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January 5, 2004

UNDER SEAL

The Honorable Richard D. Bennett
United States District Judge
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Re: *United States of America v. Anonymous Defendant*
Criminal No. RDB-03-9999

Your Honor:

Pending before the Court on January 12, 2004, is a hearing to determine whether the Court will accept the guilty plea of Anonymous Defendant pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The following submission urges the Court to accept Mr. Defendant' plea and impose a 60-month term of imprisonment.

HISTORY OF THE CASE

On April 16, 2003, Michael Defendant was involved in an alcohol-related traffic accident that killed Eugene Lonon and injured Wanda Queen. Mr. Defendant was subsequently charged with involuntary manslaughter and related traffic offenses. At the time, Mr. Defendant was pending trial for driving under the influence of alcohol (DUI) from an incident that occurred on January 27, 2003.

On September 9, 2003, Mr. Defendant offered a plea of guilty to one count of involuntary manslaughter in violation of 18 U.S.C. § 1112(a), two counts of driving under the influence, in violation of 36 C.F.R. § 4.23(a)(2), one count of failure to stay in lane in violation of Md. Transp. Art. 21-309(b), as assimilated by 36 C.F.R. § 4.2, and one count of speeding in violation of 36 C.F.R. § 4.21(c).

According to the presentence report (PSR) prepared in this case, only the involuntary manslaughter offense is scored under the United States Sentencing Guidelines. Under the Guidelines, Mr. Defendant offense level is 12, and his criminal history is I, resulting in a range of imprisonment of 10 to 16 months with the possibility of receiving a split sentence of incarceration and home detention or halfway house placement. On the remaining four Class B misdemeanors, Mr. Defendant faces a maximum term of imprisonment of six months on each.

After thoroughly reviewing the evidence and fully considering Mr. Defendant' personal background and characteristics, the parties entered into a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The agreement contemplates a total sentence of 60 months imprisonment. The sentence substantially exceeds the guideline range of 10 - 16 months, and is justified for the reasons set forth more fully below. Specifically, the following memorandum will address: (1) the "heartland" of Mr. Defendant' case where the Court's analysis must begin; (2) the nature and extent of the upward departure resulting in the stipulated 60-month sentence; and (3) the significant mitigating factors warranting potential downward departure and further supporting the stipulated sentence as fair, appropriate and balanced.

I. THE "HEARTLAND" IN MR. DEFENDANT' CASE WHERE THE COURT MUST BEGIN ITS DEPARTURE ANALYSIS IS THE INVOLUNTARY MANSLAUGHTER RANGE OF 10-16 MONTHS IMPRISONMENT.

The enactment of the Sentencing Reform Act of 1984 and the establishment of the Sentencing Commission was motivated in large part by a perceived unfair disparity in the imposition of sentences in federal criminal cases.[1] Accordingly, the Commission made clear that it "intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes." U.S.S.G. Ch. 1, Pt. A, § 4(b). This "heartland" represents the presumptive sentence that the Court must impose based primarily on the type of offense and criminal history of the offender.

Congress also recognized, however, that in the rarest of circumstances, cases would arise that merit a "departure" from the heartland of the Guidelines.[2] Because "it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision," Congress deemed departures warranted where "a particular guideline linguistically applies but where conduct significantly differs from the norm." *Id.* Although reserving for the Court an ability to depart from the Guidelines, the Commission anticipated that "despite the court's legal freedom to depart from the guidelines, they will not do so very often." *Id.* The reason for this stated belief by the Commission is that "the guidelines, offense by offense, seek to take

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[1]A Congressional effort to seek "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders," is one of three stated objectives of the Sentencing Reform Act of 1984. *See* U.S.S.G., Ch.. 1, Pt. A, § 3.

[2]*See* 18 U.S.C. § 3553(b)("The court *shall* impose a sentence of the kind, and within the range, referred to in [The Guidelines], unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.").

account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice." *Id.*

Given this Congressional directive, it is not surprising, therefore, that twenty years since the Guidelines have been enacted, upward departures occur in **less than one percent** of all cases. For Fiscal Year 2001, the most recent comprehensive data provided by the Commission, the extent of upward departures nationwide is .6%, with the Fourth Circuit upwardly departing at a slightly higher rate of .9%. In other words, 99% of all federal criminal sentences do *not* involve an upward departure, which makes the request we are proposing to the Court exceedingly rare. *See* Attachment 1 (Table of Guideline Departure Rates).

Perhaps because the impetus behind enacting the Sentencing Guidelines was to avoid greatly disparate sentences, Congress has further directed the Court to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" even where imposing an upward departure. 18 U.S.C. § 3553(a)(6). Moreover, the Fourth Circuit and other Courts have held that where a Court imposes an upward departure both the reasons for the departure in the first instance as well as the *extent* of the departure must be grounded in specific facts and law. *See United States v. Ocasio,* 914 F.2d 330 (1st Cir. 1990)(sentence vacated where trial court failed to provide succinct reasons for the degree of departure); *United States v. Yang,* 281 F.3d 584 (6th Cir.2002)(court's failure to cite facts and circumstances justifying extent of the departure required reversal); *United States v. Terry,* 142 F.3d 702 (4th Cir. 1998)(reversing manslaughter sentence because court's failure to provide "principled justification" for upwardly departing one level for each 8-mile portion of highway on which defendant operated his vehicle recklessly).

Importantly, when the Court determines an upward departure is warranted, "the Court **must** also 'specifically articulate reasons for the degree of departure using any reasonable methodology hitched to the Sentencing Guidelines, including extrapolation from or analogy to the Guidelines.'" *United States v. Nowicki*, 252 F. Supp.2d 1242, 1254 (D. NM. 2003)(*quoting United States v. Goldberg*, 295 F.3d 1133, 1138 (10th Cir. 2002)). That is, the Court's authority to depart upward is not unbridled; it can only upwardly depart based on some principled reason, often invoking "analogous Guideline adjustments." *See United States v. Melton*, 970 F.2d 1328, 1334 (4th Cir. 1992) (noting that "analogous guideline provisions provide the best method for determining the extent of a departure"); *United States v. Ferra*, 900 F.2d 1057, 1061-1062 (7th Cir. 1990) (observing that "[a] judge may not say: 'I have decided to depart, so now I throw away the guidelines'.").

