<u>Exhibits:</u>

A) Letters of Recommendation:

Nathalia Fernandez, New York State Assempblywoman, 80^{th} Assembly District
Libby Jackson-Diagne
Marques Payne, M.P. & Associates
Cornell D. Green, "CommunIT Solutions"
Pedro L. Barry
Lino A. Solis, Esq.
Edward A. Murray, Jr.
Rev. Dr. Amarilis Celcis, Spiritual Counselor & Administrative Minister
Sankofa Spiritual Counseling, ULC

B) American Bar Association, Criminal Justice Section: A Report on Behalf of The American Bar Association Criminal Justice Section Task Force of he Reform of Federal Sentencing for Economic Crimes, November 10, 2014

C) Medical Record of mother, upon request/not for filing.

Exhibit A

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

NATHALIA FERNANDEZ
Assemblywoman 80th District

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Legislative Office Building
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fernandezn@nyassembly.gov

CHAIR
Subcommittee on
Effective Treatment

COMMITTEES
Alcoholism and Drug Abuse
Labor
Mental Health
Oversight, Analysis and Investigation
Social Services
Tourism, Parks, Arts and
Sports Development

MEMBER
Black, Puerto Rican, Hispanic and
Asian Legislative Caucus
Chair, Subcommittee on
Labor, Economic Development and
MWBEs
Puerto Rican/Hispanic Task Force
Legislative Women's Caucus

To Whom It May Concern:

My name is Nathalia Fernandez, I am the State Assembly Member for the 80th Assembly District here in the Bronx. As an elected representative, it is one of my greatest privileges to advocate on behalf of individuals who have positively impacted both our community and the Bronx as a whole. Mr. Hashim Campbell is a prime example of this type of individual.

I have known Mr. Campbell for over two years and in that time he has been an exemplary member of the Bronx community. As a small business owner, he has extended his business to assist in a hiring effort as part of the Bronx Hire program with the Bronx Chamber of Commerce, he has provided numerous internships for college students in the Bronx, and led several workshops to assist other Bronx Businesses.

Mr. Campbell has paired his leadership as a small business owner to acts of good works and community service. He used his office as a drop-off location for a water and supply drive for the people of Flint, Michigan. Allowing individuals to drop off and store valuable and necessary supplies such as water, Vaseline, baby wipes, to be hand-delivered to the people who need them most. As well as, adopting families in need for Thanksgiving and Christmas, personally delivering turkeys and holiday meals to help in any way that he can.

I know Hasim Campbell to be an honest, and compassionate individual who has always put his community first. He has been a mentor to so many members of the Bronx community and is the definition of an exemplary citizen, I am proud to write this letter on his behalf.

Sincerely,

Nathalia Fernandez
New York State Assemblywoman
80th Assembly District

Libby Jackson-Diagne
917-923-9741
libbyikns@gmail.com

February 19,2022

With Appreciation,

Thank you for the opportunity to write a letter of recommendation for Hashim Campbell.

As a small business owner, I would not have been able to create and organization my business entity without coaching and support from Mr. Campbell.

I met him in 2018, when he coached a group of small business owners being trained by Operation Hope, and he has been my personal and trusted advisor ever since.

What I admire most about Hashim is his desire to train the next generation of business owners. When visiting his office, I'm greeted by a young person. While he's working with another client, I'm handled by yet another young person, who is processing my documents. It makes me so proud to see that these young people are being offered an opportunity to learn skills that prepare them to build their own businesses or at the very least, offer an Employer the level of excellence and work ethics that make them a valuable Employee.

Since my initial introduction to Mr. Campbell, I have opened two businesses, purchased a home, and continued to have the confidence needed to thrive as a business owner.
Writing this letter gives me the opportunity to write a formal THANK YOU! to Mr. Campbell.

Warm Regards,

Libby Jackson-Diagne

October 21st, 2021

To Whom It May Concern:

My name is Marques Payne, Associate Director of Community Relations and Communications at Mercy College, and Founder of Marques Payne & Associates, also known as Making Progress Accessible, a company that prides itself on our ability to connect those that need to those that have. During my career, I have assisted countless companies as well as community groups develop their business through social capital initiatives.

I first met Mr. Campbell as he extended his business to assist in a hiring effort as part of the Bronx Hire program with the Bronx Chamber of Commerce. It was there when I offered Mr. Campbell an opportunity to use his office as a drop off location for a water and supply drive for the people of Flint, Michigan. Mr. Campbell was kind enough to allow individuals to drop off and store valuable and necessary supplies such as water, Vaseline, baby wipes, to be hand delivered to the people who need it most. That act of generosity was followed by another through his wiliness to accept interns from the college so they could learn the valuable and employable skill of accounting while earning their college credits. This example of his caring nature and compassion for the less fortunate is consistent in Mr. Campbells' work and career. During the pandemic, while I worked with the South Bronx Overall Economic Development Corporation (SOBRO), Hashim helped to lead an workshop that helped to start over 50 businesses entitled "Walk Through Wednesdays". At a Bronx Fathers Taking Action meeting in which he was acknowledged and awarded an African American History Month recognition for his tireless efforts to improve the lives of the members within his community. Mr. Campbell was selected to receive the award because of his community centered approaching citing that as a makeshift caterer he would adopt families for Thanksgiving and Christmas, personally delivering turkeys and holiday meals to families in need. Moreover, during award presentations, Mr. Campbell donated free tickets to the Broadway show, The Color Purple, to his fellow award recipients. I merely offer these examples as to reference the quality person Mr. Campbell is and what he has contributed to the community with the resources available to him.

