

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

UNITED STATES OF AMERICA

v.

JOSEPH CARLTON MEEK

FILED UNDER SEAL

CRIM ACTION NO. 3:15-CR-00633

**DEFENDANT JOSEPH CARLTON
MEEK'S SENTENCING
MEMORANDUM AND MOTION FOR A
VARIANCE**

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	A VARIANCE IS JUSTIFIED BASED UPON APPLICATION OF THE § 3553(A) FACTORS AND THE DIRECTIVE THAT A SENTENCE BE “SUFFICIENT BUT NOT GREATER THAN NECESSARY”.	4
	A. HISTORY AND CHARACTERISTICS OF THE DEFENDANT	6
	1. Joey’s Medical Condition	7
	2. Joey’s Substance Abuse	10
	B. NATURE OF THE OFFENSE	11
III.	BECAUSE MR. MEEK’S SAFETY CANNOT BE SECURED IN THE GENERAL POPULATION, HE WILL BE HOUSED IN SOLITARY CONFINEMENT AS HE WAS WHEN AT LEXINGTON COUNTY DETENTION CENTER FOLLOWING HIS ARREST	11
	A. Legal Argument	13
	B. Recent Calls for Limiting Solitary Confinement	13
	C. Support in Social Science	17
	1. The Kuper Report..	17
	2. The Haney Report	19
	3. The Lieberman Report.	20
	4. The Hawkey Report	21
	5. The Keltner Report	21
	D. Solitary Confinement Is Uniquely Mentally And Physically Debilitating As Compared To Ordinary Prison Life	22
IV.	BECAUSE JOEY MEEK IS VULNERABLE TO VICTIMIZATION IN PRISON, A DEPARTURE IS WARRANTED UNDER 5K2.0(a)(2)(B)	26
V.	JOEY MEEK REQUESTS THIS COURT’S CONSIDERATION FOR THE TURNING LEAF PROGRAM	29
VI.	A VARIANCE FROM THE GUIDELINE RANGE IS WARRANTED UNDER 18 U.S.C. § 3553(a) TO AVOID UNWARRANTED SENTENCING DISPARITIES	30
VII.	MR. MEEK’S CRIMINAL HISTORY CATEGORY OVER-REPRESENTS HIS PAST CONDUCT	31
VIII.	CONCLUSION	32

I. INTRODUCTION

This is a unique case which unfortunately stands in the shadow of one of the most horrific crimes ever committed in our State. Joseph Carlton Meek (hereinafter “Joey Meek”) awaits sentencing for two crimes to which he pleaded guilty – lying to the FBI and misprision of a felony. Joey, who has suffered from mental health issues since a young age, failed to appreciate that Dylann Roof (hereinafter “Roof”) was actually going to carry out the extreme crimes he described while they were both under the influence of cocaine and alcohol approximately a week before the murders of nine South Carolinians. Due to a number of factors which will be discussed at his sentencing hearing by his treating psychiatrist, Joey Meek was inadequately equipped to assess the seriousness of Roof’s statements. This crime which shocked the world was equally unimaginable to the 21 year old Meek who knew Roof made the statements in a drunken state.

Approximately one week after hearing Dylann Roof talk of killing African Americans and starting a “race war”, Joey and his friends saw a Facebook posting at approximately 10:00pm which described African Americans being murdered in the AME Church in Charleston. After realizing that Mr. Roof had actually acted on his thoughts, Joey became extremely scared, nervous, and shaken. His reaction, typical of a scared and immature young person, was to tell his friends to refrain from calling the police and to shut down. Joey feared that because Mr. Roof had been staying at Joey’s house, partying with him, and had spoken of these crimes, that he would be accused of somehow being involved or supportive of these crimes. He was on state probation at the time and was scared of being in trouble with his probation officer. He did not call the police that night, and he asked his friends not to call the police. Joey did, however, call

the police the next morning at 8:00 am after a conversation with one of his friends.

Joey's inability to appreciate Roof's intent, ability and determination to carry out these horrific crimes, was a failure he will live with for the rest of his life. Not one day goes by that Joey fails to think of the families of the victims and wonder whether he could have stopped Roof from committing these horrific murders. Although, the evidence presented at trial made clear that Roof was determined to commit these crimes and acted completely alone¹, Joey continues to feel a tremendous amount of sorrow and guilt. (See **Exhibit A** – Letters to Victims' families from Joseph Meek and **Exhibit B** – Statement of Joseph Carlton Meek)

II. A VARIANCE IS JUSTIFIED BASED UPON APPLICATION OF THE § 3553(a) FACTORS AND THE DIRECTIVE THAT A SENTENCE BE "SUFFICIENT BUT NOT GREATER THAN NECESSARY".

Joey Meek, pursuant to the decision in United States v. Booker, 543 U.S. 220 (2005), requests this Court to impose a sentence that is "sufficient but not greater than necessary to comply with" the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2). 18 U.S.C. § 3553(a). Those goals, the consideration of the "nature and circumstances of Mr. Meek's offense, " § 3553(a), and the other factors set forth in the statute compel a sentence of less than the 27-33 months called for by the United States Sentencing Guidelines.

This Court, in arriving at the sentencing decision in this case, must, of course, consult the United States Sentencing Guidelines. *See United States v. Munoz*, 430 F.3d 1357, 1369 (11th Cir. 2005). Nonetheless, courts must also consider the other factors set out in § 3553(a):

Although "judges must still consider the sentencing range contained in the Guidelines, . . . that range is now nothing more than a suggestion that may or may

¹ Indeed, former United States Attorney Bill Nettles made it clear in an interview with The Free Times on June 22, 2016, that "this was one lone act." (See attached Free Times article - **Exhibit C**).

not be persuasive . . . when weighed against the numerous other considerations listed in [§ 3553(a)]." *Id.* at 787 (Stevens, J., dissenting). Indeed, as one district judge has already observed,

the remedial majority in *Booker* [] direct[s] courts to consider all of the § 3553(a) factors, many of which the guidelines either reject or ignore. For example, under § 3553(a)(1) a sentencing court must consider the "history and characteristics of the defendant." But under the guidelines, courts are generally forbidden to consider the defendant's age, his education and vocational skills, his mental and emotional condition, his physical condition including drug or alcohol dependence, his employment record, his family ties and responsibilities, his socio-economic status, his civic and military contributions, and his lack of guidance as a youth. The guidelines' prohibition of considering these factors cannot be squared with the § 3553(a)(1) requirement that the court evaluate the "history and characteristics" of the defendant.

