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November 9, 2022

The Honorable Frederic Block
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201
VIA ECF

RE: United States v. Hashim Campbell
1:21-cr-00478 (FB)
Defense Sentencing Memorandum
Sentencing Date: 11/17/22

Your Honor:

It is the directive of our sentencing structure to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. 3553(a) subsections 1 and 2. The point of the Pre-sentence report, the submissions of the Government and counsel are to permit the Court to understand the individual before it and, with the guidance of 18 U.S.C. 3553(a), mete out a just sentence. The concern of counsel is always how to define the individual in his humanity and fullness, not merely by the confines of his transgressions.

As for the basic preliminaries, Hashim Campbell brought himself voluntarily to the fold of the Government before the Government came to him. Mr. Campbell's extended family members had benefitted, improperly from various PPP loans arranged by Mr. Campbell. When Mr. Campbell learned of his extended family members being contacted by the Government and their exposure; Hashim requested counsel alert the Government he wished to step forward. Mr. Campbell was clear he was stepping forward to take responsibility for those persons and for himself. The Government was surprised, as apparently Mr. Campbell had already squarely been on their radar. Months of discussions and fitful proffers followed until Mr. Campbell voluntarily presented himself for arrest and plea.

On September 23, 2021, Mr. Campbell pled guilty before Magistrate Judge Roanne L. Mann to a single-count information which charges that between March 2020 and August 2020, Mr. Campbell together with others, conspired to execute a scheme to commit one or more offenses, specifically; (a) to defraud and to obtain money and property from Bank 1 and the Small Business Administration (SBA) by means of one or more materially false and fraudulent pretenses, representations and promises, and to transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, for the purposes of executing the scheme to defraud, contrary to 18 U.S.C. 1342 and (b) to defraud Bank 1, a financial institution, and to obtain money, funds, credits and other property owned by

and under the custody and control of Bank 1, by means of one or more materially false and fraudulent pretenses, representations and promises, contrary to 18 U.S.C. 1344. Count 1 is a violation of 18 U.S.C. 1349.

Mr. Campbell, the only child of his parents' union, was born in Michigan and resided there until he was nine, he then resided in New Jersey, and ultimately the Bronx, New York. He has a half brother on his father's side, but that relationship is quite limited. Mr. Campbell followed in his father's footsteps. He is his mother's only child.

Hashim's father hailed from Guyana. He established a tax preparation, accounting and bookkeeping office in the Bronx. Through so doing he was known in the community. Hashim after college, obtained his tax preparer license, ultimately opening a number of businesses in the Bronx. He would have seasonal interns to assist him in his work and loved being an active member of the community. Through his work with clients, he would come to know their families and he perceived a sense of belonging to the community to which he felt he positively contributed. Hashim also obtained his real estate license and sought to make money by buying homes with others, refurbishing them and selling them. He was never a wealthy person he was squarely seeking to support his family and making due in its uniqueness. The uniqueness of Hashim's family and care for others is detailed below.

Hashim is a devoted son, he looks greatly to his father who is a person that created a life in the United States and provided a path to a profession for his son. Though his parents are apart he is also physically and emotionally devoted to his ailing mother.

Hashim's mother was a doctor, she however is decompensating. She is a well-challenged individual and has recently had a knee replacement. A person trained in medicine should be trained to care for herself. This is not the case with Hashim's mother. Through this period he has come to learn that his mother is bi-polar and suffers from clinical depression. Lili explains three mysteries in his life: 1) Why he recalled in his childhood his mother taking to the bed for long periods of time and not functioning; 2) Why she at times is immobilized although he knows he has tasks; and 3) why his mother is not caring for herself, from taking medication to not wanting to walk. His mother is not grasping the impact of taking her medication, self-care, or the potential loss of Hashim for a period of time. In the last weeks Hashim has split his time and lived at his mother's in southern New Jersey, cleaning her sheets, making sure she is taking her medication, feeding her, trying to exercise her. She is an intelligent woman in the past splendor of mental health crisis and unable to care for herself. The medication fluctuation is compounding he has mental health issues. Hashim has no one to rely on and we propose that if a period of home incarceration is considered that he serve his mother as due to her prior positions she does not qualify for social service programming or support. The only persons to assist have proven unreliable. Crystal cannot both work and serve Hashim's mother due to the distances.

