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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,)	
)	Case No. 2:14-cr-00443
Plaintiff,)	
v.)	JUDGE DEE BENSON
)	
ADAM MICHAEL WEBBER,)	*SEALED*
)	
Defendant.)	

DEFENDANT ADAM WEBBER’S MEMORANDUM IN AID OF SENTENCING

The defendant, Adam Webber, by and through his undersigned counsel, hereby files this memorandum in aid of sentencing in the above-referenced case. Based on Mr. Webber’s unique circumstances, for the reasons that follow, and for any additional reasons that may be cited at the sentencing hearing, the defense respectfully requests that the Court vary from the applicable United States Sentencing Guidelines range and sentence Mr. Webber to a probation-only sentence or, in the alternative, a sentence of probation that includes a condition or combination of conditions that substitute home detention for imprisonment.

I. Background and Legal Framework

Following a trial that lasted from September 13 to September 23, 2016, the jury returned a guilty verdict in this case on six counts: Count 1, which charged Mr. Webber with dealing in firearms without a license in violation of 18 U.S.C. § 922(a)(1)(A); renumbered Counts 2, 3, and 4, which charged Mr. Webber with filing false individual U.S. income tax returns for the 2007, 2008, and 2009 tax years, in violation of 26 U.S.C. § 7206(1); and renumbered Counts 5 and 7, which charged Mr. Webber with filing false U.S. income tax returns for his business, HK Parts, Inc. (“HK Parts”), for the 2009 and 2010 tax years, in violation of 26 U.S.C. § 7206(1) (Doc. 230). On January 13, 2017, the Court granted Mr. Webber’s Rule 33 Motion for a New Trial as to Count 1 (Doc. 264).

Thereafter, on May 10, 2017, Mr. Weber pled guilty to Count 1. Mr. Webber pled guilty pursuant to a plea agreement (Doc. 275) that he agreed to in principle on April 17, 2017, well in advance of his retrial date of June 5, 2017. Per the plea agreement, Mr. Webber agreed to waive his appellate rights, with some limited exceptions, not only as to Count 1 but also to Counts 2, 3, 4, 5, and 7 (Doc 275 at 5). In addition, he agreed not to challenge the forfeiture of a significant amount of his property to the government (Doc. 275 at 6). He further agreed that the Internal Revenue Service (“IRS”) could use any restitution order imposed as the basis for a civil assessment, and that he would “not have the right to challenge the amount of this restitution-based assessment” (Doc. 275 at 4).

In its January 13 Order, the Court summarized the evidence on the five tax counts as follows:

At trial, the evidence showed that from 2007 to 2010, there was considerable discrepancy between the revenue received by Mr. Webber and HK Parts and the amount of gross receipts reported to the Internal Revenue Service.

For example, on Mr. Webber's 2007 and 2008 U.S. Individual Tax Returns, Mr. Webber reported gross receipts in the amount of \$23,185 and \$22,039 respectively. Similarly, on HK Parts' 2009 and 2010 corporate tax returns, Mr. Webber reported gross receipts in the amount of \$49,742 and \$84,749 respectively. Conversely, the government presented evidence that the gross receipts for Mr. Webber and HK Parts were underreported. For example, the government put forth evidence that Mr. Webber had gross receipts in the amount of \$1,048,475 and \$2,597,283 for the 2007 and 2008 tax years. Similarly, the government offered evidence that Mr. Webber and HK Parts had gross receipts in the amount of \$3,627,471 for the 2010 tax year. These discrepancies formed the basis for the five tax counts against Mr. Webber.

(Doc. 264 at 7) (footnotes omitted).

Regarding Count 1, in Mr. Webber's plea agreement, he stipulated to the following facts in support of his guilty plea:

Between 2008 and 2012, in Salt Lake County, Utah, I willfully purchased and sold over 1,500 firearms without a license issued under federal law. More specifically, I devoted time, attention, and labor to dealing in firearms as a regular course of business with the principal objective of livelihood and profit through repetitive purchase and resale of firearms. As such, I admit that I was engaged in the business of dealing in firearms without a license. I also admit that I knew my conduct was unlawful. Finally, I admit that my conduct violated 18 U.S.C. § 922(a)(1)(A).