United States v. Ranum, 353 F. Supp. 2d 984, 986 (E.D.Wis.2005).

Thus, mitigating circumstances and substantive policy arguments that were formerly irrelevant in all but the most unusual cases are now potentially relevant in every case. *United States v. Glover*, 431 F.3d 744, 752-753 (11th Cir. 2005) (Tjoflat, J. specially concurring). *See also, United States v. Huerta-Rodriguez*, 355 F. Supp.2d 1019, 1023 (D. Neb. 2005) ("post-*Booker*, the Sentencing Reform Act (SRA) requires the sentencing court to regard the guidelines' ranges as one of the many factors to consider in determining the sentence").

The goals set forth in §3553(a)(2) consist of the "need for the sentence imposed":

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational, training, medical care, or other correctional treatment in the most effective manner

As the court considers the Guidelines and the § 3553(a) sentencing factors, the key directive given to the court is to impose a sentence which is sufficient but not greater than

necessary to achieve the purposes of sentencing as defined in the statute.

In this case, Joey has a very limited criminal history. Further, consideration of the other factors of § 3553(a) - in particular, the “history and characteristics of the defendant” (§ 3553(a)(1)); the nature of the offense, the deterrence factor; the need to protect the public; and the need to avoid “unwarranted sentence disparities” (§ 3553(a)(7))- demonstrates that a variant sentence is necessary to achieve the key sentencing directive that the sentence be sufficient but not greater than necessary to fulfill the purposes of sentencing.

A. THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT

Joey was primarily reared by his mother and step-father. When he was only six years old, his parents divorced. Although he has lived in South Carolina for the past twelve years, he moved a great deal as a child due to his father’s military service and later due to his mother’s relationships with men in different states. Joey has lived in South Carolina, Texas, Alaska, and Virginia. Indeed, after his parents’ divorce, Joey’s childhood was plagued with his parents failed and abusive relationships; drug and alcohol abuse within the entire family; constant relocations; his father’s issues with law enforcement; and his own juvenile issues.

Throughout his unfortunate childhood, Joey and his younger brothers, Jacob Meek (16), and Justin Meek (19), were witnesses to domestic violence, alcohol abuse and drug abuse by the adults in their lives. Both his biological father and step-father abused Joey, his brothers and his mother. One of Joey’s most vivid childhood memories is that of picture day in middle school. He arrived at school distraught and embarrassed by the red marks on his neck from his step-father choking him the night before.

Mr. Meek's troubled childhood had a negative effect on his performance in school and academics. According to his educational records, Joey was expelled on several occasions in middle school and high school. He attended alternative programs, but made only average to failing grades. He dropped out of White Knoll High School in the 10th grade and began working. Joey has worked on a continuous basis throughout his early teens until the present in jobs ranging from restaurants, landscaping, HVAC work, and stocker for a local grocery store. During the entire time that Joey has been on bond in this case, he has worked an average of 40 hours a week, some of this time working two jobs.

Despite his tumultuous upbringing, Joey has a strong relationship with his mother, his two younger brothers, and his maternal grandparents. Although the media attention and notoriety of Roof's case has been overwhelming, his family and employer have been very supportive during this prosecution. (See **Exhibit D** – Letters of Support for Joseph Meek; **Exhibit E** – Email from Employer).

1. Joey's Medical Condition

As noted in the PSR in paragraphs 70-71, confirmed by the Probation Officer and according to his current treating psychiatrist Dr. Thomas V. Martin, M.D., (See **Exhibit F** – Curriculum Vitae of Dr. Martin). Joey has a confirmed history and presently suffers from mental health issues. Joey's treatment began when he was just 8 or 9 years old and has spanned health professionals at his schools and his county mental health center for the last ten (10) years.²

² Mr. Meek's mental health records obtained from both the Lexington County Department of Mental Health and Lexington County School District are being submitted to the Probation Office, USAO and the Court for review.

In 2006, during middle school, Joey began seeing the school psychologist who diagnosed him with Attention Deficit Hyperactivity (ADHD). During the course of his treatment in the school system, he was also diagnosed with Anxiety and Depression. By July of 2012, the diagnosis included Bipolar Disorder and Bipolar mania.

Records from the Lexington County Community Mental Health Center indicate that Joey was first diagnosed by them on May 1, 2012, with Disruptive Behavior Disorder and Mood Disorder. At that time, Joey's treatment consisted of anger management, coping skills, relaxation skills, behavior management and psychoeducation. At the time of the May 2012 report from the Lexington County Community Mental Health Center, Joey informed them that he had been taking Vyvanse for years to aid in his mental illnesses. He was also prescribed Lexapro and Depakote. During this time he was exhibiting signs of depression, irritability, hyperactivity, anger, crying, outbursts at home and school and impulsivity.

Joey's records confirm that while he was taking his prescribed medications and receiving individual therapy, his behavioral issues and moods improved. He is consistently described by mental health professionals as an individual that suffers from Disruptive Behavior Disorder (which includes ADHD, Mood Disorder, and Oppositional Defiance Disorder). He has historically had problems sleeping such that his sleep habits have had to be monitored. Lexington County Community Mental Health Center's records indicate that Joey has previously been prescribed Focalin, Concerta, and Strattera, none of which eased his mental illnesses and their symptoms.

Without dispute, Joey has suffered from mental illnesses since his early childhood. He has been on psychiatric medications since at least the age of twelve and has received

psychotherapy intermittently. Mental illness like any permanent physical illness has to be treated not only with medications, but other measures deemed necessary for that specific individual.

While on bond for this case, Joey's therapy has included the following medications for his mental and emotional health: Adderall, 30 mg twice daily to address his ADHD symptoms. He has recently been weaned off Abilify, 2.5 mg because his sleep patterns improved. Joey has been treated by Forensic Psychiatrist, Dr. Thomas V. Martin, M.S. on a regular basis for counseling and medication management throughout these proceedings. His employment record, his job performance and compliance with the bond provisions reflect that the psychotherapy and medication regimen has been very successful.