In this case, the PSR accurately establishes that the "heartland" of a typical involuntary manslaughter offense for an offender with a Criminal History Category I is 10-16 months of imprisonment with the possibility of half of that time spent on home detention or at a halfway house. The specific guideline applicable to involuntary manslaughter is U.S.S.G. § 2A1.4. That section sets forth a base offense level of 14 for conduct that is considered "reckless." In accordance with the application notes following § 2A1.4, "[a] homicide resulting from driving...while under the influence of alcohol or drugs *ordinarily* should be treated as reckless," implying that under some

circumstances a drunk driving manslaughter may be considered merely "negligent," resulting in a significantly lower offense level. *See* U.S.S.G. § 2A1.4, *Comment 1* (emphasis added).[3] Applying the stipulated higher base offense level of 14, Mr Small's presumptive guideline range is 10 - 16 months after adjusting for his acceptance of responsibility. This range is the starting point from which the Court must establish the ultimate sentence in this case.

II. THE PROPOSED SENTENCE OF 60-MONTHS IMPRISONMENT, WHICH INCLUDES A SEVEN LEVEL UPWARD DEPARTURE AND 24-MONTH CONSECUTIVE SENTENCE ON FOUR CLASS B MISDEMEANORS, FAIRLY AND ADEQUATELY CAPTURES THE AGGRAVATING FACTORS THAT PROPERLY WARRANT AN UPWARD DEPARTURE.

Although the significant aggravating factors of drunk driving and loss of life are accounted for in the involuntary manslaughter Guideline, U.S.S.G. § 2A1.4, the parties agree that this case presents an atypical set of circumstances which merit a sentence outside the range. Accordingly, the parties jointly request that the Court impose an upward departure of 7 levels. The parties further agree that an additional 24-month consecutive sentence be imposed for each of the four class B misdemeanors. This amounts to an additional five-level increase were the misdemeanors scored as additional offense levels. This combined departure of essentially 12 levels on the involuntary manslaughter guideline is appropriate for three main reasons. First, the total sentence parallels other alcohol related vehicular homicide cases and thus "avoids unwarranted disparities" between offenders and offenses. Second, it adequately accounts for the additional harm caused to other victims and property damage due to the speed at which Mr. Defendant was driving in his intoxicated condition. Third, it accounts for Mr. Defendant committing the involuntary manslaughter offense after having been ticketed and released on a previous DUI offense.

A. The Agreed Upward Departure is Appropriate when Compared to Guideline Sentences Imposed in Similar Involuntary Manslaughter Cases.

Because the Court must impose a sentence that avoids unwarranted sentencing disparities, the proposed departure represents the appropriate sentence that could be imposed in keeping with sentences handed down in more egregious circumstances. For example, numerous involuntary manslaughter cases in this and other districts involving **multiple deaths** resulted in comparable or lesser sentences than the one proposed in this case. *See, e.g., United States v. Elliott,* 19 F.3d 1430 (4th Cir. 1994)(defendant driving while intoxicated killed two people when he attempted to pass on a hill and who fled from the scene into nearby woods but was later apprehended received a 61-month sentence); *United States v. O'Brien*, 238 F.3d 822 (7th Cir. 2001)(defendant, driving while intoxicated and without a license, was involved in alcohol-related traffic accident which claimed two

[3]If not for the enhanced offense level for "reckless" conduct, based upon Mr. Defendant acknowledged use of alcohol prior to driving, the base offense level for this case would have been 10 with a resulting guideline range of 0 - 6 months.

lives and injured two others when he passed a car in a no-passing zone while driving up a hill, received two concurrent 41-month sentences); *United States v. Two Crow,* 124 F.3d 208, 1997 WL 572862 (8th Cir. 1997)(unpublished opinion)(defendant with a blood-alcohol level of .318 killing two people when he drove his truck over the center line of a highway and collided head-on with another vehicle, received a 60-month sentence); *United States v. Rowbal,* 105 F.3d 667, 1996 WL 747911 (9th Cir. 1996)(unpublished opinion)(defendant speeding in a hospital zone and crossing over the center line killing two people, received 30-month sentence); *United States v. Jones,* 332 F.3d 1294 (10th Cir. 2003)(defendant with a blood-alcohol level over. 2 and five prior drunk-driving convictions killed a husband, wife, and their infant child, received 71-month sentence).

Cases also involving a single death but multiple grievous injuries to others also have resulted in similar or lesser sentences than the one proposed here. *See, e.g.*, *United States v. Thin Elk,* 321 F.3d 704 (8th Cir. 2003)(defendant with blood-alcohol level of .257, traveling at approximately 95 mph, caused a head-on collision, killing a woman and seriously injuring her husband when defendant, over the objections of a passenger, passed another vehicle and proceeded to drive down the center of the road, received 69 month sentence, despite extensive criminal history and the fact the defendant had been released from jail the day before the accident); *United States v. Bonito,* 946 F.2d 899, 1991 WL 204939 (unpublished opinion)(defendant driving under influence of alcohol killed a mother and injured her five children received 36-month sentence).

Indeed, cases in which defendants had multiple prior convictions for drunk driving and similar aggravators as in this case have also received comparatively lesser sentences. *See United States v. Semsak,* 336 F3d. 1123 (9th Cir. 2003)(defendant, with three prior convictions, driving eighteen-wheeler while intoxicated ran approximately 20 cars off the road and failed to heed warning to pull over collided with another car killing the driver, received 33-month sentence); *United States v. Whiteskunk,* 162 F.3d 1244 (10th Cir. 1998)(previously convicted drunk driver received a 24-month sentence for killing a motorcyclist, after having been warned by police about drunk driving, and having had her keys taken from her earlier in the day by the police, resumed driving with a blood-alcohol level of .212).

In discussions with counsel, the Court referenced the case of *United States v. Merrival,* 176 F.3d 1079 (8th Cir. 1999), as significant to the Court's departure analysis in this case. The facts established in *Merrival* were that the defendant was observed drinking alcohol at a party over a 20-hour period. *Merrival,* at 1080. The defendant then got behind the wheel of a car occupied by his girlfriend and young child, with a blood alcohol level later determined to be .234%. *Id.* A short distance later, Merrival collided with two parked vehicles, killing a 21-year-old woman and her infant son, and causing serious and permanently debilitating injuries to three other people. *Id.* Although citing Merrival's extensive criminal record of tribal arrests at the sentencing hearing, the trial judge upwardly departed based specifically on the fact that two people were killed and that three more individuals were grievously injured. *Id.* at 1081. The defendant in *Merrival* was ultimately sentenced to 70-months - 10-months beyond the total proposed sentence in this case.