Doc. 275 at 3; *see also* Plea Hr'g Tr. at 5-6 (Mr. Webber admitting to same).

Pursuant to the plea agreement, the government agreed not to recommend to the Court a prison term of more than 37 months (Doc. 275 at 7). In addition, the government agreed not to seek an adjustment or upward departure based upon United States Sentencing Guidelines (also referred to herein as "U.S.S.G." or the "Guidelines") § 2K2.1(b)(5) (adjustment for trafficking in firearms), § 2T1.1(b)(1) (adjustment for failing to correctly identify source of income exceeding \$10,000 from criminal activity), § 3C1.1 (enhancement for obstructing or impeding the administration of justice), § 4A1.3 (departure based on inadequacy of criminal history category), § 5K2.0 (other grounds for departure), or any other argument based on underrepresented criminal

history category (Doc. 275 at 6). The defense is “free to argue for any sentence it deems appropriate” (Doc. 275 at 7).

In *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court set forth the analytical framework for a sentencing court to employ:

As we explained in *Rita [v. United States]*, a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. *See* 551 U.S. [338], at 347-48, 127 S. Ct. 2456. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the [18 U.S.C.] § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable. *See id.*, at 351, 127 S. Ct. 2456. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing. *Ibid.*, 127 S. Ct. 2456.

Gall, 552 U.S. at 49-50 (footnote omitted).

Section 3553(a) puts forth seven factors a court “shall consider” at sentencing. 18 U.S.C. § 3553(a). First, the court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). Second, the court “shall impose a sentence sufficient, *but not greater than necessary*, to comply with the [following] purposes”: “(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.” 18 U.S.C. § 3553(a)(2) (emphasis added). Third, the court must contemplate

“the kinds of sentences available.” 18 U.S.C. § 3553(a)(3). Fourth, the court shall factor in “the sentencing range established” by the Sentencing Guidelines. 18 U.S.C. § 3553(a)(4). Fifth, the court must assess “any pertinent policy statement” issued by the Sentencing Commission. Sixth, the court must assay “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). Seventh, the court shall examine “the need to provide restitution to any victims of the offense.” 18 U.S.C. § 3553(a)(7).

I. Discussion

As discussed below, given the unique circumstances pertaining to Mr. Webber and this case, consideration of the § 3553(a) factors calls for a variance and a probation-only sentence or a probationary sentence that includes a condition or combination of conditions that substitute home detention for imprisonment. Such a sentence would be sufficient, but not greater than necessary, to comply with § 3553(a)’s directives.

A. U.S. Sentencing Guidelines calculation

The defense agrees with the Guidelines calculation put forth in the November 27, 2017 Presentence Investigation Report (“PSR”). The defense believes that the 2010 Guidelines Manual applies, that Mr. Webber’s adjusted offense level is 22, that a two-level decrease is applicable pursuant to U.S.S.G. § 3E1.1(a) for his acceptance of responsibility, and that his criminal history score is zero and therefore his criminal history category is I. Based on a total offense level of 20 and a criminal history category of I, the PSR accurately determines Mr. Webber’s sentencing range under the Guidelines as 33 to 41 months of incarceration.

Regarding the two-level decrease per U.S.S.G. § 3E1.1(a), the PSR writer correctly concluded that “[t]he defendant has clearly demonstrated acceptance of responsibility” (Doc. 287

(PSR) ¶ 46). As to the firearms count, Mr. Webber agreed to plead guilty well in advance of trial and in so doing waived significant appellate, forfeiture, and restitution and civil liability rights. Prior to his sentencing hearing, he paid in full not only the back federal taxes he owed (\$800,818), but also the applicable interest (\$410,601.15) and significant penalty amount (\$606,467.90). The forfeiture rights he waived applied to his firearms property worth in the hundreds of thousands of dollars. *See* U.S.S.G. § 3E1.1, cmt. (n.1) (“In determining whether a defendant qualifies under subsection (a), appropriate considerations include . . . (C) voluntary payment of restitution prior to adjudication of guilt; [and] (D) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense . . .”).