The Sentencing Guidelines provide for downward departures for people with costly and serious medical conditions. U.S.S.G. Section 5H1.4 states that "[a] extraordinary physical impairment may be a reason to depart downward." Guideline Section 5H1.3 previously provided that defendants' "mental and emotional conditions" were "not ordinarily relevant." By amendment (Amend. 739), that provision now provides "[m]ental and emotional conditions *may be relevant* in determining whether a departure is warranted," especially "[i]n certain cases ... to accomplish a specific treatment purpose." Counsel can thus now argue under either this policy statement or a defendant's "history and characteristics," 18 U.S.C. § 3553(a)(1), that the Bureau of Prisons will not likely treat a specific area requiring accommodation and, therefore, a variance is warranted. The cost of treating a client's conditions further supports a cost-related mitigation argument, particularly in light of the Bureau of Prisons' chronic budgetary problems and persistent overcrowding.

To ignore Joey's unique circumstances and to sentence him as a healthy, unimpaired person would be to ignore the longstanding tradition that sentencing courts have of considering the person before them as an individual. *See Koon v. United States*, 518 U.S. 81, 113 (1996) ("it has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.").

2. Joey's Substance Abuse

As noted in the PSR in paragraph 72 and confirmed by the Probation Officer, Joey has a confirmed history of drug and alcohol abuse. He first started using marijuana at the age of 12 or 13, and last used it in August 2015. He has readily admitted that he smoked marijuana on a daily basis for much of his of life. Joey has also used cocaine, crack, methamphetamine, prescription pills and "Molly". Despite the fact that he has abused drugs and alcohol his entire life, he has never participated in substance abuse counseling or treatment until being arrested in this case. Since his release on bond, Joey has been attending Celebrate Recovery on a regular basis.

The Sentencing Guidelines provide for downward departures for people with costly and serious medical conditions. Specifically, U.S.S.G. Section 5H1.4 states that "[a] extraordinary physical impairment may be a reason to depart downward." Joey asks the Court to consider these facts in imposing a sentence. Because of his unfortunate history of mental, emotional, and substance abuse issues, taking him away from his treatment would entirely reverse the progress he has made in the last year and a half.

B. THE NATURE OF THE OFFENSE

Joey pleaded guilty to two non-violent offenses - misprision of a felony and lying to the F.B.I.. These crimes involve singular mistakes in judgment which took place within hours after the heinous shootings and while the whole world, including Joey Meek, tried to comprehend the horror. As soon as these events transpired, Joey realized the gravity of his failure to detect the seriousness of Roof's plans.

As noted above, Joey has suffered since middle school from anxiety, depression and ADHD. Clearly, these facts played a central role in his commission of the offenses. At the time of these offenses, Joey did not have the coping skills, nor the maturity, necessary to make difficult decisions. Joey's lack of serious criminal history demonstrates, too, that, for Joey, the offense was truly unthinkable. Finally, and most important, Joey's performance while on bond and his "history and characteristics" show that he has the character to successfully lead a productive and worthwhile life.

III. BECAUSE MR. MEEK'S SAFETY CANNOT BE SECURED IN THE GENERAL POPULATION, HE WILL BE HOUSED IN SOLITARY CONFINEMENT AS HE WAS WHEN AT LEXINGTON COUNTY DETENTION CENTER FOLLOWING HIS ARREST.

This Court must carefully consider whether a harsh prison sentence is commensurate with the wrongful conduct Joey committed. Indeed, the United States Attorney responsible for his prosecution has publicly indicated his view that Mr. Meek should not "be punished severely because he wasn't severely involved." (*See Exhibit C* – Free Times article, June 22, 2016, quoting former U.S. Attorney Bill Nettles). Solitary confinement, however, is without a doubt the most severe punishment in existence, with the exception of the death penalty.

From the date of his arrest on September 17, 2015, until the date he received a bond on November 4, 2015, Mr. Meek was housed in solitary confinement in the Special Housing Unit ("SHU") of the Lexington County Detention Center (hereinafter "LCDC"). Not surprisingly, LCDC expressly recognized that Mr. Meek's safety could not be secured in the general prison population based upon the notoriety of Dylann Roof's crimes and Joey's association with him.

During the six weeks that Joey spent in solitary confinement at LCDC, he describes the following:

- feeling worthless;
- crying for much of the six weeks;
- feeling as if he could not get any fresh air;
- having extreme anxiety;
- not being able to sleep because the lights were on at all times;
- being allowed one hour a day of fresh air which sometimes was at 3:00am. If he did not want to go outside at that time, he had to wait another day;
- not being able to have anything to read and taking one month to get a Bible;
- drawing on the walls to try and keep track of time;
- having no idea what time of the day it was for most of the time;
- praying on his knees;
- receiving verbal abuse from the guards; and
- talking to himself.

Counsel for the defense intends to provide expert testimony at the sentencing hearing from James Aiken, (See **Exhibit G** – Resume of James Aiken) that any sentence of confinement in the Bureau of Prisons that Joey receives from this Court will also require continuous solitary confinement.

As set forth below, social science studies, public officials, case law and, increasingly, the American people recognize that indefinite or long-term solitary confinement is every bit as

agonizing as physical torture. The mental imprint left by prolonged solitary confinement is nearly identical to that left by physical torture.³

The Sentencing Guidelines do not adequately account for these conditions. However, the Court should take them into account when determining the appropriate sentence because, as explained below, every day spent in long-term, solitary confinement is more agonizing, dehumanizing and punishing than a day served in the general population.

A. Legal Argument

The United States Supreme Court recognized more than a century ago that “[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane” *In re Medley*, 134 U.S. 160, 168 (1890). Courts of many circuits have noted that long-term or indefinite solitary confinement has devastating effects on the mind. *See, e.g., United States v. Bout*, 860 F. Supp. 2d 303, 308-09 (S.D.N.Y. 2012) (Scheindlin, J.) (internal quotation marks omitted) (noting that “[s]olitary confinement is generally intended as short term housing” and that “it is well documented that long periods of solitary confinement can have devastating effects on the mental well-being of a detainee”). Accordingly, excessive solitary confinement has been used by the courts as a basis to vary or depart from the Guidelines.

In *Davis v. Ayala*, Justice Kennedy called for review of the widespread practice of keeping prisoners in extended solitary confinement in his concurring opinion. *Davis v. Ayala*,

³ See Expert Report of Dr. Terry Kupers (“Kupers Report”) submitted on behalf of plaintiffs, inmates in solitary confinement in Pelican Bay, in *Ashker v. Brown*, No. 09-CV-5796 (N.D. Cal.) at 45, available at [www.http://bit.ly/1Ys6N2I](http://bit.ly/1Ys6N2I)

576 U.S. ____ (2015) at ____ (Kennedy, J., concurring). Noting that the prisoner in that case had likely been held virtually incommunicado in a cell the size of a parking space for twenty-three hours a day for twenty years, Justice Kennedy wrote:

There is no accepted mechanism . . . for [courts] to take into account, when sentencing a defendant, whether the time in prison will or should be served in solitary. So in many cases, it is as if a judge had no choice but to say: "In imposing this capital sentence, the court is well aware that during the many years you will serve in prison before your execution, the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself." Even if the law were to condone or permit this added punishment, so stark an outcome ought not to be the result of society's simple unawareness or indifference.

