

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MARCEL A. WALTON,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Seventh Circuit

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**APPENDIX**

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- A. October 25, 2018 Final Judgment and Opinion of the U.S. Court of Appeals for the Seventh Circuit denying Walton's appeal and affirming the district court's September 13, 2017 Judgment in a Criminal Case, which opinion was subsequently published at 907 F.3d 548
- B. Full Transcript from the September 8, 2017 Sentencing Hearing (SA93-SA182)
- C. September 13, 2017 Judgment in a Criminal Case (MWA100-MWA107)
- D. December 21, 2016 Plea Agreement (MWA9-MWA27)
- E. Select Portions of the Transcript from the December 21, 2016 Change of Plea Hearing (MWA28-MWA41)
- F. September 7, 2017 Updated Government Chart of Sentences in Similar, Related Prosecutions (with cover email) (MWA42-MWA43)
- G. April 5, 2017 Government Sentencing Memorandum (SA35-SA43)

- H. July 10, 2017 Defendant's Sentencing Memorandum and Objections to Presentence Investigation Report (with Exhibits) (SA44-SA92)
- I. February 14, 2017 Government Version of the Offense (w/ "Intended Loss Chart")
- J. Relevant Excerpts from the January 12, 2018 Revised, Corrected Presentence Investigation Report ("PSR") (Dkt. 65)

Dated: January 23, 2019

Respectfully Submitted,

MARCEL WALTON, PETITIONER

By:           /s/ Adam P. Merrill            
          One of his Attorneys

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COUNSEL OF RECORD FOR  
PETITIONER

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 17-2984

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

MARCEL A. WALTON,

*Defendant-Appellant.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division  
No. 15-cr-723 — **Thomas M. Durkin**, *Judge*.

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ARGUED OCTOBER 2, 2018 — DECIDED OCTOBER 25, 2018

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Before BAUER, KANNE, and SCUDDER, *Circuit Judges*.

PER CURIAM. Marcel Walton, a “Grand Sheik” of the Moorish Science Temple of America in Chicago, stole more than \$3 million from the Internal Revenue Service (“IRS”) by filing and assisting others in filing fraudulent tax returns. He pled guilty to mail fraud, *see* 18 U.S.C. § 1341, and was sentenced to 68 months’ imprisonment—below the advisory guidelines

range. On appeal, Walton asserts that the district court violated his due-process rights by relying on inaccurate information in determining the appropriate sentence. Because Walton does not show that any information was false, nor that the district court relied on any inaccuracies, we affirm.

### I. BACKGROUND

The Moorish Temple is a religious organization that believes Moors are the rightful owners of North America. As a “Grand Sheik,” Walton preached that the United States government occupies Moorish land and now owes its members payment, which they could acquire by filing specialized tax returns. Many people filed fraudulent tax returns at Walton’s urging. He took a percentage of the refunds some of his followers received.

Walton pled guilty to mail fraud. At the close of the change-of-plea hearing, the judge asked the government to provide information about defendants who had been prosecuted for similar schemes—specifically, the actual and intended-loss amounts and the ultimate sentences. The government’s submission (included as an attachment to the Presentence Investigation Report (“PSR”) and updated via email before sentencing) shows that the other defendants received sentences ranging from probation to 28 months’ imprisonment. Meanwhile, the probation officer calculated a guidelines imprisonment range of 70 to 87 months for Walton. Walton had a criminal history category of I and the offense level was set at 27, based on an agreed-upon intended-loss amount of \$16,391,161.

At the sentencing hearing, neither party contested the guidelines calculation, including the use of \$16 million as the

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intended-loss amount,<sup>1</sup> but they disputed the appropriate sentence. The government argued that Walton's leadership role—specifically, instructing at least nine people to prepare, or preparing for them, phony tax returns—distinguished him from the defendants listed in the chart and warranted a higher sentence within the guidelines range. The government also emphasized that in some cases the victims were “vulnerable” because there were elderly, homeless, destitute, or caring for sick relatives.

Walton asked for a 12-month sentence, based in part on his personal circumstances, including his age, his history of employment, his lack of criminal history, and his ready guilty plea. And although he admitted that “he helped others do it,” he emphasized that he did not invent the scheme. He further argued that of all the defendants on the government's chart—which his counsel deemed “helpful”—“very, very, very few people have ever been sentenced within the guidelines.” Moreover, Walton said, a higher sentence would result in unwarranted sentencing disparities because he learned about the scheme from a defendant in another case, who had received a 24-month sentence.

The district court imposed a 68-month sentence. The judge emphasized Walton's exploitation of vulnerable followers,

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<sup>1</sup> This includes the losses directly attributable to Walton and to nine named followers interviewed by federal agents who reported acting on his instructions. At least five of them—those who successfully obtained tax refunds—were also prosecuted. The government maintained at sentencing that the scheme involved an intended loss that was much greater than \$16 million and involved more than nine people, but elected to rely upon the intended losses attributable to the people who reported that Walton had recruited them.

some of whom were elderly or homeless, and many of whom believed his religious rhetoric and had not committed crimes before meeting him. The judge also confirmed that no one on the government's chart received a leader-organizer enhancement, as Walton had. The "most aggravating fact" was that Walton was responsible for "law-abiding people who got into this and ended up ... going to jail" just so he could get a "piece of the action." Regarding the need to avoid unwarranted sentencing disparities, the district court explained that the "key distinguishing feature" was that the others, with two possible exceptions, "weren't leaders," whereas many people, some of whom were prosecuted, filed phony returns "because of Mr. Walton."

To the defendant's vague protest that he "didn't necessarily have access to the factual backgrounds concerning all similar cases ... including the ones on [the government's] chart," the judge responded that there was no dispute that this defendant, Walton, lured at least nine people into criminal activity. Further, considering potential sentencing disparities, the district judge disregarded the chart as useless, because the intended losses for all the listed defendants were not comparable. Finally, after announcing the sentence, the judge asked Walton if he wished to address "anything else," and Walton said he did not.

## II. ANALYSIS

On appeal, Walton argues that the district court erred at sentencing by relying on untested representations about Walton's leadership role and uncorroborated sentencing data about other tax-fraud prosecutions. If a defendant has preserved his or her objection, we review procedural sentencing errors *de novo*. *United States v. Young*, 863 F.3d 685, 688 (7th

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Cir. 2017). But Walton's conduct at sentencing shows a forfeiture: he relied on some of the information he now challenges and only vaguely protested that he "didn't necessarily have access to the factual backgrounds concerning all similar cases," after the judge stated that Walton's leader-status distinguished him from those prosecuted in similar schemes. And Walton failed to challenge at all the government's statements regarding the vulnerability of his co-schemers. Therefore, we review for plain error. See *United States v. Butler*, 777 F.3d 382, 386–87 (7th Cir. 2015).

The Fifth Amendment guarantees the right to be sentenced based on accurate information. See *United States v. Tucker*, 404 U.S. 443, 448–49 (1972); *United States v. Adams*, 879 F.3d 826, 829 (7th Cir. 2018). To establish a violation, a defendant must show both that the information is false and that the court relied on it. *United States v. Musgraves*, 831 F.3d 454, 469 (7th Cir. 2016). Walton can show neither, and so there is no error, let alone one that is "plain."

Walton begins by listing four "unproven, disputed, and unsupported facts": (1) he preyed on vulnerable followers; (2) he was a "leader" in contrast to "all others" who have been prosecuted for similar crimes and that he led other people into his scheme; (3) he profited from a 10% "tithe" from followers who got unwarranted tax refunds; and (4) the \$16 million intended loss far exceeded the stakes in other, similar cases. Walton says that he has "since verified" that many of the facts the government stated were "false and unreliable," by examining public records in other prosecutions. The remainder of these facts he dismisses as "unsupported."

It appears that, in part, Walton argues that these statements are “unsupported” because the “record on appeal” excludes the documents before the district court that could have supported them, such as the parties’ sentencing memoranda, the probation officer’s sentencing recommendation, and the government’s version. But there are no documents in the appellate record that should not be there. And even if the record on appeal did exclude the documents that Walton disputes, the uncontested record provided a sufficient basis for the district court to make the findings Walton challenges, so this argument lacks merit.

Walton contends first that the government mischaracterized information related to his leadership role in persuading others to join the scheme. He asserts that the district court could not rely upon the existence of the purported followers who received, or tried to obtain, fraudulent refunds at his urging, because none of them testified, and the record did not contain their written statements or other evidence. But, as Walton admits, the Rules of Evidence do not apply at sentencing hearings. As long as information “has sufficient indicia of reliability to support its probable accuracy,” *United States v. Sunmola*, 887 F.3d 830, 839 (7th Cir. 2018) (quoting *United States v. Vivit*, 214 F.3d 908, 916 (7th Cir. 2000)), it does not require full corroboration, *United States v. Sandidge*, 784 F.3d 1055, 1062 (7th Cir. 2015).

Here, uncontested documents like the plea agreement and the PSR, which the district court adopted after allowing Walton the opportunity to object, support the district judge’s finding that Walton led others into the scheme. To support its argument that Walton was a leader, based upon his enlistment



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of followers, the government said: “those were the individuals where we’d had law enforcement agents go out, get those statements, and/or put these individuals in grand jury.” Also, the PSR proffered that “the IRS interviewed ... individuals and those individuals identified the defendant as the one who prepared, or caused the preparation of their false 1041 forms.”

Similarly, to support the existence of a 10% kickback to Walton, which the government called a “tithe,” the government pointed to the plea agreement, in which Walton agreed that “various individuals such as temple member Christopher Mietus, who filed three tax returns by Mr. Walton, received \$900,000, and then gave Mr. Walton \$90,000.” The PSR also states that Dawn Shannon “received a \$300,000 refund check, of which she gave \$35,000 ... to the defendant,” and that Ronald Taylor “received a \$300,000 refund check” and “gave \$35,000 to the defendant and another \$4,400 to the ... Temple, which were both deposited by the defendant.”

Walton does nothing to challenge the accuracy of this information. In rebuttal, he offers only his own vague speculation that other leaders *must* have been prosecuted: he reasons that other ring leaders must be listed on the sentencing chart that the government provided simply by virtue of the sheer number of false tax returns submitted as part of similar schemes. Such naked assertions do not meet Walton’s burden to show that the district court relied on inaccurate facts. *See United States v. Musa*, 946 F.2d 1297, 1307 (7th Cir. 1991).

Furthermore, Walton did not contest the leader/organizer enhancement, and the judge focused specifically on the followers whom Walton himself led into the scheme. When the judge relies on the PSR, “[t]he defendant must do more than merely deny the facts in the report; instead, he must provide

some evidence calling into question the accuracy or reliability of the information in the PSR.” *United States v. Harmon*, 721 F.3d 877, 889 (7th Cir. 2013). Here, Walton does not show any inaccuracy, and he has not demonstrated that the PSR and the factual basis in the plea agreement are unreliable; he simply asks for more proof than the government is required to give. The district court properly considered the documents underlying the government’s assertions, *see Adams*, 879 F.3d at 829, and they support the truth of the information provided at sentencing.

Walton next takes issue with what he deems the unsupported proposition that the \$16 million intended loss attributed to him (without dispute) far exceeds what the defendants in other cases were held responsible for. Again, he did not complain about the comparison chart before or at the sentencing hearing, at which he deemed it “helpful” in light of the government’s superior ability to round up the information. Moreover, Walton’s post-sentencing research does nothing to support his point that the district court used inaccurate information: he lists certain defendants as to whom he thinks the intended loss amounts were understated, but even the non-inflated numbers he posits do not approach the \$16 million figure to which he admitted. In any event, when it came to the intended-loss figures, the district court ultimately rejected the chart’s relevance to Walton’s sentencing, because the government had not identified a defendant similarly situated to Walton in that regard. The court looked at Walton individually.

Next, whether the district court relied on statements about Walton’s co-schemers’ vulnerability is a closer call, but even if it did, the court would not have violated Walton’s due-

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process rights by doing so. First, the record shows that Walton used his religious clout to persuade his followers to commit crimes: he recruited through the Temple and justified the fraud with reference to the federal government's debt to the Moors. The district court, therefore, reasonably inferred that Walton leveraged his authority and followers' beliefs. *See United States v. Anaya*, 32 F.3d 308, 313 (7th Cir. 1994).

And though the government said for the first time at sentencing that some of Walton's co-schemers were elderly or homeless, it had argued before the hearing, in its Sentencing Memorandum, that he preyed on his followers' vulnerabilities. Furthermore, the PSR named several of Walton's followers, so he could have anticipated the government's arguments. And yet again, Walton does not show that some of the followers he recruited *were not* vulnerable, so he cannot demonstrate that this information is untrue. He cannot baldly state the information is unreliable without providing a reason to call it into question.

### III. CONCLUSION

Because Walton's due-process claim is meritless, the district court's judgment is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES OF AMERICA, ) Docket No. 15 CR 723  
 )  
Plaintiff, ) Chicago, Illinois  
 ) September 8, 2017  
v. ) 9:50 a.m.  
 )  
MARCEL A. WALTON, )  
 )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS - Sentencing  
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Government: MS. CAROL A. BELL  
Assistant United States Attorney  
Mr. Joel R. Levin  
Acting United States Attorney  
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5th Floor  
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For the Defendant: MR. ADAM P. MERRILL  
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Suite 3200  
Chicago, IL 60603

Also Present: MR. MARCEL A. WALTON  
MS. MISSY KOLBE, U.S. Probation

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR  
Official Court Reporter  
219 S. Dearborn Street, Room 1432  
Chicago, IL 60604  
312.435.6053  
laura\_renke@ilnd.uscourts.gov

1 (In open court; defendant present.)

2 THE CLERK: All rise.

3 Be seated, please.

4 15 CR 723, United States of America v. Marcel Walton.

5 THE COURT: Good morning.

6 MS. BELL: Good morning, your Honor. Carol Bell on  
7 behalf of the United States.

8 MR. MERRILL: Good morning, your Honor. Adam Merrill  
9 from Sperling & Slater and the Federal Defender Panel here on  
10 behalf of the defendant, Marcel Walton, who is present in court  
11 as well.

12 THE COURT: All right. Good morning.

13 Good morning, Mr. Walton.

14 All right. We're here for sentencing. Everyone  
15 prepared to proceed?

16 MR. MERRILL: We are prepared to proceed, your Honor.

17 THE COURT: All right.

18 MR. MERRILL: And we apologize for the delay this  
19 morning. There was a transportation issue, I understand, and  
20 we apologize to the Court for that.

21 THE COURT: Not a problem. Not a problem at all.

22 All right. Here are the documents I have. I want to  
23 make sure I have everything I should.

24 I have a presentence investigation report.

25 I have a recommendation from the probation office.

1 I have a government's sentencing memo.

2 I have a defendant's sentencing memo.

3 There was also a motion by the government for entry of  
4 a preliminary order of forfeiture. I don't know if that was  
5 actually entered or not.

6 MS. BELL: It has not been yet, your Honor.

7 THE COURT: Okay.

8 And then I have a chart that was provided to me by the  
9 government. It's similar to a chart that was prepared -- made  
10 part of their sentencing memo, but it's updated and includes  
11 sentences as recently as the one I gave to a Phillip Jefferson  
12 about a month ago in a case involving filing of false returns.  
13 So it's I think the most recent chart of defendants who have  
14 been involved in possibly similar conduct.

15 So does both the government and defense have all of  
16 these documents, and are there any documents I should have that  
17 I've not mentioned?