As you are considering the outcome for Mr. Campbell, please evaluate him on his merit and the accomplishments he has already contributed to the community. Understanding there are some concerns existing, however, Mr. Campbell has displayed a consistent vision of compassion and caring to all his clients. Under his leadership he has helped countless students, individuals, and business owners. He attends monthly community board and precinct council meetings and is an active and valued member of the community with a proven record of community service. Furthermore, as a member of the business community it is against business practice to prevent a business owner from operating their business in its full capacity. Lastly, Mr. Campbell, has already hosted, an Annual Suit and Tie Drive to benefit survivors of domestic violence, and is slated to host a fundraiser for the upcoming election, proving it to be a valuable asset to the community. It is for the aforementioned reasons; I am proud to write this letter of support on behalf of Mr. Campbell.

Yours in Partnership,

Marques Payne
M.P. & Associates
347-720-8052

On Wed, Nov 17, 2021, 3:24 PM Cornell Green <cornellgreen@gmail.com> wrote:
Here is my letter of recommendation;

To Whom it May Concern;

I have known Hashim Campbell since 2016. In that time, it has been my pleasure to work with him in both an advisory position and as a colleague. In my pro bono work with the not-for-profit Operation Hope and the many workshops I have led and participated in, he has served as a subject matter expert to aspiring entrepreneurs in the greater New York area on the subject of taxation and financial management.

Since 2013, Hashim has focused on providing quality service to local medical professionals to help them make sure they properly manage their annual tax liabilities and prepare for retirement and beyond. I have known him to be an upstanding individual and an asset to the New York entrepreneurial community.

I know that he will be of tremendous contribution going forward, to the New York region and the nation at large, as we work to emerge productive and prosperous in this post-pandemic era.

--

Proud member since 2012

Cornell D. Green
CommunIT Solutions
Do **Better** Business -- Do Business ***BETTER!***
646-727-0212 - **phone**
https://www.communitsolutions.com/about-me/
https://linkedin.com/in/cornellgreen
https://www.facebook.com/groups/dobusinessbetter
https://twitter.com/21CCommunIT
https://instagram.com/cornelldgreen

November 18, 2021

To whom it may concern,

The excellent reputation of Mr. **Hashim Campbell** has prompted me to contact you. I recently served as Executive Director of The Bronx Empowerment Zone for the Bronx Overall Economic Development Corporation (BOEDC) supporting small business with Low -cost loans. Also, I was a Small Business Program Director with Operation HOPE, teaching a Small Business and Homeownership Workshops at Monroe College in the Bronx and at Popular Community Bank branches, Libraries, and Schools throughout NYC.

This is where I was acquainted with Mr. Campbell in 2014. We were fulfilling Operation HOPE's mission of instilling Small Business entrepreneurial financial knowledge to underserved communities. Mr. Campbell was instrumental in volunteering his support, and uplifting the business entrepreneurial program. I have discovered he possess an unusually high aptitude in financial technical areas.

He has substantial knowledge and experience in financial administration, real estate management and business accounting services, this includes providing free financial literacy to Small Businesses. Mr. Campbell has always conducted himself in a professional manner. I know him as a man of excellent character. I am confident that his contribution in terms of sharing his financial talents with the community will speak for itself favorably.

Thank you for allowing me to share this information with you directly.

Sincerely,

Pedro L. Barry.

https://www.linkedin.com/in/pedrobarry/

LINO A. SOLIS, ESQ.

282 WEST 137TH STREET

NEW YORK, NEW YORK 10030

October 9, 2022

RE: **SUPPORT LETTER FOR MR. HASHIM CAMPBELL**

To Whom It May Concern:

Please be advised that my name is Lino A. Solis, Esq. I'm an attorney in New York and practice real estate law. I'm sending this letter in support of Mr. Hashim Campbell, as I know him personally and professionally and know him to be a person of good character, a family man, father, faithful son and local small business owner. I've had the pleasure and privilege in working with Mr. Campbell on several real estate transactions and found him to be responsible and good steward towards his lenders and investors. He has a keen eye for sound real estate transactions and has had some success within the space.

I first met Mr. Campbell within the body of my local Masonic Lodge here in New York City. He is well respected in his Lodge amongst the Brotherhood and was an ever-present servant and leader when time allowed. I've had a chance to see him interact amongst his lodge Brothers during Lodge activities and casual refreshments during dinner. He is beloved amongst his Brothers.

Mr. Campbell and his family are ardent supporters of their local community, the people and various small business and local entrepreneurs. Mr. Campbell is also a diligent accountant as it relates to service to his clients and business partners. I've witnessed him pull all stops to support his accounting clients, community members and family. He and his dad are very close, and I've often see them working together on projects.

I hope that this letter serves to support Mr. Campbell, as he and his family are major supporters and stalwarts of their communities. As entrepreneurs and small business owners, they are a positive example to our overall community and our young people. I pray that you review Mr. Campbell as an overall positive influence as you review his total contributions and value to our citizens.

Thank you for your attention to this letter. Please feel free to reach me at any time. Thank you again for your considerations.

Very truly yours,

/S/LINO A. SOLIS

LINO A. SOLS, ESQ.