Most significant in Hashim's life is his wife, Crystal. He and this twin son from another relationship. One of the boys is intellectually and emotionally challenged and has his

[redacted] is a critical feature of Hashim and Crystal's devotion to the children.

The irony of Hashim's sons and Crystal's love and dedication to them is that Hashim and Crystal [redacted]. Please note as Hashim wants to [redacted] the expenses for fertility treatments and rounds were not the reason for his [redacted] he did not want to suggest that this is how he came to be before the Court. The [redacted] for Crystal is that any incarceration is a diminishment of their opportunity to have a family [redacted].

Both are extremely tearful on their visits to my office. Crystal knows Hashim so well and she has been my fulcrum to get Hashim to move. He is like a deer in headlights; he is frozen. Even to get him to focus on bringing me documents, appearing for an appointment, responding to tasks required many calls and then calls to Crystal to get him to move. Even this sentencing had to be moved due to the delay in getting his letters of recommendation to me.

This is not out of obstinance or hubris. This is out of fear. He has sat in my office unable to look at me or respond to questions. Crystal weeps next to him so concerned [redacted] something to happen himself. I remind them, this too shall pass. No matter what the outcome there is a meaningful tomorrow and people that need you and love you. Like many capable people who bask and flourish in the light of good will when they perceive they are contributing; when they are confronted with a wrong, or people displeased with them; they freeze, become immobilized and essentially halt. This is Hashim.

[redacted] is the latest update to this writing. I learned of Hashim's mother's mental illness and see [redacted] but there may be disturbance within him that requires address.

Crystal is herself an independent worker. She is accomplished in her own right; her schooling was in biology and chemistry. Her main career has been in environmental health and safety, having worked with OSHA and the Department of Health. Currently, she is a Program Director for the Department of Environmental Protection. She is designing safety policies for our [redacted] involving our air pollution solutions, waste water treatment and urban interface. Her father always taught her and her siblings to have another source of income. Thus, she also is involved in property management through her company, Principal Equity Group.

The Government, like me, experienced frustration in getting Hashim to respond and [redacted] we had to go to a great deal of trouble where we needed to go. Although he does not qualify as having [redacted] assistance to warrant a SK, I feel Hashim did explain his actions. Hashim himself was [redacted] to learn that some of the people for whom he was requested to prepare returns for either [redacted] were in prison or homeless. He too felt used, and in a sense betrayed. He joined in this matter at the request of others and ultimately became uncomfortable and asked the main individual to stop

¹ Hashim and Crystal last visited me on Monday, November 7, 2022. Again both were in tears. The latest IVF treatment was not successful. Crystal has one more opportunity and then she will be recommended to surrogacy. She desperately wants a child of her own and the loss of Hashim for any period is a stressor physically, emotionally and temporally within her window of potentiality of achieving a healthy pregnancy with Hashim.

asking him to prepare documents for people. He was often also wrong for not having met many of the straw people. He was also wrong in seeking to do PPP applications and the supporting documents for friends and extended family. He takes responsibility for his actions; yet is bewildered by the reality of what he has done.

Hashim's concept was not a full Robin Hood effect, for he too profited, but Hashim obtained a fraction of the overall loss. The majority of the loss to the bank and the Small Business Administration went to the recipients of the loan proceeds. In Hashim's mind the Government was providing these funds and he wanted the people he knew to need funds to benefit. He did not perceive in the frenzy that he was committing a crime. His concept was that the money was being given to help people and he wanted to facilitate people being helped. The line was crossed when in doing so he falsified applications and the supporting documents to achieve funds for others.

In learning that his extended family were contacted, rather than compromise them Hashim stepped forward. He also had counsel work with the Government to insure the resolution of his relatives (they are close family, friends and not actual relatives). Each of the three, the Government has assured will not be prosecuted. The potential of actual non-prosecution agreements is being reviewed. Each individual has already professed with the Government why inside these people were so mistrusting of the Government and even this counsel that counsel did to plead with them to pay attention to this matter. The Government and counsel were anxious that these people would be charged for their failures to respond and follow through with the Government and counsel. Simply fear and lack of trust.

