactions with Pxxxxx Dxxxxxxx were unremarkable, and consistent with those of any other ordinary customer. However, Pxxxxx Dxxxxxxx's interactions with the Defendant evolved over time. The Defendant facilitated structured transactions for Pxxxxx Dxxxxxxx, and did so with the knowledge that structuring transactions was illegal.

By doing so, the Defendant agreed to commit what he considered a technical violation, but did so at a time when he had no suspicions as to the provenance of Pxxxxx Dxxxxxxx's money.

As Pxxxxx Dxxxxxxx's transactions increased in frequency, the Defendant began to entertain suspicions regarding his customer. However, as his suspicion increased, so did the

creeping dread associated with the concern that, if in fact Pxxxxx Dxxxxxxx was a criminal, the Defendant was already tainted by virtue of the earlier structured transactions. The Defendant reasoned that the more he knew, the more he was involved. As a result, the Defendant decided it was better to not ask questions.

It is in that context that the Defendant's involvement in the instant conspiracy arose. Unlike that of Pxxxxx Dxxxxxxx, Hxxxxxxxx and Cxxxxxx, the Defendant's role did not arise as a result of any conscious decision to launder drug money. Instead, as a result of his decision to break the rules as applied to his responsibilities as a money remitter, the Defendant became involved in the crime before he ever suspected the gravity of the crime that was occurring.

A defendant's "lack of knowledge or understanding of the scope and structure of the criminal activity and of the activities of others is indicative of a role as minimal participant." § 3B1.2(a) Application Note 4 (Amended November 1, 2015).

Here, the foregoing reveals that, even after his suspicions of Pxxxxx Dxxxxxxx took hold, the Defendant at all times remained ignorant of "the scope and structure of the enterprise and of the activities of others." As a result, his culpability should be considered measurably less than that of his cohorts.

While the Government may argue that the Defendant's role as money remitter made him a necessary component of the money laundering, the Commission's 2015 amendments deflate that argument. The Commission specifically noted that "[t]he fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative." § 3b1.2 Application Note 3(C). As a result, it matters not whether the Defendant's role was necessary, essential, or even indispensable. Instead, the relevant calculus is whether the Defendant's role was minimal as compared to the other participants in the conspiracy.

Here, Pxxxxx Dxxxxxxx occupied the nerve center of the money laundering conspiracy; with Hxxxxxxxx and Cxxxxxx closely orbiting the nucleus given their knowing participation in the drug trafficking goals of the conspiracy.

On the other end of the spectrum, the Defendant functioned more or less as a conduit, through which the principal conspirators mechanically and impersonally diverted funds. As stated earlier, Pxxxxx Dxxxxxxx reaped substantial profits from laundering his drug proceeds.

The Defendant did not.

In fact, the evidence reflects that the Defendant earned only the 1% commission, which the money remitter agencies paid for all wire transactions. Pxxxxx Dxxxxxxx did not separately pay the Defendant anything. This was no special arrangement

whereby the Defendant received anything additional for his services. Instead, the Defendant was a tool in the hands of Mr. Pxxxxx Dxxxxxxx's organization.

This disparity is critical for the Court's analysis of the proposed adjustment. Indeed, the commission specifically noted in its recent amendments that "a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline." § 3b1.2 Application Note 3(C). Although the Defendant had a proprietary interest in Hxxxxxx, he had no awareness of the nature of Mr. Pxxxxx Dxxxxxxx's business, and did not share in its profits or losses.

Given the disparity of the roles, the disparity of the profit, and the disparity of the scienter, the Defendant's peripheral role in this conspiracy is revealed.

Here, the Defendant conducted transactions with Pxxxxx Dxxxxxxx, Hxxxxxxxx and Cxxxxxx. The latter parties purposely chose to enter those transactions, with intimate knowledge of their purpose, and with maximum gain from their commission. In comparison, the Defendant, began his interactions with his conspirators unaware of their purpose, and did not withdraw himself as their crimes became less opaque. Given these disparities, the Defendant respectfully suggests that he was a

peripheral figure in the conspiracy, thus warranting the application of the § 3B1.2(a) adjustment.

