

I. The Sentencing Factors In 18 U.S.C. § 3553(a) Support A Sentence Below the Advisory Range

For the reasons set forth below, the circumstances particular to the Defendant, addressed in a manner consistent with the purposes of the federal sentencing scheme, justify a sentence below the range set forth in the advisory guidelines.

A. The History and Characteristics Of The Defendant and The Nature And Circumstances Of The Offense

Mr. Nkrumah's Childhood

Kwame Nkrumah is 57 years old. He has lived nearly all of his life in New Haven, CT, where he was born and raised in a housing project he refers to as the “Webster Street Projects.” This neighborhood, also known as the “Elm Haven” or “Dixwell” housing project, comprised one of the most densely populated areas in the State of Connecticut and the community was notorious for its history of pervasive drug activity, violence and poverty until it was demolished in the early 90's.¹

When Kwame was very young, his father, who could not find work, abandoned the family and Kwame's mother was left to raise six children at a time when state assistance was difficult to obtain. Growing up, Kwame experienced extreme poverty and witnessed drug activity and violence first-hand. Kwame went many days and nights without a meal. Occasionally, he would be provided breakfast by the Black Panther Party, which organized a program to feed poor inner city youth.

Kwame was teased in school because he wore the same clothes to school every day, as he owned just one shirt, one pair of pants, and one pair of shoes. Even in a community where so many were suffering from poverty, Mr. Nkrumah's situation was particularly dire. Recognizing

¹ See New Haven Historic Inventory – Dixwell, at 53, 55 *available at* <http://www.cityofnewhaven.com/CityPlan/pdfs/HistoricInventory/NH%20HRI%204%20Dixwell.pdf> (describing Elm Haven in the 1960's as “one of the city's worst slums”).

this, his school teachers built a shoe shine box for him, offering it as a means for Kwame to earn badly needed money for his family. Kwame did just that; starting when he was in second grade, he took the box and shined shoes near the Yale campus to generate whatever income he could for his struggling family.

Ultimately though, that shoe shine box, like so many other things in Kwame's childhood, became just another example that nothing was safe from the pervasive negative influences of the neighborhood. When he was only seven years old, Kwame recalls shining a customer's shoes and watching as local gang members slit his customer's throat in front of him. Later, neighborhood drug dealers commandeered his shoe shine box, repurposing it as a place to conceal their drugs.

Kwame's childhood was also dramatically altered by drug use. His experience with drugs abruptly and traumatically began when he was just 14 years old. As he was walking to school one day, he asked for a ride with a group of older neighborhood kids, one of whom had a car. When Kwame asked if he could ride with the group to school, one of the car's occupants told Kwame, "you don't want what's going on in here." The price of a ride, they told him, was that Kwame would have to inject heroin. Trying to fit in, and just 14 years old, Kwame took the ride and a neighborhood acquaintance injected Kwame with heroin.

Eventually, in a too-late effort to keep him out of trouble, Kwame was sent to live with his father in Cleveland, OH. Unsurprisingly, Kwame struggled in school, struggled financially, and found himself in trouble again. He never finished high school, and only later earned his GED while incarcerated.

Criminal History

Mr. Nkrumah's criminal history dates back to his early teenage years. As outlined in the PSR, however, many of his early offenses were drug-motivated. PSR ¶¶ 54-61. As noted above, Kwame's first experience with heroin occurred when he was just 14 years old; his first recorded conviction was when he was 15. From the age of 15 to 22, Kwame's life was drastically affected by heroin abuse and it was not until his lengthy incarceration for importation of heroin that he was able to get clean. Importantly, Kwame's last drug arrest was in 1982, more than thirty years ago, and he has not used drugs since. Put simply, Mr. Nkrumah has recognized and eliminated a significant driving factor in his early criminal history.

Kwame is now married and, by all accounts, has taken on a role as a loving father to his only daughter and as a caretaker of his wife's grandson. He is a devoted husband and describes his marriage as "beautiful." PSR ¶ 74. These changes have been transformative for him. Upon his release from federal detention, Kwame will have access to a family support system that he did not have during the previous offenses from which the vast majority of his Criminal History score is derived.

As discussed in greater detail below, empirical research shows that "when individuals are already in the midst of potentially aging out of crime," as Kwame is, "living in a married ... relationship can be an important source of support upon release from prison" and can reduce the likelihood of recidivism.² Indeed, studies have long identified lower recidivism rates among offenders who live with their wives after release when compared to those who live alone or with other relatives.³

² Visher CA, Knight C, Chalfin A and Roman J. *The Impact of Marital and Relationship Status on Social Outcomes for Returning Prisoners*. Washington: Urban Institute Justice Policy Center, February 2009.

³ D. Glaser, *The Effectiveness of a Prison and Parole System* 249 (1969); *see also Johnson v. Rockefeller*, 365 F. Supp. 377, 382 (S.D.N.Y. 1973) (Lasker, J., concurring in part and dissenting in part) (noting that living with wife

Family

Kwame and his wife, Shannon Nkrumah, 45, have been married since 2010. When they met in 2005, Shannon was a single mother. *See* Letter from Shannon Nkrumah (“Mrs. Nkrumah”) attached hereto as Exhibit A. Over the years they followed, their relationship would develop into one of love and trust. In 2009, Shannon’s son tragically died of Lupus. Shannon explains:

When my son passed away in 2009, he [Kwame] was there for me like no one ever has been before. He also supported my older daughter and our daughter during this difficult time in addition to other family and friends. I don’t know what I would have done without him. He was the ‘glue’ that kept me together! After my son died, I would wake up screaming in the middle of the night in a sweat because of nightmares I was having. ... He was there at every moment and he constantly reassured me that everything was OK and told me I would get through this difficult time and would help me.

Id.

Today, Kwame and Shannon have 1 child together, [REDACTED] who is 5. *Id.* Kwame has no other children of his own, but he has taken on an active role in raising Shannon’s grandson, [REDACTED], whose mother – Shannon’s daughter – is unable to care for him. Despite these hardships, Kwame and Shannon have maintained a loving relationship and Shannon has “never seen a more loving, caring and hands-on father” than Kwame. *Id.* at 2. Shannon attends every court appearance and explains that the children he so-actively cared for have suffered tremendously since he has been gone.

Ann Horrocks, whose granddaughter attends school with Kwame’s daughter, wrote to explain that in Kwame she has seen “a man that clearly loves and values his family.” She continues: “I witnessed firsthand how much he deeply loves his daughter, grandson, and wife.

after release may reduce recidivism) (quoting Special Project, *The Collateral Consequences of Criminal Conviction*, 23 Vand. L. Rev. 929, 1168 (1970); *see also* V. Hardwick, *Punishing the Innocent: Unconstitutional Restrictions on Prison Marriage and Visitation*, 60 N.Y.U.L. Rev. 275, 303 (May 1985) (same)).

Similarly, Aaron Johnson, as coach of the Hyde Leadership Basketball team, explains that “Kwame has been an inspiration to not only myself but to the young teens which I coach at the Hyde Leadership school.” In his 13 years as a coach, Johnson has never seen a man be so influential to young kids, many of whom come from single-family homes like Kwame. *See id.*

Genita Santos, who has known Kwame her entire life, describes Kwame as a great asset to his family and community. She recounts in a letter to the Court that she has heard Kwame speak to at risk youth, explaining that “they don’t have to let their circumstances define who they are, that they need to do their best, make good choices and strive to be the best at whatever they chose to do.” Santos Letter at 1 (attached as Exhibit G). As these letters note, Kwame has taken great joy in using his own unfortunate past to counsel at-risk youth in his community against making the same choices he did.

The Offense

The central facts of the offense are not in dispute. Kwame worked as a real estate consultant, property manager, and self-taught real estate investor in New Haven from 2005 until 2008. As fairly stated in the PSR, between 2006 and 2008, Kwame facilitated three real estate transactions by either (i) locating and identifying the subject property, (ii) acting as a real estate consultant or *de facto* seller of the property, or both. PSR ¶ 8. Though the stipulated loss associated with these transactions exceeds \$600,000, in total, Mr. Nkrumah reaped just a fraction of this amount in net proceeds. Also during that time -- particularly from late 2006 to early 2007 -- Mr. Nkrumah completed false verifications of employment, which were ultimately transmitted to lenders. Though the loss associated with these transactions is stipulated as more than \$800,000 (representing 58% of the total loss in this case for purposes of §2B1.1), Mr. Nkrumah reaped no monetary benefit from these transactions. His motivation was not greed.