Id. at *3; *cf. Furman v. Georgia*, 408 U.S. 238 (1972) (Marshall, J. concurring) ("[W]hether or not a punishment is cruel and unusual depends, not on whether its mere mention 'shocks the conscience and sense of justice of the people,' but on whether people who were fully informed as to the purposes of the penalty and its liabilities would find the penalty shocking, unjust, and unacceptable.").

In *United States v. Brooks*, No. 07-CR-187 (E.D.N.Y. Oct. 23, 2008) (Sifton, J.), the defendant was restricted to his cell in the SHU at the MDC for ten months. The defendant was locked in his cell for twenty-three hours a day and allowed only one hour per day of outdoor exercise in a cage. He had no contact with other inmates and had restricted commissary, family and religious visiting. He reported that solitary confinement "was the equivalent of '*no touch torture*,' was stressful, depressing, and has caused him to suffer from memory loss." *Id.* (emphasis added). No psychiatric evaluation was ordered. Rather, in granting the defendant's motion for a reduction in sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure, Judge Sifton relied on psychological studies. *Id.* Judge Sifton found that, even without a psychiatric evaluation, the ten months the defendant had spent in solitary confinement

had a profound impact on the defendant's mental health. Accordingly, compared to the MDC's general population, the conditions of the defendant's confinement "were severe and fell upon him in a disproportionate manner relative to the MDC general population." *Id.*

B. Recent Calls for Limiting Solitary Confinement

In July of 2015, President Barack Obama reported that he had asked the Attorney General, Eric Holder, to review the overuse of solitary confinement in American prisons, stating:

The social science shows that an environment like that is often more likely to make inmates more alienated, more hostile, potentially more violent. Do we really think it makes sense to lock so many people alone in tiny cells for 23 hours a day, sometimes for months or even years at a time? That is not going to make us safer. That's not going to make us stronger. And if those individuals are ultimately released, how are they ever going to adapt?⁴

One of the most unexpected criticisms of solitary confinement comes from former New York City Correction and Police Commissioner Bernard Kerik. Mr. Kerik experienced first-hand the ravages of solitary confinement. Mr. Kerik was told by prison officials that they were placing him in solitary confinement for his own protection, and he remained in isolation for ninety days. Describing isolation for administrative purposes as cruel and unusual punishment, he said:

It is mind-altering. . . . You hallucinate; you talk to yourself. No one understands what it's like until you've been there, and we, in this country, use it way too much. . . . You create monsters in prison, and sometimes we forget they've got to go back to society. Most people that are in prison are returning back to society. Do we want them returning back to society warped?⁵

⁴ See **Exhibit H** - President Barack Obama, Remarks at the NAACP Conference (July 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference>.

⁵ See Bernard Kerik on *America's Forum* (Newsmax TV broadcast Apr. 1, 2015), <http://www.newsmax.com/Newsmax-Tv/bernard-kerik-solitary-cruelunusual/2015/04/01/id/635837/#ixzz3kcU7oy5D>.

These calls for reform echo the conclusions of the international community regarding solitary confinement. The United Nations Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Special Rapporteur") concluded that the use of solitary confinement is acceptable in only "very exceptional cases, for as short a time as possible, and only as a last resort."⁶ The Special Rapporteur concluded that international law—the International Covenant on Civil and Political Rights ("ICCPR") and the Convention Against Torture ("CAT"), in particular—prohibits prolonged solitary confinement, that prolonged solitary confinement constitutes torture or cruel and inhuman punishment and that even fifteen days in solitary confinement constitutes a human rights violation. *Id.* at 19-25.⁷

The Special Rapporteur's findings have been used to fight extradition to the United States because of the risk that the defendant will become a prisoner at the Administrative Maximum Penitentiary ("ADX") in Florence, Colorado, the only supermax prison in the United States. Ireland's High Court refused to extradite Ali Charaf Damache to the Eastern District of Pennsylvania where he would have been tried for conspiring to provide material support to

⁶ See *E.g.*, Juan E. Méndez (Sp. Rapporteur of Hum. Rts. Council on Torture), *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011), available at <http://bit.ly/1NgohLd> (quoting "Istanbul Statement on the Use of and Effects of Solitary Confinement," *Torture*, Vol. 18, No. 1, 2008, 66).

⁷ The CAT defines torture as:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." CAT, art. 1, para. 1; see S. Exec. Doc. No. 100-20, Resolution of Advice and Consent to Ratification (Oct. 27, 1990), available at <http://1.usa.gov/1PMqMaJ>.

terrorists.⁸ The court based its refusal to extradite on the fact that, if convicted, Mr. Damache would likely have served his sentence at the ADX. *Id.* at ¶ 11.11. After an exhaustive review of the conditions at the ADX, the court found that prisoners there lived in almost-total social isolation for years, which, it concluded was "inhuman and degrading treatment." *Id.* Indeed, the practice of prolonged solitary confinement is so odious and so indiscriminately widespread in the United States that an influential group of architects are lobbying the American Institute of Architects to revise its ethics code.⁹ The group concluded, after reviewing the Special Rapporteur's report among other sources, that it is unethical to facilitate human torture.

C. Support in Social Science

Observational studies practically unanimously demonstrate the sometimes permanent damage that results from prolonged stays in solitary confinement. The Center for Constitutional Rights ("CCR") recently settled its class-action lawsuit against California state officials, which it filed on behalf of inmates at Pelican Bay State Prison who had spent more than ten years in solitary confinement claiming that their prolonged isolation violated their Eighth Amendment rights. *Ashker v. Brown*, No. 09-CV-5796 (N.D. Cal.)¹⁰

⁸ *Att'y Gen. v. Damache* [2015] IEHC 339 (H. Ct.) (Ir.), available at <http://bit.ly/1OqoeMo> designing spaces that will be used for solitary confinement.

⁹ See Letter from Bd. of Dirs. of Architects/Designers/Planners for Soc. Resp. to its members 2-3, Aug. 1, 2014, available at <http://bit.ly/1TcP7Fl>.