The Government appeared to recognize that the conspiracy revealed grades of culpability: it chose not to even charge Hxxxxxxxx and Cxxxxxx for their money laundering activity. By virtue of that choice, the Government gave those conspirators, in essence, the ultimate adjustment for their role in the offense. However, irrespective of the Government's failure to calibrate for the varying shades of culpability here, the Defendant respectfully suggests that the guidelines demand an adjustment as to the instant Defendant in order to reflect his minimal role in the conspiracy.

Consequently, his offense level should decrease by 4, resulting in an offense level of 20. § 3B1.2 Commentary § 4.

The Defendant's offense level should decrease by 2 levels because he has demonstrated acceptance of responsibility for his offenses. § 3E1.1(a). AUSA Ferguson agrees that the Defendant meets the criteria for this reduction. This results in an offense level of 18.

The Defendant further requests that this Honorable Court apply the 1 level reduction of § 3E1.1(b) for timely notifying the Government of his guilty plea. Although this section states that this reduction only applies upon the Government's motion, the Government's discretion is not unlimited. United States v.

Beatty, 538 F.3d 8, 15 (1st 2008). The Government's discretion is constrained where the failure to move for this reduction is "not rationally related to [some] legitimate Government end." Id.

The Defendant chose to plead guilty prior to trial. Further, the Defendant provided information to assistant United States attorneys during two proffer meetings on August 20, 2015 and October 19, 2015. During the proffers, the Defendant candidly discussed his involvement with Mr. Pxxxxx Dxxxxxxx and his associates. See DEA-6 Report, Proffer of Rxxxxx Rxxxxx-RCxxxxx on August 19, 2015, 8/20/2015, attached; DEA-6 Report, Proffer of Rxxxxx Rxxxxx-RCxxxxx, 10/19/2015, attached. He discussed his strategies of wiring amounts under $3,000 in order to avoid detection and using unwitting customers' driver's licenses to conceal the true sender of the money. See id. He identified photographs of various members of Pxxxxx Dxxxxxxx's organization, and described his relationship to those individuals. See DEA-6 Report, Proffer of Rxxxxx Rxxxxx-RCxxxxx on August 19, 2015, 8/20/2015, supra.

The Defendant was unable to provide any information about the controlled substances Pxxxxx Dxxxxxxx's organization distributed because he possessed no such knowledge. During Mr. Pxxxxx Dxxxxxxx's proffer, he corroborated the fact that the Defendant never discussed drugs with Pxxxxx Dxxxxxxx. See DEA-6, Proffer of Daniel Pxxxxx-Dxxxxxxx, supra. After these meetings,

AUSA Katherine Ferguson offered the Defendant a proposed plea agreement in which the conspiracy to possess heroin charge would be dismissed. See Draft Plea Agreement, 12/7/2015, attached. However, the agreement required the Defendant to agree to a 6 level enhancement pursuant to § 2S1.1(b)(1)[10] and a 4 level enhancement pursuant to § 2S1.1(b)(2)(C)[11] (business of laundering funds). See id.

Where the Guidelines dictate that the Defendant's related charges must be "grouped," his sentence recommendation under the Guidelines would derive from only one of the two charges. § 3D1.2, supra. Thus, depending on this Honorable Court's interpretation of the Guidelines, the Defendant's sentence recommendation under the Guidelines could derive from the money laundering charge regardless of dismissal of the conspiracy to possess heroin charge.