Mr. Nkrumah was arrested by warrant and presented on March 2, 2012. At that time, the defendant was detained. On May 14, 2013, Mr. Nkrumah entered a plea of guilty to Count One of the Superseding Indictment, which charged him with conspiring to commit mail, wire and bank fraud, in violation of 18 U.S.C. § 1349. He also entered a plea of guilty to Count One of the Second Superseding Indictment, which charged him with conspiring to commit mail, wire and bank fraud, in violation of 18 U.S.C. § 1349.

B. The Kinds Of Sentences Available

This Court must consider all of “the kinds of sentences available” by statute. §3553(a)(3). The penalty for a violation of 18 U.S.C. § 1349, as in Count One of the 2011 Indictment, is imprisonment of not more than 20 years. The penalty is increased to 30 years for violations of § 1349 affecting a financial institution, as in Count One of the 2013 Indictment. These offenses are classified pursuant to 18 U.S.C. § 3559(c)(1) as a Class B and C Felony respectively. Accordingly, under 18 U.S.C. § 3561(a)(1) and (3), the Defendant is not eligible for a sentence of straight probation. However, in considering the sentences available the Court may not presume that the Guidelines range is reasonable.

C. The Need To Avoid Unwarranted Sentence Disparities

Failing to substantially differentiate Mr. Nkrumah from others with different backgrounds and behaviors who may be more culpable or who have more risk of recidivism, but with similar guideline ranges, would result in unwarranted uniformity. Accordingly, the court should avoid unwarranted similarities in sentencing among defendants who are different in ways not accounted for in the guideline range. *See Gall v. United States*, 552 U.S. 38, 55 (2007) (noting “the need to avoid unwarranted *similarities* among other co-conspirators who were not similarly situated”); *United States v. Ovid*, No. 09-CR-216, 2010 WL 3940724, at *3 (E.D.N.Y.

2010) (sentencing two defendants with similarly high guideline ranges of 210-262 months and 151-188 months to terms of 60 months and 126 months respectively based on distinctions in circumstances of the offenses and characteristics of the defendants). The Court may freely differentiate this defendant from those similarly charged in this case and others, particularly those who carry a greater degree of culpability than Mr. Nkrumah. This requires the Court to impose a sentence tailored to the defendant and not merely the offense of conviction. As the Supreme Court explained in *Pepper v. United States*, 131 S. Ct. 1229, 1239-1240 (2011):

[J]ustice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender. . . . In particular, we emphasized that highly relevant – if not essential – to the selection of an appropriate sentence is the possession of the *fullest information possible concerning the defendant's life and characteristics.*”

Id. (citing *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937)) (Emphasis added). At the same time, the Court must also consider the need to avoid unwarranted disparities among defendants with similar records convicted of similar criminal conduct. 18 U.S.C. § 3553(a)(6); see *United States v. Parris*, 573 F. Supp. 2d 744, 753, 756-62 (E.D.N.Y. 2008). In doing so, Courts may look to national trends in sentencing.

In fiscal year 2012, sentences below the guideline range were imposed in 47.5% of all fraud cases; 23.7% were government-sponsored, 23.8% were non-government sponsored. See U.S. Sent'g Comm'n, *2012 Sourcebook of Federal Sentencing Statistics*, Table 27.⁴ In its 2012 Report on the Continuing Impact of *United States v. Booker* on Federal Sentencing (“Booker Report”), the Sentencing Commission reported that from 2007-2011, with an average loss amount of \$2,628,129 and 44.2% of sentences being below the recommended guidelines range, the average sentence for fraud offenders was 25 months. In below-guidelines sentences, not

⁴ Available at http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm.

sponsored by the government, the average sentence was 13 months – less than half the average minimum sentence recommended by the Guidelines. *See* Booker Report, Part C – Fraud Offenses at 9.⁵

Courts in this circuit have considered national sentencing trend data when determining the appropriate sentence for fraud offenders. In *United States v. Parris*, 573 F. Supp. 2d 744 (E.D.N.Y. 2008), Judge Block relied on such data in imposing a sentence of 60 months for the two defendants, each of whom faced an advisory guideline range of 360 months to life. That is, Judge Block sentenced the defendants in *Parris* to a sentence that was 16.7% of the bottom of the applicable guideline range. *Id.* at 745.

Mr. Nkrumah has already served a prison sentence that is 39% of the bottom of the applicable guideline range. National trends in sentencing show that the 18 month period of incarceration that Mr. Nkrumah has already served is squarely in line with the sentences imposed in a number of fraud cases with similar and even substantially higher loss amounts. Thus, the Court should impose a sentence below the range recommended by the advisory guidelines.

D. Consideration Of The Sentencing Guidelines

The Guidelines result in a sentence that is greater than necessary for this defendant. The United States Supreme Court, in *United States v. Booker*, 125 S. Ct. 738 (2005), “sever[ed] and excise[d]” 18 U.S.C. § 3553(b)(1) from the Sentencing Reform Act of (1984), *id.* at 764, thus rendering the United States Sentencing Guidelines no longer mandatory, but advisory. The Second Circuit has concluded:

The Supreme Court has now explained that, as a necessary corollary to the constitutional proscription on treating the Guidelines as mandatory, sentencing courts “may not presume that the Guidelines range is reasonable.” *Gall v. United States*, 128 S. Ct. at 596-97; *see Rita v. United States*, 127 S. Ct. at 2465 (noting

⁵ *Avialable at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Booker_Reports/2012_Booker/index.cfm.

that “the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply”). . . . In short, while a sentencing court is statutorily obligated to give fair consideration to the Guidelines before imposing sentence, . . . in the end, it must make an individualized assessment of the sentence warranted by § 3553(a) based on the facts presented.

United States v. Jones, 531 F.3d 163, 170 (2d Cir. 2008) (citing *Gall v. United States*, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007); *Kimbrough v. United States*, 128 S. Ct. 558, 169 L. Ed. 2d 481 (2007) and *Rita v. United States*, 127 S. Ct. 2456, 168 L. Ed. 2d 203 (2007)).

1. Offense Level

The parties stipulated to a total loss amount of \$1,458,050. This loss figure represents \$601,000 of stipulated loss for the offenses charged in the Second Superseding Indictment and \$857,050 for the offenses charged in the Superseding Indictment. Accordingly, the parties and probation agreed to a total offense level calculation (using Guidelines in effect), as follows:

2B1.1(a) — Base Offense Level	7
2B1.1(b)(1) — Amount of Loss over \$1 million	16
3B1.1 — Manager or Supervisor Role Enhancement	3
3B1.1 — Minor Participant Role Reduction	-2
3E1.1 — Acceptance of Responsibility	-3
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TOTAL OFFENSE LEVEL	21
GUIDELINE RANGE	46-57 months

2. Criminal History

Mr. Nkrumah’s criminal history is properly calculated by the PSR as a Category III. As articulated above, much of Mr. Nkrumah’s earlier criminal history is largely comprised of drug-motivated convictions from more than 30 years ago (offenses not included in the criminal history computation). Accordingly, these earlier offenses are properly excluded from the Court’s sentencing decision not only pursuant to U.S.S.G. § 4A1.2(e)(3), but also because they are not representative of the person Mr. Nkrumah is today.

3. Sentencing Table

An Adjusted Offense Level of 21 and a Criminal History Category of III would result in a Guidelines range of 46 - 57 months.

4. Departure Considerations

As articulated below in Sections II and III, as an alternative to a below-guidelines sentence, the Defendant submits that certain factors would also warrant a departure as the Court considers the advisory Guidelines in imposing sentence.

II. The Guidelines' Loss Calculation is Not Based on Empirical Evidence, Results In A Sentence Recommendation That Is Greater Than Necessary, And Overstates the Degree of Mr. Nkrumah's Culpability

The Court may consider arguments that a guideline does not reflect the considerations outlined in § 3553(a), reflects an unsound judgment, does not treat defendant characteristics in the proper way, or that a different sentence is otherwise appropriate. *Rita v. United States*, 127 S. Ct. 2456, 2465, 2468 (2007). Judges “may vary [from Guidelines ranges] based solely on policy considerations, including disagreements with the Guidelines.” *Kimbrough v. United States*, 128 S. Ct. 558, 570 (2007). In fact, sentencing courts “may not presume that the Guidelines range is reasonable.” *Gall v. United States*, 128 S. Ct. 586, 595-97 (2007) (holding that an appellate court may not demand “extraordinary” circumstances to justify non-Guidelines sentence and must make an “individualized assessment based on the facts presented”).