October 26, 2022

Honorable Judge Fredric Block
United States District Court
Eastern District of New York

Honorable Judge Block,

My name is Edward A Murray Jr. I have known Hashim for 15 years. Hashim and I were inducted together into a Masonic Lodge. He is also my tax accountant. I know Hashim is in trouble and aware of the accusations/charges facing him.

In my 15 years of knowing Hashim, he has always been a high character guy and someone who is a beacon in the community. I know this because of his service with our annual charitable work with our Masonic Lodge. Hashim is consistent in volunteering with our annual Christmas toy give away for woman and battered children. You can count on Hashim to serve with a radiated smile, making Christmas for someone who is less fortunate.

Hashim has repeatedly expressed remorse over the circumstances. He has confided in me, his concerns, the impact this is having on his elderly mother. His mother's health is declining. She relies on him 100% to make doctor visits and financial support. He is worried how this ordeal will impact on her.

I am confident this was an aberrant act and not consistent with Hashim's character. This is evident from his active participation in the planning of our lodge's 2022 Christmas Toy give away.

I ask the court to take into consideration Hashim's 15 years of outstanding service in our community along with his mother's failing health and consider the lowest possible sentence.

Very Truly Yours

Edward A Murray, Jr

From the Desk of Rev. Dr. Amarilis Celcis (DD)

10/7/2022

To whom it may Concern,

I am writing this letter on behalf of our congregant Mr. Hashim Campbell. He has worked with extensively with our Chaplain, Rev. Dr. Joe Celcis. In that work I have had the opportunity to assist Dr. Joe in his work with Hashim. He has been very open and willing to put in the hard work needed to work on dealing with bolstering his spiritual well-being and healing with the traumas that have hindered his development into the best manifestation of himself. None of us is perfect. We are all deserving of grace, understanding and of mercy. This is particularly true in the cases where we make mistakes in judgement and are truly contrite and repentant.

In my work as a minister/counselor, my focus has been on helping those struggling with addiction, and severe domestic traumas. I have become very adept at knowing when people are being genuine or trying to pull off a hustle. In my multiple experiences assisting Rev. Dr. Joe Celcis, our chaplain, in his work with Hashim I have always been struck by his honesty. He has a sincere desire to help others, that in and of itself has been part of his problem. He can at times be too trusting because of his belief in the good nature of people. This has made him vulnerable in the past to those who took advantage of him and his incredibly generous and caring nature. Many of our congregants suffer from such painful and problematic experiences. Obviously, Hashim is no different.

SANKOFAMINACELCIS@GMAIL.COM

In our work with Hashim, we have focused on helping him see the positivity that he brings to the lives of others. The legal case in question has had a devastating effect on his spiritual, emotional, and physical well-being. These impacts are not indicative of someone who is unincumbered by conscience, morality or ethics. In fact, they are the keystone signs of good person who has become caught up in a truly unfortunate situation, but is truly trying to make genuine amends. If I did not believe this to be true, I would not have been willing to write a letter on his behalf. He is a decent man in my humble opinion.

Based on his counseling sessions and all that he has shared and discussed I can make clear statements on his character based on my experience as a minister, counselor and health-care professional. He is an engaged and active father. He is an attentive and loving husband. He is a dedicated son to both of his parents. He is a generous and reliable to his friends. He is a fair, kind and empowering leader to his staff. He is a role-model for young men and women of color in his community. He is a man of deep faith and desire to serve God through the actions of his daily life. He is becoming the epitome of "his brother's and sister's keeper".

It is my hope that this letter finds you with an open heart and mind in your assessment of the character of this man. There are many dangerous, evil, malicious and lost individuals in our society. The light of God has dimmed within their lives for whatever reasons. That is unfortunate, but true. The legal system in our nation attempts to protect us from them Ministries such as our attempt to help them when are ready to do the work. Mr. Hashim Campbell is not one of those dangerous people. He is a good, penitent and contrite man who made a mistake. He has been dedicated to doing the work to grow from it. He is actively seeking reconciliation within himself and with God through dedicated pastoral counseling and care from multiple members of our counseling ministry. Removing him in any way shape or form from the lives of the hundreds of people whose lives he touches on a regular basis would actually be detrimental to the well-being of the community at large, his employees, and his family. It is a time now for the machine of justice to show mercy to a fundamentally good, while not perfect, person. I pray that you can hear my words and show the wisdom and fairness of history's greatest judge, King Solomon, in your dealings with him.

Thank you for your consideration of my letter on his behalf. Blessings.

Sincere Blessings upon You and Yours,

Rev. Dr. Amarilis Celcis,

Dr. Acelcis

Spiritual Counselor & Administrative Minister

Sankofa Spiritual Counseling, ULC

Waterbury, Connecticut

Exhibit B

AMERICAN BAR ASSOCIATION
Criminal Justice
Section

A Report on Behalf of The American Bar Association Criminal Justice Section Task Force on The Reform of Federal Sentencing for Economic Crimes

Final Draft

November 10, 2014

- *The views stated in this submission are presented on behalf of the Criminal Justice Section. The report has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore may not be construed as representing the policy of the American Bar Association.*

The American Bar Association Criminal Justice Section
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Economic Offenses

(a) **Base Offense Level:** [6-8]

(b) **Specific Offense Characteristics**

(1) **Loss.** If the loss exceeded $20,000, increase the offense level as follows:

(A) More than $20,000	add [4]
(B) More than $100,000	add [6]
(C) More than $1,000,000	add [8]
(D) More than $5,000,000	add [10]
(E) More than $10,000,000	add [12]
(F) More than $50,000,000	add [14]

(2) **Culpability**

(A) Lowest culpability	subtract [6-10]
(B) Low culpability	subtract [3-5]
(C) Moderate culpability	no change
(D) High culpability	add [3-5]
(E) Highest culpability	add [6-10]

(3) **Victim Impact**

(A) Minimal or none	no increase
(B) Low	add [2]
(C) Moderate	add [4]
(D) High	add [6]

(c) **Special Offense Considerations**

For offenses of a kind specified in Section 2B1.1(b)(3) through (9), (11) through (14), or (16) through (18), the court should consider those offense characteristics to the extent they are appropriate in determining culpability or victim impact. Where the offense presents a special concern of the kind intended to be addressed by these subsections, and where the concern has not been addressed in determining the offense level, increase by 2 offense levels. [incorporate specific Congressional directives].

(d) **Offense level cap of 10 for non-serious offenses by first offenders**

If the defendant has zero criminal history points under Chapter 4 and the offense was not "otherwise serious" within the meaning of 28 U.S.C. § 994(j), the offense level shall be no greater than 10 and a sentence other than imprisonment is generally appropriate.

Application Notes:

1. Loss:

[To be incorporated from current 2B1.1 with the modification that loss means actual loss].

2. Culpability:

Consideration of the various culpability factors

The guideline has 5 levels of culpability that range from lowest to highest. The appropriate culpability level for any given case will depend on an array of factors. These include, but are not limited to: the defendant's motive (including the general nature of the offense); the correlation between the amount of loss and the amount of the defendant's gain; the degree to which the offense and the defendant's contribution to it was sophisticated or organized; the duration of the offense and the defendant's participation in it; extenuating circumstances in connection with the offense; whether the defendant initiated the offense or merely joined in criminal conduct initiated by others; and whether the defendant took steps (such as voluntary reporting or cessation, or payment of restitution) to mitigate the harm from the offense. The list is not exclusive. Other factors may also bear on the culpability level.

Because of the nature and number of these culpability factors, as well as the almost limitless variety of possible combinations, there is no workable formula for assigning values to each individual factor. Rather than assign a numeric score to each individual culpability factor, the court instead arrives at one of five culpability levels after considering the combined effect of all culpability factors. The weight that each particular culpability factor plays in a given case will vary. In some cases, the defendant's motive will be the factor most indicative of the defendant's culpability. In other cases, extenuating circumstances will play the most prominent role. Also, these various factors will often overlap. A less culpable motive, or a less culpable nature of the offense, will sometimes be evident in the extenuating circumstances that prompted the defendant to commit the offense.

The end result of the court's analysis should be a culpability level that "ranks" the defendant in the hierarchy of five levels of culpability for all defendants sentenced under this guideline. By definition, all defendants sentenced under the guideline are to some degree "culpable." The court should not be reluctant to find a mitigating culpability value out of concern that it will signal a lack of opprobrium for the offense – the point of the analysis is to accomplish proportionality by meting out sentences that are sufficient but not greater than necessary to accomplish the purposes of sentencing in the light of each defendant's culpability when compared with all

other defendants sentenced under this guideline.
As a way of assisting the court in making the culpability assessment, it is anticipated that the middle culpability category – "moderate culpability" – would account for the largest number of defendants sentenced under the guideline. A defendant seeking an assessment of "low" or "lowest" culpability bears the burden of proof to establish this, while the government bears the burden to prove either "high" or "highest" culpability.

In assigning a culpability level, the court should be careful not to "double count" the amount of loss or the victim impact, each of which is a separate specific offense characteristic. Although in some circumstances there may be overlapping considerations bearing on each factor, loss, culpability, and victim impact are each intellectually distinct concepts warranting individualized assessment. Thus, a high loss or significant victim impact may result from conduct reflecting mitigated culpability by some or even all of the criminally responsible participants. Conversely some cases may present aggravated culpability resulting in more limited loss or victim impact.

There is also overlap between the considerations that inform the defendant's level of culpability and those that bear on the defendant's role in the offense as determined under Chapter Three. Nevertheless, as with the relationship of culpability to loss and victim impact, role in the offense is also intellectually distinct from culpability and requires separate inquiry. Where it is necessary for the court to weigh the same considerations governing role in the offense in its assessment of culpability, this may in some circumstances require a sentence outside the range resulting from a cumulative application of the culpability and role adjustments.

The court should also recognize that this guideline is intended to address *offense* characteristics. The court should continue to consider *offender* characteristics at sentencing in accordance with 18 U.S.C. § 3553(a). Although aspects of offender characteristics may overlap with culpability considerations, these are intellectually distinct concepts requiring separate consideration.

(A) *Motive/Nature of Offense*

One factor in the culpability level is the defendant's motive or the nature of the offense. The following examples occur frequently in cases sentenced under this guideline.

> (1) *Predatory* – These offenses are intended to inflict loss for the sole or dominant purpose of generating personal gain to the defendant or to others involved in the criminal undertaking. These offenses – accompanied by no legitimate purpose – are among the most culpable types of offenses sentenced under this guideline.