In other words, the Government procured the Defendant's cooperation, and in exchange, offered a plea deal that would have potentially resulted in a worse sentence than he would have otherwise received. The Defendant requested that the plea agreement permit the parties to take their own respective positions regarding the guidelines. The Government rejected

[10] Section 2S1.1(b)(1), which applies when a defendant knew or believed that laundered funds derived from drug distribution, is discussed on page 20, supra.
[11] Section 2S1.1(b)(2)(C), which applies to defendants who are "in the business of laundering funds," is discussed on page 20-25, supra.

that request. As a result, on the advice of counsel, the Defendant rejected the agreement and pursued two motions to suppress. See affidavit of Murat Erkan, attached.

AUSA Ferguson resolved to deny the Defendant the reduction despite the fact that defense counsel informed her that the Defendant would not insist on trial if his motions to suppress failed. Considering the complex nature and vast quantity of evidence in this case, the Defendant spared the Government great time and expense in pursuing non-evidentiary motions instead of a trial. This illuminates the fact that AUSA Ferguson's decision to deny the Defendant this reduction serves no legitimate government end, and thus exceeds her discretion. Beatty, supra, at 15.

The Defendant therefore respectfully requests this Honorable Court to apply the 1 level reduction under § 3E1.1(b), or in the alternative, apply a downward variance of 1 level. This would bring the Defendant's offense level to 17.

Counterintuitively, if the Defendant had been more deeply involved in the drug trafficking organization, he would have been able to provide more substantial information to the authorities, and consequently, he likely could have brokered a more favorable plea deal. Because the Government apparently considers guilt a more marketable commodity than innocence, the

Government did not offer the Defendant the generosity it afforded Mr. Pxxxxx Dxxxxxxx.

According to the Guidelines, the sentencing range for offense level 17 for an individual with no prior criminal convictions is 24 – 30 months. The Defendant respectfully requests that this Honorable Court exercise its discretion and impose a sentence below the Guidelines.

ARGUMENT

In United States v. Booker, 543 U.S. 220 (2005), the Supreme Court held that the federal sentencing guidelines were not mandatory. Instead, the Guidelines provide an advisory sentencing range, giving the court freedom to tailor a sentence in consideration of other factors. Booker, 543 U.S. at 245. After considering the Guidelines to determine a starting point, the court must make an individualized assessment based on the facts presented, including the factors enumerated in 18 U.S.C. § 3553(a)(2). Gall v. United States, 552 U.S. 38, 50 (2007).

Section 3553(a)(2) of 18 U.S.C. states that the purpose of a sentence is:

> (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) To afford adequate deterrence to criminal conduct;
>
> (C) To protect the public from further crimes of the defendant; and

(D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Guidelines suggest a sentencing range of 37 – 46 months of incarceration. The Defendant respectfully requests that this Honorable Court impose a non-guidelines sentence of supervised probation, for any duration and with any conditions as this Honorable Court deems appropriate.

A sentence should be "sufficient, but not greater than necessary" to achieve these objectives. 18 U.S.C. § 3553(a). Additionally, a court does not need "extraordinary circumstances" in order to justify a sentence outside of the range suggested by the Guidelines. Gall, supra, 552 U.S. at 47.

In Gall, the Supreme Court upheld a sentence of probation, where the Guidelines suggested a sentence of two and a half years.

There, defendant sold over 10,000 illegal "ecstasy" pills, id. at 58, and made over $30,000 as a participant in a drug sales organization before voluntarily withdrawing from the conspiracy. Id. at 41. He moved on with his life, finishing college and starting a business. Authorities arrested him three years later, resulting in a guilty plea. Id. at 42.

The Guidelines suggested a sentence range of 30 to 35 months of incarceration. Id. at 43. However, after considering

the defendant's specific circumstances, the District Court judge sentenced him to 36 months of probation. Id.

On appeal, the Government argued for the use of a rigid mathematical formula that calculated the percentage of a non-Guidelines sentence's departure from the guidelines as a method for determining the degree to which a court may depart from the Guidelines. Id. The Supreme Court rejected this approach. Id. If such an approach were employed, all sentences of probation would appear as extreme "100% departure[s]" from the Guidelines, allotting no weight to the "substantial restriction of freedom" probation imposes. Id. at 48.