To determine what respect to give a particular Guideline, courts evaluate whether the Commission, in promulgating or amending it, acted in “the exercise of its characteristic institutional role.” *Kimbrough*, 128 S. Ct. at 575. As described in *Rita*, the exercise of this role has two basic components: (1) reliance on empirical evidence of pre-guidelines sentencing practice, and (2) review and revision in light of judicial decisions, sentencing data, and

comments from participants and experts in the field. *Rita*, 127 S. Ct. at 2464-65. The use of empirical evidence to support a guideline is crucial because, although Congress directed the Commission to design the Guidelines based on the purposes of sentencing set forth in § 3553(a)(2), *see* 28 U.S.C. § 991(b), a “philosophical problem” arose when the Commissioners could not agree on which purposes should predominate. They therefore abandoned that approach and instead “took an ‘empirical approach,’ beginning with an empirical examination of 10,000 presentence reports setting forth what judges had done in the past and then modifying and adjusting past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like.” *Rita*, 127 S. Ct. at 2464 (internal citations omitted).

With regard to a particular Guideline, if the Commission relied on past practice, and then reviewed and revised the Guideline in response to data and feedback from judges and others in the field, in the typical case it may be “fair to assume” that the Guideline “reflect[s] a rough approximation of sentences that might achieve 3553(a) objectives.” *Rita*, 127 S. Ct. 2464-65. When, however, the Commission has departed from its empirical approach, and a Guideline is not the product of “empirical data and national experience,” a court may conclude that it fails to achieve the § 3553(a) purposes, “even in a mine run case.” *See Kimbrough*, 128 S. Ct. at 575.

The fraud guideline’s loss level increases do *not* “reflect a rough approximation of sentences that might achieve § 3553’s objectives.” *See Rita*, 127 S.Ct. 2464-65. Accordingly, this Court is free to exercise its complete discretion to fashion a sentence that it feels appropriately achieves the purposes of § 3553(a) in this particular case, provided the sentence is reasonable.

The fraud guideline, which was initially set forth in section 2F1.1 of the Sentencing Guidelines, has undergone progressive increases in severity in the twenty-six years since it was first promulgated. These increases have not been based on empirical evidence, but rather, have been largely reactionary -- responding to congressional directives and highly politicized events.⁶ For example, in 1989, in response to the savings and loan crisis, Congress passed legislation increasing the maximum penalties for financial fraud offenses and directed the Sentencing Commission to include specific offense characteristic enhancements in the fraud guideline. *See* Robert S. Bennett, et al., *Taking it to the Banks: The Use of the Criminal Process to Regulate Financial Institutions*, 109 *Banking L. J.* 28, 28-34 (1992) (discussing changes in fraud guideline).

Twelve years later, in 2001, the Sentencing Commission amended §2F1.1 to combine fraud, theft and embezzlement, and property destruction into a single guideline – Section 2B1.1. That change resulted in a new loss table that dramatically increased the possible sentences for economic offenses, particularly in moderate and high-loss cases. *See* U.S. Sentencing Commission, Report to the Congress: Increased Penalties Under the Sarbanes-Oxley Act of 2002, at 7 (2003).⁷ Most recently, in 2003, the Commission amended the fraud guideline in response to Congressional directives in the Sarbanes-Oxley Act, section 905(b)(2), which instructed the Commission to consider whether the guidelines were “sufficient to deter and punish” certain economic crimes “in view of the statutory increases in penalties contained in the Act.” *See* USSG App. C, Amend. 653 (Nov. 1, 2003). *Id.* Again, those amendments included a

⁶ *See* Lana L. Freeman, *Sentences Should Be Reasonable, Not Shocking: A De-Emphasis on Loss for Federal Securities Fraud Sentencing*, 2012 *U. Ill. L. Rev.* 969, 977 (2012) (noting that the 1987 amendments were issued in “an effort to ‘better reflect society’s values regarding the criminal culpability of economic offenders,’” and that subsequent amendments were in response to the “accounting scandals of Enron, WorldCom, Tyco, and Global Crossing.”).

⁷ Available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Corporate_Crime_and_Fraud/200301_RtC_Sarbanes_Oxley.pdf

revised loss table that added offense level points in the highest loss cases. U.S.S.G. app. C amend. 647 (Nov. 1, 2003).

Since the Commission adopted the original sentencing guidelines in 1987, the practical effect of these increases has been to multiply, several times over, the recommended sentence applicable in the original guidelines. Indeed, the guidelines range for Mr. Nkrumah (as calculated in the PSR) has more than doubled. Were a similarly situated defendant convicted of the same offense in 1987, with an identical loss amount, role enhancement, and applicable offense characteristics, his guidelines range would be calculated as follows:

2F1.1(a) — Base Offense Level	6
2F1.1(b)(1) — Amount of Loss over \$1 million	9
3B1.1 — Manager or Supervisor Role Enhancement	3
3B1.1 — Minor Participant Role Reduction	-2
3E1.1 — Acceptance of Responsibility	-3
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TOTAL OFFENSE LEVEL	13
GUIDELINE RANGE	18-24 months

Following the savings and loan crisis, just two years after the adoption of the Guidelines, the Commission increased the applicable fraud guideline range. As a result, in 1989, the Guidelines for a defendant like Mr. Nkrumah were as follows:

2F1.1(a) — Base Offense Level	6
2F1.1(b)(1) — Amount of Loss over \$800,000	11
3B1.1 — Manager or Supervisor Role Enhancement	3
3B1.1 — Minor Participant Role Reduction	-2
3E1.1 — Acceptance of Responsibility	-3
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TOTAL OFFENSE LEVEL	15
GUIDELINE RANGE	24-30 months

Then, in 2001, the Commission again increased the fraud guideline, adding five more levels to the loss enhancement for losses greater than \$1 million. The applicable guidelines were increased as follows:

2B1.1(a) — Base Offense Level	6
2B1.1(b)(1) — Amount of Loss over \$1 million	16
3B1.1 — Manager or Supervisor Role Enhancement	3
3B1.1 — Minor Participant Role Reduction	-2
3E1.1 — Acceptance of Responsibility	-3
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TOTAL OFFENSE LEVEL	20
GUIDELINE RANGE	41-51 months

Finally, in 2003, following the Commission's arbitrary enhancement of the base offense level to 7, the advisory range increased to 21. The current guidelines sentence for that range and a criminal history category III, as outlined in the PSR, is 46-57 months -- more than double the guidelines sentence for the same offense if it were committed in 1987.

These significant and arbitrary increases fail to "assure the meeting of the purposes of sentencing," 28 U.S.C. § 991(b)(1)(A), and yield sentences far greater than the average sentences imposed and prison time actually served before the guidelines were adopted, which Congress directed the Commission to use as a "starting point." 28 U.S.C. § 994(m). Indeed, the Guidelines-based sentence for Mr. Nkrumah has baselessly doubled the average sentence deemed appropriate prior to the adoption of the Guidelines. The current Guidelines would call for a sentence of roughly 2-3 years more than in the pre-guidelines period with no principled basis for the disparity.

Recently, in *United States v. Corsey*, No. 10-1800-cr, 2013 WL 3796393, at *10 (2d Cir. July 23, 2013), Judge Underhill noted in his concurring opinion that "[t]he widespread

perception that the loss guideline is broken leaves district judges without meaningful guidance in high-loss cases...” He continued:

The history of bracket inflation directed by Congress renders the loss guideline fundamentally flawed, especially as loss amounts climb. The higher the loss amount, the more distorted is the guideline’s advice to sentencing judges. As a well-known sentencing commentator has put it, “For the small class of defendants . . . convicted of fraud offenses associated with very large guidelines loss calculations, the guidelines now are divorced both from the objectives of Section 3553(a) and, frankly, from common sense. Accordingly, the guidelines calculations in such cases are of diminished value to sentencing judges.”

Id. (citing Frank O. 23 6 Bowman, III, *Sentencing High-Loss Corporate Insider Frauds After Booker*, 20 FED. SENT’G REP. 167, 168 (2008)).

III. A Sentence Of 18 Months As Requested Herein Is Sufficient But Not Greater Than Necessary To Comply With The Purposes Of Sentencing

The Court is directed by 18 U.S.C. § 3553(a), after consideration of circumstances particular to the individual before the Court, to “impose a sentence *sufficient, but not greater than necessary*” to comply with the purposes set forth therein. (Emphasis added). A sentence of 18 months is sufficient, and a lengthier sentence of incarceration is greater than necessary, to comply with these purposes.