18 MS. BELL: The only other document that comes to mind  
19 is the government's version, which I assume your Honor has  
20 attached to the PSR.

21 THE COURT: It is attached to the PSR.

22 MR. MERRILL: And, your Honor, I believe you have  
23 everything that you should have, and we have had access to all  
24 that as well.

25 THE COURT: And you have the updated sentencing chart?

1 MR. MERRILL: We did receive that, your Honor, yes.

2 THE COURT: Okay. Very good.

3 From probation -- actually, why don't you identify  
4 yourself for the record, please.

5 MS. KOLBE: Yes. Good morning. Missy Kolbe with  
6 U.S. Probation.

7 THE COURT: And, Ms. Kolbe, is there anything else  
8 that you're aware of that I should have with me and consider  
9 for sentencing?

10 MS. KOLBE: No, your Honor.

11 THE COURT: Okay. All right.

12 Well, does either side have any witnesses or victims  
13 to present in the courtroom?

14 MS. BELL: No, your Honor.

15 MR. MERRILL: No, your Honor.

16 THE COURT: Okay.

17 And, Mr. Merrill, have you and your client read and  
18 discussed the presentence report?

19 MR. MERRILL: We have, your Honor.

20 THE COURT: All right.

21 And I'm going to ask you, Mr. Walton. Have you read  
22 the presentence report yourself?

23 THE DEFENDANT: Yes.

24 THE COURT: And discussed it with your attorney?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. And read the recommendation of  
2 the probation office?

3 THE DEFENDANT: Yes.

4 THE COURT: And discussed that with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay.

7 All right. I know there are objections to it, and  
8 we'll get to that in a moment, but I think the first step is to  
9 calculate the guidelines in this case, which I believe are not  
10 in dispute.

11 There is a base offense level for the mail fraud of  
12 26, with an adjustment for role in the offense adding four  
13 points, for an adjusted offense level of 30. Acceptance of  
14 responsibility and early notification of a desire to plead  
15 guilty results in a reduction of three points, for a total  
16 offense level of 27, with a criminal history category of I,  
17 which results in a guideline -- advisory guideline range of  
18 70 to 87 months.

19 First, does the government agree with that  
20 calculation?

21 MS. BELL: I do, your Honor.

22 THE COURT: Does defense agree with that?

23 MR. MERRILL: Yes, your Honor.

24 THE COURT: All right. And is probation -- I believe  
25 that was your recommendation in the PSR.



1 MS. KOLBE: Yes, your Honor.

2 THE COURT: All right. So I'll make that finding that  
3 that is what the advisory guideline range will be in this case.

4 And are there any formal departure motions being made  
5 by either side? Not a variance motion, but a formal departure  
6 motion by either side.

7 MS. BELL: No, your Honor.

8 MR. MERRILL: No, your Honor.

9 THE COURT: Okay. I'll also find that, relating to  
10 the guidelines, there is a period of supervised release as to  
11 Count I of the indictment of one to three years.

12 There was a dispute as to whether probation -- where  
13 the probation office said the defendant was ineligible for  
14 probation. And I know that was a disputed issue in your  
15 sentencing memo.

16 MR. MERRILL: That's correct, your Honor. The  
17 government and I have discussed it. And I'm sure Ms. Bell will  
18 correct me if I'm wrong.

19 But I think where we come out on the legal issue -- on  
20 this legal issue is that under the statute, he is eligible for  
21 probation. Under the guidelines -- the guidelines say he is  
22 ineligible, but, of course, since the guidelines are advisory,  
23 you know, the reality is he is eligible for probation if the  
24 Court so chose.

25 Now, we're not -- we haven't even asked for probation

1 here, but if the Court in its discretion wished to do it, our  
2 view is that the Court is authorized to do so.

3 THE COURT: I understand your position, and I'm --  
4 this is simply for determining what the correct guidelines are,  
5 which is something I have to do before I sentence anyone.

6 So does the government agree that the defendant is at  
7 least eligible for probation given the particular crime which  
8 he pled guilty to?

9 MS. BELL: Yes, your Honor. And we walked through the  
10 PSR yesterday, and I believe that both parties would agree that  
11 it is accurate in its statements in paragraphs 85 and 86  
12 regarding whether -- the probation eligibility under --  
13 statutorily, I mean, the probation eligibility under the  
14 guidelines.

15 So pages 24 and 25, your Honor.

16 THE COURT: Okay.

17 Pages 24 and 25?

18 MS. BELL: Yes, in paragraph 85 and 86.

19 MR. MERRILL: Of the PSR.

20 THE COURT: My PSR goes up to paragraph 83.

21 MR. MERRILL: Oh.

22 THE COURT: If we're working off different PSRs, then  
23 we have a problem and we're going to have to resolve it. But I  
24 have -- my PSR, before I get to supervised release conditions,  
25 goes up to page -- paragraph 83. Then we get into the

1 supervised release conditions.

2 MS. KOLBE: Should be on page 24, your Honor.

3 THE COURT: Here we are. Okay. I'm sorry. I'm --  
4 I -- there are paragraphs that follow the supervised release  
5 conditions.

6 All right. What's probation's view on the eligibility  
7 of -- for probation given the fact this is a class C felony?

8 MS. KOLBE: Your Honor, paragraph 85 indicates it's  
9 statutorily authorized.

10 THE COURT: All right. So I believe the -- in your  
11 recommendation where you put down the guideline provisions that  
12 say it's ineligible --

13 MS. KOLBE: Yes.

14 THE COURT: -- I think that needs to be modified.

15 MS. KOLBE: Oh, all right, your Honor. Happy to do  
16 that.

17 THE COURT: I think that was the objection. Isn't  
18 that correct?

19 MR. MERRILL: That's correct, your Honor. The  
20 paragraphs we just referred to I think are generally accurate,  
21 except I think it would be most accurate to say that when you  
22 refer to the guidelines calculation. But, of course, that's  
23 advisory.

24 And so you have -- you have this issue. If you look  
25 at that paragraph alone, it seems to be -- someone seems to be

1 saying he's ineligible for probation. It's really the Court's  
2 issue because as long as the Court agrees and the government  
3 agrees, then the Court obviously is free to impose whatever  
4 sentence it feels appropriate.

5 THE COURT: No, Ms. Kolbe. In your sentencing  
6 recommendation, I think under "Guideline Provisions," which is  
7 typically what I look at --

8 MS. KOLBE: Yes.

9 THE COURT: -- when I calculate and make official  
10 guideline findings, it says "ineligible" under probation. And  
11 I think the PSR says probation is possible.

12 MS. KOLBE: Well, we just make a distinction, your  
13 Honor, between what we call the statute and the guidelines. So  
14 the statute does allow for that. The guidelines do not because  
15 his range is in what they call a class -- range D zone.

16 THE COURT: I see.

17 MS. KOLBE: So we will stand by that he's not eligible  
18 under the guidelines. But, of course, the Court could depart  
19 under 3553 or any other reasons to probation.

20 THE COURT: Of course. Okay. All right. Now I  
21 understand why that's there.

22 All right. There's no need to change the probation  
23 recommendation paper. But I acknowledge for the record that  
24 probation is possible under the -- under the statute.

25 Anything more need to be said on that issue?

1 MR. MERRILL: Not from our perspective, your Honor.

2 MS. BELL: No, your Honor.

3 THE COURT: Okay. Also, the fine range under the  
4 guidelines is \$12,500 to \$125,000. There's a restitution  
5 amount of \$2,434,727 and a special assessment of \$100.

6 Do the parties agree on those numbers?

7 MS. BELL: Yes, your Honor.

8 MR. MERRILL: Yes, your Honor.

9 THE COURT: Okay. Those will be the findings as it  
10 relates to the guidelines.

11 And there being no motion for a departure, nor do I  
12 find there's any basis for departure, there will be no  
13 departure motion -- or departure finding by the Court.

14 MR. MERRILL: Your Honor, I may have misheard. But I  
15 believe -- did the Court indicate a range of a fine under the  
16 guidelines?

17 THE COURT: I did.

18 MR. MERRILL: And if -- and I just couldn't tell if  
19 the Court was imposing a particular amount.

20 THE COURT: No, I'm not -- none of this is imposition  
21 of a sentence. This is simply --

22 MR. MERRILL: Got it.

23 THE COURT: -- making findings for purposes of the  
24 record that has to find its way into the judgment and  
25 commitment order, what the actual guideline provisions are.

1           There's obviously a separate page in the judgment and  
2 commitment order for what the sentence is. And we'll deal with  
3 that when I actually pronounce sentence.

4           MR. MERRILL: Thank you, your Honor.

5           THE COURT: Okay. Let's go through your objections to  
6 the presentence report right now because if there's any  
7 modifications to the report itself that have to be made, we  
8 should discuss those now.

9           And, Mr. Merrill, I would say many of your objections  
10 were to the -- some of the comments of the probation office and  
11 the recommendation. Those are editorial comments that the  
12 probation officer is free to make. I have to, obviously,  
13 sentence the defendant based on what I believe to be the  
14 correct information.

15           But the purpose, as I understand it, of modifying or  
16 making changes to the PSR is the PSR often accompanies the  
17 defendant to the institution they're designated at. And it's  
18 important that there be accurate information for the prison  
19 authorities to consult with when they make decisions about  
20 placement of a defendant in an institution: health  
21 considerations, a variety of other things.

22           But if there are factual assertions made in the PSR or  
23 the recommendation, now is the time to raise them. I know  
24 they're raised in written form in great length in your memo.

25           And if there's a point where I think they ought to be

1 corrected, I'll ask the probation officer to correct that  
2 portion of either the PSR -- again, I don't think the  
3 recommendation -- as far as I know, the recommendation does not  
4 go to the institution.

5 Do you know, Ms. Kolbe?

6 MS. KOLBE: I don't believe it does, your Honor.

7 THE COURT: Yeah, I didn't think so either. So --

8 MR. MERRILL: Your Honor -- and if it's helpful, I  
9 think -- I would agree after looking at this further and  
10 discussing it with the government the real concern that I have  
11 as defense counsel is the PSR because that does impact where  
12 they're assigned. It does impact -- it can impact, as I  
13 understand it, how they're treated while they're serving any  
14 sentence of incarceration.

15 And the objections to the recommendation really are  
16 pointing out to the Court that, you know, I believe the  
17 recommendation is unnecessarily high based on some of these  
18 factors.

19 But I agree. We don't need the recommendation to be  
20 corrected, but I do think it's important to correct any errors  
21 or inappropriate information that's included in the PSR.

22 THE COURT: All right. Your client can have a seat if  
23 he wants. If he wishes to, there's no problem with that at  
24 all.

25 Well, let's go through the PSR. What particular

1 portions -- and you should use the paragraph that you have an  
2 objection to that you think needs to be corrected. That's not  
3 something that's argument because argument is, in fact --

4 MR. MERRILL: Yes, your Honor. And I understand that.  
5 And it's a little bit of an unusual situation for me in that  
6 these are arguments that generally the government has not made.

7 And so one of the greatest concerns I have in this  
8 case is that there's stuff that was included in the PSR that  
9 the government -- wasn't in the government's version. And, you  
10 know, that was concerning to me. So it's not -- I don't view  
11 the PSR as an appropriate place for argument.

12 THE COURT: Well, that's fine.

13 MR. MERRILL: And --

14 THE COURT: Just point out where you have a  
15 disagreement on it.

16 MR. MERRILL: Yes, your Honor.

17 So the first area -- you know, we've got kind of a  
18 bullet-pointed list on page 5 of our memorandum that just kind  
19 of summarizes what those are, and then -- but I'll flip back  
20 and forth to the discussion in our memo.

21 The first area really has to do with the suggestion  
22 that Mr. Walton has some present involvement with the Vice  
23 Lords street gang and that he is -- carries -- presently or in  
24 the recent past has carried a weapon and has threatened people  
25 with that.



1           And that really is in paragraphs 58 and 59. We  
2 discussed this issue on pages 10 and 11 of our sentencing  
3 memorandum. But in pages 58 and 59 of the PSR are the specific  
4 sections, paragraphs that we had concern with.

5           MS. BELL: So, your Honor, that would be at page 14 of  
6 the PSR.

7           THE COURT: I've got it. Okay.

8           Any objection by the government to taking out the --  
9 beginning with the third sentence of paragraph 58, omitting  
10 the -- really the rest of that paragraph?

11           And then is there a need for 59 in any circumstance?  
12 He's said he's been out of the gang since he's been either 25  
13 or 26. That's over 20 years ago, two decades ago.

14           I can see having this in the PSR being a -- something  
15 that would potentially affect his designation.

16           So let's start first with paragraph 58. Any objection  
17 to the last -- after the first two sentences the rest of the  
18 paragraph being omitted?

19           MS. BELL: No, your Honor. This is all information  
20 that was conveyed to the IRS agents by witnesses during the  
21 investigation.

22           THE COURT: All right.

23           MS. BELL: All of it was not, to my knowledge,  
24 corroborated or investigated independently, and it certainly is  
25 old. No objection by us.

1 THE COURT: All right. Then, Ms. Kolbe, that should  
2 be omitted.

3 MS. KOLBE: All right. Yes, your Honor.

4 THE COURT: And then let's go to 59. Any objection  
5 to, frankly, omitting all of that?

6 Although I will tell you this. I think -- does the  
7 defendant agree he was a member of the Vice Lords at least till  
8 the age of 25 or 26?

9 MR. MERRILL: Yes, your Honor. And I think it's part  
10 of -- to his credit that he grew up in very difficult  
11 circumstances. I'll talk more about it a little bit later.

12 But he got out of the gang. And what happened is that  
13 the defendant and I were present at the presentence interview.  
14 And he made something to the effect of, well, you can never  
15 truly be out of the gang, which is -- which is, as I understand  
16 it -- I've never been a part of it, but that's just kind of  
17 like once you're -- you know, you're told when you get into a  
18 gang once you're in, you're always in.

19 But nonetheless, he ceased any activity or  
20 involvement, and it was -- it was really not -- there's no  
21 evidence that he's had anything to do with Vice Lords for over  
22 20 years.

23 THE COURT: Well, I've been told dozens of times by  
24 people who were in a gang that they're out of the gang and have  
25 no involvement and they're completely out. They don't ever

1 say --

2 MR. MERRILL: Yeah.

3 THE COURT: Rarely does anyone ever say they're never  
4 truly out of the gang because everyone wants to do every --  
5 when they're in federal court, they want to run away from that  
6 association as far away as they can.

7 I do think it may be a little misleading, the words  
8 "You're never truly out of the gang," which would imply he's  
9 still a member of the Vice Lords.

10 MR. MERRILL: Mm-hmm.

11 THE COURT: But it is probably a point of  
12 information -- if I were in the Bureau of Prisons, I'd want to  
13 know, even if it was a long time ago, that the defendant was in  
14 the Vice Lords, keeping in mind they -- gang affiliation is an  
15 important factor that the Bureau of Prisons monitors because of  
16 the need to make sure they -- they know who's even had a past  
17 association with a gang when they put someone in an  
18 institution, if for no other reason, possibly for your own  
19 client's protection.

20 MR. MERRILL: Your Honor, I have no objection to the  
21 PSR reflecting that as a youth, he was a member of the Vice  
22 Lords street gang and that he ceased involvement in any  
23 activity with the gang when he was 25 or 26.

24 And I just think that perhaps it was inartfully put.  
25 I don't understand fully, you know, why he said what he said.