Hashim is a good son, good father, good cousin (although getting people you love PPP money they did not deserve while a crime was well intentioned), good husband, and a good community person who served his community faithfully through his local business. He was earnest and wanted to build for his family. Now with this conviction he will lose all of the licenses he had earned; his business will be impacted and he will have to recreate himself but as a felon. He is at each peel of the onion of felony conviction impact, disheartened, contrite, bewildered and immobilized.

He sought to do good things for his community and to inspire others to be their best but he is like the shoemaker whose children have no shoes, he is diffuse and scattered in his emotive self; he has a low self esteem which he had sought to fill by being healthy in his giving to others.

Of great note, is that Crystal's family reflects on how giving Hashim is. When Crystal's aunt's son passed, she could not afford the funeral. Hashim paid for the funeral. Yes, this was during the time of the crime however, it is an example of his goal of kindness. When Crystal's

father could not care for her own child, Hashim and Crystal took that child in and raised her from infancy to age 17. She refers to Crystal and Hashim as mother and father. Her biological father died this year, and the loss of Hashim would be impactful to a now blossoming young teen.

asked in a period of supervision include psychological counseling as Mr. Campbell is struggling on so many levels. He feels as if he has disappointed his parents, his wife, his community, family and friends, and children. There is a \$100,000.00 forfeiture to which Hashim has agreed which represents his potential gain. Financially, all is a struggle.

To demonstrate the good nature, belief in and respect for Hashim attached are eight letters of recommendation.

New York State Assemblywoman Nathalia Fernandez writes, "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 Hashim 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."

Libby Jackson-Diagne who has been an inspired mentee of Hashim writes:

"As a small business owner, I would not have been able to create and organize[] 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 to thrive as a business owner. Writing this letter give me the opportunity to write a formal THANK YOU ! to Mr. Campbell.”

Marques Payne, Associate Director of Community Relations and Communications at Mercy College, and Founder of Marques Payne & Associate, 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 willingness 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. Campbell's work and career. During the pandemic, while I worked with the South Bronx Overall Economic Development Corporation (SOBRO), Hashim helped to lead a 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 approach[] citing that as a makeshift caterer he would adopt families for Thanksgiving and Christmas, personally delivering turkeys and holiday meals to families in need.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.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 reason; I am proud to write this letter of support on behalf of Mr. Campbell.”

Cornell Green on CommunIT Solutions whose logo is “Do Better Business-Bo Business Better!” writes of knowing Mr. Campbell since 2016 in both an advisory position and as a colleague. They worked together pro bono with the not for profit Operation Hope through many workshops. Mr. Green led and participated in many workshops and Mr. Campbell served as a subject matter expert to aspiring entrepreneurs in the greater New York area on the subject taxation and financial management.

Pedro Barry recently served as the Executive Director of The Bronx Empowerment Zone for the Bronx Overall Economic Development Corporation (BOEDC) supporting small business with low cost loans. Mr. Barry was also a Small Business and Home Ownership Director with Operation HOPE, teaching Small Business and Home Ownership 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 missions of instilling Small Business entrepreneurial financial knowledge to underserved communities. Mr. Campbell was instrumental in volunteering his support, and uplifting the business entrepreneurial program. ...”

Lino A. Sols, Esq. an attorney practicing real estate law knows Mr. Campbell personally and professionally and knows him to be a person of good character, a family man, father, faithful son and local small business owner. Mr. Sols worked with “Mr. Campbell on several real estate transactions and found him to be responsible and good steward towards his lenders and investors.”

Mr. Sols met Mr. Campbell within the body of Mr. Sols’ local Masonic Lodge in New York City. Mr. Campbell is well respected in his Lodge amongst the Brotherhood and was an ever-present servant and leader when time allowed. Mr. Sols has had a chance to see him interact amongst his lodge Brothers during Lodge activities and causal 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 seen 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 that you review Mr. Campbell as an overall positive influence as you review his total contributions and value to our citizens.”

Edward Murray, Jr. also knows Hashim through the Masonic Lodge over the last fifteen years. Hashim is also Mr. Murray's tax accountant. Mr. Murray is also aware of the charges against Hashim but notes that notwithstanding, Hashim has "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 women and battered children. You can count on Hashim to service with a radiated smile, making Christmas for someone who is less fortunate."