A. The Need For The Sentence Imposed To Reflect The Seriousness Of The Offense, To Promote Respect For The Law, And To Provide Just Punishment For The Offense

The need for retribution is measured by the degree of “blameworthiness,” which “is generally assessed according to two kinds of elements: the nature and seriousness of the harm caused or threatened by the crime; and the offender's degree of culpability in committing the crime, in particular, his degree of intent..., motives, role in the offense, and mental illness or other diminished capacity.” Richard S. Frase, *Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: "Proportionality" Relative to What?*, 89 Minn. L. Rev. 571, 590

(February 2005). It is implicit in the notion of retributive punishment that the punishment be proportional to the defendant's culpability. *See id.*

1. Mr. Nkrumah's role and degree of culpability in the offense was minor when compared to the licensed professionals who directed the transactions

Mr. Nkrumah's role in each offense was limited. In such a case, total economic loss simply cannot serve as a reliable proxy for a defendant's culpability.⁸ As exemplified in this case, the amount of loss is often "a kind of accident" and serves as "a relatively weak indicator of [] moral seriousness . . . or the need for deterrence." *See United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004). Recognizing that the loss enhancements may be particularly ill-suited for use in sentencing certain offenders, the Sentencing Guidelines, in Section 2B1.1 and application note 19 advise that "[t]here may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted." This is such a case.

Importantly, the essential nature of Mr. Nkrumah's conviction is that he facilitated certain purchase and loan transactions in one conspiracy by locating buyers and drafting agreements and contract addenda, and in the other, by executing false verifications of employment. As to the first of the two conspiracies, Mr. Nkrumah participated in just a few of the several dozen transactions involved in a much broader mortgage fraud scheme. PSR ¶ 8. With respect to the second conspiracy, Mr. Nkrumah's role was limited to the preparation of false verifications of employment for a purchaser of several properties. Mr. Nkrumah was not aware of the other false aspects of the loan documentation submitted by others. PSR ¶ 34. Thus, what truly sets Mr.

⁸ *See United States v. Gupta*, F. Supp. 2d (S.D.N.Y. Oct. 24, 2012) ("By making a Guidelines sentence turn on this single factor [loss or gain], the Sentencing Commission ignored [3553(a)] and . . . effectively guaranteed that many such sentences would be irrational on their face."); *United States v. Adelson*, 441 F. Supp. 2d 506, 509 (S.D.N.Y. 2006) (explaining that "the inordinate emphasis that the Sentencing Guidelines place in fraud on the amount of actual or intended financial loss" fails to justify placing "such huge weight to [this] factor[]").

Nkrumah apart from the four real estate lawyers, the licensed mortgage broker, the licensed loan originator, the licensed real estate agent, and the other true leaders of these transactions, is his comparatively minor role in the overall conduct. In total, Mr. Nkrumah's role in the offense represents just one point in his overall guidelines calculation (adding 3 points for "supervising" one other individual in the first offense and subtracting 2 points for his minor role in the other). Yet the Guidelines assign him a full *16 points* for the resultant, but unpredictable losses associated with those transactions.⁹ That is, the loss enhancement alone represents 75% of the applicable offense level and no fewer than 39 months of the resulting recommended sentence (or 84%).

Rigid application of the Sentencing Guidelines would also inappropriately charge Mr. Nkrumah with the entire loss amount for transactions in which he received no gain. Courts have long recognized that, notwithstanding the proper application of the Guidelines, the loss table enhancements "may well overstate both the degree of [a defendant's] criminality and his need to be corrected," particularly where the defendant received minimal or no gain. *United States v. Stuart*, 22 F.3d 76, 82 (3d Cir. 1994) (defendant received only \$2,000, but loss table called for 9-level enhancement for \$129,000 loss); *see also United States v. Forchette*, 220 F. Supp. 2d 914, 925-31 (E.D. Wis. 2002) (departing downward where loss was \$454,300, but gain was between \$20,000 and 40,000). Other courts have noted the defendant's "extraordinary lack of profit" in imposing below-guidelines sentences. *United States v. Hill*, 643 F.3d 807, 848 (11th Cir. 2011) (affirming district court's decision to sentence defendant to only five months when the guidelines recommended a sentence between 63 and 78 months). As to the \$857,050 of loss attributed to Mr. Nkrumah for his role in the conspiracy charged in the Superseding Indictment here, the

⁹ As Judge Jed. S. Rakoff recently noted in his proposal for sentencing reform before the American Bar Association, "[t]he sentencing commission to this day ... has never been able to articulate why they have two points for this, or four points for that."

sentencing guidelines calculation substantially overstates his culpability and a departure is warranted.

Moreover, because the loss guidelines encourage fraud sentences to be based almost exclusively on the amount of resulting loss, giving inordinate and unjustified weight to this one offense characteristic, strict adherence to the Guidelines would result in a sentence disproportionate to Mr. Nkrumah's culpability.

2. Mr. Nkrumah has already received just punishment

At the time Mr. Nkrumah is to be sentenced by this Court, he will have served more than eighteen months in federal detention. Not only is this sentence already in line with national trends in sentencing, but commentators have observed that “[p]rison terms of this length offer no appreciable advantage in deterrence or incapacitation for individuals convicted of nonviolent offenses.” Kahan and Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42 J. Law & Econ. 365, 384 (1999) (noting that white-collar offenders typically serve terms of fewer than 18 months). This level of punishment is sufficiently just in this case.

B. A Sentence Below the Guidelines Range Will Afford Adequate Deterrence To Criminal Conduct

Under section 3553(a)(2)(B), there are two primary considerations: specific and general deterrence. In this case, general deterrence is satisfied with a sentence below the guidelines and a period of home confinement. The sentence will send a clear message that playing a role in fraudulent activity, even a minor role, will result in substantial sentence and significant restrictions on a defendant's liberty. Specific deterrence is achieved by the time Mr. Nkrumah has already spent in federal detention and by the collateral consequences the arrest, detention, and conviction have had on Mr. Nkrumah and his family.

It is unlikely that Mr. Nkrumah will engage in further criminal activity in light of his age, his close familial connections, his determination to serve as a positive role model for his daughter and grandson, and his desire to use his past to educate and deter at-risk youth in his community. *See United States v. Goltson*, No. 09-CR461, 2010 WL 4023299, at *2 (E.D.N.Y. Oct. 13, 2010) (considering similar factors in imposing 18 month sentence, despite guidelines range of 57-71 months); *see also United States v. Clark*, 08-CR-332 (JBW), 2009 WL 1617939 (E.D.N.Y. June 10, 2009) (imposing 1 year and 1 day sentence in bank fraud conspiracy, despite guidelines range of 41-51 months, where defendant had strong family connections, assisted his ill siblings, and provided financial and other support to them and his stepson).

At age 57, being convicted of a non-violent offense, he possesses two of the important factors that indicate a low likelihood of offending again. U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (2004), at Exhs. 9, 10, 11. According to a report released in May 2004 by the Commission: “Recidivism rates decline consistently as age increases.” *See id.*¹⁰

Courts in this circuit recognize that the age of the defendant is highly relevant in determining whether the defendant will be a danger to society or will recidivate in the future. *See United States v. Carmona-Rodriguez*, No. 04 CR 667, 2005 WL 840464, at *4 (S.D.N.Y. Apr. 11, 2005); *Simon v. United States*, 361 F. Supp. 2d 35, 40-41 (E.D.N.Y. Mar. 15, 2005). Indeed, this practice, unlike the Guideline’s arbitrary loss table, is supported by empirical research. For all male offenders in Criminal History Category III, the recidivism rate is 34.7%. For those over age 50 at the time of sentencing, however, the rate in Category III is significantly less, at only 19.8%. Marriage also reduces the rate of recidivism; for defendants in Criminal History Category III who are married at that time of sentencing, the rate drops from 34.7% to

¹⁰ Available at http://www.ussc.gov/pulicat/Recidivism_General.pdf.

25.1%. For those like Mr. Nkrumah who have are married, are drug free in the year prior to the offense, and are over 50 years of age, the recidivism rate is certainly much lower. *See* U.S. Sent'g Comm'n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at Exh. 9, at 28; Exh. 10, at 29 (May 2004).