1 I've heard that expressed before. I agree with you that when  
2 people are in court, they like to say they have nothing to do  
3 with the gang.

4 But I think it's a longtime tenet of street gangs that  
5 once you join, you are always a member of the gang. And  
6 whether -- and that you can only get -- what I've called --  
7 been heard "blessed out" of the gang. In other words, you have  
8 to get a specific release from the high-ranking gang member  
9 before you can leave. So in other words, it's not a voluntary  
10 cessation of gang activities, and I think he was just  
11 reflecting that.

12 THE COURT: All right.

13 MR. MERRILL: But as I'm aware, there's no evidence  
14 that he's had anything to do with any of them. I don't even  
15 think he knows the current Vice Lords in his neighborhood or  
16 anywhere else in Chicago.

17 THE COURT: Well, they're likely either dead or in  
18 jail, the ones he knows, just because of the nature of gangs  
19 and the prosecutions of the gang.

20 So why don't we modify 59 as follows: "The defendant  
21 indicated that, although he has no record of being in a gang,  
22 he was a member" -- change "is" to "was" -- "a member of the  
23 Vice Lords street gang but reported he has not been involved  
24 with any gang activities. He advised that" -- put in the word  
25 "that" -- "he stopped any real activities around the age of

1 25/26 years old."

2 So, Ms. Kolbe, did you get those edits?

3 MS. KOLBE: Yes, your Honor.

4 So the last part is "He stopped any gang activities"  
5 or "real activities around the age of 25/26"?

6 THE COURT: "Stopped any real activities."

7 MS. KOLBE: Okay. Thank you, your Honor.

8 THE COURT: So why don't you read that into the record  
9 as amended and see if there's an objection from the government  
10 or defense.

11 MS. KOLBE: "The defendant indicated that, although he  
12 has no record of being in a gang, he was a member of the Vice  
13 Lords street gang but reported he has not been involved with  
14 any gang activities. He advised that he stopped any real  
15 activities around the age of 25/26 years old."

16 THE COURT: Any objection to that as modified? By the  
17 government.

18 MS. BELL: No, your Honor.

19 THE COURT: By the defense.

20 MR. MERRILL: No, your Honor.

21 THE COURT: All right. That will be the modification  
22 on that.

23 Okay. Mr. Merrill, your next --

24 MR. MERRILL: Your Honor, the next one really has to  
25 do with cooperation with probation. And I don't really think

1 it's probably productive to get into a dispute about, you know,  
2 probation's view about his level of cooperation. But I do  
3 think it's important that to the extent there are factual  
4 inaccuracies in the PSR about his level of cooperation that  
5 those be reported.

6 We -- it really is contained in paragraph 32 of the  
7 PSR -- trying to think if there's any -- I know it's also in  
8 the recommendation, but I'm not going to focus on that at this  
9 point, your Honor, for the reasons we talked about. I believe  
10 the primary place in the PSR is paragraph 32.

11 THE COURT: All right.

12 And ultimately, Ms. Kolbe, you received the records  
13 that you were looking for. Is that correct?

14 MS. KOLBE: Yes. And I received the signed copies  
15 attached to his sentencing memorandum.

16 THE COURT: All right. Well, then, Mr. Merrill, the  
17 language you're objecting to then in paragraph 32 is in the --  
18 looks like the third sentence.

19 MR. MERRILL: So if we're at the -- let's see.

20 THE COURT: Third and fourth sentences.

21 MR. MERRILL: Yes. And what we have done, your Honor,  
22 is we attached as an exhibit to our sentencing memorandum where  
23 we did provide his financial documents. And they were signed,  
24 and they were complete.

25 THE COURT: All right.

1           MR. MERRILL: So I think that it's inaccurate. And  
2 obviously we had concerns about the fact that probation not  
3 only was -- had incorrect information about what was provided  
4 and when it was provided, but that it was going to be addressed  
5 as a 3553(a) factor in the recommendation, which we can talk  
6 about later.

7           THE COURT: Well, I can tell you right now, for the  
8 record, I'm not going to consider that as an aggravating factor  
9 because ultimately the records were produced.

10           I find failure to produce information to be  
11 aggravating when it persists through sentencing because then I  
12 don't have the proper information to make decisions, and that's  
13 an aggravating factor. But, you know, this sentencing has been  
14 continued frequently, and now all the records are in.

15           I don't want to do injustice to the truth, but one way  
16 to correct this is simply to amend that third sentence to read,  
17 "The undersigned received his financial documents on  
18 February 17, 2017."

19           MR. MERRILL: And it might be more accurate, your  
20 Honor, to say February 20th because February 17th, an unsigned  
21 version was --

22           THE COURT: All right.

23           MR. MERRILL: -- was provided, but then we provided  
24 the signed version three days later on February 20th.

25           THE COURT: All right. So let's change that to

1 February 20th, 2017, and put a period after that.

2 And then the next sentence, simply omit the words  
3 "albeit incomplete."

4 So with those modifications -- did you get those,  
5 Ms. Kolbe?

6 MS. KOLBE: Yes, I did, your Honor.

7 THE COURT: Any objection by the government to those  
8 changes?

9 MS. BELL: No, your Honor.

10 THE COURT: And with those modifications, are you  
11 satisfied that we've covered this objection?

12 MR. MERRILL: I'm satisfied that it certainly corrects  
13 the factual inaccuracy, and the Court understands the last  
14 sentence. So -- and has indicated its position with respect to  
15 that.

16 THE COURT: All right.

17 MR. MERRILL: So I think that's fine, your Honor.

18 THE COURT: Yeah, the -- to the extent probation views  
19 this as a 3553(a) factor, I think whatever may have been in the  
20 situation at the time this was prepared, I think it's since  
21 been remedied. So I'm not considering it as an aggravating  
22 factor at this point.

23 MR. MERRILL: Okay. Thank you, your Honor.

24 THE COURT: So all right. Any other -- what's your  
25 next one?



1           MR. MERRILL: The next one, your Honor, has to do  
2 with -- and I'll deal with them both together because I think  
3 they are similar. And they have to do with a discussion and  
4 suggestions and imputations of sovereign citizen beliefs to  
5 Mr. Walton and suggestions that he has engaged in "paper  
6 terrorism" is the phrase.

7           And some of this is in the recommendation and so we've  
8 talked about it. But let me find at least some -- any specific  
9 references in the PSR to this issue.

10           So I think it's in paragraph 13, your Honor, which I  
11 think is part of the -- was the supposed factual basis for the  
12 discussion and the probation department's recommendation.  
13 That, I believe, is at least one place --

14           THE COURT: All right. Well, let's look at --

15           MR. MERRILL: -- where it's mentioned.

16           THE COURT: Oh, go ahead. Find out the paragraphs you  
17 want to address, and then we'll do it one by one.

18           MR. MERRILL: Well, I think paragraph 13 is clearly  
19 the primary paragraph. And what it really has to do with is  
20 this is a mail fraud case. We've got a plea agreement. It  
21 didn't go to trial. There's been no evidence presented beyond  
22 the plea agreement.

23           These filings have not been -- I don't know whether  
24 they've all been provided to us. Some of them have.

25           THE COURT: All right. Well, let me --

1           MR. MERRILL: But this case has nothing to do with  
2 those filings.

3           THE COURT: Let me cut you off real quick. I think  
4 the "sovereign citizen" language and the "paper terrorism"  
5 language was contained in the recommendation. I don't believe  
6 there's a reference to "sovereign citizen" in the PSR itself.  
7 If I'm mistaken, correct me, but I don't believe it's there.

8           Now, I think your objection here is that the intended  
9 loss was \$16.3 million, and there's a statement in here that  
10 that's just the ones the government could corroborate. But  
11 they believe, in fact, instead of 17 people who filed --  
12 approximately 17 people who filed phony returns based on the  
13 defendant's conduct, there were actually 103 different trusts  
14 from the years 2005 to 2012 seeking \$116 million from the  
15 government.

16           That may be the government's position, but I assume,  
17 Ms. Bell, you're not -- because of the plea agreement, you are  
18 not seeking to hold the defendant accountable for your  
19 suspicions.

20           MS. BELL: Correct, your Honor. And I tried to make  
21 that clear with the government version as well, that we are  
22 focused on the 16 million. Those are the individuals whom the  
23 agents in this case interviewed, who directly said, "Mr. Walton  
24 prepared my returns," or "encouraged me to do this."

25           These other individuals, the larger 103 trusts, were

1 individuals who had various filings in Cook County bearing  
2 Mr. Walton's signature relating to a Moorish Science Temple and  
3 the like or had an official Moorish stamp with Mr. Walton's  
4 name, and then those individuals later filed similar fraudulent  
5 trust tax returns seeking the similar amounts.

6 But those individuals were not interviewed. Those  
7 individuals did not directly say Mr. Walton encouraged them or  
8 prepared their returns. And so we drew a line there at the  
9 16 million.

10 But I do -- I would want the Court to know, I mean,  
11 this 116 million figure was one that the defense and I have  
12 discussed this larger universe as far back as July 2016, going  
13 through that chart and the government explaining why we drew  
14 the line there and that we were focused on the 16 million, that  
15 those were the ones that we were in a position to prove up.

16 THE COURT: All right.

17 MR. MERRILL: And just to be clear, your Honor, we've  
18 morphed into another objection, which I think is fine because I  
19 think we can deal with all of them at the same time.

20 But the defense has been aware that the government had  
21 this larger figure. We have never seen the documentation for  
22 all of these. We have never -- I'm not even sure we have a  
23 list of, like, necessarily all of the names of that  
24 \$116 million figure. And the reason why is because we reached  
25 an agreement with respect to the smaller \$16 million figure in

1 terms of what the government said it could corroborate.

2 And once everyone agreed that that was the intended  
3 loss, it seemed unnecessary for us to actually test whether  
4 there was a hundred and -- you know, what role he had in the  
5 116 million.

6 So this is some agent's connections that we've never  
7 verified, we've never talked to the agent about, we've never  
8 seen all the documentation for, which is why it should not be  
9 considered as part of sentencing.

10 And, you know, I had a concern -- and it perhaps is in  
11 the recommendation -- but the probation department  
12 characterized the intended loss that everyone -- that the  
13 parties agreed to as "conservative" because of -- based on her  
14 conversations with the agent where the agent presumably walked  
15 her through, you know, how they got to this 116 million.

16 And, you know, it's just not part -- properly part of  
17 the sentence. And so that's really on the loss.

18 And I do want to come back to the -- to the filings if  
19 the Court will permit.

20 THE COURT: Well, let's -- I'm going to rely upon the  
21 loss figure of \$16.3 million for purposes of sentencing. The  
22 government is not seeking as an aggravating factor this other  
23 conduct, correct?

24 MS. BELL: Correct, your Honor. We focused on the  
25 16 million. I had just included that just to try to convey

1 that this was a conservative loss figure. And certainly the  
2 underlying materials, being rather voluminous, related to the  
3 other 103 trusts were ones that I had offered to produce and  
4 had produced some of those.

5 But certainly because of the government's I feel like  
6 clear intention not to prove up that 116 million, it was not  
7 the subject or the focus of the discovery or our productions.

8 THE COURT: All right. Well, this isn't really  
9 inaccurate in the sense the government has a good-faith belief  
10 in it.

11 However, I do find that a tax loss or a purported  
12 request from the government of over \$100 million is  
13 sufficiently prejudicial to remain in a PSR that is going to  
14 accompany the defendant to the penitentiary he's designated at  
15 that it ought to be omitted. It's not being relied upon by the  
16 government; I'm not going to rely upon it in my sentence. And  
17 that normally would be the end of it because it's not  
18 inaccurate; it's just not being relied upon.

19 This is sufficiently prejudicial where I think some  
20 deletion of this language in this paragraph is appropriate.

21 So what are you suggesting, Mr. Merrill?

22 MR. MERRILL: So, your Honor, I think that certainly  
23 the second sentence of paragraph 13 --

24 THE COURT: Okay. I agree.

25 MR. MERRILL: -- that --

1 THE COURT: Should be omitted.

2 MR. MERRILL: -- I think that whole paragraph can come  
3 out.

4 THE COURT: You mean that whole sentence?

5 MR. MERRILL: Or that whole sentence. I'm sorry.

6 THE COURT: I think the second sentence and the third  
7 sentence, if omitted, likely deal with your objection.

8 MR. MERRILL: Yes, your Honor.

9 And if you get rid of that third sentence, I think it  
10 takes care of a great part of the other objection concerning  
11 paper terrorism and sovereign citizen beliefs, which I think  
12 the Court is correct, although I'm going to verify after -- on  
13 my computer, I'm going to verify that sovereign citizen/paper  
14 terrorism doesn't otherwise show up in the PSR. I think it  
15 primarily is in the recommendation.

16 But I think if you take those two sentences out, that  
17 deals with both of those effectively.

18 THE COURT: All right. Ms. Kolbe, did you get those  
19 two sentences?

20 MS. KOLBE: Yes, your Honor.

21 THE COURT: Any objection by the government?

22 MS. BELL: No, your Honor.

23 THE COURT: And, Mr. Merrill, with that modification,  
24 are you satisfied that that objection in your sentencing memo  
25 has been addressed?

1           MR. MERRILL: Your Honor, the only other aspect is on  
2 page 24, the probation department is recommending a  
3 condition -- it's listed as Condition 15 under "Other" -- that  
4 Mr. Walton "... be prohibited from filing any liens or legal  
5 documents against or for any individual/s, businesses or  
6 entities without prior permission of this Court."

7           THE COURT: All right. We'll get to that when we go  
8 through the conditions of supervised release.

9           MR. MERRILL: And what I would just ask is if the  
10 Court determines not to impose that condition, that in my view,  
11 there's no factual basis in the record, particularly given what  
12 we've just struck from the PSR, for that condition.

13           And I would be concerned, you know, because the true  
14 paper terrorism that gets charged and prosecuted is the filing  
15 of liens and other documents against public officials, usually  
16 public officials that are prosecuting someone who has these  
17 types of beliefs.

18           There is no indication in his prior behavior or in his  
19 interactions with this Court or with myself or with Ms. Bell  
20 that indicates that Mr. Walton has done that or is  
21 contemplating doing that. And I -- what I would not want to do  
22 is to get somebody in the prison system concerned that that's  
23 what he's doing and therefore treat him differently. So --

24           THE COURT: I'm not sure if non-imposed conditions of  
25 supervised release that are in the PSR where the check mark is

1 removed remain with the PSR when it goes to the institution.

2 Do you know?

3 MS. KOLBE: The presentence report, yes, it would  
4 still include our -- you know, the condition that we  
5 recommended, yes.

6 THE COURT: Okay. So you're asking that be stricken,  
7 not -- if I don't impose it --

8 MR. MERRILL: Yes.

9 THE COURT: -- you're asking that it not even remain.

10 MR. MERRILL: Because I don't want to create some  
11 confusion as to why is this because I think it's a nonstandard  
12 condition. I don't think it's included in every case. I think  
13 it's included in cases of true paper terrorism.

14 So I don't want somebody seeing that if the Court  
15 doesn't impose it and speculating that Mr. Walton is this --  
16 might engage in that behavior and treating him differently as a  
17 result.

18 THE COURT: All right. Let's address it right now.  
19 Is the government seeking that condition of supervised release?