Furthermore, regarding Mr. Webber’s acceptance of responsibility as to the tax counts, as the defense previously argued to the PSR writer:

“Conviction by trial . . . does not automatically preclude a defendant from consideration for such a reduction.” U.S.S.G. § 3E1.1 (Application Note 2). Prior to being indicted, Mr. Webber did offer to plead guilty and pay his full tax arrearage along with interest and penalties. However, the parties were not able to reach agreement on the terms of settlement in this case. Subsequent to indictment, the government never extended Mr. Webber a formal plea offer. The government simply offered to consider any offer Mr. Webber might wish to present. Accordingly, Mr. Webber exercised his constitutional right to a trial. At trial, the defense asserted that Mr. Webber did not have the requisite *mens rea* (that is, that he did not act in a criminally willful manner) to be found guilty of the counts of conviction. Mr. Webber did not contest at trial the conduct the government alleged he engaged in. Given these circumstances, a § 3E1.1 reduction is appropriate. *See United States v. Gauvin*, 173 F.3d 798, 806 (10th Cir. 1999) (upholding downward adjustment for acceptance of responsibility where, at trial, the defendant argued only that he lacked the requisite state of mind to commit the offense because he was intoxicated); *United States v. Garcia*, 182 F.3d 1165, 1175 (10th Cir. 1999) (upholding downward adjustment for acceptance of responsibility where, at trial, the defendant relied on an entrapment defense, and noting that “if the entrapment defense were viewed as challenging the factual element of intent, under the law of this circuit, we would still affirm the district court’s acceptance-of-responsibility downward adjustment”).

Doc. 287-1 at 6. *See also* Trial Tr. at 1150 (defense counsel’s closing argument: “We are not contesting, ladies and gentlemen, that Mr. Webber got the gross receipts from his business wrong on his 2007, 2008 and 2009 and 2010 returns. . . . Now, this case comes down to what was Mr. Webber’s intention with regard to the conduct that the government says that he engaged in. Intent, ladies and gentlemen, is the critical issue in this case.”). Moreover, when pleading guilty to the firearms count, Mr. Webber waived significant appellate rights not just to as to Count 1 but also as to his prior tax convictions. In sum, as the PSR writer found, it is clear that Mr. Webber has earned a two-level decrease for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a).

As mentioned above, pursuant to the plea agreement the government has agreed to abandon prior arguments and not to seek an adjustment or upward departure based upon U.S.S.G. § 2K2.1(b)(5) (adjustment for trafficking in firearms), § 2T1.1(b)(1) (adjustment for failing to correctly identify source of income exceeding \$10,000 from criminal activity), § 3C1.1 (enhancement for obstructing or impeding the administration of justice), § 4A1.3 (departure based on inadequacy of criminal history category), § 5K2.0 (other grounds for departure), or any other argument based on underrepresented criminal history category (Doc. 275 at 6). The PSR writer has not applied U.S.S.G. § 2K2.1(b)(5), correctly concluding that doing so “would be double-counting” (Doc. 287-1 at 2). She has also appropriately rejected application of § 2T1.1(b)(1) (Doc. 287-1 at 2), has rightly concluded that there is “no information indicating the defendant impeded or obstructed justice” (Doc. 287 ¶ 31), and has accurately assessed Mr. Webber as having a criminal history score of zero and a resulting criminal history category of I (*see* Doc. 287 ¶¶ 49-57). In sum, none of the enhancements and departures previously advanced by the government has merit, and they should not be applied by the Court.