Mr. Nkrumah's earlier convictions are also not indicative of an individual for whom greater specific deterrence is necessary. As explained above, many of Mr. Nkrumah's earlier offenses were drug-related or drug-motivated and committed at a time when Mr. Nkrumah was a heroin user. During Mr. Nkrumah's earlier periods of incarceration, treatment programs in prisons were not as readily available as they are today and, as the PSR notes, Mr. Nkrumah was never put into a treatment program for addiction. PSR ¶ 76. Mr. Nkrumah's periods of incarceration without treatment likely contributed to repeat offenses. Relapses, after all, are a part of addiction. Thus, it is not that Mr. Nkrumah's prior periods of incarceration were of insufficient length to deter him from subsequent criminal conduct, nor is it that Mr. Nkrumah is inherently prone to recidivate. Instead, incarceration without treatment is not effective in deterring the drug addicted defendant. Research indicates that lengthy and repeat sentences have actually been shown to exacerbate the problem:

While imprisoning offenders may provide comfort to some in terms of public safety, it does little to reduce the cluster of issues which will see these people cycle in and out of the nation's corrections system.... Drug-involved offenders typically develop chronic dependence on the drug economy for subsistence. Reconnecting ex-offenders to the world of legitimate employment is crucial to maintaining recovery and reducing future criminal behavior. Instead, treatment must be defined more broadly to cover the full continuum of care, including vital prevention programs: basic literacy training, job skill development, life skills training, mental health assessment and treatment, and possibly help with basic needs. . . .

Treatment or Incarceration? Justice Policy Institute, National and State Findings on the Efficacy and Cost Savings of Drug Treatment Versus Imprisonment, 2004.¹¹

Put simply, the majority of Mr. Nkrumah's criminal history is reflective of a chapter in his life that is now closed. In the past several years, Kwame has started a new phase in his life – one focused on his family and community. Any period of incarceration longer than that requested herein would be superfluous and detrimental to the goals of deterrence. Moreover, the attendant strains of his continued incarceration on his family risk further damage to his invaluable support system, which is waiting for him upon his release.

C. There is No Need To Impose a Lengthy Sentence To Protect The Public From Further Crimes Of The Defendant

In imposing the least sentence sufficient to account for the need to protect the public from further crimes, this Court should consider the empirical research showing that Mr. Nkrumah's age, marriage and close bonds with his daughter and grandson statistically reduce his risk of recidivism.¹² *See, e.g., United States v. Hamilton*, 323 Fed. Appx. 27, 31 (2d Cir. 2009) (“the district court abused its discretion in not taking into account policy considerations with regard to age recidivism not included in the Guidelines”); *United States v. Holt*, 486 F.3d 997, 1004 (7th Cir. 2007) (affirming below-guideline sentence based on defendant's age and attendant reduction in risk of recidivism); *United States v. Urbina*, 2009 WL 565485, *3 (E.D. Wis. Mar. 5, 2009) (considering low risk of recidivism indicated by factors including defendant's strong family ties); *Simon*, 361 F. Supp. 2d at 48 (E.D.N.Y. 2005) (recognizing recidivism drops substantially with age) (citing *United States v. Nellum*, 2005 WL 300073 at *3 (N.D. Ind. Feb. 3, 2005) (granting variance to 57-year-old defendant because recidivism drops with age)).

¹¹ Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01_rep_mdreatmentorincarceration_ac-dp.pdf

¹² Visher CA, Knight C, Chalfin A and Roman J. *The Impact of Marital and Relationship Status on Social Outcomes for Returning Prisoners*. Washington: Urban Institute Justice Policy Center, February 2009.

Indeed, studies have long identified lower recidivism rates among offenders who live with their wives after release when compared to those who live alone or with other relatives.¹³ Research also shows that fathers who are more strongly attached to their children upon release from incarceration are less likely to commit crime, get arrested, or violate conditions of their supervision.¹⁴ Kwame's relationship with his wife, and strong bond with his daughter, and grandson will provide him with much needed support upon his release and will contribute to a statistically lower likelihood that he will offend in the future.

D. The Defendant's Sleep Apnea Will Cause A Period Of Incarceration To Be A Greater Burden On The Defendant And On The System And Can Be Treated Most Effectively Outside of Prison

As noted in the PSR at paragraph 75, Defendant suffers from sleep apnea and diabetes, among other medical conditions affecting his health. PSR ¶ 75. His sleep apnea requires the use of a Continuous Positive Airway Pressure ventilator ("CPAP machine") to regulate his breathing while he sleeps. Those who suffer from sleep apnea, like Mr. Nkrumah, run the risk of sudden death if their CPAP machine fails to properly function. On at least one occasion during his incarceration at Donald W. Wyatt Detention Facility Medical Unit, Mr. Nkrumah's CPAP machine became inoperative and required replacement. It took several weeks before Mr. Nkrumah's machine was replaced and during that time, Mr. Nkrumah's physical condition was noticeably affected due to lack of sleep. (See Nkrumah Letter, Exhibit A at 2; Woodson Letter, Exhibit J) (discussing Kwame's condition without his CPAP machine).

¹³ D. Glaser, *The Effectiveness of a Prison and Parole System* 249 (1969); see also *Johnson*, 365 F. Supp. at 382 (Lasker, J., concurring in part and dissenting in part) (because living with wife after release may reduce recidivism) (quoting Special Project, *The Collateral Consequences of Criminal Conviction*, 23 Vand. L. Rev. 929, 1168 (1970); see also 60 N.Y.U.L. Rev. 275, 303, *supra* note 3).

¹⁴ See S. Moldonado, *Recidivism and Paternal Engagement*, *Family Law Quarterly*, Vol. 40, Issue 2 (Summer 2006), pp. 191-212 (discussing research concluding that "exconvicts who share close relationships with their children are less likely to recidivate than those who do not.").

Generally, the determination of whether or not the court should factor a physical condition into sentencing is not based on whether the Bureau of Prisons can care for the Defendant, but whether there is an extraordinary physical impairment. The issue “is whether it is an exceptional condition, of a type or to a degree not contemplated by the Commission in ruling that the normal variations of health and physical fitness among criminals are not ordinarily relevant to sentencing, whose severity bears in some way on the justifications for punishment.” *United States v. Jimenez*, 212 F. Supp. 2d 214, 219 (S.D.N.Y. 2002).

In *Simon v. United States*, *supra*, the Court granted a downward departure based upon glaucoma, loss of sight in one eye, pain and suffering due to stab wounds, and colitis. The Court found that because of the defendant’s health problems, the defendant would be “a greater burden on the federal prison system, and incarceration [would be] a greater burden on [the defendant].” *Id.* at 43. But the Court is also directed under 18 U.S.C. § 3553(D) to consider the need to “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”

Mr. Nkrumah experiences a great deal of difficulty breathing due to sleep apnea. He has also recently experienced the effects of a liver enzyme imbalance, for which he is currently undergoing testing. The effect of a lengthy period of incarceration on this Defendant would be significantly greater than on a defendant without his physical condition. Many environmental factors in the prison setting – sleep deprivation, uncomfortable and improperly sized bedding that is not designed to accommodate favorable sleeping positions, and uncertain access to timely repairs in the event of a CPAP malfunction – will exacerbate his condition exponentially more than they would affect a defendant without his physical conditions. Accordingly, Mr. Nkrumah’s medical condition should be considered in the Court’s sentencing decision. *See e.g.*,

United States v. Amarante, 08-CR-76, 2008 WL 4427917 (E.D.N.Y. Sept. 22, 2008) (recognizing defendant's "proclivity to sleep apnea, pulmonary disease, and other ailments that cannot be adequately treated under prison conditions" as considerations in sentencing decision); *United States v. Ranum*, 353 F. Supp. 2d 984, 991 (E.D. Wis. 2005) (noting defendant's "diabetes and sleep apnea" in determining sentence, though recognizing that defendant's health problems were not so severe that the Bureau of Prisons could not handle them).

E. Mr. Nkrumah's History of Substance Abuse, Poor Upbringing, Poor Education, Poor Environment, Lack Of Positive Role Models, Lack Of Opportunity, and Extreme Poverty Are Contributors To His Criminal Conduct And Should Serve As Mitigation And Distinguish Him From Other More Culpable Offenders.

Courts have long recognized that factors such as poor upbringing, poor education, poor environment, lack of positive role models, lack of opportunity, poverty, and traumas as a child are mitigating factors to be considered at sentencing. *See Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (evidence about the defendant's background is relevant because the belief "long held by this society, that the defendants who commit criminal acts that are attributable to a disadvantaged background or to emotional or mental problems may be less culpable than defendants who have no such excuse"). Sentencing decisions in this circuit reflect an appreciation of the lasting toll that such factors can have on a defendant, particularly where he has experienced such profound hardship as Mr. Nkrumah has. For example, in *United States v. Goltson*, No. 09-CR461, 2010 WL 4023299 (E.D.N.Y. Oct. 13, 2010), the Court sentenced the defendant, who faced an advisory Guidelines range of imprisonment of 57 to 71 months (including safety-valve and acceptance of responsibility adjustments), to 18 months time-served. In explaining the Court's consideration of all the factors listed under 18 U.S.C. § 3553(a), Judge Weinstein wrote:

As a child, Goltson was abused by his father, a heroin addict, and was raised in conditions of severe poverty. He suffers from depression and a severe learning

disability, and he has received no education beyond middle school. Goltson has three children: two young daughters and a son in middle school. He remains close to his family and has been offered housing and employment by relatives. Because the defendant has already served eighteen months, a sentence of time served reflects the seriousness of the offense and will promote respect for the law and provide just punishment.