20 MS. BELL: No, your Honor.

21 THE COURT: All right. Then I'll ask -- and I don't  
22 intend to impose it.

23 Well, Ms. Kolbe, do you want to be heard on this?

24 MS. KOLBE: Your Honor, we could rephrase it to say,  
25 "No filing of trusts without the Court's permission."



1           THE COURT: Well, I think if he -- a condition of  
2 supervised release is you not violate the law. I don't want to  
3 put a hamper on him -- he's like any other citizen. He may  
4 have a trust return he legitimately may have to file someday.  
5 I can't predict that. And if he files a false trust return,  
6 he'll be in violation of supervised release and likely go back  
7 to jail.

8           So I think -- it seems unnecessary. There's all kinds  
9 of things we can put in as a condition of supervised release:  
10 "Don't do the same thing you did before." And I don't often  
11 find that. That seems unnecessary. We don't put conditions on  
12 a gun case "Don't ever" -- well, that's a bad example because  
13 we do include that in conditions of supervised release.

14           But in most crimes, we don't repeat the crime and make  
15 it a condition of supervised release to not do it again. And I  
16 think there is certainly a -- as a citizen, he has a right to  
17 file a trust return if he has trust income.

18           So I'm going to not impose Condition 15, and I'm going  
19 to ask that it actually be deleted from the PSR so there's no  
20 suggestion by a careful reading of someone in the penitentiary  
21 that he might be a lien filer, which he clearly is not. That's  
22 not what happened here.

23           MS. KOLBE: All right, your Honor.

24           THE COURT: All right. Thank you.

25           What else do you have, Mr. Merrill?

1           MR. MERRILL: Your Honor, let me just -- we talked  
2 about the loss amount. Let me just make sure that those were  
3 the only paragraphs that I believed -- it was only paragraph 13  
4 that contained the concerning language.

5           THE COURT: Yeah, there's language in the government's  
6 version, but that's not going to be changed. I think there is  
7 language there.

8           MR. MERRILL: All right. Your Honor, let's move on to  
9 the next objection, which has to do with the recommendations of  
10 conditions that would prohibit him from practicing his  
11 religion. And really it's -- I don't know that this is so  
12 much -- although, frankly, I do have concerns. We probably  
13 ought to look specifically at these because I think it  
14 normally, as you know, under the law -- certainly under the  
15 sentencing guidelines, someone's religion is not an appropriate  
16 factor to consider in imposing a sentence.

17           THE COURT: Well, let's do that when we go through the  
18 conditions of supervised release. That's a little different  
19 than the ones you've raised so far, which are factual  
20 inaccuracies or perceived factual inaccuracies or language that  
21 is contained, even if not -- the box isn't checked, that might  
22 be deleterious to the defendant's incarceration.

23           I think we're best off going through those when we go  
24 through the conditions of supervised release.

25           MR. MERRILL: Your Honor, I'm fine to do that.

1           And just to highlight what it is that I would be  
2 concerned about in terms of language, notwithstanding what the  
3 Court just said, it's the suggestion that somehow his religious  
4 practice were extremist, and that is in the PSR at paragraph 8.

5           And I think there's not only no factual basis for that  
6 that has been presented to the Court, but I think it is  
7 prejudicial because it can trigger the same sort of concern by  
8 a prison official that -- particularly given that Mr. Walton  
9 wears a fez and sometimes his religion is confused with Islamic  
10 religion. And I just don't want him to be subject to  
11 unnecessary scrutiny --

12           THE COURT: Any objection to --

13           MR. MERRILL: -- because of that.

14           THE COURT: -- the word "extremist" being removed?

15           MS. BELL: No objection to that, your Honor.

16           And I think the basis for this was a letter from the  
17 Moorish Science Temple of America, Inc., the larger national  
18 religious organization, that had been produced to the defense  
19 where they distinguish themselves from other temples and the  
20 like. So I'm assuming that that's why the "extremist" maybe --

21           THE COURT: Sure.

22           MS. BELL: But no objection, your Honor.

23           THE COURT: All right.

24           MR. MERRILL: But the problem with that, your Honor,  
25 is there is no one national organization. This religion was --

1 is relatively recent. It started in the early 1900s. And  
2 after the initial founder and prophet died, it split into three  
3 different groups. And it has been -- you know, there's been  
4 offshoots ever since.

5 So for one organization -- one of those organizations  
6 that now claims to be the true successor to the original  
7 organization to claim that another -- it's really just not  
8 helpful. And I don't think there's a factual basis, and I  
9 think it's misleading to the reader.

10 THE COURT: Well, if we want to get into that, we can  
11 talk about the Nation of Islam, which is one of the -- with  
12 Louis Farrakhan, which is one of the offshoots. The El Rukns  
13 claimed membership in one of the offshoots. There's all kinds  
14 of -- if you want this to be accurate, it's going to be more  
15 prejudicial than not.

16 The word "extremist" I'm happy to take out. I don't  
17 view the rest of this as all that prejudicial if --

18 MR. MERRILL: Your Honor, it's the phrase right after  
19 the "extremist" segment that says "... the national  
20 organization does not affiliate with his views."

21 THE COURT: All right.

22 MR. MERRILL: There is no national organization.  
23 There is -- there are various organizations who claim to be the  
24 successor to the original organization. But there's a dispute,  
25 as I understand it, within those -- among those groups as to

1 who is the national organization.

2 So if they want to say, you know, that an organization  
3 that claims to, you know, be a successor, you know, doesn't  
4 affiliate with the views he expressed.

5 THE COURT: All right.

6 MR. MERRILL: But I just don't know why we need to get  
7 into all that.

8 THE COURT: How about we take out the second sentence.  
9 Any objection by the government?

10 MS. BELL: No, your Honor.

11 THE COURT: All right. Ms. Kolbe, why don't we do  
12 that.

13 MS. KOLBE: All right. Yes, your Honor.

14 THE COURT: And does that satisfy your objection to  
15 that, Mr. Merrill?

16 MR. MERRILL: Yes, your Honor.

17 THE COURT: Okay. That will be an amendment to the  
18 PSR.

19 Anything else?

20 MR. MERRILL: Your Honor, I think -- let me look at  
21 the last -- there's one more, but it might be something that  
22 really is a condition. It has to do with the condition that  
23 Mr. Walton's employer be notified of any -- immediately  
24 notified of any sentence. But I think we can deal with that as  
25 part of the condition.

1 THE COURT: Fair enough. Okay.

2 MR. MERRILL: The sentencing.

3 THE COURT: So with that then, are there any  
4 additional modifications, factual disagreements, or  
5 modifications -- let me rephrase it -- any modifications either  
6 side is requesting to the PSR?

7 MS. BELL: No, your Honor, not the government.

8 MR. MERRILL: No, your Honor.

9 THE COURT: Okay. So I will adopt the PSR with the  
10 modifications that have been made that we've just gone through.

11 All right. So after calculating the guidelines and  
12 finding no departures are appropriate, I must now consider the  
13 relevant factors set out by Congress at 18 U.S.C. § 3553(a) and  
14 ensure that I impose a sentence sufficient, but not greater  
15 than necessary, to comply with the purposes of sentencing.

16 These purposes include the need for the sentence to  
17 reflect the seriousness of the crime, to promote respect for  
18 the law, and provide just punishment for the offense.

19 The sentence should also deter criminal conduct,  
20 protect the public from future crime by the defendant,  
21 promote -- and promote rehabilitation.

22 In addition to the guidelines and policy statements, I  
23 must consider the nature and circumstances of the offense, the  
24 history and characteristics of the defendant, the need to avoid  
25 unwarranted sentence disparities among similarly situated

1 defendants, and the types of sentences available.

2 Does the government wish to argue about the  
3 application of the factors set forth in 3553(a), request a  
4 variance, or otherwise make a sentencing recommendation?

5 MS. BELL: Yes, your Honor, just briefly.

6 THE COURT: All right. Ms. Bell, you may proceed.

7 MS. BELL: Your Honor, the government is seeking a  
8 guidelines sentence in this case. This is a serious offense  
9 for which both general and specific deterrence is very  
10 necessary.

11 Through his own filings alone, the defendant stole  
12 over \$310,000 and intended to steal a total of \$900,000. He  
13 took advantage of the U.S. tax system's reliance on the honesty  
14 of taxpayers. He exploited a vulnerability in our tax system,  
15 and he filed blatantly false trust tax returns, not just for  
16 one year, but for three.

17 And in January 2011, his scam with his personal taxes  
18 proved to be a success, and he received that refund check for  
19 \$310,162.

20 He quickly deposited the check in an account he opened  
21 up under the name of his fake trust, and he began spending that  
22 money for his own use. He bought a car. He stayed at hotels.  
23 He dined at restaurants. He went on shopping sprees. He  
24 bought jewelry and even Chicago Bulls tickets.

25 So within six months' time period, Mr. Walton managed

1 to spend \$310,000 that he was not entitled to, stolen money  
2 from the government.

3 Now --

4 THE COURT: His job was a janitor with the Chicago  
5 Park District, correct?

6 MS. BELL: Yes, your Honor.

7 THE COURT: And he made, what, 40, 45,000 on that?

8 MS. BELL: About 39 or 40,000 a year.

9 THE COURT: All right. Go ahead.

10 MS. BELL: Now, IRS agents eventually caught on to  
11 what was going on, and in October 2012, they approached  
12 Mr. Walton at his temple. They told him to stop filing the  
13 false returns, to stop assisting others, and he claimed he  
14 didn't know anything about these Form 1041s being filed with  
15 the IRS.

16 But he's now admitted that that's a lie, and he's  
17 admitted to the larger crime and scheme at issue here because  
18 the defendant used his position as the Grand Sheik, or Sheik,  
19 with the Moorish Science Temple of America in Chicago to  
20 recruit others to further his tax scheme.

21 And the benefit that was in it for him was that he was  
22 using his position as a religious leader of sorts to request a  
23 tithe, or 10 percent gift, to him and his temple from those he  
24 assisted.

25 So as reflected in the plea agreement, there were



1 various individuals, such as temple member Christopher Mietus,  
2 who filed the three tax returns assisted by Mr. Walton,  
3 received \$900,000, and then gave Mr. Walton 90,000 of those  
4 dollars for his assistance.

5 Now, also through that plea, Mr. Walton has admitted  
6 to assisting other individuals besides Mr. Mietus and that he  
7 knew when he was assisting those others by preparing their  
8 returns and/or filing them directly for them that he knew those  
9 individuals were not entitled to that money.

10 THE COURT: Did -- when he was interviewed by the IRS,  
11 did he stop -- obviously, his own returns had been filed  
12 previously, correct?

13 MS. BELL: Correct, his own had been filed.

14 THE COURT: Did he prepare any returns for the other  
15 individuals after October 2012? It appeared not, but I wasn't  
16 sure on the dates.

17 MS. BELL: And that would be my understanding. I can  
18 look --

19 THE COURT: Sure.

20 MS. BELL: -- back at the --

21 THE COURT: Go ahead.

22 MS. BELL: -- the IRS agents back there if I may --

23 THE COURT: Take a moment.

24 MS. BELL: -- have a moment, your Honor.

25 I will say that that's the government's understanding

1 as well, your Honor.

2 THE COURT: All right. Okay.

3 Proceed, please.

4 MS. BELL: And through the defendant's scheme, which  
5 was charged over just a year-or-more period, he managed to  
6 cause a loss to the government of \$3.2 million.

7 Now, some of that money was later recovered, but the  
8 intended loss through that scheme -- and this is just a small  
9 handful of people doing this -- was over \$16 million to the  
10 government.

11 So the potential impact that he made on -- to the  
12 government is quite astounding in terms of money being siphoned  
13 away from legitimate government programs, money that would be  
14 in place to help and assist the public, to provide programs and  
15 to make our government function better, was being stolen away  
16 by Mr. Walton and others when he knew that those individuals  
17 and himself were not entitled to it.

18 THE COURT: I had a question. Sorry to interrupt, but  
19 it's my nature.

20 There are, what, seven -- how many individuals did  
21 you -- did -- is Mr. Walton accountable for for filing false  
22 returns?

23 MS. BELL: At least 17 other individuals.

24 THE COURT: All right. And of those 17, how many of  
25 those people went to jail?

1 MS. BELL: Well, the government decided to proceed  
2 with prosecutions only of those individuals who received a  
3 refund check. So some of those 17 individuals were not  
4 prosecuted because they did not win the Lotto -- or maybe lose  
5 the Lotto -- with getting a refund check.

6 So the ones in this district that I'm aware of, there  
7 are at least five individuals who Mr. Walton prepared their  
8 returns or encouraged to -- or were encouraged by him to  
9 prepare the returns who were prosecuted or are being prosecuted  
10 in this district.

11 So if I can get the chart real quick.

12 THE COURT: You can.

13 I have my own calculation, but I wanted to confirm it  
14 with you.

15 MS. BELL: And that is ... older chart.

16 I apologize, your Honor.

17 THE COURT: No problem.

18 MS. BELL: I had the original chart, not the updated  
19 one.

20 THE COURT: The names I have, at least, are Ronald  
21 Taylor -- and you can tell me if that's correct.

22 MS. BELL: That's correct, your Honor.

23 THE COURT: Erica Moore.

24 MS. BELL: That's correct.

25 THE COURT: Christopher Mietus.

1 MS. BELL: That's correct.

2 THE COURT: And Dawn Shannon.

3 MS. BELL: That's correct, your Honor.

4 THE COURT: And I believe you thought there were five,  
5 at least. Was there another one I missed or someone who's not  
6 on the chart who hasn't been sentenced, perhaps?

7 MS. BELL: Yes, your Honor. There's an individual  
8 Steven Segura, who is -- so not Florentina, but another Segura,  
9 Steven Segura, who is still being prosecuted.

10 THE COURT: And has he pled guilty awaiting  
11 sentencing, or does he have --

12 MS. BELL: He --

13 THE COURT: -- an open case right now?

14 MS. BELL: -- has an open case. As far as I know, I  
15 believe they're going to prepare for trial in that case.

16 THE COURT: All right. Because I must tell you,  
17 Mr. Merrill, when we get to your comments -- and you can  
18 anticipate this -- I find it extremely aggravating, probably  
19 the most aggravating fact in this case, that people who by all  
20 accounts -- because just looking at their criminal history,  
21 except for Erica Moore, are all Criminal History I -- are  
22 law-abiding people who got into this and ended up having --  
23 either going to trial or pleading guilty and then going to  
24 jail. And I put that on the doorstep of the defendant in many  
25 regards.

1           So it's something you should be prepared to address  
2 because it's, in my mind, the most aggravating factor in this  
3 case. He pleads guilty. Some of these other people who  
4 believe this stuff go to trial and end up going to jail because  
5 of a belief that the leader and organizer of this doesn't even  
6 hold up enough himself to -- you know, it's a mitigating factor  
7 he pled guilty. I recognize that. He receives credit for that  
8 under the guidelines. And it's a matter in mitigation you've  
9 put in your memo and you'll argue undoubtedly.

10           But there's some irony to the fact that some people  
11 were misled over the -- this whole idea of the government owing  
12 money to them and going to trial over that and going to jail  
13 over that when the person who put them up to it or at least was  
14 involved in counseling them to do it is seeking mercy because  
15 he pled guilty and recognized the criminality of his conduct.  
16 I find that ironic and aggravating, and it's something you need  
17 to address.

18           Okay.

19           MR. MERRILL: Thank you, your Honor.

20           THE COURT: Continue, Ms. Bell.

21           MS. BELL: Yes, your Honor.

22           And so I know on the sentencing chart, we're seeing  
23 only four other individuals. But, again, there is the one  
24 additional case.