Mr. Murray reflects on Hashim's contrition and remorse for his actions and his concern for his mother in failing to serve her and disappointing her. Mr. Murray reflects that this period of action was aberrant and not consistent with Hashim's character.

Finally, Reverend Doctor Amarilis Celcis writes of Hashim Campbell as a congregant. Hashim has worked extensively with Reverend Chaplin Joe Celcis. "[Hashim] has been very open and willing to put in the hard work needed to work ...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....I have always been struck by [Hashim's] 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. ...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 [a] good person who has become caught up in a truly unfortunate situation, but is truly trying to make genuine amends.He is a decent man in my humble opinion.

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 they 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 working 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...."

As is apparent from the letters of support, Hashim is well intentioned, but the path to hell or criminality is thus often so paved. What is sufficient but not greater than necessary for Hashim? 18 U.S.C. 3553a.

U.S. Probation recommends 33 months with two years post release supervision with special conditions as enumerated in the Sentencing Recommendation filed on 6/24/22; and a fine of \$15,000.

The Probation report calculated the offense level computation as detailed at the PSR at paragraphs 23 through 34. Significantly, Hashim has a criminal history category of I, as he has no prior interface with the criminal justice system. See, PSR at paragraph 37.

The total offense level calculated is 20 providing a sentencing guideline range of 33-41 months. Probation has recommended 33 months as an appropriate sentence.

There is an alternative.

"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 consist[ed] of five professors, three judges, six practitioners, tow organizational representatives, and observers from the Department of Justice and the Federal Defenders." (Reporter's Notes, A. Members of the Task Force and Principles of Consensus.) See, American Bar Association, Criminal Justice Section: A Report on Behalf of The American Bar Association Criminal Justice Section Task Force of The Reform of Federal Sentencing for Economic Crimes, November 10, 2014 [ABA Report] (Attached at Exhibit B, at page 8).

Amongst the judges involved in the Task Force and resultant report were The Honorable Nancy Gertner, retired, Professor Harvard Law School; The Honorable John Gleeson, U.S.C.D., E.D.N.Y.; The Honorable Gerard Lynch, U.S. Court of Appeals For the Second Circuit; and The Honorable Jed Rakoff, U.S.D.C. S.D.N.Y. See ABA Report at page 8.

The ABA Report as became known as the "shadow guidelines," they serve as an alternative view of how to calculate a more humane guideline in economic crimes.

In review of the proposed chart for economic offenses proposed in the ABA Report and a review of the applications notes, there are alternative calculations to arrive at an offense level. See, ABA Report at pages unnumbered through page 7. The ABA Report notes at page 9 that

they have performed no research and have no empirical basis for the levels they assigned in the draft; but that their application notes and application to specific case scenarios reassured the group on the structure of the proposal. Id. “[I]t placed appropriate weight on the considerations of loss, culpability, and victim impact in relation to one another.” Id. “We also felt that the proposal is sufficiently clear and specific that it leads to reasonably uniform application.” Id.

Two proposed calculations for Mr. Campbell’s matter may lead as follows:

- | | | |
|---|-----|-------------|
| a) Base Offense Level | | 7 |
| b) Specific Loss Characteristics: | | |
| 1) Loss (C) more than \$1,000,000 | add | 8 |
| 2) Culpability (c) moderate culpability | | no change |
| 3) Victim Impact (A) Minimal or non | | no increase |

This results in a calculation of 15 and a sentencing ranger of 18 to 24 months.

To holistically understand the reasoning for the choice of calculation for culpability and victim impact please see the ABA Report’s Application Notes at pages 1-7.

The current PSR has no increase for victim relate adjustment. See PSR at paragraph 27.

There is as well, an “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.” The ABA Report at page unnumbered and pages 6-7 (application notes).

“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).” The ABA Report at 6.

“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.” Id.

“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. ABA Report at pages 6-7.

In reflection on Hashim and the matter before the court, the loss attributed to Hashim was \$1,000,00.00, but his gain was \$100,000.00. PSR at paragraph 14. The overall loss went to others, either through his perceived need (friends and family) or the conspiracy he joined. Thus, Hashim’s gain was fractional to the overall loss.