Id.

As noted in the PSR, and as described above, Mr. Nkrumah was raised in conditions of extreme poverty. He was a witness to numerous shootings, stabbings, and other crimes at a very young age. His only role models were the older kids in his community, who ultimately introduced him to heroin and exposed him to these acts of violence and crime. Kwame knows that his choices were his own, and he regrets that his being a follower led to many of them, but he is less culpable and the punishment should be less severe because of it. At 57, Kwame has finally built what he did not have as a child: a loving family, a positive and constructive role in the community, and a drug-free life. He fears that a period of lengthy incarceration will inflict further damage on his family and vitiate the positive strides he has made. A below-guidelines sentence would adequately reflect Defendant's actual culpability, history, and characteristics.

IV. Conclusion

For all the foregoing reasons, the Defendant respectfully requests that the Court, after consideration of all the factors in 18 U.S.C. § 3553(a), including specific consideration of the Guidelines, impose a sentence below the advisory Guidelines' range.

**DEFENDANT,
KWAME NKRUMAH**

By: /s/ Michael G. Chase
Ross H. Garber (ct17689)
Michael G. Chase (ct28935)
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
Tel: (860) 251-5000
Fax: (860) 251-5219
Email: rgarber@goodwin.com
Email: mchase@goodwin.com

Certificate of Service

I hereby certify that on August 29, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A paper copy will be delivered to:

Raymond Lopez
Senior U.S. Probation Officer
United States Probation Office
915 Lafayette Street
Bridgeport, CT 06604

/s/ Michael G. Chase
Michael G. Chase
Fed. Bar No. ct28935
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103

Exhibit A

May 16, 2013

To Honorable Janet Hall,

I am writing this letter on behalf of my husband, Kwame Nkrumah. My husband has been my rock and my best friend since we have been together. He has been my biggest supporter. When my son passed away in 2009, he was there for me like no one has ever been before. He also supported my older daughter and our daughter during this difficult time in addition to other family and friends. I don't know what I would have done without him. He was the "glue" that kept me together! After my son died, I would wake up screaming in the middle of the night in a sweat because of nightmares I was having. I was so afraid that something bad would happen to our daughter too. He was there at every moment and he constantly reassured me that everything was OK and told me I would get through this difficult time and would help me. After my son died, I really struggled because of his death. I became very bitter towards my husband and I said some really mean things to him and I tried to push him away from me all the time. Kwame didn't let me push him away; he recognized that I was hurting real bad due to the loss of my son. Instead he constantly reassured me that he loved me and that he would help me get through this difficult time. It was later that I realized I was trying to push him away so that I would not have to suffer from losing him too. In my mind, I figured I wouldn't hurt as much if I made him leave as it would if he chose to leave me. I am so thankful for him staying with me and for supporting me through my darkest days and for understanding that I really do need him. He was there for me when my father passed away too and when I had surgery. He took very good care of our daughter during these times. He really is a caring person.

In addition, he is a great father and grandfather. When my daughter was unable to care for her son, he did not hesitate to take him into our home and step up to help me care for him. He came to us with asthma, allergies and severe eczema not to mention other issues due to trauma. Learning how to take care of him and support him took time along with many visits back and forth to the doctors. He was at all of the appointments and did not hesitate to learn everything he needed to learn so that we could give him the best care possible.

I was working 3 jobs which meant he was the primary caretaker for both our 3 year old daughter and 1 year old grandson at the time. I would leave on Friday mornings, go to my primary job at the school, leave there and go directly to take care of an elderly woman until Sunday morning when I went to take care of a middle aged woman with MS. I wouldn't be done working until Sunday evening. I would also work with a patient Monday through Thursday evenings after my primary job. He took care of both toddlers and he did a great job! I never worried when he was taking care of the children. He even made sure he took them to the park, weather permitting, and to do age appropriate things with them so that they could enjoy themselves while I was working. After this situation happened, our world has been turned upside down. I even had to quit one of my jobs, which has been a financial burden, so that I could be home more for the children. The children have a great relationship with him

and it has been very hard on them. Many people have complimented how he is with the children, patient, kind, understanding, etc. I know that they have suffered tremendously since he has been gone. Their day starts at 5 a.m. and doesn't end until about 9 p.m. as I have to work. When he was home, the children were able to sleep later and he would get them up, feed them, dress them and get them to school. He would pick them up from school and get them home, ready for bed and in bed at bedtime. I also know that they do not understand the situation and I am praying that you will take them into consideration when making your decision.

As a father, I honestly have to say that I have never seen a more loving, caring and hands on father. The children are his priority and they need him as much as he needs them.

I also know that health wise he isn't well. He has severe sleep apnea that is critical and he needs a CPAP machine whenever he is sleeping. In addition, he has diabetes. I worry about him getting proper medical attention. While in Wyatt Center, he was without his CPAP machine for at least 28 days, he could have died. I made many calls and was frantic trying to get him a CPAP machine so that he would not die, he is CRITICAL without the machine. Staff was very lackadaisical with me when I was addressing this issue. Medical staff even made the statement, "Just because he has a machine, doesn't mean he needs it." It is unacceptable that this happened and that it took that long to get him a working machine. I worry constantly about his health and I don't want anything to happen to him.

My husband and our daughter and grandson have a wonderful, special bond. I know that having daddy in their life is very important for them mentally, emotionally and physically. Their world has been turned upside down in his absence. They have suffered so much since he was such a positive, daily presence in their life.

I know that you know all too well how important it is for children to have a father in their life, especially when he is a positive father. I am asking that you please take our children into consideration when making your decision.

Sincerely,


Shannon Nkrumah



July 22, 2013

Dear Honorable Janet Hall,

I am writing you this letter on behalf of my husband Kwame Nkrumah. I know I previously wrote you a letter. However, I realized I did not express the financial burden I am having since he has been away. Not only have I had to quit a job because he is not home with us which has really decreased my monthly income. The children and I are also without his income and this has created an unbearable financial burden on me. In addition, I am facing uncertainty with my current job since my boss retired. It is very stressful and I am worried that I may no longer be able to meet our family's financial needs without him. I am scared to death that this will happen! We are barely making it and are currently living paycheck to paycheck as it is. Monthly I pay a mortgage, and a land fee which has just gone up. I pay taxes for the house and car and now I have home owner's insurance bill which just started in June that is no longer included in my mortgage payment. The expenses have increased while my income has drastically decreased. I have a lot of medical out of pocket expenses for my grandson that is not covered by medical insurance. In addition to my husband's financial contributions, he has taken care of all of us and emotionally too.

I had a hard life growing up. My mother died when I was 5 years old and my father was an alcoholic that abandoned me and my 8 siblings. Growing up my siblings and I were raised by many different family members who took care of us for a little while until they could no longer take care of us or no longer wanted to take care of us and then another family member would take care of us and the cycle continued this way for many years until we were all separated and sent to live with different relatives. I raised my oldest 2 children on my own without the support of my family or anyone. I tried my best and worked hard to take care of them on my own. I tried to make sure that they felt loved, secure and safe growing up; which I did not feel growing up. I honestly have to say that I can't remember ever feeling safe and secure before my husband came into my life. It took me a long time to trust him. He was the first person to show me love, respect and safety without ever wanting, asking or demanding something in return. Kwame and I have always made sure [REDACTED] and [REDACTED] have felt loved, safe and secure. They are suffering without him home with them and this is very difficult for them.

Since I wrote you the previous letter, I have been informed I may have cancer, which I am currently undergoing tests for. I am very scared about this and worried for our children. If something does happen to me, I don't know what will happen to our children if he is not home with us. It is very important for me to keep my family together. In addition, last week I was told that our grandson [REDACTED] (whom we are raising) has a heart murmur that needs to be "watched closely."

I pray and hope that you will be able to take these things into consideration when making your decision.

Thank you,


Shannon Nkrumah

[REDACTED]

Exhibit B

May 15, 2013

Dear Honorable Janet Hall,

I am writing this letter on behalf of Mr. Kwame Nkrumah. I met Mr. Nkrumah over a year ago. We met at my great granddaughter's school where his daughter also attends. Mr. Nkrumah brought his daughter to school and picked her up daily. The girls have become close and even spend time with one another outside of school. During the time I was able to get to know Mr. Nkrumah, I was able to get to know a man that clearly loves and values his family. I witnessed firsthand how much he deeply loves his daughter, grandson and wife. He attended every event and achievement for his daughter. While he was home he made sure his mother didn't miss an event either. In addition to "cheering" on his daughter, he cheered on my great granddaughter and every other child. Mr. Nkrumah and his daughter have such a strong bond that I don't think I have ever seen one as strong. I have also witnessed Mr. Nkrumah and [REDACTED] and the bond they have.