Perhaps the greatest difference between *Merrival* and Mr. Defendant' case is that Merrival was responsible for two deaths and debilitating injuries to several other victims. This difference, when accounted for under the Guidelines, actually renders *Merrival* a case in support of the proposed 60-month sentence. Although Merrival entered a plea to one count of involuntary manslaughter, had he been formally charged with killing both a young mother and her baby, as supported by the facts, the offenses would not have grouped under the Guidelines.[4] To fairly compare Merrival's sentence to the 60-month sentence suggested by the parties for Mr. Defendant, this Court would have to reduce Merrival's 70-month sentence by two levels, representing an appropriate reduction for one death, as opposed to the two for which Merrival was responsible. If Merrival's sentence were adjusted in this way to bring the facts of the two cases more in accord, the guideline range which encompasses Merrival's 70-month sentence would be reduced to a range of 51 - 63 months.[5] This range is precisely in line with the sentence requested for Mr. Defendant, who was involved in a single involuntary manslaughter offense. In fact, it would be logical to assume that the sentencing judge in *Merrival* applied this exact empirical formula to determine Merrival's sentence, because the second death would clearly be relevant conduct under the Guidelines. *See* U.S.S.G. § 1B1.3 (requiring the Court to establish the offense level based on "*all* acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant")(emphasis added).

Moreover, the sentencing judge in *Merrival* also justified the degree of the upward departure on the extensive and lingering injuries suffered by three surviving victims. *Merrival*, 176 F.3d at 1081. One victim experienced a "sheared brainstem." *Id.* at 1082. Two others required surgery. *Id.* All reported having to "continue to deal with the traumatic effects of the offense." *Id.* Whereas in this case, the Government has identified a single additional victim, Wanda Queen, and no evidence exists that her injuries are of similar magnitude to those suffered by the three victims in *Merrival. Merrival*, therefore, and scores of other cases, strongly support the proposed 60-month sentence.

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[4]U.S.S.G. § 3D1.2 specifically excludes all Chapter Two, Part A from the grouping rule. Accordingly, Merrival should have been subjected to an additional two-level enhancement for unrelated counts, pursuant to U.S.S.G. § 3D1.4.

[5]The base offense level in *Merrival* was 14, with a criminal history category of I, and a resulting guideline range of 15 - 21 months. *Merrival,* at 1081. Although the opinion does not explain why the defendant was denied an adjustment for acceptance of responsibility, Merrival complained that the Court's 12-level departure to 63 - 78 months, and the final sentence of 70 months was an unwarranted departure. *Id.*

B. Mr. Defendant' Pending Alcohol-Related Driving Offense Warrants an Upward Departure Similar to an Adjustment Pursuant to U.S.S.G. § 2J1.7.

The stipulated three-level upward departure set forth in paragraph 6(a) of the plea agreement appropriately quantifies the aggravating nature of Mr. Defendant' committing the involuntary manslaughter offense while he was pending trial for an earlier alcohol-related driving charge. The extent of the departure is equal to the adjustment that would normally apply under U.S.S.G. § 2J1.7.[6] Understandably, that Mr. Defendant was awaiting trial for a DUI offense when the accident occurred which took Detective Lonon's life is a significant aggravating factor in the Court's mind. However, this factor is adequately addressed through the agreed three-level upward departure, as well as the stipulation to consecutive sentences for the traffic misdemeanors, an issue discussed more thoroughly below. In the absence of a departure, no other Guideline adjustment accounts for Mr. Defendant' pending DUI charge. The § 2J1.7 increase, by its own terms, is only warranted where an enhancement under 18 U.S.C. § 3147 applies. Such an enhancement may only be imposed when an individual is *convicted* of an offense that is committed after he has been released pursuant to the Bail Reform Act.[7]

Following Mr. Defendant arrest on January 27, 2003, for DUI and other related traffic misdemeanors, he was released from the United States Park Police substation with a directive to appear for court when notified through the mail. Mr. Defendant was not presented to a United States Magistrate Judge prior to his release. Consequently, he was never afforded the procedural protections of the Bail Reform Act, which include the right to an adversarial hearing with compulsory process of witnesses before an accused may be detained pre-trial. *See* 18 U.S.C. § 3141, *et seq*. Moreover, he was never formally advised by a federal judge of the nature of the offenses with which he was charged, the maximum penalties, or the consequences for commission of any new offenses while on release. Lastly, had Mr. Defendant been presented before a magistrate judge for a DUI charge, he would have likely been placed on Pretrial Services supervision with alcohol counseling and treatment.

Because Mr. Defendant was not released pursuant to the procedures required by the Bail Reform Act, he is not subject to the enhancement under § 3147. Therefore, the 3-level adjustment required by § 2J1.7 does not technically apply. However, Mr. Defendant acquiesces to an upward departure equal to the full adjustment to account for his conduct in committing the involuntary

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[6]U.S.S.G. § 2J1.7, Commission of an Offense While on Release, provides: "*If* an enhancement under § 3147 applies, add 3 levels to the offense level for the offense committed while on release."

[7]18 U.S.C.§ 3147 creates an enhanced penalty for offenders who are "convicted of an offense committed while released under *this chapter*. . . ." The term "this chapter" refers to Chapter 207 of Title 18, commonly known as the Bail Reform Act of 1984.

manslaughter offense while he was pending trial for a prior DUI charge. This significant departure and commensurate additional sentence above his guideline range adequately punishes Mr. Defendant for this aggravating factor.

C. A Two-Level Upward Departure Adequately Accounts for Injuries to Wanda Queen.

Significant physical injury caused during the commission of an offense is an enumerated basis for an upward departure. *See* U.S.S.G. § 5K2.2 ("If significant physical injury resulted, the court may increase the sentence above the authorized guideline range"). The parties do not dispute that Wanda Queen, the driver of a vehicle involved in this accident, is an additional victim who suffered physical injury. The pre-sentence report documents that Ms. Queen experienced back pain following the accident and upon physical examination exhibited "tenderness with spasm in the musculature." *See* PSR, Attached Letter of Robert A. Smith, M.D. Additionally, Ms. Queen reported missing several days from work.