(2) *Legitimate ab initio* – These offenses often arise from otherwise legitimate efforts that have crossed over into criminality as a result of unexpected difficulties. Even though such offenses may be intended to cause loss for the purpose of generating personal gain to the defendant or to others involved in the criminal undertaking, they rank lower on the culpability scale than predatory offenses.

(3) *Risk shifting* – These offenses are not specifically intended to cause loss. Instead, they shift the risk of any potential loss from the defendant (or from others involved in the criminal undertaking) to a third party, such as the victim of the offense. Examples include false statements for the purpose of obtaining a bank loan that is intended to be repaid. Such offenses are generally less culpable than those where loss is specifically intended.

(4) *Gatekeeping* – These offenses are not specifically intended to cause loss or even to shift the risk of loss. Instead, they violate so-called "gatekeeping" requirements intended generally to prevent practices that create potential loss or a risk of loss. Examples include billing Medicare for medically necessary goods and services that are actually provided without the appropriate third-party verification of medical necessity. Such offenses are generally at the lower level of culpability under this factor.

There may be cases where the nature of the offense fits more than one of these descriptions. And there may be cases for which none of these categories is appropriate. Whether or not these descriptions fit a particular case, the court should take them into account when considering how the defendant's motive (including the nature of the offense) compares, for culpability purposes, to that of other defendants sentenced under this guideline whose offenses match these descriptions.

(B) *Gain*

Another culpability factor is the gain to the defendant or to others involved in the criminal undertaking.

(1) *Commensurate with loss* – Where the defendant and others involved in the criminal undertaking derive a gain from the offense in an amount that is roughly commensurate with the loss, this ordinarily indicates a higher degree of culpability.

> (2) *Less than loss* – Where the defendant and others involved in the criminal undertaking derive a gain from the offense in an amount that is less than the loss, this ordinarily indicates a lesser degree of culpability than (1).
>
> (3) *Minimal or Zero* – Where the defendant and others involved in the criminal undertaking derive little or no gain from the offense, this ordinarily indicates a lesser degree of culpability than (2).

The extent to which the defendant *personally* gained may also be relevant to the culpability level. For example, an accountant convicted for participation in a securities fraud scheme would be less culpable (on the factor of gain) than an officer of the company who personally gained more than the accountant. Also, a small amount of gain in relation to the loss may not always mean a lower level of culpability. For example, a defendant who intentionally inflicts a large loss on others for the purpose of achieving a small gain would be more culpable with respect to the gain factor than someone who did not intend the loss. The degree of culpability in this example varies depending on the extent to which the loss was foreseeable to the defendant.

(C) *Degree of sophistication/organization*

Criminal undertakings involving a high degree of sophistication and/or organization generally reflect a greater threat of harm and a higher level of culpability. The reverse is also true – where the offense is executed in a simple manner without the involvement of large numbers of participants, this generally reflects a lesser threat of harm and a lower level of culpability. The court should also consider the extent of the defendant's contribution to the offense's sophistication or organization. A defendant with less responsibility for the offense's sophistication or organization would be less culpable, all other things being equal, than one with greater responsibility for these characteristics.

(D) *Duration*

As with sophistication and organization, the duration of the offense and the defendant's participation in it also frequently reflects differences in culpability. Criminal undertakings that extend over several months or longer suggest a greater degree of culpability, while those that occur in a single event or over a shorter period of time in many circumstances reflect a lower level of culpability.

(E) *Extenuating circumstances*

Some defendants will commit an offense in response to various circumstances, such as coercion or duress. There are many extenuating circumstances that could contribute to the commission of an offense, and the extent of their contribution will also vary from case to case. A defendant's culpability will be affected by the nature of these extenuating circumstances and the extent to which they played a part in the commission of the offense.

(F) *Efforts to mitigate harm, including voluntary cessation, self-reporting, or restitution*

A defendant will sometimes take steps that help mitigate the harm or otherwise reflect a lower level of culpability. Where the defendant voluntarily ceases the offense conduct prior to its detection, this generally indicates a decreased level of culpability. Self-reporting of the offense is also a sign of lower culpability, as is voluntary restitution. In considering the significance of restitution, care must be taken not to punish a defendant more severely as a result of a lack of financial resources.

The court may consider a defendant's cessation of criminal conduct even if it does not qualify as a legal defense to conviction for conduct that occurred after the defendant's involvement ceased. For example, the court may consider the fact that a defendant ceased taking part in a conspiracy even though the legal standard for withdrawing from the conspiracy was not met.

3. *Victim Impact*:

The guideline has four levels of victim impact: (1) minimal or none; (2) low; (3) moderate; and (4) high. As with the culpability levels, there are many factors to consider in arriving at the appropriate level of victim impact. The court should consider how the combination of these factors places the defendant's offense in comparison to victim impact in other cases under this guideline. The court should also be cognizant that the amount of the victim(s)' loss is already accounted for and should not be counted again in the context of victim impact. An additional score for victim impact is appropriate only where there is a harm beyond that inherent in the amount of the loss.

(A) *Vulnerability of victims*

Where victims are identified and targeted because some particular vulnerability they suffer, this may indicate a higher degree of victim impact (and/or culpability). The court should be careful not to "double count" the vulnerability of the victims in assessing culpability, victim impact, and the special adjustment in Chapter Three for vulnerable victims, 3A1.1(b). Nevertheless, there may be some circumstances in which the vulnerability of victims results in a peculiar degree of impact, particularly where that impact was foreseeable to the defendant, that would warrant an increase in the victim impact adjustment as well as an enhancement for vulnerable victim in Chapter Three.