Unfortunately, since I have last seen Mr. Nkrumah, I have witnessed his daughter's sadness since her father has been gone. [REDACTED] is only 5 and it's almost as if the "spark" in her has faded. [REDACTED] is only 3 but he is always talking about his "Pop Pop" and what they are going to do together as soon as he comes home. I am asking you to please take his entire family into consideration when making your decision as they have suffered and struggled since he has been away.

Sincerely,

Ann Horrocks

Ann Horrocks
[REDACTED]

Exhibit C

May 17, 2013

Dear Honorable Janet Hall,

This letter is in regards to Kwame Nkrumah. I have known Kwame for 6 to 7 years and I have known his wife even longer as I work with her. I know that since he has been away, it has been very hard on his children, wife and mother. He was the parent that took care of the children while his wife worked. He would make sure their needs were met. He always made sure his elderly mother's needs were met. If she needed transportation to get somewhere, he made sure she would get to her destinations safely. He is definitely his mother's main supporter.

I know Kwame as a very caring man that has always tried to help people of all ages that were going through difficult times. He has always talked to our at risk youth about staying away from the streets and entrepreneurial opportunities.

I am hoping you will take these things into consideration when making your decision.

Sincerely,

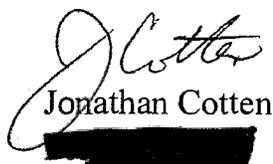

Jonathan Cotten


Exhibit D

May 13, 2013

To The Honorable Janet Hall,

My name is Billie Jo Wilson and I am writing this letter on behalf of Kwame Nkrumah. I have known Kwame for the past 5 years and I know him as being a very caring and loyal father, husband and "grandfather." I use the grandfather loosely as he has really taken on the "father" role with regards to [REDACTED]. He has always been actively involved in his daughter, [REDACTED]'s and grandson [REDACTED]'s care. He brought both children back and forth to school daily and even took them to their medical appointments on a regular basis while his wife was working. When his grandson needed a home because his parents were unable to take care of him due to their situations, he supported his wife in the decision to bring him in to their home to raise him and love him as their own. [REDACTED] is his wife's daughter's son. While his wife was working weekends, I saw him regularly take both kids to the park whenever the weather permitted and actively play with them while they were there. He would also take them to Chuck E. Cheese if the weather was bad so that they could enjoy kids' activities and "burn off" their abundance of energy. Kwame attended every birthday party, child's achievement ceremony, etc.

I know him as a gentle, caring and concerned family man who has a great relationship with his children and wife who put them first. I know that he has a bond with the children that most people could only dream of. [REDACTED] had been through some "rough" times before moving in with his grandparents and Kwame showed nothing but love, patience and understanding with him to help bring him through his difficult days. When this situation took him away from his family, it was very difficult for the children not to see him as he was the "constant" in their home as his wife was working 3 jobs at the time and he was the "hands on" parent. Since then, his wife had to quit 1 job because of his absence, it was impossible to continue as that job required her to leave home on Friday mornings and not return until Sunday evenings.

I am asking that you take all of these things into consideration when he appears before you. There are enough children without fathers in their lives and these 2 children have had a great father in their lives that loves them and they can only do great things while getting the support and Love them. They need him as much as he needs them.

Please feel free to contact me at [REDACTED].

Sincerely,



Billie Jo Wilson

Exhibit E

HYDE LEADERSHIP FOOTBALL

*Head Coach
Melvin I. Wells Jr
203-641-9874.*

Dear Honorable Janet Hall;
May 13, 2013

I have known Mr. Kwame Nkrumah for the past six years; he has assisted me with the local youth football program as been a mentor for some of our high risk young people. This is while continuing to take care of his family and better himself.

I hope that you consider all the good he has done and allow that he be held accountable while continuing to be a productive person in our community

If I may be of any further assistance, please contact me at either my home or school.



Melvin Wells

[REDACTED]
Hamden, CT 06518

[REDACTED]
203-497-7078 (school)

*HYDE LEADERSHIP SCHOOL
306 Circular Ave. Hamden CT, 06514*

An Equal Opportunity Employer

Exhibit F

Dear Judge Janet Hall,

5-20-13

I am writing this letter on behalf of my friend and co worker Kwame Nkrumah, Kwame has been an inspiration to not only myself but to the young teens in which I coach at the Hyde Leadership school. He has displayed great leadership skills and his time and dedication has been appreciated. I deal with a lot of inner city kids and also high risk teens in the city of New Haven and Mr.Nkrumah makes a conservative effort to talk and interact with kids on a weekly basis. This has been an ongoing process for the last 2 years and to be honest he has played a major part in my growth as a man. He has been a role model to me and also a father figure to the kids who come from a single family home. His support to the basketball team has been beneficial and the kids look forward to seeing him on a daily basis. Not everyday does teens look forward to what he brings to the table and it's almost like they are disappointed when he cant be there. I've been coaching basketball for 13 years and I have never seen a man be so influential to young kids. In conclusion the basketball team and myself would like to thank you for reading this letter and hopefully some justice will be done and you take his passion for the kids into consideration.

Thank You, Aaron Johnson

Residential Advisor/Basketball Coach

Exhibit G

May 15, 2013

Dear Honorable Janet Hall,

I am writing to you regarding Kwame Nkrumah. I have known Kwame all of my life. He is a man that has taken on the role in his family as the "Caretaker," always looking after others in his family. He is a very caring husband, father, son and grandfather who deeply loves his 5 year old daughter, his first born, his wife, grandson and mother. Before this situation, when I saw Kwame, I saw his daughter. It was very rare to see him without her. When his grandson came to live with him and his wife, he always had him with him too. In fact, the only time he was seen without the children was when they were in school. If they weren't with him, he was telling a story about them and how proud he is of them. I can honestly say, he loves his kids and wife more than anything. He took very good care of his daughter and grandson, taking them to the park, and talking with them about everything, really trying to make sure they experienced different things. Since having his daughter, I have never seen him happier in his entire life. I know he is hurting by not being with her right now and I know she is very sad that he isn't with her. She talks about him all the time and states that she can't wait until her daddy comes home because she loves him and misses him. I know he feels the same way about his grandson too. Not being there for his kids is taking a "toll" on him.

I also know the side of him that has always helped others that are in need and/or down on their luck. He was quick to make sure someone who was hungry had something to eat, he share his own food. If someone was cold, he made sure that they had a coat to keep them warm, I saw him take his own coat off his back and give it to someone that didn't have one. I have heard him talk to his daughter and grandson about sharing with others and he even told them it is OK to share their toys and even give a toy to a child that didn't have any. He talked with them about how they might feel if they were in the other child's position. He explained to them that they are blessed and it is OK to share and even give their toys to a child that has none or very little. He has such a loving and caring heart! I have also listened to him talk to "at risk" individuals and stress that they don't have to let their circumstances define who they are, that they need to do their best, make good choices and strive to be the best at whatever they choose to do. He has convinced many that they can still achieve great things even if they aren't in the best situation; they just need to stay focused and have a goal.

I hope that you will take these things into consideration when making your decision. As I know he is a great asset to his family and the community.

Sincerely,



Genita Santos

[Redacted]

Exhibit H

John Mann

[REDACTED]

Hamden Ct. 06518

[REDACTED]

May 24, 2013

To whom it may concern,

Kwame Nkrumah and I have known each other for many years, over the last three years I have gotten to know him on a personal level. I have found him to be intelligent, down to earth, and a man that holds family values. He is a hard working individual striving to provide a living for his family.

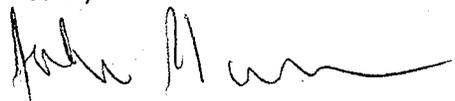
From my understanding he had time in the system for a number of years. He has expressed to me how grateful he was to have served his time and been given another chance to have the American dream. A Business, wife, children, and home he earnestly held that life dear in his heart.

I have had many encounters of him in the presence of his children, not only do they adore him he treasures their lives as well. His relationship with his now eighty one year old mother is very important to them both. He is her oldest son and he looks after her by doing errands for her, taking her to visit family members to doctors' appointments, church and helping her with other needs.