Accordingly, Mr. Defendant acknowledges the Court's authority to depart upward to take into account Ms. Queen's injuries. The parties have stipulated to a two-level upward departure, invoking an analogous guideline, U.S.S.G. § 2B3.1, which provides for a two-level increase in the robbery context where any victim sustains "bodily injury." The parties have so agreed because the degree of a departure under § 5K2.2 "ordinarily should depend on the extent of the injury, the degree to which it may prove permanent, and the extent to which the injury was intended or knowingly risked." U.S.S.G. § 5K2.1.

Although Ms. Queen sustained injury, the information provided in the PSR does not document they were permanent or debilitating. A two-level increase is, thus, appropriate in kind and degree to provide an incremental additional punishment for Ms. Queen's injuries.[8]

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[8]Although the Court may properly consider Ms. Queen a victim whose injuries must be accounted for in sentencing Mr. Defendant, it may not consider as a basis for departure the suffering of other friends and family members of Officer Lonon not present at the accident, even though their loss is tragic, regrettable and horribly painful. *See United States v. Terry,* 142 F.3d 702, 711 (4th Cir. 1998) (reversing upward departure based on extreme psychological injury to family members of deceased, holding that family members not present at accident are not direct "victims"). Nor may the Court consider the relatively upstanding nature of the decedent in determining whether and to what extent a departure is warranted. *See Hoyungowa,* 930 F.2d at 747 (decrying reasoning in murder case under which "the justice system would punish the murderer of the head of a household more harshly than the murderer of a transient" and observing that "[t]he Sentencing Guidelines admit of no such sentencing disparity").

D. A Two-Level Upward Departure for the Property Damage Mr. Defendant Caused Further Captures the Aggravating Nature of this Case and Quantifies the Harm Caused By Mr. Defendant' Conduct.[9]

The parties agree that the combination of speed and alcohol in this case constitute an aggravating factor that an upward departure must take into consideration. Undoubtedly, as a direct consequence of Mr. Defendant' driving under the influence of alcohol at excessive speeds caused extensive damage to the property of others and warrants an upward departure. In determining the extent of the departure, the parties point to an analogous guideline, U.S.S.G. § 2B1.1(B)(1)(b), which quantifies harm based on the value of the lost or damaged property.

Here, the Yukon sport utility vehicle that was operated by Wanda Queen was severely damaged when it collided with Eugene Lonon's vehicle. After being hit, Ms. Queen's truck became engulfed in flames. Another vehicle at the intersection, a Cadillac DeVille, belonging to Michael Webb, was impacted and incurred body and fender damage. The Government contends, and the defense does not dispute, that this damage exceeds $5000. Applying the analogous guideline for offenses to property, U.S.S.G § 2B1.1(B)(1)(b), the Court is requested to depart upwardly 2 levels to factor in the significant loss of property that resulted in this case.[10]

E. The Stipulated 24-Month Sentence Effectively Results in an Additional Five Level Departure, Further Addressing the Aggravating Factors of Speed, Excessive Alcohol and The Prior Pending Offense.

While the above-enumerated departure grounds account for the aggravators of speed, excessive alcohol and the prior alcohol-related offense, the stipulated sentence further captures this harm in imposing the maximum term of imprisonment on each misdemeanor offense to run consecutively to all the others. Because the parties have stipulated to the maximum six months of imprisonment on each of the four Class B misdemeanors, Mr. Defendant will serve an additional **24-**

[9]This section of the sentencing letter is intended to address only the propriety of upwardly departing from the guideline range based upon property damage caused by Mr. Small's conduct. It is not intended to address the related but distinct issue of whether, and to what extent, the Court may lawfully impose restitution for this property damage as part of the sentence pursuant to 18 U.S.C. §§ 3663 and 3663A.

[10]U.S.S.G. § 2B1.1(b)(1)(B) provides for a 2 level increase in the offense level for economic offenses that result in loss of property exceeding $5000.

months imprisonment. This stipulation, in essence, adds **five additional offense levels** beyond the stipulated seven-level departure on the involuntary manslaughter offense.[11]

This concession is especially noteworthy when considering Mr. Defendant' likely exposure on such offenses were they to have been adjudicated more typically for this district in Hyattsville misdemeanor court. First, with respect to Mr. Defendant' initial DUI offense from January 27, 2003, the typical first-time DUI offender with a blood-alcohol level comparable to Mr. Defendant' receives a sentence of *probation* in Hyattsville misdemeanor court. Accordingly, if Mr. Defendant were to have been found guilty of this offense in Hyattsville, he would have likely received probation and been accorded only one criminal history point. On the subsequent involuntary manslaughter offense, therefore, Mr. Defendant would have still remained a criminal history I. By contrast, the proposed plea agreement stipulates to a six-month consecutive term on the initial DUI charge, an unheard-of sentence in Hyattsville on a first-time DUI case, even if the defendant had committed subsequent alcohol-related offenses.

As for the remaining misdemeanors of speeding and failing to stay in one lane, Mr. Defendant would likely have received a fine only for each offense, rather than **one year** imprisonment as the proposed agreement stipulates. The typical defendant adjudicated in Hyattsville for speeding receives a fine for any speeds under 100 miles per hour. Defendants traveling speeds in excess 100 miles per hour would receive a day in jail for every mile over 100.

On the charge of failing to stay in lane, a defendant would typically receive the parallel penalty imposed in Maryland state court – a $ 70 fine. Here, Mr. Defendant is receiving an additional *one year* incarceration for pleading guilty to speeding and failing to stay in one lane. Again, no other offender whose misdemeanors are adjudicated in Hyattsville misdemeanor court has received or would receive anything near 6 months imprisonment on each of these offenses to run consecutively to each other.

As for the second DUI offense to which Mr. Defendant has pleaded guilty and agreed to a six-month consecutive sentence, Mr. Defendant has again acceded to a maximum sentence far beyond what he would face in Hyattsville misdemeanor court. Typically, second-time DUI offenders in Hyattsville receive a longer term of probation with possibly some time on home detention or at a half-way house. Such offenders do not receive a six-month term of imprisonment.

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[11]As addressed in Section I, Mr. Defendant begins at a base offense level of **12** on the involuntary manslaughter offense, and has agreed to an additional seven-level upward departure, with a final offense level of 19, and a guideline range of 30 to 37 months. To achieve a total punishment of the stipulated **60 months imprisonment** via additional offense levels, Mr. Defendant agreed to a further departure of **five offense levels** to a level **24** which includes a 60-month sentence of imprisonment.