25           And then the government has interviewed multiple other

1 individuals, you know, at least -- well, with Walton, as far as  
2 the interviewed, multiple other ones who had said they were  
3 temple members and who filed taxes. And some of those  
4 individuals had provided testimony and statements, again  
5 saying, "Mr. Walton told us to do this."

6 And they -- we have elected not to prosecute them  
7 because of the lack of intent and in most cases because they  
8 did not receive a check.

9 But as your Honor has noted, these individuals, some  
10 of whom appeared to believe that if they were Moorish  
11 individuals, they could file these returns and that somehow  
12 these numbers represented codes that conveyed to the government  
13 their entitlement to these monies, they were believers.

14 They were vulnerable individuals in some cases, in  
15 some cases homeless individuals and several cases -- in the  
16 case of Dawn Shannon, for example, and her family elderly  
17 individuals who first encountered Mr. Walton when they were  
18 assisting his help in trying to bury a family member who -- for  
19 whom they did not have money to bury him.

20 They were individuals who were in need of housing or  
21 transportation and who saw this as if this was a true religion,  
22 which Mr. Walton portrayed it to be, as something that could  
23 really help themselves and could help their family members,  
24 some of whom were destitute; or also, in the case of Dawn  
25 Shannon, she cared for a granddaughter who had a lot of

1 physical and mental health issues, who needed a lot of  
2 additional care.

3           And so the monies received were sometimes put to good  
4 uses. But these were people who were misled and then were put  
5 in the position of being federally prosecuted, going to jail,  
6 suddenly finding -- in the case, again, using Ms. Shannon as an  
7 example, and her family members, where they filed these false  
8 trust returns -- and then even in the cases of those who did  
9 not receive money have found the government then going after  
10 interest and after fee -- penalty fees for their filing by  
11 garnishing things like their Social Security.

12           And so that has caused an impact on other individuals  
13 who were not prosecuted. And Mr. Walton is the one who  
14 recruited these individuals. He sold them a bill of goods  
15 about becoming Moors, encouraged them to file these false  
16 returns.

17           And he did it to further his own greed in many ways  
18 because he was seeking that 10 percent fee and because this was  
19 an easy crime for him to commit and because, at the end of the  
20 day, he knew it was a small percentage but some were going to  
21 get through, and then he hoped that those individuals would pay  
22 him back.

23           Now, my sort of rough calculation is maybe at the end  
24 of the day, only about 6 percent of these fraudulently -- the  
25 larger universe of fraudulently returned files [*sic*] actually

1 resulted in a payout to an individual, but that does not make  
2 it any less burdensome on the government to have to deal with  
3 going through and processing all of those and attempting to  
4 catch all of these fraudulent returns.

5 The system that's in place is such that the IRS does  
6 the best job it can to speedily provide tax refunds to  
7 law-abiding citizens. And when they're having to deal with  
8 massive amounts of fraudulent returns, it slows down the system  
9 for everyone. And at the end of the day, his conduct took away  
10 legitimate monies that could be used to assist and help others  
11 in our society.

12 So the government cannot stress enough that there is a  
13 great need for jail time in this case. There is a need to  
14 provide just punishment. This is a serious crime, and there is  
15 a need to deter Mr. Walton personally and to deter others who  
16 may follow in his footsteps from doing something that's  
17 relatively easy, putting down a few numbers on a return,  
18 getting an EIN, and then submitting electronically from the  
19 comfort of your home, as Mr. Walton did, a series of simple  
20 trust returns and then crossing your fingers and waiting to see  
21 if a check is going to roll in.

22 I also believe that a guidelines sentence here, a  
23 higher sentence, is necessary to avoid any unwarranted  
24 sentencing disparities.

25 The individuals who have previously pleaded guilty



1 or -- and have been sentenced or have gone to trial and been  
2 sentenced by the courts were not leaders. They were not  
3 organizers. They were temple members following the  
4 instructions of Mr. Walton or someone like him.

5 Many of these other names were involved in another  
6 temple run by another lady, who referred to herself as "the  
7 Queen." And she was previously affiliated with Mr. Walton, and  
8 then they went their separate ways.

9 THE COURT: Was that the Cahills?

10 MS. BELL: Yes, the Cahills were a member of the  
11 Queen's temple.

12 And the Cahills were both interviewed. Cutchlow has  
13 never met Mr. Walton. Fani Cahill had stated she had met him  
14 one time previously. But they were members under the Queen's  
15 temple.

16 And I know there was something raised by the defense  
17 that Fani Cahill could have been viewed as a leader/organizer.  
18 If she did assist other members in helping file tax returns  
19 that that is new information to me, but I certainly was not the  
20 prosecutor on that case.

21 But my understanding is, and I think the agents'  
22 understanding as well, is that the Cahills were temple members  
23 operating underneath a temple leader, who styled herself as  
24 "the Queen," who previously was affiliated with Mr. Walton.

25 THE COURT: But the 17 -- it's 17 individuals that

1 you're saying filed phony returns at the direction or with the  
2 help of Mr. Walton. In the interviews, the IRS interviews of  
3 those 17 people, are the Cahills mentioned as the people who  
4 caused them to file these returns or prepare these returns?

5 MS. BELL: No, your Honor.

6 THE COURT: All right.

7 MS. BELL: In the interviews, those individuals all  
8 said it was Marcel Walton who -- "He prepared my return,"  
9 and/or "He filed my return," and/or "He encouraged me and told  
10 me how to do it myself."

11 THE COURT: Got it. All right.

12 MS. BELL: So they all have identified Mr. Walton, and  
13 they've -- and in some of those interviews, Erica Moore and  
14 Dawn Shannon also said, "When we were at" -- "I was at  
15 Mr. Walton's house, and these other individuals were there, and  
16 I saw him prepare those individuals' returns."

17 So in the case of Dawn Shannon, some other of her  
18 family members, or her elderly sisters, she says Mr. Walton was  
19 preparing their returns, prepared those returns for them as  
20 well.

21 So the government really focused on those because  
22 those were the individuals where we'd had law enforcement  
23 agents go out, get those statements, and/or put those  
24 individuals in grand jury. And they said it was Marcel Walton,  
25 nobody else.

1           So he is a leader. He is an organizer. He is unique  
2 out of any of these cases. He deserves a significant sentence,  
3 a higher jail time than any of the members have received.

4           He has deprived the government and the public of money  
5 that could have been used for actual assistance to individuals.  
6 He's preyed upon people's trust. He's used his religious  
7 authority and position of authority in that temple to convince  
8 people to commit crimes. He's turned other law-abiding  
9 citizens into now-convicted felons or individuals who now are  
10 facing stiff IRS penalties and garnishment and the like, even  
11 if they aren't being federally prosecuted by our office.

12           And so the government would ask for a guidelines  
13 sentence for those reasons for Mr. Walton.

14           THE COURT: All right. Thank you, Ms. Bell.

15           Now, does the defense wish to argue about the  
16 application of the factors set forth in Section 3553(a),  
17 request a variance, or otherwise make a sentencing  
18 recommendation?

19           MR. MERRILL: Yes, your Honor. We'd like to -- I'd  
20 like to address some of the 3553(a) factors if the Court would  
21 permit.

22           THE COURT: You may.

23           MR. MERRILL: Your Honor, I think in some ways,  
24 Mr. Walton is very similar to many other defendants that this  
25 Court has seen, that I have seen as I've been a member of the

1 Federal Defender Panel.

2 And those ways include the following: He grew up in a  
3 very poor part of Chicago. He had no relationship with his  
4 birth parents. His mother suffered from schizophrenia and  
5 psychosis and did not raise him. He was turned over to his  
6 grandmother shortly after he was born, as I understand it, and  
7 she raised him. His father was an alcoholic and was never  
8 really part of his life, and he abandoned him when Walton was  
9 six or seven years old.

10 Mr. Walton had physical disabilities as a kid. He had  
11 a clubfoot, which required multiple surgeries. I can't imagine  
12 that -- I imagine that that caused him some difficulties  
13 socially, certainly participating in athletics, other things  
14 like that.

15 And he had other health problems as a youth that led  
16 to surgeries, a large number of surgeries for a kid, at least  
17 in my experience.

18 When he was 15 or 16 years old, as often happens in  
19 people with his sort of -- in his sort of socioeconomic  
20 situation, he began drinking. He began smoking pot. He got  
21 kicked out of high school and stopped attending high school,  
22 and he joined the Vice Lords street gang and began carrying a  
23 gun.

24 All of that is very similar to what happens with a lot  
25 of other defendants that stand before the Court and are

1 sentenced for various crimes. And what is unusual and unique  
2 about Mr. Walton, in my experience, is that he somehow got  
3 himself together, with the exception of why we're here today,  
4 which I want to talk about in a moment.

5 But in his 20s, he got out of the gang. He quit  
6 participating, being involved in gang life, which is a very,  
7 very difficult thing to do.

8 In addition, he went back to high school. Now, he  
9 didn't get his GED from -- while he was sitting in jail with  
10 lots of time on his hands. He did it on his own, and he went  
11 back and physically attended an alternative high school here in  
12 Chicago that was called the Academy of Scholastic Achievement.  
13 And he got his high school diploma.

14 He worked. He has spent most of the last -- most of  
15 his adult life holding down various jobs. These are not  
16 high-paying jobs, but they were good, decent jobs, and all --  
17 by all accounts, he was a good worker and did a good job  
18 because he continued to get similar jobs and continued to get  
19 raises. And most recently he -- for many years, he has been a  
20 custodian at the Chicago Park District and has made close to  
21 \$40,000 a year.

22 Those things are very unusual. He continued to live  
23 with his grandmother until he was 44 years old, frankly, until  
24 just before she passed away. I don't know all the reasons  
25 behind that, but this is someone who was not very

1 sophisticated, doesn't have a lot of education, but did a  
2 pretty good job with what he had and overcame some significant  
3 personal obstacles in the process.

4 Now, let me talk for a moment about the nature of this  
5 offense and the circumstances of this offense. In the plea  
6 agreement, he says exactly what he did. He admitted that he  
7 filed false trust tax returns, and he helped others do the  
8 same.

9 Now, in these cases, I think that's a big deal. I  
10 think you look at the sentencing chart and as updated by the  
11 government, and we identified a number of other people that we  
12 point out in our memorandum that aren't on the chart that we  
13 believe are similarly situated folks.

14 As far as we could tell, the majority of people that  
15 are considered to be Moors and filed -- filing false tax  
16 returns went to trial. Many of those people that go to trial,  
17 it's not just that they don't plead guilty; they question the  
18 very right of the government to prosecute them. They question  
19 the jurisdiction of the Court. They assert that they are above  
20 and beyond the law. Right?

21 I can tell you that Mr. Walton has not done that in  
22 this case. The Court knows he has not done that in this case  
23 because he has never submitted a -- asserted that in court.  
24 He's never submitted a filing in this court asserting any of  
25 those beliefs.

1           He has been cooperative. He has showed up when he is  
2 supposed to show up. He has complied with, as far as I can  
3 tell, all the conditions of his pretrial release. He has  
4 continued to work. And as far as we can tell, he has not  
5 continued any of this behavior that led to the charges in this  
6 case. So I think that's a big deal.

7           And he has zero criminal record, which, frankly, is  
8 amazing given his involvement in the Vice Lords gang, but it's  
9 really a testament to the fact that he's held down a job and  
10 hasn't been convicted of any crimes in his life, is -- says a  
11 lot about him given where he came from.

12           Now, I want to speak for a moment about this notion  
13 that he was the ringleader of this scheme. He admitted that he  
14 helped others do it. He admitted he did it himself and helped  
15 others do it. There's no dispute about that.

16           In addition, he -- you know, the parties agree that he  
17 should -- his sentencing guidelines should include a four-level  
18 increase because he was an organizer or leader of the criminal  
19 activity that involved five or more participants. Those are  
20 the folks we just talked about. There were 20 trust returns  
21 that go in, as I understand it, to the -- to the number that is  
22 the intended loss here.

23           But he didn't create this scheme. He didn't invent  
24 it. Right? I mean, people have been filing \$300,000 trust --  
25 false trust tax returns for decades, as far as I can tell.

1 And --

2 THE COURT: Seriously? I've never heard that.

3 What's the government's view on that? I didn't know  
4 this was a -- I was a prosecutor 20 years ago, and I never saw  
5 these types of prosecutions.

6 Now, it doesn't mean it didn't happen. But I didn't  
7 understand this scheme -- not going to lay the entire scheme of  
8 these phony returns, of which there's multiple instances of  
9 prosecution in this building, on Mr. Walton. That would be  
10 unfair. We'll just lay upon him the ones that are a part of  
11 the plea agreement.

12 But I didn't know this scheme was something that's  
13 been going on for decades. Does the government know otherwise?

14 MS. BELL: No, your Honor, I do not. This is my first  
15 knowledge of this sort of scheme, and this being run by  
16 Mr. Walton or the woman known as the Queen. So this is a more  
17 recent scheme. I certainly can check too with the IRS agents,  
18 who may be a little more learned.

19 THE COURT: Go ahead.

20 MR. MERRILL: Your Honor, what I can say -- and if the  
21 Court wants, I can find -- dig it up. But we found -- I found  
22 in my legal research instances where people who had no  
23 affiliation with Moors, they were sovereign citizens.

24 (Counsel conferring.)

25 MR. MERRILL: And there was a couple in Oregon or



1 Washington State that helped a lot of people file false trust  
2 tax returns.

3 And for some reason, I've seen in some other cases  
4 where it's exactly \$300,000. I mean, I don't know why you  
5 would want to -- that doesn't seem like a great way to file  
6 things with the IRS, by having it, you know, 300,000 even.  
7 But --

8 THE COURT: Well, it is, because if you're going to  
9 try and scam the IRS on the hope that they miss it, \$300,000 is  
10 a lot of money. Why go for a small amount?

11 MR. MERRILL: No, I understand.

12 THE COURT: I understand the motivation.

13 MR. MERRILL: But why not \$301,467? I mean, it's --  
14 what I can tell you is that we found an indication that this  
15 was -- this has existed for many years --

16 THE COURT: All right.

17 MR. MERRILL: -- and has existed outside of the  
18 Moorish community, and that for some reason crept into the  
19 Moorish community. So that's the large point. He didn't  
20 create this scheme.

21 And to the extent that the Court wants additional  
22 information, we're happy to provide it. I'm sure the  
23 government would be happy to comment on that.

24 THE COURT: Ms. Bell, did you learn something from the  
25 agents on that point?

1           MS. BELL: Your Honor, I checked with IRS Agent Paul  
2 Ponzio, who has assisted on many, if not all, of the  
3 prosecutions in our district of these cases and has quite a  
4 history of working on these sort of tax cases.

5           The earliest case he can remember he estimated was --  
6 occurred approximately five or seven years ago. So certainly  
7 no knowledge by IRS of this being a decades-old or a common  
8 scheme.

9           THE COURT: All right. Well, I won't rely upon the --  
10 that's not going to be a factor in my sentencing. I'm not  
11 going to -- and I'm not going to hold Mr. Walton accountable  
12 for conduct that he's not responsible for under the plea  
13 agreement.