Him being away from his family has been a crushing blow on them all. His wife has had to juggle work and family alone. This has not been an easy task to maintain the family structure. I don't know all things but I do not think that the charges brought against him were based on truth; I have witnessed a changed man. That had too much to lose by engaging in criminal actions.

I sincerely ask that you consider my thoughts that I have expressed concerning Kwame Nkrumah. I have great concern for the family structure.

Sincerely



John Mann

Exhibit I

Deborah Mann

[REDACTED]
Hamden Ct. 06518
[REDACTED]

May 24, 2013

To whom it may concern

I am writing to you to share my experience of knowing Kwame Nkrumah. He has always been a caring and concern individual reaching out to help others in need. The care and concerns extends outside of family.

My husband and I had problems with a tenant and needed advice. We spoke to him concerning this issue and he took the time out to sit with us and instructed us on who to contact and what steps to take.

His love and concern for his wife and children is refreshing, daily he would get both children off to school and daycare before going off to work himself.

When making your decision I hope that these things will be taken into consideration

Sincerely,


Deborah Mann

Exhibit J

May 22, 2013

Dear Honorable Janet Hall,

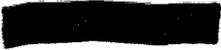
This letter is in regards to my son, Kwame Nkrumah. Kwame is my eldest son and he has never given me a problem growing up. I love him and care for him deeply and I am hurt that he isn't home. I am 81 years old and it is very hard for me to not have him around as he has always taken good care of me and helped me with everything. Now I don't have his help. He has also helped out his family in many ways. Currently I am watching his 5 year old daughter while my daughter-in-law works. Due to my age and health, some days are harder than others for me to watch her and I am not sure how long I will be able to help with her.

Kwame has always put me first and he has taken good care of his daughter who he has never been away from until this. As a mother, I know how difficult it is to be away your child and I know being away from his family is killing him. Kwame has embraced the joy of raising his daughter. He was 52 years old when he had his first child. As his mother, I can't put into words how proud I am of him and the way he has taken care of his family. He has been a "hands on" father and unfortunately, that is a rare role to see with men. I have never been prouder of him!

I worry about his health every day as I know how hard it is to maintain good health. I pray every day for him to stay healthy and strong and I worry that medically he will not be taken care of properly. I know he is on a machine to be able to breath at night and I know without it, he could die. Since he's been away, he had to go without it. My son could have died during that time, thank God he didn't. It was not easy to get him a working machine and the process took too long and that is unacceptable!

I also know that none of us are guaranteed tomorrow and I would love to have my son home with me as I am not getting any younger.

Sincerely,

Lula Woodson


your truly
Mrs Lula Woodson

Exhibit K

May 23, 2013

Dear Honorable Janet Hall,

Please be advised that this letter is sent to support Kwame Nkrumah in his bid for a fair plea bargaining in his case. I am most familiar with his wife, daughter and grandson who miss and need him dearly. In essence, his family needs him very much.

Understanding that the system is just and fair for the most part Kwame recognizes this and has made no unwanted criticism of the system that would be self-serving. He is totally prepared to abide by the established rules and laws of our society and reestablish himself as a productive and meaningful member of society.

In his present situation Kwame has adhered to all of the rules and guidelines and has exhibited excellent behavior. He has been cooperative, demonstrated respect for authority and has shown a willingness to review, reflect, and make attitudinal changes when merited.

I sincerely believe that if given the opportunity Kwame will once again become a productive member of society.

Sincerely,

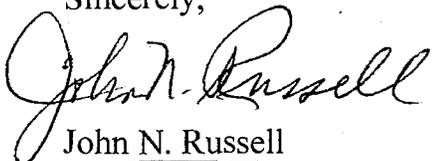

John N. Russell



Exhibit L

To Whom It May Concern:

I am writing this character reference letter on behalf of Mr. Kwame Nkrumah.

My name is Deborah Claiborne and I have known the aforementioned person for approximately seven plus years. I have known him to be a committed husband, a dedicated family man and a decent human being. On numerous occasions, I have personally witnessed his giving help to others either financially and in some instances helping people to obtain work, food or a place to stay.

I know that his family misses him dearly and wants/needs him to be at home. The separation from his family has been hard on the children and his wife.

If released, I see him as being a productive member of society rather than a hindrance.

I hope that these things are taken into consideration as you are deciding his case.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Claiborne".

Deborah Claiborne



Exhibit M

Chris Bangboye, Agent

1890 Dixwell Ave, Suite 108
Hamden, CT 06514-3110
Box 203 288 /141
chris.bangboye.jl@statefarm.com



Providing Insurance and
Financial Services

05 17 2013

To: The Honorable Janet Hall

Re: **Kwame Nkrumah**

With regards to Kwame Nkrumah, this letter is to express that I have known Kwame to be a caring, loving husband and father. He has been a very good role model and is a very "hands on" father to his daughter and grandson. I also know him as a very supportive individual, always willing to help others. I ask that you take these things into consideration when making your decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Bangboye", written over a horizontal line.

Chris Bangboye

Exhibit N

May 17, 2013

Dear Honorable Janet Hall,

I have known Kwame Nkrumah for about 7 years now. When I first met him, I was going through a rough time and he assisted me in finding a suitable, safe and affordable apartment for my son and me. During that difficult time, I met many people that did not have mine or my son's best interest in finding a suitable place to live. They just wanted my money and were expecting us to move into anything; safe or not.

His genuine concern for my son's safety was so appreciated and something I will always be grateful as he did not know us but did spend a lot of time helping me. I am asking that you take this kind man's good deeds into consideration when making your decision.

Sincerely,

Melloney Houseley

[REDACTED]

Melloney Houseley

Exhibit O

May 17th, 2013

To the Honorable Janet Hall,

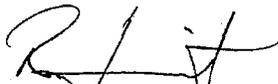
This letter is written on behalf and in beseechment of leniency for Mr. Kwame Nkrumah. I have had the pleasure of dealing with Mr. Nkrumah for close to half a decade now. In this time I have always found him to be as good natured and upbeat of a human being as I have ever met. In that time despite whatever trials and travails came the way of he and his family, Kwame has always been a supportive husband father and friend to all those he dealt with.

I have been a friend and co worker to Mr. Nkrumah's wife Shannon for well over her decade. My first interaction with Mrs. Nkrumah was as Dean and football coach of her son Anthony at the then known as The Hyde Leadership High School of Greater New Haven. While I had met Kwame previously I got to know him unfortunately much better when Anthony, his stepson passed away in early 2009. It was a difficult time for us all but Kwame was unflaggingly supportive to us all.

It was then and afterward that I came to see the type of man, husband and father Kwame Nkrumah is. What he is and does for his family is priceless. My heart breaks that he and his daughter of five years old [REDACTED] have been separated for so long. That they will be separated even longer is unconscionable but it is a reality that Kwame is doing his best to help his family deal with.

If the caliber of a man as a father, husband and friend have any weight upon what happens to Kwame from this point forward then please take such matters into consideration. Kwame has in the time I have known him tried to lend a hand to all those he comes in contact with. When making your decision regarding his future please consider the asset that he is to his community and loved ones.

Respectfully yours,



Ronald Leconte
(203) 996 - 2020

Exhibit P

Micro Society Magnet School

306 Circular Ave.

Hamden, CT

To the Honorable Janet Hall,

I am writing on behalf of Kwame Nkrumah. I am his daughter's, [REDACTED], former teacher. She was in my class when she and her father were separated. Her father would bring her to school every day and they were very close. She was extremely upset when he was no longer at home. We saw changes in her behavior at school. She went from being well behaved to a child who would deliberately misbehave hoping that we would call her father and he would come for her. She would cry a lot. It was sad to see the changes in her. I hope that you will take into consideration Mr. Nkrumah's strong family commitment when deliberating his case.

Sincerely,

Mary Welch

Mary Welch

Teacher

Exhibit Q

May 20, 2013

To Honorable Janet Hall,

This letter is regarding Kwame Nkrumah. I am writing this to let you know that Kwame is good person that is willing to help others. I have witnessed this firsthand as I am an adult that has benefited from his mentoring when I was younger. I had a situation in my life that was very hard for me to figure out. He stepped right up and talked to me about the many ways I could deal with the situation, but more importantly what would be the right way to handle the situation. Because of his knowledge, I know I didn't make a hasty decision that would not only affect me the rest of my life but also the life of my son. I know that not only can I turn to him if I need to, but my son can also.

I am asking that you please take the good things he has done and can continue to do into consideration when making your decision. I know he can do more good for himself, his family and "at risk" youth if he is home.

Thank you for your time.

Sincerely,

Marquet Sutton

[REDACTED]