Moreover, the stipulated six-month imprisonment on the DUI results in a longer sentence than contemplated under the Guidelines. Because his conduct vis a vis the involuntary manslaughter charge and DUI charge are inextricably intertwined, the Sentencing Guidelines strongly suggest that the Court should exercise its discretion to impose such sentences *concurrently*, not consecutively. Section 1B1.9 of the United States Sentencing Guidelines direct that while the Sentencing Guidelines do not apply to Class B misdemeanors, the Court should "consider the relationship between the Class B or C misdemeanor or infraction and any other offense to which the defendant is convicted." *Comment 2,* U.S.S.G. § 1B1.9. *Cf. United States v. Thai*, 29 F.3d 785, 820 (2d Cir. 1994)(relevant conduct used to increase sentence may not also be used as a basis for upward departure). Put another way, in considering whether to run such misdemeanors consecutively or concurrently with other offenses, the Court should consider whether the punishment imposed for the other offense has already accounted for the conduct punishable by the Class B misdemeanor.

Here, Mr. Defendant' commission of the involuntary manslaughter offense is undoubtedly intertwined with his driving while intoxicated offense. Mr. Defendant' driving while intoxicated constitutes the recklessness that forms one of the elements of the involuntary manslaughter offense. Without Mr. Defendant having committed the misdemeanor alcohol offense, it is quite likely that in law and in fact, he would have never committed the involuntary manslaughter offense. In Mr. Defendant' case, therefore, the driving while intoxicated offense is subsumed by the involuntary manslaughter offense, counseling in favor of a totally or partially concurrent sentence with the involuntary manslaughter charge. Mr. Defendant' however, has agreed to a significantly greater sentence in stipulating to a six-month consecutive term for this misdemeanor charge.

In sum, the agreed upon sentence of 60-months imprisonment requires Mr. Defendant to receive far more severe punishment on the four charged misdemeanors than would have ever received had he been adjudicated on these charges in the manner customary for this district. Rather, Mr. Defendant has agreed to what is essentially an additional **five level upward departure** by stipulating that he receive **two additional years of imprisonment** on offense that would have otherwise resulted in probation and fines only.

The agreed-upon 60-month sentence further requires Mr. Defendant to receive a seven-level upward adjustment on the involuntary manslaughter offense in a manner sufficiently accounting for those factors which remove this case from the heartland of typical offenses: that he had a pending DUI misdemeanor charge at the time of the offense; that his reckless conduct resulted in additional injury to Wanda Queen; and that his speed and alcohol use led to greater damage as quantified by the property damage in this case. In the end, Mr. Defendant has effectively agreed to a 12-level upward departure beyond the "heartland" of his involuntary manslaughter offense precisely because the lethal combination of speed and alcohol caused not only death, but also significant personal and property damage. These factors, when taken with the numerous mitigating aspects of Mr. Defendant life discussed below, render a 60-month sentence fair, adequate and appropriate.

III. THE AGREED UPON 60-MONTH SENTENCE APPROPRIATELY ACCOUNTS FOR NUMEROUS DOWNWARD DEPARTURE GROUNDS IN LIGHT OF MR. DEFENDANT' EXTRAORDINARY COMMUNITY AND CHARITABLE WORKS, HIS EXTREME REMORSE, AND IMMEDIATE, EXTRAORDINARY ACCEPTANCE OF RESPONSIBILITY.

The stated terms of the plea agreement speak only about the agreed-upon seven-level upward departure and four consecutive six-month sentences on four Class B misdemeanors. Omitted from the plea language but embedded in the agreement's spirit is a recognition of the significant mitigating factors surrounding Mr. Defendant' life both before and after this tragic offense.

In determining the magnitude of an upward departure, "mitigating circumstances, themselves insufficient to ground a downward departure must nevertheless be considered in fixing the degree of the upward departure." *United States v. Ocasio*, 914 F.2d 330, 337 (1st Cir. 1990); *see also United States v. Hartunian*, 920 F.2d 1040, 1046 (1st Cir. 1990); *United States v. Harrell*, 936 F.2d 568, 1991 WL 115986 (4th Cir. Aug. 26,1991) (*Murnaghan, J. dissenting*) (recognizing that downward departure grounds and mitigating factors "would modify or mitigate the increase (for the upward departure) to leave the crime punishable at Guideline levels").

Here, numerous mitigating circumstances that would support a downward departure in their own right should be considered by the Court in determining the propriety of a seven-level upward departure on the involuntary manslaughter offense, and maximum sentences on all four misdemeanors running consecutively to achieve a 60-month term of imprisonment. Specifically, the proposed plea accounts for the downward departure grounds of (1) extreme remorse, (2) extraordinary public and community service (3) super acceptance of responsibility and (4) post-offense rehabilitation. Each ground is addressed separately below.

A. Extreme Remorse.

In exceptional circumstances, the Court is permitted to depart downward for a defendant's extreme remorse. *See, e.g.*, *United States v. Jaroszenko*, 92 F.3d 486 (7th Cir. 1996) (holding district court erred in determining it did not have discretion to depart based on extreme remorse); *United States v. Fagan*, 162 F.3d 1280 (10th Cir. 1998) (same).

In this case, Mr. Defendant has borne a constant deep remorse that has rendered him suicidal at times, and always in constant pain. When the offense first happened, Mr. Defendant was found on the side of the road, hysterical, repeating "I'm sorry, I'm sorry" and hoping that no person was still in the burning car that he had hit. That day, he was transported to Prince George's Community hospital where he remained overnight. That evening, Mr. Defendant' was reportedly suicidal, received a psychiatric consult from the hospital, and was watched carefully by hospital personnel, family members and friends. *See* Attachment 2, Hospital Records.

As he reported to his loved ones that evening and on many occasions since, Mr. Defendant wished that his own life be taken if it would bring back Officer Lonon. Practically every letter written on Mr. Defendant' behalf references Mr. Defendant' deep remorse, sorrow and ever-lasting anguish over causing Officer Lonon's death. The following excerpts especially reflect his constant and extreme remorse:

Letter of Ralph G. Davis

> "I have visited with [Mr. Defendant] on a daily basis and I can tell that I have held his shoulders while he has cried and we have both prayed to God, not so much to forgive him but to allow him to take the place of the life that he knows he has taken."

Letter of Linda L. Keyser

> "Since this devastating event, I have visited Michael several times. He has exhibited a great deal of humility and remorse with regard to what has transpired, referring to this incident as 'my right arm' and indicating that 'I will carry this around with me for the rest of my life.' In my opinion, Michael will never forgive himself for what has occurred."