While the Guidelines establish a sentencing range of 33 to 41 months, that range is just one of seven factors to be considered by the Court prior to sentencing Mr. Webber. The Guidelines range constitutes only the “starting point” and “initial benchmark,” and is *not* presumptively reasonable. *Gall*, 552 U.S. at 49-50. Other § 3553(a) factors amply demonstrate that a prison sentence in that range would be unnecessary, unduly harsh, and fiscally wasteful. Mr. Webber’s offenses render him eligible for a sentence of probation, *see* 18 U.S.C. § 3561, and the remaining relevant § 3553(a) factors call for a probationary sentence.

B. Mr. Webber’s history and characteristics, his rehabilitation to date, and his provision of full restitution to the government

Putting aside the conduct that generated this case, Mr. Webber, who is 40 years of age, has lived a good, productive life and has enriched the lives of others in his family, church, and community. Mr. Webber is a devoted husband, father, son, brother, and uncle. He has been successfully married for over 15 years and has six children. [REDACTED]

[REDACTED] He is a good friend to others, generous and humble in nature, and a contributing member of his church and community. He has mentored young people through his volunteer work with the Boy Scouts (Mr. Webber himself achieved Eagle Scout status as a Scout) and his activities with his church.

Mr. Webber, who came from modest family circumstances [REDACTED] [REDACTED] has also educated himself, and he has worked full-time steadily and diligently throughout his adulthood to support himself and his family. Mr. Webber is in fact the sole source of financial support for his family. Over the last several years, he built his company, HK Parts, from scratch, and today 11 full-time employees rely on HK Parts for their livelihood. Thus, Mr. Webber has a years-long track record of being a good family man and friend, an active and generous participant in his church and community, and a hard-working employee and (now) employer. And, during

this most difficult time in his life, Mr. Webber successfully maintained his marriage and family, his church and community ties, and his business.

Attached as Exhibit A to this sentencing memorandum are 45 letters in support of Mr. Webber from his business associates, friends, neighbors, and family members. These letters paint a vibrant and consistent picture of a man who adores and is adored by his children; who is uniquely generous to those in need and humble in his generosity; who is a responsible member of his community, a mentor to young people, and an active and enthusiastic volunteer of his time and talents; who runs a business on which numerous other people rely for their livelihoods; and who treats his employees, business associates, and customers not simply as implements of his professional life, but as people for whom he cares on a personal level.

Since the commencement of this case approximately 38 months ago, Mr. Webber has scrupulously followed the directives of the Court. He has never been found to be in violation of his pretrial release conditions. He has had no issues with reoffending, no issues with illegal substances or alcohol, no issues with maintaining contact with Pretrial Services, and no issues with attending court.

As several of the attached letters also make clear, Mr. Webber has repeatedly expressed to others sincere remorse for his conduct. (And Mr. Webber is eager to express his remorse to the Court at the sentencing hearing.) In accordance with his contrition, Mr. Webber, after prevailing on his Rule 33 motion, chose to plead guilty to Count 1 instead of exercising his right to a second trial on that charge. He made that decision well in advance of his scheduled trial date. In doing so, he further agreed to waive his appellate rights not only as to Count 1 but also to his tax counts of conviction. He also agreed, among other things, not to challenge the forfeiture of a significant

amount of his personal property or any restitution-based civil assessment levied against him by the IRS. In short, Mr. Webber is contrite and has fully accepted responsibility for his conduct.

In addition, Mr. Webber has already done what he can to fully retribute the United States for his offenses, paying not only \$800,818 in federal taxes owed, but also \$410,601.15 in interest and a 75% penalty of \$606,467.90. Mr. Webber has also filed amended state tax returns for the same years at issue, and he has paid the State of Utah for back taxes owed. Moreover, Mr. Webber voluntarily forfeited to the United States firearms property valued well into the hundreds of thousands of dollars.

In sum, Mr. Webber has done everything he can to make amends for his prior conduct, and he has amply demonstrated what his future conduct would be if given the opportunity to remain under supervision rather than be imprisoned: Mr. Webber would be law abiding; he would provide for his wife and six children; he would continue to be a positive force in his church and community; and he would be a hard-working, productive employer of numerous Utah residents who rely on his business for their livelihood.