14           MR. MERRILL: Yeah.

15           THE COURT: So --

16           MR. MERRILL: And, your Honor, just speaking for that  
17 for a moment, I mean, I think it was very helpful to have this  
18 sentencing chart because as a defense lawyer, this is hard to  
19 come up with, this information. I mean, we were able to track  
20 down some of this stuff, but we weren't able to track down all  
21 of it.

22           I can tell you that Mr. Walton -- there's no  
23 indication that Mr. Walton had anything to do with most of the  
24 people on this list. I think the list is close to -- it's well  
25 over 20, maybe close to 30 people -- I haven't counted it --

1 with the new additions.

2 But it's indicated that he's involved with maybe four  
3 to six of these people. So most of these people figured out  
4 how to do these things, heard about how to do these things on  
5 their own or through some other source other than Mr. Walton.

6 What I can tell you is that -- is that I think Fani  
7 and Cutchlow Cahill did play a role in Mr. Walton's involvement  
8 in this. And what I can point the Court to is we dug up the  
9 Cahills' -- the government's sentencing memorandum in the  
10 Cahill case, and in that -- and we point to this in defendant's  
11 sentencing memorandum at page 22.

12 But in the government's sentencing memorandum in that  
13 case, the government said that Fani Cahill not only perpetrated  
14 her own crimes, but she also aided others in committing similar  
15 fraud, providing bogus Form 1041 examples to others and  
16 providing instructions about filling out the forms falsely and  
17 recommendations about opening a trust bank account for purposes  
18 of the fraud.

19 And the Cahills were prosecuted. They were involved  
20 in these sorts of things earlier than Mr. Walton. They were  
21 prosecuted years ago. They were sentenced in 2015 in a 2014  
22 case. And we attached -- we dug up and attached as Exhibit D  
23 to our sentencing memo an e-mail from Ms. Cahill back in 2010  
24 to a number of folks, including Mr. Walton, that responds to  
25 questions, attaches, you know, treatises about trusts,

1 explains, you know, the nature of trusts being private and how  
2 to structure these things.

3 So she's referring to a Jack Smith trust treatise that  
4 is attached here. And I must admit I did not read the  
5 attachments.

6 But there is evidence that Mr. Walton heard about this  
7 from other folks, other Moorish folks. And he then obviously  
8 repeated that to other people. He figured out how to do it and  
9 helped other people do it. He's admitted to that.

10 But he didn't do all of these trust tax returns. He  
11 did a small number of these. That's serious; it's wrong; he  
12 shouldn't have done it.

13 And what -- you know, the Court expressed concern  
14 about his willingness to plead guilty in this case while others  
15 may have fought it.

16 What I can tell you is that early in the case, I was  
17 retained -- or not retained -- I was appointed very early in  
18 the case. And I was asked by the government to pass along to  
19 Mr. Walton just a suggestion that he not have any contact with  
20 any of the other people that he had been involved with.

21 And that's -- it's a reasonable suggestion, and it's a  
22 reasonable request. I passed that along to Mr. Walton. As far  
23 as I know, he complied with that. Right?

24 So he wasn't telling people to do these things after  
25 he was charged, or he wasn't telling people to not do these

1 things. In fact, the government had suggested to me and I  
2 suggested to him that he not have any contact with them at all.  
3 And all of those people had their own lawyers.

4 But he wasn't out telling people to fight this. He  
5 wasn't out saying, "Hey, this is bogus. You know, you can  
6 resist this. You know, they won't ever be able to prosecute  
7 you."

8 He just -- he kept to himself, as far as I can tell,  
9 and no longer engaged in this activity and didn't encourage or  
10 discourage people from, you know, pleading or cooperating or  
11 any other thing.

12 So to his credit, he pled guilty. Right? He -- the  
13 moment he was charged and we had some time to look at the  
14 documents, to discuss this case, you know, he agreed to plead  
15 guilty.

16 And there was some delay, but I can tell you the delay  
17 really had to do, in my view, with the lawyers trying to figure  
18 out the 16 million and having conversations about this larger  
19 116 million and how that was going to play out. That's largely  
20 what took, you know, the most amount of time in terms of  
21 figuring this out.

22 Mr. Walton never indicated to me that he wanted to  
23 fight this. He never questioned the jurisdiction of this  
24 court. He never questioned the right of the United States  
25 government to prosecute him or others for filing these returns

1 and getting these proceeds.

2 So I understand the Court's concern. I don't know how  
3 else to address it because I think that under the  
4 circumstances, he did everything he reasonably could do once he  
5 was caught.

6 Did he make a mistake? Did he get wrapped -- this to  
7 me is not a religious fraud. This to me is a financial fraud.  
8 And it's a financial fraud that somehow people wrapped up in  
9 some religious terms, and it was certainly prevalent in a  
10 particular religious community.

11 But I think my guess is the Court has to -- you know,  
12 to the extent that it's relevant, my guess is that this is  
13 greed and trying to get something that -- for nothing and that  
14 most people probably had a sense that, you know, this wasn't  
15 really going to work and that they weren't really entitled to  
16 this.

17 But so I understand that there are victims. But I  
18 don't -- you know, and Mr. Walton I think has done everything  
19 he can do under the circumstances with that.

20 So the last thing I will say, your Honor, is the  
21 guidelines in -- as often happens in some of these financial  
22 cases are shockingly high for someone who has no criminal  
23 history, someone who has overcome the situations -- the  
24 circumstances that Mr. Walton has overcome.

25 If you look at just the chart, very, very, very few

1 people have even been sentenced within the guidelines. Many  
2 people have had years of, you know, a guidelines range that  
3 went into the years, as high as 24 to 30 months, and have  
4 gotten -- two people have gotten probation. So -- and one  
5 person got a day.

6           So there are -- you know, there have been some  
7 reasonably high guidelines ranges in this case, but almost  
8 nobody has been sentenced within those ranges. The only  
9 exception that I'm aware of is Florentina Segura, who fled the  
10 country and was sentenced in absentia by Judge Chang. And I  
11 don't know all the reasons there, but I imagine that that had  
12 played a role in the sentence that she received.

13           THE COURT: Did anyone else have a leader and  
14 organizer enhancement, if you're aware of it, either because of  
15 the plea agreement or after sentencing? Or after the trial,  
16 rather.

17           MS. BELL: No, your Honor.

18           MR. MERRILL: And I'm not aware, your Honor, but I'm  
19 not necessarily familiar with that. And I don't understand why  
20 the Cahills wouldn't have had that given what the government's  
21 position was, that they helped others do it.

22           So we didn't dispute that because I think, as a legal  
23 and factual matter, it was clear given what Mr. Walton admitted  
24 to in the plea agreement that that was going to apply. But I  
25 think that the guidelines ranges have not been -- most people

1 have not received a sentence within the guidelines range, and  
2 that's looking at the chart as a whole.

3           And if you do as we do at the end of the sentencing  
4 memorandum and you take out and just pull out the people who  
5 have no criminal history category and did not fight the  
6 government, didn't file frivolous pleadings, didn't assert that  
7 the Court lacked jurisdiction over them -- right? -- if you  
8 just take that smaller group of people who had no criminal  
9 history and who stepped up and pled guilty and didn't turn this  
10 into a circus, then the average sentence of those people was  
11 less than a year. It was about nine to ten months.

12           And it was upon that basis that I think it's  
13 appropriate for the Court to consider a 12-month sentence. For  
14 someone in Mr. Walton's condition, who has never been convicted  
15 of a crime, who has never served a jail sentence and has spent  
16 most of his life working, even a 12-month sentence is going to  
17 be incredibly disruptive and -- to his life. It is going to  
18 send a message.

19           In addition, his age. You know, most studies indicate  
20 that people his age don't come out and recidivate. And,  
21 frankly, I'm not that worried about recidivism here because he  
22 hasn't spent his life, as many defendants have, committing  
23 numerous crimes. I think he made a mistake. He's admitted he  
24 made a mistake. I think he's learned his lesson and will learn  
25 his lesson as he pays back the government for the damage that



1 he's admitted to.

2           So we would ask the Court to impose a sentence that's  
3 consistent with these factors, consistent with the similar  
4 sentences that have been imposed in other cases. We don't  
5 think that -- I don't think there's anything remarkable about  
6 Mr. Walton that would cause -- that should cause the Court to  
7 treat him more harshly than others have been treated in these  
8 types of cases, and, in fact, I think there's a lot of reasons  
9 to treat him less harshly than some of these folks who went to  
10 trial or put the government through these hoops.

11           And so we would urge the Court to impose a 12-month  
12 sentence.

13           THE COURT: All right. Thank you.

14           Mr. Walton, you have a right to make a statement or  
15 present any information you want to me in an effort to mitigate  
16 your sentence. You don't have to make a statement. I won't  
17 hold it against you if you don't. But this is your opportunity  
18 to say anything you wish to say to me.

19           THE DEFENDANT: Now, I'll say I apologize for filing  
20 those tax returns. It was misleading information that I  
21 received. You know what I'm saying? But I apologize for that.  
22 Know what I'm saying? I wasn't trying to defraud anybody. I  
23 was just -- you know, I was misled. Know what I'm saying?

24           THE COURT: You were misled?

25           THE DEFENDANT: Yeah, by the information. Know what

1 I'm saying? But I'm not saying that -- I apologize for the  
2 fraudulent activities that we done that was fraudulent.

3 And that's it.

4 THE COURT: All right. Thank you, sir.

5 All right. Anything else that either the government  
6 or defense wishes to add?

7 MS. BELL: No, your Honor.

8 MR. MERRILL: No, your Honor.

9 THE COURT: Okay. Well, typically what I do on  
10 sentences, and I'll do it here, is before I impose any period  
11 of incarceration, which there will be imposed, I address the  
12 issues of supervised release. So I'd like to do that now.

13 I am going to impose a period of supervised release of  
14 three years. I believe the conduct that was involved here took  
15 place over a period of time, and there's a need to monitor the  
16 defendant's conduct for the three-year period that's  
17 recommended by probation. I think that's appropriate -- by the  
18 probation office. I think that's appropriate. And so any  
19 period of incarceration will be followed by a period of  
20 supervised release of three years.

21 I'm not going to recommend a fine. I don't believe  
22 there's any ability to pay.

23 And there will be an imposition of a \$100 special  
24 assessment, along with a restitution requirement of \$2,434,727.

25 Now, as to the conditions themselves, Mr. Merrill, I

1 can -- the law requires me to read them. The law does not  
2 require me to explain my reasons for imposing any particular  
3 one unless you ask for that information. If you waive my  
4 having to explain why I'm imposing many of these standard  
5 conditions, I'll simply read them.

6 My practice and what I'd suggest we do here is I will  
7 read the conditions I'm imposing, and if you either are  
8 objecting to one of them or want the reasons explained, you  
9 should interrupt me -- please do interrupt me. I'm inviting  
10 it -- to tell me that you either object to a condition or you  
11 want an explanation for it on the record. Is that acceptable?

12 MR. MERRILL: That's acceptable, your Honor.

13 THE COURT: All right. Then the conditions of  
14 supervised release are as follows:

15 Mr. Walton, you shall not -- when on supervised  
16 release, you shall not commit another federal, state, or local  
17 crime.

18 Shall not unlawfully possess a controlled substance.

19 You shall cooperate in the collection of a DNA sample  
20 if the collection of such a sample is required.

21 Is there a need for the testing for unlawful use of a  
22 controlled substance? I don't believe his -- he had some past  
23 drug use in his background, but it seems fairly remote.

24 MS. KOLBE: Yes, your Honor. Based on his background,  
25 we usually take -- if the Court orders this condition, we

1 usually take at least three urine samples throughout his  
2 supervision. And if he doesn't test positive, then we leave it  
3 at that.

4 THE COURT: All right. Well, then I'll impose this.  
5 There was at least some drug use in the past.

6 So you should refrain from any unlawful use of a  
7 controlled substance and submit to one drug test within 15 days  
8 of release on supervised release and at least two periodic  
9 tests thereafter, up to 104 periodic tests, for use of a  
10 controlled substance during each year of supervised release.

11 You shall make restitution to the victim of the  
12 offense, which in this case is the Internal Revenue Service.

13 Is that correct?

14 MS. BELL: Yes, your Honor.

15 THE COURT: All right. In the amount that I've just  
16 said. And that's under Section 3556.

17 You shall seek and work conscientiously at lawful  
18 employment or pursue conscientiously a course of study or  
19 vocational training that will equip you for employment.

20 The probation officer would define the term  
21 "conscientiously" as the defendant's ability to dedicate  
22 himself to either locating or maintaining employment.

23 An individual who conscientiously seeks employment is  
24 an individual who makes a daily concerted effort by enumerating  
25 the name and location of their job search, submit applications,

1 and interview for jobs for which they're qualified.

2           Once a job is obtained, an individual should appear  
3 for work on time as required and communicate in a professional  
4 manner with their colleagues and supervisors.

5           You should refrain from -- well, you should refrain  
6 from engaging in any specified occupation, business, or  
7 profession bearing a reasonably direct relationship to the  
8 conduct constituting an offense -- the offense or engage in  
9 such a specified occupation, business, or profession only to a  
10 stated degree under certain circumstances.

11           You shall be prohibited from assisting or directing  
12 the completion/submission of tax returns for others unless  
13 provided permission from the Court. You should not help people  
14 with their tax returns ever again unless you get permission to  
15 do so, at least while you're on supervised release.

16           I'm not going to impose the condition that you shall  
17 not operate or hold a leadership position in the Moorish Temple  
18 of America unless you receive Court permission. I believe that  
19 unduly restricts your exercise of religious rights, and I don't  
20 think that's an appropriate condition to impose.

21           All right. You shall refrain from knowingly meeting  
22 or communicating with any person whom you know to be engaged or  
23 planning to be engaged in criminal activity pertaining to the  
24 fraudulent preparation of tax returns.

25           You should refrain from the use of a narcotic drug or

1 other controlled substance as defined in Section 102 of the  
2 Controlled Substances Act, which is 21 U.S.C. § 802, without a  
3 prescription by a licensed medical practitioner.

4 You shall refrain from possessing a firearm,  
5 destructive device, or other dangerous weapon.

6 You shall remain within the jurisdiction where you're  
7 being supervised unless granted permission to leave by the  
8 Court or probation officer.

9 And you should be told where that jurisdiction is when  
10 you're released. Probation officer should inform you of the  
11 limits of your ability to move around while you're on  
12 supervised release.

13 You shall report to the probation officer as directed  
14 by the Court or a probation officer.

15 You shall permit a probation officer to visit you at  
16 any reasonable time at home, at work, or any other reasonable  
17 location, and you shall permit confiscation of any contraband  
18 observed in plain view of the probation officer.

19 You should notify a probation officer promptly, within  
20 72 hours, of any change in residence, employer, or workplace  
21 and, absent constitutional or other legal privilege, answer  
22 inquiries by a probation officer.

23 You shall notify a probation officer promptly, within  
24 72 hours, if arrested or questioned by a law enforcement  
25 officer.

1           And you shall also satisfy the special conditions as  
2 set forth right now:

3           You shall not incur new credit charges or open  
4 additional lines of credit without the approval of a probation  
5 officer unless you're in compliance with the financial  
6 obligations imposed by this judgment, which is the  
7 2.4 million-plus restitution order.

8           You shall provide a probation officer with access to  
9 any requested financial information necessary to monitor  
10 compliance with conditions of supervised release.

11           Shall notify the Court of any material change in your  
12 economic circumstances that might affect your ability to pay  
13 restitution or special assess -- or the special assessment.