¹⁰ On September 1, 2015, the parties notified the court that they had reached a settlement. Paige St. John, *California agrees to move thousands of inmates out of solitary confinement*, L.A. Times (Sep. 1, 2015), <http://www.latimes.com/local/lanow/la-me-ln-california-will-move-thousands-ofinmates-out-of-solitary-20150901-story.html>. Pursuant to the agreement, California transferred nearly 2,000 inmates out of solitary confinement and into the general population and ended the practice of keeping inmates in isolation based on gang membership. *Id.*

As part of that lawsuit, the CCR relied on reports by mental health experts showing not only the intense deleterious effects of prolonged solitary confinement on both mental and physical health. These reports which are described below also found that, like posttraumatic stress disorder, the effects of solitary confinement persist long after the inmate is released from solitary and, indeed, may be irreversible.

1. The Kuper Report

Dr. Terry Kupers, a psychiatrist with an expertise in studying prisoners, interviewed twenty-four prisoners or ex-prisoners who spent ten or more years at the Pelican Bay SHU.¹¹ According to Dr. Kupers, the effects of solitary confinement persisted long after the inmates were released from solitary confinement. Through Dr. Kupers's interviews, he identified a syndrome found in 100 percent of the prisoners he interviewed that he termed SHU Post-Release Syndrome.¹² Dr. Kupers found that, even after being released, the prisoners reported the same symptoms that would have afflicted them in the SHU: "intense anxiety, disordered thinking and paranoia, problems concentrating, problems with memory, compulsive acts, despair, suicidal thoughts or actions, severe insomnia, nightmares, . . . [a] tendency . . . to numb their feelings and isolate themselves even more than SHU confinement required, and . . . mounting despair."¹³ But these prisoners suffered from symptoms that emerged only *after* being transferred out of the SHU.¹⁴ Those symptoms included:

- Disorientation immediately following release.

¹¹ See – Expert Report of Dr. Terry Kupers at page 2, available at <http://bit.ly/1Ys6N2I>

¹² See Kupers Report at 42.

¹³ See Kupers Report at 42.

¹⁴ See Kupers Report at 42-46.

- Anxiety in unfamiliar places and with unfamiliar people, and the daily life events that had been ordinary prior to SHU confinement become unfamiliar events following release from SHU.
- A tendency to retreat into a circumscribed, small space, often a bedroom or cell.
- A tendency to greatly limit the number of people one interacts with, usually limited to close family members and a few friends.
- Hyperawareness of surroundings, for example a need to sit facing the door to a room or with one's back to a wall.
- Heightened suspicion of everyone who comes close, especially strangers.
- Difficulty expressing feelings.
- Difficulty trusting others, even one's spouse or first degree relative.
- Problems with concentration and memory, beginning in the period of SHU confinement and continuing after release, making it difficult to accomplish tasks and to work.
- A sense of one's personality having changed. The most often reported form of this change is a change from a relatively outgoing, friendly individual with a sense of humor prior to SHU confinement, to a more serious, guarded, and inward individual following release from the SHU.
- In some but certainly not all cases, there is a tendency to resort to alcohol and illicit substances to lessen the pain and make the confusion and anxiety more bearable.¹⁵

These symptoms persist for years later and are also characteristic of post-traumatic stress disorder.¹⁶

2. The Haney Report

Dr. Craig Haney also evaluated prisoners housed in the Pelican Bay SHU *and* surveyed the studies conducted on populations of prisoners kept in prolonged solitary confinement. He concluded that such confinement placed prisoners at grave risk of psychological harm.¹⁷ With respect to Dr. Haney's meta-analysis of the scientific literature, he concluded:

¹⁵ See Kupers Report at 44-45.

¹⁶ See Kupers Report at 45.

¹⁷ See Expert Report of Craig Haney ("Haney Report"), submitted on behalf of plaintiffs, inmates in solitary confinement in Pelican Bay, in *Ashker v. Brown*, No. 09-CV-5796 (N.D. Cal.) at 9, available at <http://bit.ly/1MPjP2Q>

There are numerous empirical studies that report "robust" findings—that is, the findings have been obtained in studies that were conducted by researchers and clinicians from diverse backgrounds and perspectives, were completed and published over a period of many decades, and are empirically very consistent.

...

In addition, the empirical conclusions are theoretically sound. That is, there are straightforward scientific explanations for the fact that long-term isolation—the absence of meaningful social contact and interaction with others— and the other severe deprivations that typically occur under conditions of isolated or solitary confinement have harmful psychological consequences. Social exclusion and isolation from others is known to produce adverse psychological effects in contexts other than prison; it makes perfect theoretical sense that this experience produces similar negative outcomes in correctional settings, where the isolation is so rigidly enforced, the social opprobrium that attaches to isolated prisoners can be extreme, and the other associated deprivations are so severe.¹⁸

According to empirical research, isolated prisoners are at risk of "sometimes irreversible harm, including loss of psychological stability, impaired mental functioning, self-mutilation, and even death."¹⁹

Dr. Haney's study of the Pelican Bay inmates confirmed his survey of previous studies. Dr. Haney found that long-term isolation had produced changes that were "qualitatively different" from changes caused by short-term isolation:

It has forced these prisoners to truly become—not just to more briefly endure being—asocial and alone. Prisoners in [Pelican Bay's SHU] have been subjected to a form of "*social death*" that has undermined and even destroyed their relationships with others, and damaged their ability to function as social beings. The passage of time has not ameliorated or desensitized them to the pain they are experiencing but, if anything, has deepened the sense of loss and the realization that can never fully recover much of what has been taken from them. In a very real and fundamental way, they have undergone a transformation in their personalities as a result of the conditions of isolated confinement and social exclusion to which they have been subjected. At a basic level, they are no longer people who can comfortably and normally interact with, relate to, or care about other human beings.²⁰

¹⁸ See Haney Report at 9-10.

¹⁹ See Haney Report at 102.

²⁰ See Haney Report at 103-04 (emphasis added).

Although the prisoners Dr. Haney studied at Pelican Bay had endured solitary confinement for ten years, "the American Psychiatric Association defined 'prolonged segregation' as segregation lasting for four weeks or longer (which the APA also said 'should be avoided' for the seriously mentally ill)."²¹

3. The Lieberman Report

Dr. David Matthew D. Lieberman is a professor of psychology, psychiatry and biobehavioral sciences at University of California, Los Angeles, focusing on "the intersection of social psychology and neuroscience and my early research is often associated with the founding of the field of *social cognitive neuroscience*."²² Dr. Lieberman drew a connection between prolonged isolation and *physical* health: "[A] lack of social connection and social support have been examined as risk factors for morbidity (i.e. death) and were found to be a greater health risk than smoking 15 cigarettes a day or continuing to smoke after a diagnosis of cardiac heart disease."²³

4. The Hawkley Report

Louise C. Hawkley, an expert at the University of Chicago "in social isolation and loneliness and their effects on physical and mental health and well-being,"²⁴ also found a connection between social isolation and physical health. According to Ms. Hawkley, "a person

²¹ See Haney Report at 11.