C. The seriousness of the offense and notions of just punishment, deterrence, and promoting respect for the law

Mr. Webber agrees that the nature and circumstances of his offenses were serious. However, factors exist that mitigate the severity of his offenses. First, Mr. Webber's conduct at issue occurred numerous years ago, in 2012 and before. Since that time, Mr. Webber has not reoffended in any respect, has been in full compliance with court orders, and has maintained his family, community ties, and business. Second, Mr. Webber's violations were truly regulatory offenses. With regard to Mr. Webber's conduct in the tax realm, it bears noting that in 2012, prior to knowing that he was under government investigation, Mr. Webber, acting on his own accord, engaged a reputable accounting firm to prepare his personal and business tax returns, and he has

used that firm's services continually to the current time. In addition, no evidence was presented at trial that Mr. Webber's firearms conduct generated public safety issues or resulted in the skirting of required Brady Act background checks.

Furthermore, Mr. Webber has already been significantly punished, and well-deterred from engaging in any malfeasance in the future, due to the fact that he has been under court supervision for over three years, since September of 2014; has paid \$800,818 in taxes owed, \$410,601.15 in related interest, and a \$606,467.90 associated penalty to the United States (i.e., \$1,817,887.05 in total) for his tax violations, *see, e.g., Paroline v. United States*, 134 S.Ct. 1710, 1726 (2014) ("The primary goal of restitution is remedial or compensatory, but it also serves punitive purposes.") (citations omitted); has forfeited hundreds of thousands of dollars' worth of firearms property to the government related to Count 1, *see, e.g., United States v. Jarvis*, 499 F.3d 1196, 1203 (10th Cir. 2007) ("Criminal forfeiture . . . is imposed as a punishment against the defendant."); and now endures (and will always have to endure) the stigma of being a felon, along with all of the negative consequences that status brings, including being proscribed from ever owning or possessing a firearm of any kind. Thus, this case has already significantly punished Mr. Webber financially and emotionally.¹ These punishments are significant and more than commensurate with the regulatory nature of Mr. Webber's offenses. This case has also greatly harmed his reputation, negatively impacted his business and ability to earn a living, and abridged many of the rights he used to enjoy.

¹ It bears noting that Mr. Webber was a victim of Andrew Kelley, who defrauded Mr. Webber and his wife out of \$1,145,250.21 (*see* Doc. 287 ¶ 69 (referencing *United States v. Kelley*, case no. 2:16-cr-00630-001-DB)).

Accordingly, under the recommended sentence of the defense, Mr. Webber would be appropriately and justly punished, as he will remain a felon and under close supervision for a period of years. *See Gall*, 552 U.S. at 48 (“Offenders on probation are . . . subject to several standard conditions that substantially restrict their liberty. Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking. USSG § 5B1.3. Most probationers are also subject to individual ‘special conditions’ imposed by the court.”) (citations and footnote omitted). The proposed sentence would thus promote respect for the law. It would also certainly deter Mr. Webber from engaging in criminal conduct in the future. Indeed, the defense submits that there is no risk that Mr. Webber will reoffend, and his efforts while on release in this case for over three years amply demonstrate that.

D. The need to avoid unwarranted sentencing disparities

Given the unique circumstances present in this case, the sentence recommended by the defense would not generate unwarranted disparities among defendants with similar records who have been found guilty of similar conduct. Having been convicted of Class C and Class E Felonies (Doc. 287 ¶ 91), Mr. Webber is eligible for probation. *See* 18 U.S.C. § 3561. As the U.S. Sentencing Commission has documented, rates of within-Guidelines-range sentences for U.S. citizen offenders eligible for alternative sentences have “decreased substantially” since the Guidelines were ruled effectively advisory in *United States v. Booker*, 543 U.S. 220, 245 (2005). U.S. Sentencing Commission, *Alternative Sentencing in the Federal Criminal Justice System* (May

2015), at 10.² Those decreases have been equally distributed among offenders with sentencing ranges in Zones B through D. *Id.* In fact, from 2005 to 2014, the rate of within-range sentences for these types of offenders in Zone D decreased from 60.5% to 36.7%. *Id.* at 26 n.42.