We must acknowledge the two level enhancement for special skill as noted in the PSR in reviewing this aspect, as Hashim’s is an accountant and thus he had a skill which was used as set out in USSG 3B1.3. Hashim engaged in the conspiracy and sought to help friends and family (albeit illicitly) but as to some of the referrals he felt oppressed and struggles to leave and distance himself. The duration of the conduct was for the duration of the PPP application program in the wake of COVID-19. Hashim was uncomfortable with the number of people he was sent by persons related to the bank and attempted to slow and stop his relationship with that person. Ultimately when the Government reached out to extended family for whom Hashim had prepared dubious PPP applications, he stepped forward and presented himself to the Government taking responsibility before the Government came to him.

The ABA Report’s Application Notes at pages 1 through 6, discusses levels of culpability and consideration to arrive at the appropriate culpability level and appropriate point value for offense level. In our calculation we suggest that Hashim’s culpability was moderate and thus there was not need for additional point value in the calculation.

“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.” The ABA Report at page 1.

“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. ...Also, these various factors will often overlap. ..." Id.

"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 to accomplish the purposes of sentencing in the light of each defendant's culpability when compared with all other defendants sentenced under this guideline." Id. pages 1-2.

"As a way of assisting the court in making the culpability assessment, it is anticipate that the middle culpability category-'moderate culpability'-would account for the largest number of defendants sentencing under the guideline. Id. at page 7.

"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 re intellectually distinct concepts requiring separate consideration." Id. at 2.

In considering culpability the ABA Report suggests considering: motive/nature of offense what the offense (1) predatory-intending to inflict loss for the sole or dominate purpose of person gain to the defendant or others involved in the criminal undertaking? (2) Legitimate *ab initio*, offense arising from otherwise legitimate efforts that have crossed into criminality? (3) Risk Shifting- offenses not specifically intended to cause loss but instead shift the risk of any potential loss form the defendant 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 culpably than those were the loss is specifically intended." Id at 3. Or (4) Gatekeeping: These violate so-called 'gatekeeping' requirements intended generally to prevent practices that create potential loss or a risk of loss. Id. at 3.

It would seem that Hashim, is not in the predatory category but a pastiche of the other three concepts.

Gain is another culpability factor. Here Hashim is in a less culpable aspect as his gain is fractional to the loss. He does not refute that he gained and took a portion of the loss for himself, for his efforts, but the majority went to the recipients of the loss proceeds. The degree of sophistication weighs against Hashim for he had a skill set that facilitated the scheme. As for duration this was a finite period post pandemic in the wake of the Care Act program and the PPP loan portals.

The extenuating circumstances in this matter was a sense of opportunity in the wake of the pandemic to assist people in getting funds. The events of the pandemic years were financially crushing to so many. P.O. Jennifer Fisher wrote in the Sentence Recommendation, “[t]hat the instant offense is a serious fraud and that the defendant seems to have been involved for his own financial benefit with no regard for the long-term consequences, or the impact this offense may have caused individuals in true need of PPP loans. There do not appear to be any mitigating factors.” Hashim did not design this conspiracy he and another accountant played roles that facilitated the conspiracy; however, he also sought in his mind’s eye to help friends and family and perceived a helping hand to others. ~~Hashim was stunned during proffers to learn some of the~~

~~that people were homeless or in prison~~ He too was used. This does not justify his actions; his belief set emanated from a sense, albeit incorrect, that these funds were for People without access. He acted without thought to the deprivation of others in true need as the PPP program was perceived as a positive opportunity for the people he facilitated. He did not perceive the long term consequences or the depth of his actions. He too benefited but fractionally in relation to the overall loss.

The next ABA Report consideration is victim impact. It would seem as set forth at the PSR that the victim impact was minimal or none in accord with the PSR at paragraph 27. Finally, is suggested the consideration of the vulnerability of the victims, significance of the loss to the victims, other non-economic harm to the victims and victim inducement of offense. Here the victims are the bank and the SBA; not individuals as contemplated for this aspect of culpability. See accord, PSR at paragraph 27.

It is submitted that in understanding Hashim the court may see a genuinely good person who joined in a conspiracy in the wake of the pandemic. He through his stepping forward so that others would not be prosecuted, he explained his actions and sought to take responsibility. He will lose all he had proudly achieved, his licenses and his businesses. He is remorseful and terrified for he could never imagine himself in a position of facing prison.