²² See - Expert Report of David Matthew D. Lieberman ("Lieberman Report"), submitted on behalf of plaintiffs, inmates in solitary confinement in Pelican Bay, in *Ashker v. Brown*, No. 09-CV- 5796 (N.D. Cal.) at 1, available at <http://bit.ly/1Ysbtp>

²³ See Lieberman Report at 4 (internal citation omitted).

²⁴ See - Expert Report of Louise Hawkley ("Hawkley Report"), submitted on behalf of plaintiffs, inmates in solitary confinement in Pelican Bay, in *Ashker v. Brown*, No. 09-CV-5796 (N.D. Cal.) at 1, available at <http://bit.ly/1kRTmuG>.

placed in the SHU as opposed to the General Population has a significantly greater chance of developing hypertension, particularly at a relatively young age, with the associated serious health risks of deadly heart disease associated with hypertension."²⁵ Ms. Hawkley studied data on 939 Pelican Bay prisoners and found that "18.4% of the GP population (78/425 prisoners) and 48.4% of the SHU population (249/514 prisoners) have hypertension. In other words, the SHU population has a 4.2 times greater odds of having hypertension than the GP population."²⁶

5. The Keltner Report

Dacher Keltner is a professor of positive psychology at the University of California, Berkeley, whose research focuses on "the mechanisms of social interactions – touch, facial expression, and human voice – and how these mechanisms contribute to the individual's social adjustment and mental and physical health."²⁷ According to Dr. Keltner:

The science is clear: depriving humans of the ability to touch another human being denies them a basic form of social interaction critical to the functions of soothing in response to stress, creating a sense of safety, and fostering cooperation. Denying people the opportunity for caring touch deprives them of one of the most ennobling sources of purpose and meaning in human social life – contact and affection with family and community. Deprivation of this essential bonding opportunity strips individuals of their sense of social support, setting in motion patterns of chronic stress and distrust, which in turn often directly contribute to greater ill will and hostility.²⁸

Like Dr. Lieberman and Ms. Hawkley, Dr. Keltner drew a connection between extreme isolation and physical health: "These cumulative effects of touch deprivation – the physical manifestation of social support – will contribute to chronically high levels of stress and cortisol, which have

²⁵ See Hawkley Report at 4.

²⁶ See Hawkley Report at 10 (internal citation omitted).

²⁷ See - Expert Report of Dacher Keltner ("Keltner Report"), submitted on behalf of plaintiffs, inmates in solitary confinement in Pelican Bay, in *Ashker v. Brown*, No. 09-CV-5796 (N.D. Cal.) at 1, available at <http://bit.ly/1TcRyYA>

²⁸ See Keltner Report at 15 (footnote omitted).

well established links to the acceleration of multiple health problems and disease, as well as mental health difficulties."²⁹

C. Solitary Confinement Is Uniquely Mentally And Physically Debilitating As Compared To Ordinary Prison Life

Solitary confinement is fundamentally unlike ordinary prison life. Conditions in solitary confinement present an atypical hardship in relation to ordinary incidents of prison life. Courts have previously recognized that such “harsh conditions” imposed “an atypical and significant hardship within the correctional context,” giving rise to “a liberty interest in avoiding assignment” to the conditions. *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005).

As discussed above, there is substantial consensus that solitary confinement causes debilitating mental and physical harms. Because human brains are designed for social interaction, extreme isolation results in neurological changes to the brain, quickly degrading brain function. See Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. Pol’y 325, 331 (2006). A recent report for the National Aeronautics and Space Administration (“NASA”) recognized that prolonged sensory deprivation and isolation leads to the “development of adverse behavioral conditions and psychiatric disorders.” Edward Vessel & Steven Russo, NASA, *Effects of Reduced Sensory Stimulation and Assessment of Countermeasures for Sensory Stimulation Augmentation* (2015). Sensory deprivation causes the body to produce increased cortisol, “well-documented to have negative health consequences for both the body and the brain,” negatively affecting cognition, mood, and well-being. *Id.* at i, 20, 23, 28, 51–52, 65–66. Those detrimental effects occur after as little as two days, and the risk increases the longer an individual is subjected to deprivation. *Id.* at 22, 28.

²⁹ *Id.*

Solitary confinement leads to immediately obvious physical harm, including self-mutilation and suicide. Half of prison suicides occur in solitary confinement. See Stuart Grassian & Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, 13 Correctional Mental Health Rep. 1, 11 (2011). It is not unusual for inmates in solitary confinement to swallow razors, smash their heads into walls, compulsively cut their flesh, and try to hang themselves. See Thomas Benjamin & Kenneth Lux, *Constitutional and Psychological Implications of the Use of Solitary Confinement: Experience at the Maine State Prison*, Clearinghouse Rev. 83, 84 (1975) (one inmate nearly died from loss of blood after cutting himself with his broken light bulb, another swallowed glass, numerous others attempted hanging, several successfully).³⁰

Extreme isolation is also associated with substantial psychological trauma, including anxiety, headaches, troubled sleep, or lethargy, heart palpitations, obsessive ruminations, confusion, irrational anger, withdrawal, violent fantasies, hallucinations, perceptual distortions, emotional flatness, and depression. See Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, Crime & Delinq. 124, 130–31 (2003). The research is “strikingly consistent.” Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450, 1450–54 (1983). A recent survey of both modern prisoner studies and studies of extreme isolation in other contexts found wide-ranging consensus on “deterioration in the ability to think and reason, perceptual distortions, gross disturbances in feeling states, and vivid imagery in the form of hallucinations and delusions.” Elizabeth Bennion, *Banning the*

³⁰ See also John Cacioppo et al., *Social Isolation*, 1231 Annals N.Y. Acad. Sci. 17, 17 (2011) (solitary confinement is a “strong ... risk factor for morbidity and mortality”); Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442, 445 (2014) (inmates subjected to solitary confinement are over six times more likely to attempt or commit suicide); Jeffrey Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry & L. 104, 104 (2010) (solitary confinement “can be as clinically distressing as physical torture”).

Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment, 90 Indiana L.J. 741, 756 (2015). Lasting effects of solitary confinement, which continue after release, include “persistent symptoms of post-traumatic stress (such as flashbacks, chronic hypervigilance, and a pervasive sense of hopelessness).” Grassian, *Psychiatric Effects of Solitary Confinement*, *supra*, at 353. Indeed, Senator John McCain, a former prisoner of war, described solitary confinement as ““an awful thing” that “crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”” Atul Gawande, *Hellhole*, *New Yorker*, Mar. 30, 2009, at 38 (quoting Sen. McCain’s remarks).

The co-chairs of a recently formed committee of the ACA—the oldest association of corrections practitioners—acknowledged that prolonged solitary confinement conditions “manufacture or increase mental illness.” Gary Mohr & Rick Raemisch, *Restrictive Housing: Taking the Lead*, *Corrections Today* (March 2015). Associations of mental health professionals, including the American Psychiatric Association, the American Public Health Association, the National Alliance on Mental Illness, and the Society of Correctional Physicians, have issued policy statements opposing long-term solitary confinement, especially for inmates with mental illness.³¹ The American Bar Association recommends that solitary confinement be utilized only as needed for disciplinary or security reasons following adequate process and advocates against solitary confinement for death-sentenced inmates. See Am. Bar Ass’n, *Criminal Justice Standards on the Treatment of Prisoners* 23-2.6(a), 23-2.9 (2010). The ACA also counsels that solitary confinement be used only when no alternative is available and has called for

³¹ See Am. Psych. Ass’n, *Position Statement on Segregation of Prisoners with Mental Illness* (2012); Am. Pub. Health Ass’n, *Solitary Confinement as a Public Health Issue*, Policy No. 2013-10 (2013); Nat’l Alliance On Mental Illness, *Public Policy Platform*, Section 9.8 (2014); Soc’y Of Correctional Physicians, *Position Statement on Restricted Housing of Mentally Ill Inmates* (2013).

individualized assessments of inmates before placement. See Am. Correctional Ass’n, *Resolution on the Use of Restrictive Housing*, Corrections Today (Nov. 2013). And the legislative ³² and executive ³³ branches have increasingly reassessed extreme isolation in prisons.

The United States is virtually alone in incarcerating thousands in solitary confinement. In 1842 Charles Dickens visited Pennsylvania, saw the new system of solitary confinement and noted that “[V]ery few ... are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers.” Overlooking the uniquely debilitating harms imposed by long-term solitary confinement because those inmates are out of sight or because any such harms are just desserts substantially impairs that “essence of human dignity inherent in all persons,” which “[p]risoners retain.” *Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011).

IV. BECAUSE JOEY MEEK IS VULNERABLE TO VICTIMIZATION IN PRISON, A DEPARTURE IS WARRANTED UNDER U.S.S.G. §5K2.0(a)(2)(B).

Sentencing Guidelines Section 5K2.0(a)(2)(B) provides for a departure “in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines, but that nevertheless is relevant to determining the appropriate sentence.” This case is most definitely an exceptional case in that the Bureau of Prison’s choices for Joey are to

³² Two U.S. congressional hearings have been held on the issue. See Solitary Watch, Testimony <http://solitarywatch.com/resources/testimony> (last visited Aug. 6, 2015).

³³ See, e.g., Peter Baker & Erica Goode, *Critics of Solitary Confinement Are Buoyed as Obama Embraces Their Cause*, N.Y. Times, July 21, 2015. A recent study also recommended that the Federal Bureau of Prisons further individualize referrals to restrictive housing and reduce that population. See CNA, Federal Bureau of Prisons: Special Housing Unit Review and Assessment (Dec. 2014).

place him in the general prison population where it would be impossible to provide him adequate protection from being harmed or to place him in solitary confinement where he would deteriorate mentally and physically.

In *United States v. Lara*, 905 F.2d 599 (2d Cir.1990), prison authorities were forced to take extreme measures to protect an inmate whose “immature appearance, sexual orientation and fragility” made him particularly vulnerable to abuse. *Id.* at 603. In *Lara*, the defendant had been found guilty in a non-jury trial of certain narcotics offenses. At sentencing, the district court -- without reference to the then mandatory Guidelines -- sentenced Lara to the 5 year mandatory minimum sentence. The Government appealed, and the Second Circuit reversed and remanded, instructing the district court to sentence Lara in accordance with the Guidelines. At resentencing, defense counsel sought a downward departure from the applicable Guidelines range premised on Lara's "potential for victimization." It seems that Lara was a "delicate looking young man . . . with a certain sweetness about him," who had been victimized "as a consequence of his diminutive size, immature appearance and bisexual orientation." The Government argued that these circumstances were not a valid basis for a downward departure. The district court rejected the Government's argument, and departed downward. On appeal, the Second Circuit affirmed the district court's sentence. In doing so, the Second Circuit made numerous observations concerning the asserted ground for a downward departure. *First*, the Second Circuit noted that the district court had not relied on the defendant's age as a basis for the departure. Rather, the district court had "merely observed that Morales 'looks 16,'" thereby reflecting that the district court "considered the defendant's immature appearance, not his chronological years." *Second*, the Second Circuit noted that the district court had not departed "on account of defendant's homosexual orientation." Instead, the district court had considered

"Morales' sexual orientation, not as a separate characteristic meriting departure, but as it related to his vulnerability." *Finally*, the Second Circuit held that to "the extent that the district court relied upon the defendant's physical, mental and emotional condition in finding him particularly vulnerable to victimization, it adhered to the Commission's admonition that these factors are not ordinarily relevant in determining whether a sentence should be outside the guidelines. The Commission's language acknowledges the propriety of considering these factors when, in the sentencing judge's view, they present an extraordinary situation."

This Court can take two points from the *Lara* decision. First, under *Lara*, grounds exist for a downward departure or a non-Guidelines sentence if a defendant would be unusually vulnerable to abuse if incarcerated. Sexual orientation is clearly not the only circumstance that would present as extreme vulnerability. Second, a combination of factors that are not ordinarily relevant at sentencing may, under certain circumstances, combine to present an extraordinary situation.