(B) *Significance of loss*

Where the victim suffers losses that threaten the victim's financial soundness, this generally indicates a higher degree of victim impact. This may be more common where the victims are individual as opposed to institutional. It is assumed that in most offenses involving an institutional victim, the impact is measured principally by the amount of the loss such that no additional victim impact adjustment would ordinarily be appropriate in the absence of the failure or bankruptcy of the institution.

(C) *Other non-economic harm*

Where the victim has suffered a significant non-economic harm, this may not be captured in the loss adjustment, and thus the guideline may understate the seriousness of the offense under some circumstances in the absence of an upward adjustment reflecting victim impact.

(D) *Victim inducement of offense*

In some circumstances the victim has contributed to the offense in some manner. This may include inducing the commission of the offense or some lesser degree of conduct. Under such circumstances it may be appropriate to partially discount the impact on the victim as a measure of offense severity.

4. *Offense level cap for offenses that are not "otherwise serious"*:

The Sentencing Reform Act provides as follows: "The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense…." 28 U.S.C. § 994(j). Many of the offenses falling within this guideline are not "otherwise serious."

In determining whether an offense is not "otherwise serious," the court should consider (1) the offense as a whole, and (2) the defendant's individual contribution to the offense. For example, a low level employee who is peripherally involved in what would be an "otherwise serious" offense as to other defendants may nevertheless qualify for this offense level cap.

Factors to be considered in determining whether the offense is one for which a sentence of probation is appropriate include the following: the amount of the loss; whether loss was intended at the outset of the offense conduct; whether the defendant's gain from the offense is less than the loss; whether the defendant's offense conduct lacked sophistication (including whether it was committed in a routine manner or without the involvement of a large number of participants); whether the defendant acted under duress or coercion; the duration of the offense conduct and the defendant's participation in it; whether the defendant voluntarily ceased the offense conduct before it was detected; and the nature of the victim impact caused by the offense. Where the defendant has no criminal history points, and where the circumstances of the offense support a finding that the offense was not "otherwise serious," the offense level under this guideline shall be no greater than 10, and a sentence other than imprisonment is generally appropriate.

Reporter's Notes

A. Members of the Task Force and Principles of Consensus.

In April 2013 the Criminal Justice Section of the American Bar Association assembled this Task Force to evaluate the reforms needed in the sentencing of federal economic crimes and to draft a proposed federal sentencing guideline to effectuate those reforms. The Task Force consists of five professors, three judges, six practitioners, two organizational representatives, and observers from the Department of Justice and the Federal Defenders:

- Stephen Saltzburg (Chair)
  Professor of Law, George Washington University School of Law
- James E. Felman, Esquire (Reporter)
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After a number of meetings and telephone conferences, the group arrived at a consensus proposal subject to a number of important caveats. These caveats are an essential aspect of the proposal to avoid misunderstanding its nature and scope.

First, we feel more strongly about the structure of the proposal than we do about the specific offense levels we have assigned. We assigned offense levels in the draft because we think it is helpful in understanding the structure, but the levels have been placed in brackets to indicate their tentative nature. Indeed, in some instances we have bracketed a range of levels, although as noted below in the discussion of the "Twenty-Five Percent Rule" we recognize that a final guideline likely could not include such a range. We have performed no research and have no empirical basis for the levels we assigned in the draft.

We have applied the proposal to an array of specific case scenarios, and this exercise was very helpful to us on a number of levels. We were reassured about the structure of the proposal – we felt the proposal captured the offense characteristics most relevant to sentencing, and it placed appropriate weight on the considerations of loss, culpability, and victim impact in relation to one another. We also felt that the proposal is sufficiently clear and specific that it leads to reasonably uniform application. Although the culpability and victim impact considerations do not lend themselves to exact quantification in the same way as measuring the amount of loss, we were able to reach consensus on the application of the proposal to the scenarios without undue difficulty or disparity. Most us were comfortable with the range of outcomes that result from the levels assigned in the draft, but it should be understood that we devoted the bulk of our efforts to structural improvements and less time to issues of optimal punishment severity, in part out of a recognition that there are inherently political components to such judgments.

Second, we discussed but did not fully resolve the question of whether certain categories or types of offenses should be sentenced under a separate guideline in light of the very wide array of offenses sentenced under this guideline. We believe, in particular, that certain types of securities offenses where changes in the value of market capitalization drive the loss calculation may be especially suited for consideration under a separate guideline.

Third, the proposal is submitted as a consensus product in accordance with the following limiting principles:

1. It is assumed that, for the foreseeable future, the current structural framework dictated by statute will remain in place, including the 25% rule (28 U.S.C. § 994(b)(2)), and that the Commission therefore will still find it necessary to assign fairly specific numeric values to sentencing considerations. The draft proposal is written to comply with that assumed structural framework, although it should be noted that the American Bar Association supports the repeal of the 25% rule. ABA Justice Kennedy Commission, Reports with Recommendations to the ABA House of Delegates (August 2004), http://www.abanet.org/crimjust/kennedy/Justice KennedyCommission ReportsFinal.pdf).

2. This structural framework (both the 25% rule and the guidelines' overly arithmetic approach) is not ideal because it can be unduly rigid and lead to the arbitrary

assignment of values and the overemphasis of considerations that are more easily quantified to the detriment of equally relevant considerations that are less easily quantified. There is also a risk under the current structural framework that a guideline will appear to carry more empirical or scientific basis than is present.