Letter of Vernon Lee, Jr.

> "I have been more impressed by Mr. Defendant' remorse and sorrow for the mistake he has made. I have visited with him and spent quality time in a one on one situation in which he has clearly expressed his regret for what has happened and made certain that I learn from his mistake."

Letter of Michael E. Long

> "Some in the media and the prosecution have portrayed Michael as an uncaring killer; this is totally inaccurate. The accident has had a devastating effect on him because he is such a caring person."

Letter of Lenicia Gilmore

> "When I look into his eyes, I don't see the life that I used to see. I see a man who is living physically but who is dying emotionally. In fact, he has expressed to me that he could no longer be happy in life because the man who died as a result of his actions could not be happy.")

Letter of R. Randall Campbell

> "I was with Michael in the hospital the day of the auto accident, and have visited him on occasions during his detention. I know that Michael's feelings of remorse for the man who died and the man's family are genuine and constant. We talk about it frequently and I have personally seen him writhing in grief for the pain he has caused. He will carry the burden in his soul every day for the rest of his life. His prayers are for the family – he does not pray for himself."

Letter of Perterie (Rita) Thompson

"Every time I visit Michael he always expresses how sorry he is about the accident, and how he wished he could do something to make it up to the family. Even though he has committed a serious crime, he would have giving anything for this not to have happened. He is already paying the ultimate price everyday that he live [sic] with **his conscience**, and I know that he is truly sorry for what happen [sic]."

Letter of Joan E. Moriarty

"Since the unfortunate events that have transpired, I know that Michael has been guilt-ridden, heartbroken, and grief-stricken for the deceased and his family. As a loving father himself, he understands very well the pain he has caused that family. In conversations with me, he has been in tears, agonizing over what he did and how his actions have destroyed that family."

Letter of Cynthia R. Brown

"I have cried with Michael and I know he feels horrible and is full of remorse for what has happened. Michael is a God-fearing man and has prayed for the officer and his family. He wishes he could turn back the hands of time but that cannot be done. So, I know if he could do anything for the Lonon family he would and I know he will."

Letter of Nichelle C. Brewer

"He was devastated at the loss of Mr. Lonon and how the loss of his life would forever affect Mr. Lonon's family. He was concerned about Mr. Lonon's wife and children. He was emotionally drained. He expressed to me that he learned of Mr. Lonon's death while he was in the hospital immediately after the accident. He expressed to me that he often thought of taking his own life (if he could) while in the hospital and in jail the week after because he just couldn't bear the fact that he had ended someone's life."

Letter of Richard Mayerick

"There is no satisfactory way to express how badly Michael feels about what he did. His remorse will last his lifetime. He is concerned that he has not had an opportunity to tell Mr. Lonon's family how very sorry he is. He hopes that he will get that opportunity, and that he will find some way to express his unfathomable sorrow and remorse. Michael is inexpressibly saddened by what he did, and he grieves abut the life altering pain and anguish he has caused Mr. Lonon's family, his own family, especially his children, and his friends."

Letter of Carolyn Washington

"On numerous occasions it was difficult to complete a telephone conversation with [Mr. Defendant] because he was crying, saying that he was sorry and that he did not intend the results. Knowing Mr. Defendant' personality this is something that will always haunt him and constantly tear at the very fabric of his being. One cannot be a "giver" which he is, and not have this tragedy adversely affect him."

To address his deep despair and suicidal ideations, Mr. Defendant immediately began therapy as a condition of his Pretrial supervision. Dr. Bruke Tadesse, the psychologist contracted by the Pretrial Services Office to counsel defendants on Pretrial supervision, has treated Mr. Defendant weekly since his arrest over eight months ago. Based on scores of sessions, Dr. Tadesse reports that Mr. Defendant suffers from prolonged and extreme feelings of guilt, remorse, shame, and despair over causing Officer Lonon's death.[12] Mr. Defendant's cries frequently at his counseling sessions; his sleep has been profoundly disrupted; he has flashbacks of the crash; and he is so plagued by his remorse that he discusses his regret and sorrow at *every meeting with Dr. Tadesse.* Dr. Tadesse further reports that Mr. Defendant admitted his wrongdoing from the very first session and spoke openly about his willingness to exchange his own life for that of Officer Lonon's. Importantly, Dr. Tadesse describes Mr. Defendant attitude as highly unusual compared with the other offenders that the doctor has treated. Dr. Tadesse notes that typical offenders plunge deep into denial and tend to blame other people or situations rather than themselves for their legal predicaments. Mr. Defendant, however, stands alone in his immediate and consistent expressions of regret, remorse and responsibility for his actions.

Finally, Dr. Tadesse believes Mr. Defendant' remorse to be genuine and life-changing. Mr. Defendant has spoken frequently to Dr. Tadesse about the ways he can attempt to make amends for his behavior. Mr. Defendant has discussed at length his desire to use his skills as an advocate to enlighten others on the dangers of drinking and driving. He has discussed writing educational pamphlets and lecturing to youths on the evils of drinking and driving. Dr. Tadesse views these plans not only as practical and achievable, but as a clear sign of Mr. Defendant' deep-seated remorse.

Although Mr. Defendant would state that no amount of future action would remedy the harm that he has caused, as yet further evidence of his remorse for his conduct, Mr. Defendant, in conjunction with his fraternity *Omega Psi Phi*, has begun working on a scholarship fund for Officer Lonon's children. Mr. Defendant' deep and extreme remorse, therefore, remains a constant presence in his life and a strong motivator to try, in some way, to make future reparations.

B. Extraordinary Public and Community Service.

The proposed 60-month sentence also accounts for the extraordinary contributions Mr. Defendant had made to individuals and his community prior to these offenses. Where a defendant exhibits extraordinary civic and community service, the Court may exercise its discretion and depart downward from the established guideline range. *See, e.g., United States v. Sarafini*, 233 F.3d 758 (3d Cir. 2000) (extraordinary acts of charity above and beyond financial contributions sufficient to support downward departure); *United States v. Greene*, 249 F. Supp. 2d 262 (S.D.N.Y. 2003) (defendant's adoption of severely disturbed children warranted downward departure); *United States*

[12]The following information is based on a phone interview with Dr. Tadesse. The defense expects to receive a written report from Dr. Tadesse that it will forward to the Court upon receipt.

v. Bennett, 9 F. Supp.2d 513, 525 (E.D. Pa. 1998) (granting downward departure for substantial contributions in area of children, youth, substance abuse and juvenile justice); *see also United States v. Rybicki*, 96 F.3d 754, 758 (4th Cir. 1996) (acknowledging that extraordinary civic or military service could justify downward departure); *United States v. Pipich*, 688 F. Supp. 191, 193 (D. Md. 1988) (downward departure warranted where "the person has displayed attributes of courage, loyalty and personal sacrifice that others in society have not.").