The Defendant implores this Honorable Court to embrace the approach to sentencing the Supreme Court discussed in Booker and Gall, considering the Defendant's specific circumstances, rather than calculating his sentence in the manner an accountant mechanically calculates an income tax return.

Given the Defendant's lack of criminal record, comparatively low culpability in the conspiracy, the five months he already served while awaiting trial, his family and community connections, and his character notwithstanding this offense, a non-guidelines sentence of supervised probation will achieve the objectives articulated in § 3553(a).

The Defendant's criminal conduct consisted of active participation in laundering money derived from Mr. Pxxxxx

Dxxxxxxx's drug trafficking organization. Although his participation in money laundering makes him criminally liable as a conspirator in Mr. Pxxxxx Dxxxxxxx's drug trafficking organization, he did not otherwise participate in drug distribution. Consequently, although the Defendant had suspicions about Mr. Pxxxxx Dxxxxxxx and his associates, he remained ignorant of the vast scope of Mr. Pxxxxx Dxxxxxxx's illegal activities.

Further, the Defendant's offenses do not suggest a willful, conscious decision to enter into the nefarious world of drug trafficking. Instead, the Defendant's involvement in criminal activity, and the extent of its wrongfulness, proceeded by almost imperceptible increments. Like a small blemish which transformed over months into malignancy, Dxxxxxxx's criminal activity infected the Defendant's life in a slow and insidious manner, detected only when it was too late to purge himself of the taint.

When Mr. Pxxxxx Dxxxxxxx first began wiring money through Hxxxxxx Multiservice, the Defendant interacted with him as if he were just another customer. Over time, the nature of Mr. Pxxxxx Dxxxxxxx's transactions changed, as did the nature of their relationship. The Defendant intended not to get involved with the illegal activities he suspected Mr. Pxxxxx Dxxxxxxx and his

associates conducted, and kept himself willfully ignorant, foolishly mistaking that ignorance for innocence.

Consequently, a penalty appropriate for those consciously working to bring heroin to the Commonwealth of Massachusetts encompasses punishment for conduct in which the Defendant did not engage and would overstate the Defendant's culpability. Although 18 U.S.C. § 3553(a) requires the court to consider the need to avoid unwarranted sentence disparities among similarly situated defendants, the court should also consider "the need to avoid unwarranted *similarities* among other co-conspirators who [are] not similarly situated." Gall, supra, 552 U.S. at 55. Sentencing the Defendant to a punishment fit for Mr. Pxxxxx Dxxxxxxx or his other associates would contradict 18 U.S.C. § 3553(a), which states that a sentence should be "sufficient, but not greater than necessary" to achieve the need of the punishment. 18 U.S.C. § 3553(a).

Further, the incarceration the Defendant already served has punished his crime and deterred him from re-offending. The ordeal that the Defendant has endured over the past 18 months, the jail time he served, the risk of losing his family during his daughters' formative years, and the knowledge that, if the Court agrees with the United States Attorney, he will be punished severely, have combined to show him the gravity of the foolish, dangerous mistakes he has made. Where the Defendant

has the love and support of his family and community, he lacks the motivation to repeat his mistakes.

The Defendant respectfully asks this Honorable Court to consider his sentence in the context of a growing national sentiment that imprisonment of non-violent offenders has well exceeded, and become unmoored from, any reasonable connection to the goals of sentencing.

Stated simply, if the Court accedes to the Government's request, the Defendant will be yet another minority, non-violent first time offender behind bars. The Defendant will be imprisoned for his role on the periphery of a non-violent offense. The Defendant will be imprisoned despite any plausible argument that he has already been adequately deterred by the time he has already served, and by the harm to his reputation flowing from the allegations. The Defendant's children will become members of an already over-large group of children sharing the dubious distinction of having an incarcerated father.