Mr. Webber's situation is unique in that he has already demonstrated for 38 months that he can and will follow the directives of the Court. Moreover, Mr. Webber has already, prior to sentencing, restituted the government in full for his offenses, and did so pursuant to an agreement which demonstrates his full acceptance of responsibility and which has punished him for his regulatory offenses by imposing significant interest and penalty payments, and the forfeiture of hundreds of thousands of dollars in property. In addition, Mr. Webber rates highly in terms of his personal history and characteristics, is extremely contrite about his conduct, is the sole source of support for his wife and six children, and is a business owner who has 11 full-time employees relying on the continued viability of his parts enterprise. Given the foregoing circumstances, a variance in this case would not propagate unwarranted sentencing disparities.

E. Conclusion

When considering all of the § 3553(a) factors, this case calls for the Court to render a probationary sentence for Mr. Webber. Mr. Webber comes before the Court having lived an otherwise admirable life – he is a good family man and community member, and has strong support in his church, city, and business community. He has an excellent work ethic and founded a business that employs numerous people. He has no criminal history points and has followed the Court's orders for over three years. He is sincerely contrite about his conduct, and he has accepted full responsibility for it. He has already been significantly punished in this case, as he has paid,

² Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/alternatives/20150617_Alternatives.pdf (link last visited on November 29, 2017).

prior to sentencing, well over one million dollars in interest, penalties, and the forfeiture of personal property. He is also now a felon, and has lost his ability to own and possess firearms.

A term of imprisonment here would make little sense. Imprisoning Mr. Webber would be costly to taxpayers (*see* Doc. 287 at 16 (the annual cost calculated in 2016 for incarceration in BOP facilities was \$31,976)) and would impose the additional costs of removing Mr. Webber, the sole source of financial support for his family, from his wife and six young children, and probably causing his business to fail, resulting in his employees losing their jobs and Mr. Webber losing his platform for supporting his large family. A probationary sentence, perhaps one including home confinement, would significantly impair his freedom and thus adequately impose further just punishment while promoting respect for the law and deterring recidivism.³

In the past the Court has made statements to the effect that prison should be reserved for people whom we fear, who are dangerous, and not for people at whom we are mad. Mr. Webber is in no manner a danger to this community, and he has, over a period of years, given the Court every indication that if the Court were to show leniency toward him, he would honor the Court's trust.

WHEREFORE, for the foregoing reasons, and any additional reasons that may be proffered at the sentencing hearing, Mr. Webber respectfully requests that the Court sentence him to, inter

³ Of course, were Mr. Webber to violate the conditions of his probation, the Court could revoke his supervision and impose a term of incarceration. *See, e.g., United States v. Walker*, 252 F. Supp. 3d 1269, 1293-94 (D. Utah 2017) (“This court would add that violations of probation can result in a defendant being resentenced as if he had committed the crime anew. *See* 18 U.S.C. § 3565(a); *United States v. Sanchez*, 907 F.2d 127, 128 (10th Cir. 1990) (“Revocation of probation . . . allows the court to set a new sentence for the original conviction.”). Probationary sentences accord flexibility to the courts because they can be revoked at any time upon a hearing and consideration of the general statutory sentencing provisions. *See* 18 U.S.C. § 3565(a). Upon revocation, the court may impose any term of imprisonment that was available at the initial sentencing proceeding.”) (internal quotation marks and citations omitted).

alia, a probation-only sentence or, in the alternative, a sentence of probation that includes a condition or combination of conditions that substitute home detention for imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2017, I filed the foregoing memorandum under seal with the Clerk of Court and also served the foregoing, via electronic mail, upon the following:

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