It is the hope of the defense that the Court will perceive Hashim’s positive contributions throughout his life without threat of prosecution; his essence and see his criminality in the context of the chaos of the pandemic. His essence is not this crime but a person who sought to be a positive contributor to his community. He sought to give of his time and efforts to give to, lift, educate and inspire others. In the context of this matter, he used his skills improperly to get more for others than himself, all transgressions that evolved in the wake of a perceived opportunity to achieve for others what was offered by the Government without thought to the import and limitations of that provision.

In considering 3553(a)(1), “[s]urely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all great religions, moral philosophies and systems of justice was plainly part of what Congress had in mind when it

directed courts to consider, as a necessary sentencing factor, ‘the history and characteristics of the defendant.’” Judge Rakoff, *United States v. Adelson*, 441 F.Supp.2d 504, 514.

After an assessment of the Guidelines exposure in this matter, an assessment of the factors under 18 U.S.C. 3553(a), recognition of Hashim’s contributions to his community prior to the pressures of seeking to appear of value, and recognizing his potential, we respectfully submit that the minimum sentence akin to that which the defense advocates would be ‘*sufficient but not greater than necessary*,’ to reflect the seriousness of the offense, promote respect for the law, provide just punishment and deter others. See, *United States v. Garcia*, 413 F.3d 201 (2d Cir. 2005), *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005).

“The court, in determining the particular sentence to be imposed, shall consider-

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed—
 - (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;
- (3) The kinds of sentences available;
- (4) The kinds of sentences and the sentencing range established for—
 - (A) The applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) Issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28 United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) That excepted as provided in 3742(g), are in effect on the date the defendant is sentenced;

Notably, 18 U.S.C. §3582(a) entitled, “Factors To Be Considered in Imposing A Term Of Imprisonment,” the Court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, ... “recogniz[es] that imprisonment is not an appropriate means of promoting correction and rehabilitation.”

Here to sentence this regular person in context and with a view of the potentials of restitution and family foundation we seek a resolution which recognizes the period of chaos out of which this offense was born. The COVID-19 pandemic and the emergent responses in its wake were unique as were the behaviors of people who otherwise would not deviate from the proper and expected paths paved through respect for elders and earned degrees and licenses.

The weight of this case since Hashim learned of the interest in the relatives he sought to albeit illicitly assist in the wake of the pandemic; the dawning of realization that his errors were contrary to his nature and the perception that the Government's PPP program was an unlimited drawer from which to give to many; the loss of his career and licenses and the destruction of his ability to maintain his businesses and support his family in the manner he had studied for and earned the respect of his community has been a severe torture combined with his self emotional assault and stagnation. I am concerned through his despair ~~and fear he not harm himself~~ and cause a ripple of unending pain for his family. I assure him that this too shall pass.

Counsel advocates for probation or home confinement as sufficient but not greater than necessary to effect the goals of sentencing in this matter. As noted above a directive of home incarceration in service to his mother at her home could fulfill sentencing and serve a person unable to care for herself who can uniquely be cared for by her son.

If the Court perceive that some period of incarceration be necessary, Counsel advocates that the shock for this person of this experience that even one month will have such impact that the weight of this period will serve to remind Hashim of the impact of his actions. Whatever the sentence, we seek a component of psychiatric support for this person is dismantling himself emotionally.

Hashim is anticipating our sentencing day with the depth of a view into the abyss. For the otherwise good person each transgression is self magnified to levels of shame and self flagellation that cannot adequately be put into words. Crystal, stands by him, she is his rock; she will be present with family support and weeping at sentencing as she weeps on each of our meetings. Hashim's supporters understand his transgression but ask the Court to recognize that this man is not defined by his transgressions but by the services he gave to seek meaning in the world of his community.

Most respectfully,

Stacey Richman

cc:

AUSA Chand W. Edwards-Balfour, via email: Chand.Edwards-Balfour@usdoj.gov

USPO Michelle Malko, via email: Michell_Malko@nyep.uscourts.gov

Exhibit List and Exhibits to follow

Exhibits:

A) Letters of Recommendation:

Nathalia Fernandez, New York State Assemblywoman, 80th 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 the Reform of Federal
Sentencing for Economic Crimes, November 10, 2014

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