3. A better structural framework would (a) place less emphasis on arithmetic calculations and those few sentencing considerations that lend themselves to exact quantification; and (b) allocate greater sentencing authority to the judiciary.

4. The Task Force is not necessarily of one mind regarding the ideal allocation of sentencing authority between the Congress, the Sentencing Commission, the Judiciary, and the Executive Branch, but it was not deemed necessary to achieve consensus on this point as this proposal is premised on the assumption that the current structural framework will remain in place.

B. Intent of the Proposal Within the Existing Guidelines Structure

The proposal is intended as a free-standing substitution in the Guidelines Manual for the existing Guideline Section 2B1.1. There are two aspects of this substitution that bear particular emphasis.

First, we understand that Subsection (c) of the proposed guideline regarding Specific Offense Characteristics ("SOCs") would need to be tailored to comply with specific Congressional directives to the Sentencing Commission. Many of these directives are open-ended, and require only that the Commission "consider" amending the guidelines as necessary in light of specific legislation. We believe our proposal accommodates those directives by instructing the court to apply the SOCs in the existing guideline that resulted from such directives where the offense presents a special concern of the kind intended to be addressed by these SOCs, and where that concern has not otherwise been addressed in determining the offense level under the guideline. But we also recognize that there have been a handful of Congressional directives that required specific amendments to the guideline. An example of such a specific directive is that contained in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10606, 124 Stat. 119, 1006 (2010), which directed new offense level increases for higher loss frauds involving government health care programs. Our proposal would need to be conformed to these specific directives if adopted by the Sentencing Commission.

Second, the proposal, like all provisions of Chapter Two of the Guidelines, is intended to deal solely with *offense* characteristics. The court should continue to consider *offender* characteristics at sentencing in accordance with 18 U.S.C. § 3553(a). Although aspects of offender characteristics may overlap with culpability considerations, these are intellectually distinct concepts requiring separate consideration.

C. Compliance with the "Twenty-Five Percent" Rule

Title 28 U.S.C. § 994(b)(2) provides: "If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment." Early in the life of the Sentencing Commission, it decided to construe this statutory limitation to apply not only to the final sentencing range resulting from the guidelines computation, but also to each adjustment along the route of that computation. While this construction of the statute does not appear to be compelled by its terms, our proposal is drafted on the assumption that the Commission will not revisit this question. Accordingly, we recognize that adoption of our proposal would require the Commission to select a specific numeric value for the base offense level and each of the culpability categories. As noted above, we elected to include a range of possible values in our proposal to illustrate the range of possible outcomes under it, depending on the levels ultimately selected by the Commission. We are confident, however, that if a specific value is inserted for the base offense level and each of the culpability levels, our proposal would then comply with the statute. We have heard some outside comment that because the culpability consideration groups together a wide array of factors and thus results in such a wide array of ultimate offense level outcomes, this renders the proposal violative of the statute. We do not agree with this view, and find support for our position in the observation that role in the offense also groups together a wide array of potential considerations and can result in an eight-level swing in the range resulting from those considerations. *See* U.S.S.G. §§ 3B1.1, 1.2.

D. Case Scenarios

These scenarios are intended to illustrate application of the proposal and the manner in which it might diverge from the current guideline. They are intended as a rough illustration of how the proposal would operate based on a very general level of detail. A much wider array of facts would frequently be relevant to a court's consideration of an appropriate sentence. Also, the scenarios do not include information regarding the history or characteristics of the offender under the assumption that these very important sentencing factors will be considered by the court in fashioning a reasonable sentence pursuant to 18 U.S.C. § 3553(a). Finally, the scoring of the scenarios continues to utilize a range of offense levels for the base and culpability factors, but we recognize that adoption of the proposal would require the selection of a specific numeric value for these factors in accordance with the "twenty-five percent" rule in 28 U.S.C. § 994(b)(2).

Case Scenario 1

The defendant was an organizer and leader of a fraudulent "lottery" scheme in which elderly persons were identified and contacted by telephone, advised that they had won a lottery award, and told that to obtain the award they must first pay advance fees to cover matters such as taxes, insurance, bonding, or other matters. After the victims submitted the requested fees, they were advised to expect the delivery of their winnings via armored car to their homes at specific dates and times. When the armored car did not arrive, the victims' efforts to contact those to whom they had remitted the fees were not successful. The scheme victimized 14 individuals, most of whom were 70 years old or older. For six of the victims, the losses represented their life savings. The fees paid ranged from $20,000 to $175,000, with a total loss to all victims of roughly $1.7 million. The majority of these funds were obtained by the defendant and converted to his personal use.

Score under current guideline:

Base Offense level:	7
Loss:	+16
more than 10 victims/mass marketing:	+2
Vulnerable victim	+2
Role in the offense	+4
	31

Score under ABA proposal:

Base Offense level:	6-8
Loss:	+8
Highest culpability:	+6-10
High victim impact:	+6
Vulnerable victim	+2
Role in the offense	+4
	32-38

This scenario presents a predatory offense where the defendant's gain was roughly commensurate with the loss. Although the scenario does not specify the degree of sophistication or duration of the offense, some sophistication and duration is implicit in the nature and extent of the scheme. No extenuating circumstances or efforts to mitigate harm are specified. This presents a "highest culpability" offense. The victim impact is also "high" in light of the significance of the loss to six of the victims. The scheme targeted the victims based on their elderly status, and if some of them were unusually vulnerable for that reason this would be additional support for findings of high victim impact and highest culpability. It is assumed that for purposes of Chapter Three this scenario would also score adjustments for both vulnerable victim and leadership role in the offense. These adjustments are the same under both this proposal and the existing guideline as this proposal does not address Chapter Three.