14           You shall provide documentation to the IRS and pay  
15 taxes as required by law.

16           You shall receive prior permission of the Court should  
17 you wish to file exempt status on your personal state or  
18 federal income taxes.

19           You shall pay any financial penalty that's imposed by  
20 this judgment that remains unpaid at the commencement of your  
21 term of supervised release. Your monthly payment schedule  
22 should be an amount that is at least \$25, or 10 percent of your  
23 net monthly income, defined as income net of reasonable  
24 expenses for basic necessities such as food, shelter,  
25 utilities, insurance, and employment-related expenses.

1           Shall not enter into any agreement to act as an  
2 informer or special agent of law enforcement without the  
3 permission of the Court.

4           There is no -- there's a Request No. 14 where the  
5 probation officer is requesting guidance from the Court on  
6 whether his current employer, the Chicago Park District, has to  
7 be informed of his involvement in this crime.

8           Mr. Walton is going to jail. And I'm not sure,  
9 Ms. Kolbe, why this -- why you need to -- what the nature of  
10 this need is to tell them that he's going to be missing from  
11 work for quite a long time.

12           MS. KOLBE: Yes, your Honor. We're more concerned  
13 about the condition of supervised release when they're on  
14 supervision. If he goes back to the park district, they should  
15 be aware that -- of this offense.

16           THE COURT: I don't think that's necessary. If they  
17 ask, there has to be a truthful answer. Nothing he did here  
18 jeopardized the assets of the Chicago Park District.

19           MS. KOLBE: Okay.

20           THE COURT: And so I -- although there's some  
21 indication he may have used some park district facilities for  
22 recruitment, I don't think that's close enough where the  
23 Chicago Park District is in danger of any loss of assets. He's  
24 not working in the financial end of the park district; he's a  
25 janitor. So I don't think there's a need to notify them of



1 his -- if he even has a job waiting for him when he gets out of  
2 jail.

3 MS. KOLBE: Yes, your Honor.

4 THE COURT: So I'm not going to impose No. 14.

5 Similarly, I'm not going to impose No. 15. We also  
6 spoke about that, about the lien issue. And that should be --  
7 that is actually going to be redacted from the PSR.

8 All right. Mr. Merrill, are any of the conditions  
9 I've imposed -- is there any objection to them, or is there a  
10 need for my -- to explain them on the record?

11 MR. MERRILL: No, your Honor. I mean, the only reason  
12 I'm even hesitating is that I'm not a tax professional. So I  
13 was just wondering about the special conditions of supervised  
14 release No. 8, about him filing exempt.

15 And I guess -- I guess if he really is exempt for some  
16 reason, it just means that he's going to have to file a motion  
17 whereas most people would be able to fill out a W-2 is my  
18 impression. But -- because he may be exempt. There may be  
19 circumstances where he truly is exempt from filing tax returns.  
20 I think it's an income-based thing at times. So if he's not  
21 employed, has no income, then he may be able to do that. And  
22 it sounds to me like he's just going to have to make a motion.

23 THE COURT: He's going to have to. That's -- not  
24 having income is different than saying exempt. Exempt means  
25 you don't have to pay tax. Not having income means you don't

1 file a return. There's no obligation to file a return when  
2 you're below a certain limit on income. Simply don't have to  
3 file a return.

4 If he's going to -- given his conduct both for his own  
5 returns and for the other people he counseled into filing false  
6 returns, if he's going to put down that very special category  
7 of exempt, which is a -- from my knowledge is an unusual  
8 category, he needs permission from the Court to do that because  
9 it's -- it would be shocking to me that there's any point where  
10 he's truly exempt from filing returns. And if he is, he needs  
11 to seek permission from the Court to do so and explain why he  
12 believes it if he's going to do that.

13 He's caused too much havoc with the IRS through his  
14 own conduct to get any break on this one. So --

15 MR. MERRILL: Your Honor, I'll look at it. I may be  
16 misunderstanding the circumstances under which people can file  
17 as exempt. And if I believe that there's a basis for doing so,  
18 I can obviously bring a motion to modify the conditions or  
19 something like that. But I understand the Court's rationale  
20 and thinking.

21 THE COURT: Any other conditions that you want further  
22 explanation or you have an objection to?

23 MR. MERRILL: No, your Honor.

24 THE COURT: All right. Any additional conditions that  
25 probation was recommending that I didn't address?

1 MS. KOLBE: No, your Honor.

2 THE COURT: All right. Anything else from the  
3 government on this regard?

4 MS. BELL: No, your Honor.

5 THE COURT: All right. Those will be the conditions  
6 of supervised release.

7 Now, as to the sentence itself, I need to consider  
8 both aggravating and mitigating circumstances.

9 In mitigation, the defendant has no prior criminal  
10 record. And, frankly, that is surprising given his membership  
11 in the Vice Lords. It's shocking, actually, that he has no  
12 prior criminal record and -- because the nature of what gang  
13 activity does. I find that shocking.

14 I would note, though, that if he had prior criminal  
15 record, that would have been reflected. He's getting the  
16 benefit of no prior criminal record by having a criminal  
17 history category of I.

18 He's not a young man. An argument in mitigation, that  
19 recidivism drops with age. But he wasn't a young man when he  
20 committed these crimes. It's not as if he committed these  
21 crimes as youthful indiscretions. He was a person of certainly  
22 middle age, which, frankly, carries with it some degree of  
23 authority for people who are younger.

24 I don't know the ages of the people who were misled  
25 into this folly of filing these blatantly false returns, but

1 the point is, although I recognize recidivism is something that  
2 decreases with age, he committed these crimes when he was  
3 middle age.

4 He had bad family circumstances. I recognize that,  
5 and I acknowledge that. He had no father in his life. His  
6 mother was ill. His grandmother raised him.

7 Surprisingly, despite those challenges, his background  
8 is better than many defendants I see. He had a grandmother who  
9 loved him. In his own words, when he -- in the presentence  
10 report, he never was wanting for -- he said he was cared for  
11 financially and emotionally. There was no poverty.

12 Certainly wasn't a rich existence. He wasn't living  
13 in Oak Brook. He was in a relatively impoverished area of the  
14 city. But there was no abuse: no sexual abuse, no mental  
15 abuse, none of the things that I, tragically, see in many  
16 defendants that come in front of me where they just don't even  
17 have a chance. It's just the only inevitability -- thing is  
18 it's inevitable they're going to appear in front of me for some  
19 type of sentencing. It's just a matter of when.

20 This defendant, to his credit, climbed out of a gang  
21 issue, climbed out of an issue where he had some physical  
22 disabilities as a youth. I acknowledge that that's difficult  
23 for a young person to have to overcome. And to his credit --  
24 and I do recognize that -- he did get out of gangs and drinking  
25 that he was involved in.

1           The surgeries relating to his foot were long ago, but  
2 I'm sure there were emotional scars related to it. But he  
3 overcame them, went back to high school, or at least went back  
4 and got a high school degree at an alternative school, and he  
5 had a good work history.

6           And I recognize too he didn't create this tax fraud  
7 scheme. He's certainly led a number of other people astray,  
8 but he didn't create it himself.

9           And he has not kept up his behavior. He didn't go to  
10 trial, espousing beliefs in this idea that the government owes  
11 them money -- "them" being the people who file the returns --  
12 and that -- I never understood the defense at a trial on this.  
13 It makes no sense to me at all.

14           But he didn't engage in, as you call it, a circus by  
15 putting on a defense involving nonsensical ideas that have no  
16 tether in reality, which they don't.

17           So those are all mitigating factors.

18           In aggravation, there are a number of factors. It's  
19 not a one-time thing. This took place over a relatively long  
20 period of time. It was deliberative conduct. It was not an  
21 impulsive action where a person walks by a bank and decides to  
22 write out a demand note in Crayola and walk in and present it  
23 to a teller. This was deliberative conduct that took place  
24 over a period of time.

25           I don't know that -- I don't believe he did this

1 for -- under sovereign beliefs. I don't credit that he's a  
2 sovereign citizen or any of that. It's a scam. He did it for  
3 greed. It's -- as -- frankly, as wrongheaded as the sovereign  
4 citizen beliefs are, at least people have a belief. This was  
5 just fraud. I don't view it as anything but that.

6 I find it troubling that even now, the defendant said  
7 he was misled. He's not -- he's not a stupid person. He's an  
8 intelligent person. He's kept down good jobs. He got a high  
9 school degree, went back to get a high school degree. No  
10 person of any intelligence would believe this was legitimate.  
11 And to sit here and -- stand here and tell me he was misled, I  
12 find that to be aggravating.

13 I think, as I said before, one of the most aggravating  
14 things in this case is that he brought other people into a life  
15 of crime. Most defendants in these case had no criminal  
16 record, the people that got prosecuted because of filing  
17 returns that the defendant either prepared for them, filed for  
18 them, or counseled them to prepare. He was a bit of a Pied  
19 Piper who led people into the mess that resulted from this.

20 And what happened? The chaos, the destruction that  
21 occurred before that. People have felony convictions, which  
22 will prevent them, realistically, from getting jobs or at least  
23 make it more difficult for the rest of their lives.

24 People went to jail, the ultimate sanction, the one  
25 thing -- the worst thing the government can do to any person.

1 These people went to jail in most cases -- in many cases  
2 because of this.

3           Crushing financial obligations. Restitution often in  
4 cases in the hundreds of thousands, even millions of dollars.  
5 Garnishments, liens that people have over their income going  
6 probably for the rest of their lives.

7           The untold misery of families who have parents or  
8 husbands or wives who bought into this insanity and suffer  
9 because their loved ones have all these different impediments I  
10 just spoke of, the most important of which is jail. Their  
11 mother, their father, their brother, their sister, their son or  
12 daughter is going to jail because this defendant counseled them  
13 on how to prepare phony -- absolutely phony tax returns.

14           The only legitimate number on any of these returns was  
15 the check that came back to them. The trust income was phony.  
16 The fiduciary fees was phony. The amount of money withheld was  
17 phony. The only legitimate number anywhere in this whole scam  
18 was the check that went back.

19           And when people got their checks back -- and this  
20 defendant is Exhibit No. 1 of this. When they got their money  
21 back, they spent it as quick as they could. Didn't go to  
22 charitable organizations. Didn't go to philanthropic pursuits.  
23 Didn't go to anything other than the traditional way people who  
24 are greedy spend their money.

25           I'm not saying the defendant was rolling in money to

1 begin with. I'm sure this was the biggest bonanza he ever had  
2 in his life, \$300,000 when he makes 40 grand or less in  
3 blue-collar work. So he spends it on a -- on a big car, meals,  
4 jewelry, Bulls tickets. And that's the circumstance with  
5 everybody who was involved in this.

6 I don't know if greed's the right word because  
7 certainly people were not of great means. But once they got  
8 the money illegally, this was not put into a -- an IRA to  
9 gather interest and use for the college fund. This was all  
10 spent immediately on items that aren't even necessarily  
11 considered necessities.

12 Some of this was not simple for some of the  
13 unsophisticated people who he got involved in this scheme,  
14 setting up false trusts, obtaining EINs, prepared many of the  
15 returns for them. I was struck by the government's comment  
16 that some of the people who were involved were elderly people,  
17 homeless people, people who cared for people with special  
18 needs.

19 You found some good ones who -- people who would be  
20 susceptible to this. And why would you get other people  
21 involved? For the simple reason -- very obvious reason is you  
22 were getting a piece of the action. You were getting the  
23 percentage of what they got back. You called it a tithe, which  
24 is a little bit cynical and also ironic.

25 But you were getting a piece of the action. And so



1 for these people all now risking and often getting felony  
2 convictions and going to jail and having crushing financial  
3 burdens in their life, they did all of that, often in a state  
4 of ignorance, just so you can get some money kicked back to  
5 you. I find that aggravating.

6           And I can't -- I know you didn't communicate and tell  
7 people go to trial who did go to trial. But I -- as I stated  
8 earlier when I told this to Mr. Merrill, I find it richly  
9 ironic that the Grand Sheik of the Moorish Temple, who  
10 counseled people who came to that temple -- and however they  
11 got caught up in this, whether they entrusted you because you  
12 had a position of authority in this temple or they were misled  
13 by you because of your title -- many of them, because of the  
14 wrongheaded but nonetheless perhaps genuine belief that there  
15 was a real requirement -- real fact to all this fantasy of  
16 money being owed to them went to trial, whereas the person who  
17 got them involved pled guilty.

18           I give you credit for pleading guilty, but I also find  
19 it ironic that other people who actually still bought into this  
20 went to trial and suffered the consequences of it, although you  
21 today still say you're being misled and were misled.

22           I believe general and specific deterrence are needed.  
23 I recognize the defense argument that deterrence is something  
24 that it is the certainty of sentence rather than the severity  
25 of sentence is what some researchers have thought is the

1 importance of deterrence.

2 I don't necessarily agree with that. I recognize your  
3 argument, but I don't necessarily agree with it.

4 I think specific deterrence is needed because although  
5 Mr. Walton stopped doing this when the IRS caught on to him and  
6 said, "Stop doing it," I am not convinced given his comments  
7 today that he believes what he did was necessarily wrong or  
8 that he's to blame for what he did.

9 General deterrence and the tax consequence is of  
10 utmost importance. We have a voluntary system of taxes. We  
11 have more taxpayers than there are agents that can investigate  
12 the truthfulness of their filings. And without truthful  
13 filings with the IRS, we would have chaos in the country.

14 Country relies upon -- the government relies upon the  
15 revenue derived from the IRS through the tax system. And if  
16 everyone took the position that they didn't have to file  
17 accurate returns, we wouldn't have a government. We wouldn't  
18 have a system of government. We wouldn't have a -- we wouldn't  
19 have the country we have. And that's why general deterrence is  
20 so important, especially in the tax context.

21 And those people who are tempted to exploit a  
22 vulnerability in the IRS system, either because of its size or  
23 because of a lack of funding to examine trust returns or to  
24 somehow file multiple returns, hoping at least one of them  
25 slips in, which is what happened here in most cases -- people

1 didn't get every one of their returns. They didn't get the  
2 bonanza back on every one of their returns, but they -- even if  
3 they got one or two, they spent it very quickly.

4 But to exploit a vulnerability in the tax system  
5 deserves and requires a sentence that is severe enough where  
6 people who are tempted to do it in the future will recognize  
7 that, if caught, the consequences are severe.

8 And I believe that -- I believe that to my core. I  
9 believe general deterrence in the tax context especially is  
10 significant and requires a -- is important and requires a  
11 significant sentence.

12 The sentences of other people -- I need to avoid  
13 unwarranted sentence disparities, and, Mr. Merrill, you made a  
14 very good argument about why these sentences are certainly  
15 lower than what the probation officer is recommending or the  
16 government is recommending in this case.

17 The key distinguishing feature -- and I can't account  
18 for the Cahills. But the key distinguishing feature on all of  
19 the other defendants is -- even Mr. Jefferson, who I just  
20 sentenced a month ago -- they weren't the leaders; they were  
21 the followers. They got caught up in this wrongheaded idea.  
22 Someone who was more persuasive put them in the position where  
23 they filed a return which had blatantly false information on  
24 it, that had no relation to reality, got money back from the  
25 government, and then spent it as quickly as they possibly

1 could. I believe that's what many of these defendants were.

2 I'm not aware of any of these defendants having  
3 17 people who filed false returns because of -- because of  
4 their conduct. They were the followers, not the leader.