The Fourth Circuit agreed with the Second Circuit's finding that the Sentencing Commission did not adequately address extreme vulnerability of victimization in prison as a ground for departure in *United States v. Maddox*, 48 F.3d 791 (4th Cir. 1995). Although the Fourth Circuit found that this ground for departure should be construed very narrowly and declined to reverse the district court's decision to not depart downward, it recognized it as a valid basis for departure. *United States v. Goff*, 907 F.2d 1441, 1447 (4th Cir.1990).

In *United State v. Spring*, 1162004 WL 1964513 (4th Cir. September 7, 2004), *Unpublished Opinion*, the Fourth Circuit affirmed the district court's departure from the Guidelines on the basis that Spring would be extremely susceptible to abuse in prison. The

Spring court concluded that a departure was warranted based on these observations in addition to its finding that Spring had been the victim of two prior assaults in prison. *Id.* The Guidelines state that “[p]hysical condition or appearance, including physique, is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.” U.S.S.G. § 5H1.4 (2002). Obviously, the Guidelines do not prohibit the consideration of a defendant's physical characteristics as a basis for departure in every circumstance. *See Koon*, 518 U.S. at 106-07 (rejecting argument that susceptibility to prison abuse is an impermissible departure factor under all circumstances); *see also United States v. DeBeir*, 186 F.3d 561, 568 (4th Cir.1999) (stating that extreme vulnerability to prison abuse is a “permissible, though not encouraged, basis for departure.”).

V. JOEY MEEK REQUESTS THIS COURT’S CONSIDERATION FOR THE TURNING LEAF PROGRAM.

Due to the extreme danger Joey faces with a sentence of incarceration; his lack of serious criminal history; the non-violent nature of his criminal history; and his demonstrated ability while on bond to be rehabilitated – Joey requests consideration for the Turning Leaf Program of Charleston, South Carolina or an equivalent program in Columbia, South Carolina. Turning Leaf is a rehabilitation and reentry nonprofit organization serving adult men. It is both an education and employment program with the primary focus being on helping participants increase their thinking, decision and problem-solving skills.

The Turning Leaf program focuses almost entirely on criminogenic needs which are the factors in a person’s life that contributed to their breaking of the law. Examples of criminogenic needs are having a criminal peer group, lacking self-control, justifying criminal behavior and having a drug and alcohol dependency. Since being on bond, Joey’s issues have been addressed

through receiving cognitive behavioral therapy which is a type of therapy that addresses dysfunctional thought patterns which contributes to criminal behavior. This therapy has proven successful with Joey and has been shown repeatedly to be effective with nearly all categories of offenders.

The Turning Leaf program uses cognitive behavioral therapy and teaches thinking skills which are practiced and role-played. Students of Turning Leaf participate in a minimum of 100 hours of cognitive behavioral therapy before being placed onto transitional employment. Students are initially in groups five days a week from 9am – 12pm and are assigned a Case Manager to develop an individualized success plan based on their risks, needs and strengths. After being assigned to transitional employment, participants are also assigned a Job Coach who supports their on-the-job success. Turning Leaf follows the rules of Evidence-Based Practices (EBP), which are the only programs shown by research to reduce recidivism. Historically, EBP comes from the medical field as a method to utilize clinical research findings to improve medical decision making and lower risk. Tools and best practices are provided with a focus on both decision making and implementation. Accordingly, Joey requests that he be considered for this outstanding program or its equivalent in lieu of incarceration.

VI. A VARIANCE FROM THE GUIDELINE RANGE IS WARRANTED UNDER 18 U.S.C. § 3553(a) TO AVOID UNWARRANTED SENTENCING DISPARITIES.

18 U.S.C. § 3553(a)(6) asks the Court to avoid unwarranted sentence disparities. There are a host of cases where defendants convicted of similar offenses in the District of South Carolina have received sentences far less than the imprisonment range recommended here.

A review of the sentences that are generally imposed in false statement cases in the District of South Carolina demonstrates that individuals convicted of the same offenses as Joey

do not generally receive lengthy sentences. In fact, in many instances the defendants receive time served and probation. (See **Exhibit I** – 18 U.S.C. §1001 Chart and **Exhibit J** – 18 U.S.C. §4 Chart). Moreover, there are a number of people in this case who were aware of the same facts Joey was aware of and who were not prosecuted. They will receive no punishment for doing the same exact things that Joey did, simply because the Government chose not to prosecute them.

Although the facts of each case are always unique because they involve different individuals in various circumstances, Joey should be treated like other defendants who were charged with committing the same criminal acts.

VII. BECAUSE JOEY MEEK’S CRIMINAL HISTORY CATEGORY OVER-REPRESENTS HIS CONDUCT A DEPARTURE IS WARRANTED UNDER U.S.S.G. § 4A1.3(b)

The Guidelines authorize this Court to depart down when the Guidelines overstate the Defendant’s prior criminal record. In Joey’s case, a downward departure under §4A 1.3(b) or, in the alternative a downward variance, is warranted. An offense level of 16 and a criminal history category of III, resulting in an advisory guidelines range of 27-33 months, substantially over-represents the seriousness of Mr. Meek’s criminal history, and also substantially over-represents the likelihood that Mr. Meek will commit other crimes. U.S.S.G. §4A1.3 (b)(1). Mr. Meek’s criminal history is based upon the following:

1. A misdemeanor Receiving Stolen Goods charge committed when he was 16 years old;
2. A misdemeanor Petit Larceny charge committed when he was 18 years old;
3. A misdemeanor Public Disorderly Conduct committed when he was 18 years old; and
4. A misdemeanor Receiving Stolen Goods charge committed when he was 19 years old.

These offenses do not show Joey to have made a career of crime: the convictions all are based upon petty offenses occurring when he was very young. These offenses also do not demonstrate that Joey is someone that society needs protection from. Accordingly, a downward departure under § 4A1.3(b) supports a downward departure in criminal history category for Joey.

VIII. CONCLUSION

For the reasons set forth above and as will be presented at his sentencing hearing, Joey respectfully requests a downward departure under § 4A1.3 of the advisory guidelines and/or a downward variance pursuant to the factors set forth in 3553(a) and for all of the reasons set forth above. Given the unique circumstances of this case and Joey's background, a lower sentence will, in the broad sense, "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). Joey's efforts at rehabilitation and cooperation with law enforcement demonstrate that the likelihood of recidivism is low and that a long period of incarceration is not necessary "to protect the public from further crimes of the defendant." § 3553(a)(2)(C). Indeed, a sentence less than the 27-33 months recommended by the advisory guidelines would be "sufficient, but not greater than necessary," to comply with the goals of sentencing. 18 U.S.C. § 3553(a).

Respectfully Submitted,

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