Recent studies based on statistics compiled by the United States Census Bureau and the Institute for Criminal Policy Research have shown that the United States accounts for roughly 4.4 percent of the world's population, but accounts for over 22 percent of the world's prison population. Michelle Ye Hee Lee, Does the United States Really Have 5 Percent of the World's Population and One Quarter of the World's Prisoners?, Washington

Post (2015).[1213] The United States incarceration rate exceeds the international average by roughly five times. Rep. John Conyers, Jr., The Incarceration Explosion, 31 Yale L. & Pol'y Rev. 377, 377 (2013). Between 1990 and 2013, the average length of prison sentences increased by thirty-six percent. Id. at 379-380. Long sentences for non-violent first offenses contribute to this excessive incarceration rate. Id. at 385.

In 2013, to address these issues, former Attorney General Eric Holder and the Obama administration prioritized sentencing reform. Eric Holder, Attorney General, Remarks at the Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013).[14] Attorney General Holder resolved to "recalibrate" America's criminal justice system with measures eliminating "draconian" sentences for low-level, non-violent drug offenders. Id.

In furtherance of his administration's view on incarceration, President Obama has commuted the sentences of 248 individuals as of June, 2016. Neil Eggleston, President Obama Has Now Commuted the Sentences of3248 Individuals,

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[12] https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/

[13] These statistics are not without flaws. For example, researchers believe that countries, such as North Korea, China, and Iran may underreport their prison populations. Yee Hee Le, supra.

[14] https://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations

WhiteHouse.gov (2016).[15] President Obama has commuted more sentences than the past six presidents combined. Id.

Additionally, the Honorable Judge Saris, Chief United States District Judge for the District of Massachusetts and chairperson of the United States Sentencing Commission, also favors sentence reductions for drug offenders. Hon. Patti Saris, Sentencing Reform, Boston B.J. Vol. 59 #3 (2015).[16] The United States Sentencing Commission has recommended reduced drug penalties in order to reduce prison populations and prison expenses. Id.

Reserving more severe penalties for violent or high-level traffickers promotes public safety, deterrence, and rehabilitation. Holder, supra. Alternatives to incarceration, such as supervised probation, can divert low-level offenders away from prison while conserving public resources. Conyers, supra, at 385.

Additional research suggests that States that have enacted programs diverting funds away from prisons, and toward non-prison services designed to reduce recidivism, such as supervised probation, have experienced both reduced recidivism rates and reduced prison populations. Holder, supra.

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[15] https://www.whitehouse.gov/blog/2016/03/30/president-obama-has-now-commuted-sentences-348-individuals

[16] http://bostonbarjournal.com/2015/07/08/sentencing-reform/

Given the amount of heroin Mr. Pxxxxx Dxxxxxxx controlled, it would be difficult to argue that his was a low-level organization. However, considering the Defendant's specific conduct in the organization, his lack of awareness of the organization's scope, and his lack of criminal history, the Defendant fits squarely into the class of offenders described as "low-level." As a result, a rehabilitative sentence would successfully accomplish the government's purposes in sentencing while not over-punishing the Defendant.

Aside from his involvement with Mr. Pxxxxx Dxxxxxxx, the Defendant's conduct shows nothing but a resolve to improve the quality of life for families in Lawrence. Through his involvement in various charities, the Defendant works tirelessly within the Lawrence community to reduce poverty and promote literacy, health and fitness, and the arts. The Defendant embraces his role as a positive force in the community. The implication that his conduct has "poison[ed] the community well," as Magistrate Judge David H. Hennessy stated, fills the Defendant with shame and regret. The Defendant's desire to prevent this stain on his reputation from undermining his ability to positively contribute to the community further deters the Defendant from re-offending.