Mr. Defendant' thirteen years of serving the Federal Government as well as his extraordinary service of others would merit this departure. As a number of Mr. Defendant' character letters aver, Mr. Defendant was the first in his family to attend college and law school. Because his family grew up modestly, in an area plagued with broken homes and limited opportunity, Mr. Defendant had to put himself through seven years of post-secondary schooling. At times in Mr. Defendant' past, the prospect of successfully completing college, let alone law school, seemed dim. Indeed, when Mr. Defendant was a teenager, his personal aspiration was to work as a janitor in the local VA hospital after high school. *See* Letter of boyhood friend, Jeffrey Torain.

Once Mr. Defendant obtained his Juris Doctorate, he did not work for any time in the private sector. Rather than pursue a lucrative career as a young, minority attorney in Washington D.C., Mr. Defendant immediately began working for the Department of Veterans Affairs where he remained the duration of his career.

His co-workers' letters reveal that Mr. Defendant was both dedicated to the mission of his office and the personal success of his colleagues and support staff. Fellow attorneys, secretaries, paralegals, interns and opposing counsel, have all described Mr. Defendant as dedicated, selfless, giving, hard-working, and generous – a true mentor to many others that have come after him. *See, e.g.*, Letter of Michele Russel Katina, Esq., ("whenever I needed to ask for the help of a colleague in completing an assignment, I always counted on Michael, and whenever I needed someone to help in any way, I always counted on Michael."); Letter of Robin G. Hayes (describing Mr. Defendant as "kind, generous, very professional, and one who goes far beyond the call of duty"); Letter of Robert W. Legg, Esq. (Mr. Defendant has "consistently showed an extraordinary patience with support staff burdened by (disabilities), patience and simple kindness that I have not always seen in colleagues in other workplaces"); Letter of Linda Keyser, J.D. R.N. (" I have witnessed Michael to present excellent oral argument before the United States Court of Appeals for Veterans Claims, researching every issue and responding to the Court's inquiries with aplomb"); Letter of R. Randall Campbell ("the best way to describe it is that [Mr. Defendant] was a big brother figure for many in the office . . . . Michael mentored many junior attorneys, as well as law students employed as interns."); Letter of Patricia Trujillo ("his door was always open for me for any kind of question about the law or the office practice in general that I might have had. I do know that he has been especially generous with his time in dealing with support staff in the office."); Letter of Jeany Mark, Esq. (in her capacity as opposing counsel Mr. Defendant, Ms. Mark writes "Mr. Defendant, though having to defend the position of the Secretary of the Department of Veterans Affairs, had always shown his care and concern for the veterans"); Letter of Rita Thompson ("Michael would always put

a lot into his work, and is an excellent attorney. He would always stay late, and work overtime on the weekend (without pay)."); Letter of Cynthia Brown ("It has been such a learning experience and a pleasure to work with him in the legal field . . . . Mr. Defendant has no problem helping others understand the law and he takes time out of his busy schedule to discuss and explain whatever you want to know.")

As a remarkable testament to Mr. Defendant' dedication to others, some have even credited their entire careers to Mr. Defendant. Ms. Linecia Gilmore, for example, considers Mr. Defendant a second father, and believes that without Mr. Defendant consistent dedication and encouragement, she would not have finished law school herself. *See* Letter of Linecia Gilmore.

Similarly, Mr. Archie Israel credits Mr. Defendant with helping him to start his own business. Mr. Israel writes: "he showed me the right papers to sign, how to trademark my company's name, and even though I bugged him every day and got under his skin, he made sure that I legally had my business set correctly." *See* Letter of Archie Israel.

Mr. Defendant is also credited with assisting families who had lost loved ones. *See, e.g.*, Letters of Cassandra Shields and Welton Bescheles. He has given free legal assistance in a vast array of circumstances. *See, e.g.*, Letters of Ramona Young, Virginia Martin, and Judy Lattimore. He has done everything from arranging for estate planning, to assisting with social security applications for the elderly, to reviewing child support claims and divorce papers, to organizing interstate trips and food drives to help those in bereavement. *See id.*

In addition to the personal examples of sacrifice and generosity, Mr. Defendant has been a lifelong participant in numerous charitable and community service projects geared to assisting disadvantaged families. His many activities include regular participation in all levels of projects to provide food for homeless and hungry in D.C. Year after year, he has taken part in such programs as "We Feed Our People," "Project Give Back," dedicating his holidays - Thanksgiving, Christmas and Martin Luther King Day - to preparing and delivering food for hundreds of needy families. Each food drive requires countless hours of preparation prior to and on the holidays themselves. Mr. Defendant was not only a steadfast participant, he also recruited many of his other friends and family to join in the service of others.

Mr. Defendant has also given countless hours to improve the lives of disadvantaged children. Among his many activities, he has served as a Board Member for the Joz Arc School for disabled children; he has been a member of Big Brother and tutoring programs in the D.C. Public Schools; he has been an active member of the Truesdale Boys program sponsored by his fraternity Omega Psi Phi in which fraternity brothers devote several afternoons to mentoring young boys from Truesdale Elementary School in D.C. He has also been an active participant in the Partnership In Education Program through the Veterans Administration in which he, along with other Administration Employees, devoted time to Eastern High School in Southeast, D.C. For four years in a row, Mr.

Defendant also was a guest speaker for the "Largo Law Academy" for Largo Public High School students.

In addition to the above formal community service programs, Mr. Defendant has given an extraordinary amount of time and resources to helping children on an individual basis. "Ronnie" is a 16 year-old boy that Mr. Defendant began mentoring about four years ago. Ronnie, as one of ten children being raised single-handedly by his grandmother, suffered from severe learning disabilities when he first met Mr. Defendant. One day in early summer, Ronnie came to visit Mr. Defendant and *spent the entire summer in Mr. Defendant' home*. Ronnie quickly became a member of Mr. Defendant family. Mr. Defendant not only treated Ronnie as his own child in that he fed, clothed and offered Ronnie a place to sleep. He also worked with Ronnie on his education. During the school year, Ronnie would spend practically every weekend with Mr. Defendant. After much hard work with Ronnie, he was able to matriculate into a mainstream school. And although he still requires some special education, much to Mr. Defendant credit, Ronnie need not attend an exclusively special-education school.