Case Scenario 2

The defendant was the owner of a legitimate business for many years and financed the operations of the business through a line of credit secured by the inventory and accounts receivable of the business. When the business came on difficult times, the defendant caused the submission of false information to the lender regarding both inventory and accounts receivable, thus enabling the business to borrow more than it would otherwise have been permitted to borrow. The defendant also attempted to support the operations of the business by liquidating his personal assets and investing the proceeds into the business. The lender discovered the fraud and caused the termination of the business. After mitigating its losses by selling the inventory and collecting legitimate accounts receivable, the lender was left with a loss of approximately $6.9 million. A forensic accounting revealed that during the period of the fraud the defendant contributed more funds to the business than he withdrew from it in salary and other compensation.

Score under current guideline:

Base Offense level:	7
Loss:	+18
More than $1 Million in gross receipts:	+2
Role in the offense	+4
	31

Score under ABA proposal:

Base Offense level:	6-8
Loss:	+10
Low culpability:	-3-5
Low victim impact	+2
Role in the offense	+4
	17-21

This scenario presents a mixture of legitimate ab initio and risk shifting fraud. Although the offense had some degree of sophistication, the less culpable motive, zero gain to the defendant, extenuating circumstances, and efforts to mitigate harm result in a "low culpability" score. The victim impact is also rated as "low" given that it involved a single institutional victim, but not minimal given the magnitude of the loss and the difficulty of the detection of the offense and the efforts needed to mitigate its harm. It is assumed the defendant would receive a leadership role in the offense adjustment under Chapter Three.

Case Scenario 3

The defendant was the owner of a durable medical equipment business that provided oxygen to Medicare patients. To qualify for reimbursement, equipment providers must ensure the oxygen is medically necessary by sending patients to an independent laboratory for testing. Instead of referring patients to independent labs for testing, the defendant caused his employees to conduct the testing themselves and then falsely represent to Medicare that the testing had been performed by an independent lab. Virtually all of the oxygen was medically necessary, although Medicare would not have paid the bills for it had the failure to qualify the patients by independent testing been disclosed. The fraud continued for more than a year, and involved in false representations regarding the testing of 159 patients. The amount billed to Medicare for their oxygen was $7.1 million. The patients were billed a small co-pay fee, and a small portion of the reimbursement for the oxygen received by these patients was also paid by 109 supplemental insurance companies.

Score under current guideline:

Base Offense level:	7
Intended loss:	+20
Sophisticated means:	+2
Production of unauthorized access device:	+2
More than 250 victims:	+6
Health care fraud offense	+3
Role in the offense	+4
	44

Score under ABA proposal:

Base offense level:	6-8
Actual loss:	+10
Moderate culpability:	0
Low victim impact:	+2
Health care fraud offense	+3
Role in the offense	+4
	25-27

This scenario presents a gatekeeping offense (although if the oxygen was either not provided or medically unnecessary this would be a predatory offense). Under current law in at least some circuits, the amount billed is treated as loss notwithstanding the medical necessity of the oxygen. *See, e.g., United States v. Bane*, 720 F.3d 818 (11th Cir. 2013). Notwithstanding the less culpable motive, the defendant's culpability is considered "moderate" given his personal benefit as the owner of the company, the degree of sophistication involved, the duration of the offense, and the absence of any extenuating circumstances or efforts to mitigate harm. The victim impact is considered low in light of the medical necessity of the treatments provided but not minimal in light of the sensitive nature of the government benefits program at issue. It is assumed that an additional three-level upward adjustment would be required under the Congressional directive presently located at 2B1.1(b)(7), as well as a leadership enhancement under Chapter Three.

Case Scenario 4

The defendant accepted $1,000 to act as a "straw purchaser" in a fraudulent real estate transaction that resulted in a $250,000 loss to a financial institution.

Score under current guideline:

Base offense level:	7
Loss:	+12
Role in the offense	-2
	17

Score under ABA proposal:

Base offense level:	6-8
Loss:	+6
Low culpability:	-3-5
Minimal victim impact:	0
Role in the offense	-2
	5-9[1]

This scenario presents a risk shifting offense in which the defendant's gain is minimal in relation to the loss and the offense involved limited sophistication and duration. On the other hand, the defendant knowingly played an essential role in a serious offense causing a significant risk of loss and did derive a direct personal benefit from the offense. For these reasons, the defendant's culpability would be "low" but not "lowest." The victim impact is considered minimal in that the victim is institutional, the amount of the loss did not threaten the security of the institution, and the severity of the offense conduct is adequately captured by the loss amount alone. A mitigating role in the offense adjustment under Chapter Three is assumed, but would not in all cases be applied.

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[1]If the Base Offense Level is set at 8, Low Culpability is set at -3, and the defendant did not receive a mitigating role adjustment, this would result in an offense level 11, but in this scenario the offense level cap for non-serious offenses would cap the offense level at 10 if the defendant is a first offender.