Although painfully aware of the Defendant's crimes, his friends, family, and community have maintained their support for

him. One friend opined, "Ever since I could remember, Rxxxxx has been a role model, a man of his word, the hardest working man I've ever known and a respected man in his community." See Affidavit of Loren Axxxxxxx Dxxxx, attached. He further pleads, "From all the bottom of my heart, I ask please forgive this man and don't take him away from his family." Id.

Brian Depana, a Lawrence City Councilor who has known the Defendant "at a business and personal level for many years," states that he is "an industrious, hardworking, family man who is community-minded and other-centered." See Letter from Brian A. Depena, attached. Mr. Depena also pleads, "I just hope that you will give an opportunity for a second chance to Rxxxxx while you make a fair decision." Id.

Dr. Joel Almono, the president of the International Book Fair in Lawrence, a charity in which the Defendant serves as President of the Finance Committee, states that the Defendant "has demonstrated time and again the excellent human qualities of dedication, enthusiasm and service to others." See Letter of Dr. Joel Almono, attached.

A fellow Lawrence business owner describes the Defendant as, "a Pilar [sic] of the community." See Letter of Cxxxxxx Gxxxxx, attached. A neighbor considers the Defendant "a loving father and husband, an extraordinary human being." See Letter of Sarah B. Pxxxxx, attached. Another friend states that the Defendant

is "a great human being, with extraordinary character and devotion to help the family and his community." See Affidavit of Rxxxxx Taveras, attached. Danelia Dxxxxxxx, who has known the Defendant since 1990 when they both lived in the Dominican Republic, states of the Defendant, "His extraordinary character and his arduous devotion to help his community is considered by me and many to be a great community leader." See Affidavit of Danelia Dxxxxxxx, attached.

While the Defendant's absence will impact the community, it will absolutely devastate his wife and two young children.[17]

His youngest daughter states that she loves her dad "because he is always there in [her] dark moments and makes [her] happy and help[s] [her] achieve [her] goal." See Letter from D___ A_____ Rxxxxx Mxxxxxxx, attached.[18] His older daughter, A__ Celeste, describes her father as a "strong, smart, caring man[,]" who is the "star of the house." See Letter from A__ Celeste Rxxxxx Mxxxxxxx, attached. She states of her father, "I really do love him and I really am thankful for everything he

[17] The effects of a parent's incarceration on children are well known. See e.g. Julie Poehlmann, Ph.D, Children of Incarcerated Mothers and Fathers, 24 Wis. J.L. Gender & Soc'y 331, 336-337 (2009) (Children with a history of parental incarceration experience greater risk of substance and alcohol abuse, behavior problems, cognitive delays, academic failure, criminal activity, and incarceration); Tanya Krupat, Invisibility and Children's Rights: The Consequences of Parental Incarceration, 29 Women's Rts. L. Rep. 39, 40 (2007) (Children of incarcerated parents suffer social stigma, making it difficult to obtain programs and services to help cope with problems resulting from a parent's incarceration).

[18] Reference to the full identifying information of the Defendant's minor children is omitted pursuant to court rule.

does for not just us nor my family but for everyone around him." Id.

The Defendant's involvement with Mr. Pxxxxx Dxxxxxxx and his associates was foolish and dangerous. His knowledge that, barring the mercy of this Honorable Court, his mistakes will certainly tear him from his family fills the Defendant with regret. Although he understands that he must be punished for his crimes, he respectfully requests that this Honorable Court give him a second chance, both for himself and for the sake of those who depend on him.

CONCLUSION

For these reasons, the Defendant respectfully requests that this Honorable Court sentence him to supervised probation for any duration and with any conditions as this Honorable Court deems appropriate.

Respectfully submitted,
Rxxxxx Rxxxxx RCxxxxx
By his Attorney,

/s/ Murat Erkan
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CERTIFICATE OF SERVICE

I, Attorney Murat Erkan, hereby certify that this document, was filed with United States Attorney Kate Ferguson, and will be hand-delivered to the Court on this 24th day of June, 2016.

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