Additionally, Mr. Defendant helped raise his eleven-year old niece, Mariah, when his sister fell upon hard times. Without hesitation, Mr. Defendant opened his home once again for Mariah who stayed with Mr. Defendant for several months. At the time, Mariah was nine-years old and completed the third grade while living with Mr. Defendant.

Mr. Defendant' tendency to give his time and energy to young people even manifests itself in seemingly small, inconsequential ways. For example, Mr. Defendant has assisted his neighbors by supervising their children in the mornings and ensuring that they board the bus safely. He has also maintained an active and deeply committed role in his own children's lives. In addition to attending all of his children's school functions and maintaining an active role in their schooling, Mr. Defendant always included them in his own charitable activities to teach them the value of community service.

In sum, Mr. Defendant has clearly demonstrated himself as a tremendous "giver," to adults and children, family and strangers alike. Were Mr. Defendant being sentenced by the Court without the proposed plea agreement, he would likely find himself eligible for a departure to account for his many years of community service. Rather than pursue this departure, however, the defense urges this Court to impose a 60-month sentence as one in which adequately accounts for Mr. Defendant' grave and lethal error, but also for his extraordinary assistance to others – a trait not often found among those never charged with a crime, let alone those who are.

C. Super Acceptance of Responsibility.

Although the Sentencing Guidelines account for acceptance of responsibility pursuant to U.S.C.G. § 3E1.1, where the defendant's conduct manifests extraordinary acceptance to a degree not adequately considered in the guidelines, an additional downward departure may be warranted. For

example, a timely and full post-arrest confession may constitute extraordinary acceptance of responsibility, supporting a downward departure. *See United States v. Brown*, 985 F.2d 478, 481 (9th Cir. 1993) (remanded where district court erroneously believed that as a matter of law it could not grant a downward departure because defendant confessed after arrest); *see also United States v. Gaither*, 1 F.3d 1040, 1043 (10th Cir. 1993).

Here, Mr. Defendant manifested immediately his desire to take responsibility for his criminal conduct. Indeed, from the curb of the crash site, Mr. Defendant was found sobbing and saying over and over again "I'm so sorry. I'm so sorry." Further, through counsel, Mr. Defendant made his intention to plead guilty known and never wavered from this decision. He also participated in instituting remedial measures through the above-mentioned scholarship fund that certainly cannot substitute for Officer Lonon's own presence with his family, but does demonstrate Mr. Defendant' desire to accept responsibility and make reparations for his criminal conduct.

Importantly, the agreed-upon sentence further adjusts for the fact that despite his early, timely intent to plead guilty and take steps to manifest his super acceptance of responsibility, he only received a reduction of **two** offense levels instead of **three** under the acceptance-of-responsibility Guideline, U.S.S.G. § 3E1.1. Because the involuntary manslaughter guideline only resulted in a total offense level of **14**, Mr. Defendant could not receive the three level reduction applicable only where the total offense level is **16** or greater. *See* U.S.S.G. § 3E1.1. This is so even though Mr. Defendant agreed to a departure which increased his offense level substantially beyond 16. This is also so even though Mr. Defendant timely intent to plead guilty would have resulted in his receiving the third point pursuant to U.S.S.G. § 3E1.1(b)(2). Put another way, Mr. Defendant agreed-upon seven-level departure and 24-month consecutive sentence on the misdemeanor offenses also account for the quirk in the Sentencing Guidelines that prevents Mr. Defendant from receiving an additional reduction for his timely and full acceptance of responsibility, despite his agreeing to an upward departure to an offense level well above 16 which would trigger his receiving the third point reduction under U.S.S.G. § 3E1.1.

D. Post-Offense Rehabilitation.

A further manifestation of Mr. Defendant' super acceptance of responsibility can be found in his extraordinary conduct since his offense as compared with his precarious mental health prior to the offense. Specifically, a defendant's great strides in rehabilitation and/or impeccable conduct while on Pretrial Services supervision could constitute a further ground for downward departure in its own right. *See United States v. Jones,* 158 F.3d 492, 502-03 (10th Cir. 1998). Although post-offense rehabilitation is a proper ground for a court to depart downward under the Sentencing Guidelines, *See United States v. Brock*, 108 F.3d 31, 35 (4th Cir. 1997), the Guidelines do, to a great extent, contemplate post-offense rehabilitative efforts as a factor in considering whether a defendant receives a downward adjustment for acceptance of responsibility. *See* U.S.S.G. § 3E1.1, *Comment 1(g)*. Accordingly, for a downward departure to be warranted in its own right, a defendant must

exhibit such efforts to an extraordinary degree. *Id. See also United States v. Rhodes*, 145 F.3d 1375, 1383 (D.C. Cir.1998); *Jones,* 158 F.3d at 502-03.

As the PSR reflects, Mr. Defendant was in the throes of a severe mental health crisis at the time of the crash for which he was seeking professional assistance. His marriage was ending badly and he was experiencing greater than usual work stresses. He had begun counseling for depression and anxiety and had likely drank to excess on the evening of the crash due in part to his fragile mental state.

Since the offense, the Court, the prosecutor, and the community at large have watched Mr. Defendant closely. Mr. Defendant has been locked down in his home twenty-four hours a day on electronic monitoring with no prospect of receiving any credit toward his sentence for being on house arrest. His breath has been monitored five to six times per day for any alcohol consumption, all with negative results. He has attended weekly therapy sessions to battle his depression and anxiety. In short, for the past nine months, Mr. Defendant has demonstrated a remarkable will to overcome a significant and ultimately devastating mental health crisis and has done so while his former life has ended has he knew it. Mr. Defendant has lost his legal career with the Department of Veterans Affairs, his wife, and the ability to live with his children. While the loss of such things cannot compare to the loss of Officer Lonon's life, the proposed sentence does appropriately account for the efforts Mr. Defendant has made toward rehabilitation and shouldering life's burdens without consuming alcohol.

Thank you for your attention to this matter. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

PAULA XINIS
Assistant Federal Public Defender

SUSAN M. BAUER
Assistant Federal Public Defender

Enclosures

cc: AUSA Hollis Weisman
USPO Sandra Karner

px/lah