5 And although Mr. Walton is not the leader of everyone,  
6 not the leader of all the people on this chart, 17 people filed  
7 phony returns seeking millions and millions of dollars from the  
8 government because of Mr. Walton. A number of them -- handful  
9 of them, at least, got charged and went to jail.

10 And they went to jail because of their own conduct.  
11 They're adults. They didn't have to do this. But ultimately  
12 they went to jail and got involved in this because of  
13 Mr. Walton. And that distinguishes him from the other  
14 defendants that the government has listed out in this -- on  
15 this helpful chart.

16 You argue that the guidelines are high for someone  
17 with a criminal record. Well -- with no criminal record,  
18 rather. Well, they perhaps are. The guidelines are what they  
19 are. I'm not required to follow them.

20 But I do have to weigh all the other 3553(a) factors.  
21 Guidelines are just a starting point. So I'm not wedded to the  
22 idea that the guidelines guide the case, but they're just  
23 simply a starting point is what the appellate court tells us,  
24 and I weigh all the other 3553(a) factors in deciding what the  
25 sentence should be.

1           Are there any other -- Mr. Merrill, before I pass  
2 sentence, are there any other significant arguments in  
3 mitigation that I've failed to address?

4           MR. MERRILL: No, your Honor.

5           THE COURT: All right. Well, the --

6           MR. MERRILL: Your Honor, if I may just --

7           THE COURT: You may.

8           MR. MERRILL: -- make one comment.

9           THE COURT: Sure.

10          MR. MERRILL: I mean, I just want the record to be  
11 clear that we didn't necessarily have access to the factual  
12 backgrounds concerning all similar cases that have been  
13 charged, including the ones on this chart.

14          And as we pointed out, we found some -- identified  
15 some defendants that we think probably should have been  
16 included on this chart but for whatever reason weren't.

17          We don't know why people were charged with what they  
18 were charged. Sometimes, you know, the decision to give  
19 someone an enhancement for being a manager or supervisor, that  
20 sometimes goes into a plea discussion. It sometimes has to do  
21 with cooperation. It's sometimes not apparent to someone just  
22 pulling the public docket whether those people actually were  
23 involved or not, including -- you know, and the loss amount  
24 sometimes can be a negotiated-type thing.

25          And, you know, there have been -- there obviously were

1 other leaders. I don't know what happened to those other  
2 leaders. There's someone that gets referred to as "the Queen."  
3 As far as I know, she's not on this chart. As far as I know,  
4 she's never been charged.

5 So it's troubling to me that somebody who -- you know,  
6 Mr. Walton wasn't responsible, wasn't involved in most of these  
7 people. Well, somebody else was. Now, why haven't they been  
8 charged, and what sentence would they get had they been  
9 charged? You know, it's really difficult to know.

10 So I understand he's situated a little differently,  
11 but, you know, I think the fact that he's the only, you know,  
12 person that's been prosecuted thus far as a leader or a  
13 supervisor strikes me as being a little unusual. And I'm not  
14 sure it's entirely fair to hold that entirely against him.

15 But I just want it to be clear we don't necessarily  
16 have access to all the information to rebut the Court's  
17 suggestion about who these other people are.

18 THE COURT: All right. Well, people don't get charged  
19 sometimes because they weren't caught. And there's no shortage  
20 of people out there who have committed crimes that simply  
21 haven't been caught by the IRS or the FBI or whatever agency is  
22 involved.

23 That doesn't diminish the wrongfulness of the conduct  
24 of the defendant who has been caught. It may be something I  
25 have to consider on whether it's fair if someone was plucked

1 out of the millions of people who engaged in certain conduct  
2 and they are, because of fate, the ones that are caught.

3 In this case, I find it aggravating that he misled and  
4 got 17 other people involved. There's no disputing that. And  
5 you have those records, and you have -- you've admitted to that  
6 in the plea agreement. And the loss amount, the -- not the  
7 actual loss, but the --

8 MR. MERRILL: Intended.

9 THE COURT: -- intended or certainly something that --  
10 you know, the actual loss was lower, but certainly the intended  
11 loss was \$16 million-plus.

12 That is so much greater than anything on this chart by  
13 multiples that I believe the chart does not provide to me a  
14 point where I need to work off of these numbers to avoid  
15 unwarranted sentencing disparities because the intended loss in  
16 this case of \$16 million is so much higher than the largest  
17 intended loss on this chart, which is \$2.2 million for two  
18 individuals, the two Cahills.

19 So I've discussed the need for this sentence to  
20 reflect the seriousness of the crime -- because I find it a  
21 very serious crime -- and to promote respect for the law and to  
22 provide just punishment.

23 I've discussed deterrence, both general and specific.

24 And the sentence should promote rehabilitation. I  
25 think whatever institution the defendant is sentenced to,

1 hopefully he will at some point recognize both through the  
2 sentence and possibly through whatever programs are available  
3 in that jail that he did something wrong and that being misled  
4 and then misleading other people is not what I believe happened  
5 in this case, at least him being misled. I believe he knew  
6 exactly what was he doing, and he misled people who were  
7 perhaps not as charismatic or intelligent as him into doing  
8 something wrong themselves.

9 So I've considered the nature and circumstances of the  
10 offense. I've considered the history and characteristics of  
11 the defendant. I've discussed the need to avoid unwarranted  
12 sentence disparities among similarly situated defendants.

13 And the types of sentences available include  
14 supervised release. Probation is at least something I could  
15 impose, along with the jail sentences that are recognized as  
16 the maximums in the plea agreement and what the guidelines  
17 provisions are.

18 The guideline range is 70 to 87 months. The probation  
19 office is recommending 75 months. The government is  
20 recommending a guideline sentence. And I'm going to sentence  
21 the defendant to a period of 68 months' incarceration, which is  
22 below guidelines, but I believe is still an appropriate  
23 sentence in light of the extremely aggravated conduct he  
24 engaged in.

25 So pursuant to the Sentencing Reform Act of 1984, it's



1 the judgment of the Court that Marcel Walton is hereby  
2 committed to the custody of the Bureau of Prisons, to be  
3 imprisoned for a total of 68 months on Count I.

4 It's ordered the defendant shall pay the United States  
5 a special assessment of \$100 on Count I.

6 It's further ordered the defendant pay the \$2,434,727  
7 in restitution, with interest waived. Payments should be made  
8 to the IRS Special Services address, attention Mail Stop 6261,  
9 Restitution, 333 West Pershing Road, Kansas City, Missouri  
10 64108.

11 Upon release from imprisonment, the defendant shall be  
12 placed on supervised release for a term of three years.

13 Within 72 hours of release from the custody of the  
14 Bureau of Prisons, defendant shall report in person to the  
15 probation office in the district to which he is released.

16 Is there a request for a designation to a particular  
17 institution?

18 MR. MERRILL: Your Honor, may I just have a moment?

19 THE COURT: You may.

20 (Counsel and defendant conferring.)

21 MR. MERRILL: Your Honor, if we could ask that the --  
22 that he be -- that the Court recommend he be housed in a  
23 facility as close to Chicago as possible. This is where he's  
24 from and where his friends and family are.

25 THE COURT: All right. We'll put that in the order.

1           And is there a surrender date you wish to propose?

2           MR. MERRILL: Your Honor, we were just discussing that  
3 briefly. I don't know how the Court feels about it, but he  
4 indicated that there's a big family event that's going to be  
5 happening in his family in November. And so I don't know if  
6 it's possible to have a report date in early December or  
7 something like that.

8           But that way -- you know, he's also got -- and I know  
9 has some other arrangements he's going to need to make in terms  
10 of where he lives and his stuff and things like that.

11          THE COURT: Any objection by the government?

12          MS. BELL: No, your Honor.

13          THE COURT: All right. We'll make an early December  
14 surrender date.

15          THE CLERK: December 5th. That's a Tuesday. Does  
16 that work?

17          MR. MERRILL: Yes, your Honor.

18          THE COURT: All right. I'll allow him to self-  
19 surrender if he wishes to the institution which he's been  
20 designated. That designation will probably occur within a  
21 month or so, so he'll know where he's going.

22          And then he can either self-surrender or surrender  
23 here at the -- to the Marshals Service or the MCC, in which  
24 case he'd be transported to the institution he's been  
25 designated to.

1 MR. MERRILL: Okay.

2 THE COURT: Mr. Walton, the -- you can appeal your  
3 conviction if you believe your guilty plea was somehow unlawful  
4 or involuntary or if there's some other fundamental defect in  
5 the proceedings that was not waived by your guilty plea.

6 You also have a statutory right to appeal your  
7 sentence under certain circumstances, particularly if you think  
8 the sentence is contrary to law.

9 Any notice of appeal must be filed within 14 days of  
10 the entry of judgment or within 14 days of the filing of a  
11 notice of appeal by the government.

12 If requested, the clerk will prepare and file a notice  
13 of appeal on your behalf.

14 If you can't afford to pay the cost of an appeal or  
15 for appellate counsel, you have the right to apply for leave to  
16 appeal *in forma pauperis*, which means you can apply to have the  
17 Court waive the filing fee. On appeal, you may also apply for  
18 court-appointed counsel.

19 I'll ask first the probation office. Is there --  
20 well, also there's a motion by the government for entry of the  
21 prelim -- of a preliminary order of forfeiture. Any objection  
22 to that motion?

23 MR. MERRILL: We have no objection, your Honor.

24 THE COURT: That will be granted.

25 Do you have a proposed order?

1 MS. BELL: I do, your Honor.

2 THE COURT: All right.

3 MS. BELL: If I may approach.

4 THE COURT: If you can give it to my courtroom deputy.

5 (Document tendered to the clerk.)

6 THE CLERK: Thank you.

7 THE COURT: Okay.

8 THE CLERK: Thanks.

9 THE COURT: I'll ask first the probation officer. Is  
10 there anything else I need to address?

11 MS. KOLBE: No, your Honor.

12 THE COURT: And from the government. Anything else I  
13 need to address?

14 MS. BELL: No, your Honor.

15 THE COURT: Mr. Merrill, anything else you wish  
16 addressed?

17 MR. MERRILL: No, your Honor.

18 THE COURT: All right. That will be the sentence of  
19 the Court.

20 Good luck, Mr. Walton.

21 MR. MERRILL: Thank you.

22 THE DEFENDANT: Thank you.

23 (Concluded at 11:49 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ LAURA R. RENKE  
LAURA R. RENKE, CSR, RDR, CRR  
Official Court Reporter

October 2, 2017

UNITED STATES DISTRICT COURT  
Northern District of Illinois

UNITED STATES OF AMERICA

v.

Marcel A. Walton

JUDGMENT IN A CRIMINAL CASE

Case Number: 15 CR 723-1

USM Number: 49901-424

Adam P. Merrill  
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) one (1).
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 1341	Mail Fraud	2011	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this District within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

09/08/2017

Date of Imposition of Judgment

Signature of Judge

Thomas M. Durkin, U.S. District Judge  
Name and Title of Judge

9/11/2017  
Date

DEFENDANT: MARCEL A. WALTON  
CASE NUMBER: 15 CR 723-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Sixty-eight (68) months as to count one (1).

- The court makes the following recommendations to the Bureau of Prisons: This Court recommends a facility close to the Chicagoland area.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
  - at \_\_\_\_\_ on \_\_\_\_\_
  - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - before 2:00 pm on 12/5/2017
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MARCEL A. WALTON  
CASE NUMBER: 15 CR 723-1

**MANDATORY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3583(d)**

Upon release from imprisonment, you shall be on supervised release for a term of:  
Three (3) years as to count one (1).

You must report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. The court imposes those conditions identified by checkmarks below:

**During the period of supervised release:**

- (1) you shall not commit another Federal, State, or local crime.
- (2) you shall not unlawfully possess a controlled substance.
- (3) you shall attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, if an approved program is readily available within a 50-mile radius of your legal residence. [Use for a first conviction of a domestic violence crime, as defined in § 3561(b).]
- (4) you shall register and comply with all requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16913).
- (5) you shall cooperate in the collection of a DNA sample if the collection of such a sample is required by law.
- (6) you shall refrain from any unlawful use of a controlled substance AND submit to one drug test within 15 days of release on supervised release and at least two periodic tests thereafter, up to 104 periodic tests for use of a controlled substance during each year of supervised release. [This mandatory condition may be ameliorated or suspended by the court for any defendant if reliable sentencing information indicates a low risk of future substance abuse by the defendant.]

**DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C § 3563(b) AND 18 U.S.C § 3583(d)**

**Discretionary Conditions** — The court orders that you abide by the following conditions during the term of supervised release because such conditions are reasonably related to the factors set forth in § 3553(a)(1) and (a)(2)(B), (C), and (D); such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in § 3553 (a)(2) (B), (C), and (D); and such conditions are consistent with any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994a. The court imposes those conditions identified by checkmarks below:

**During the period of supervised release:**

- (1) you shall provide financial support to any dependents if financially able.
- (2) you shall make restitution to a victim of the offense under § 3556 (but not subject to the limitation of § 3663(a) or § 3663A(c)(1)(A)).
- (3) you shall give to the victims of the offense notice pursuant to the provisions of § 3555, as follows:
- (4) you shall seek, and work conscientiously at, lawful employment or pursue conscientiously a course of study or vocational training that will equip you for employment. (The probation officer would define the term conscientiously as the defendant's ability to dedicate himself to either locating or maintaining employment. An individual who conscientiously seeks employment is an individual who makes a daily concerted effort by enumerating the name and location of their job search, submit applications, and interview for jobs for which they are qualified. Once a job is obtained, an individual should appear for work on time as required and communicate in a professional manner with their colleagues and supervisors.)
- (5) you shall refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances; (if checked yes, please indicate restriction(s)) You shall be prohibited from assisting and/or directing the completion/submission of tax returns for others, unless provided permission by the Court.
- (6) you shall refrain from knowingly meeting or communicating with any person whom you know to be engaged, or planning to be engaged, in criminal activity pertaining to fraudulent preparation of tax forms.
  - visiting the following type of places:
  - knowingly meeting or communicating with the following persons:
- (7) you shall refrain from  any or  excessive use of alcohol (defined as  having a blood alcohol concentration greater than 0.08; or  ), or any use of a narcotic drug or other controlled substance, as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802), without a prescription by a licensed medical practitioner.
- (8) you shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
- (9)  you shall participate, at the direction of a probation officer, in a substance abuse treatment program, which may

**MWA102**



DEFENDANT: MARCEL A. WALTON

CASE NUMBER: 15 CR 723-1

include urine testing up to a maximum of 104 tests per year.

- you shall participate, at the direction of a probation officer, in a mental health treatment program, which may include the use of prescription medications.
- you shall participate, at the direction of a probation officer, in medical care; (if checked yes, please specify: \_\_\_\_\_.)
- (10) (intermittent confinement): you shall remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling \_\_\_\_\_ [no more than the lesser of one year or the term of imprisonment authorized for the offense], during the first year of the term of supervised release (provided, however, that a condition set forth in § 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with § 3583(e)(2) and only when facilities are available) for the following period \_\_\_\_\_.
- (11) (community confinement): you shall reside at, or participate in the program of a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of supervised release, for a period of \_\_\_\_\_ months.
- (12) you shall work in community service for \_\_\_\_\_ hours as directed by a probation officer.
- (13) you shall reside in the following place or area: \_\_\_\_\_, or refrain from residing in a specified place or area: \_\_\_\_\_.
- (14) you shall remain within the jurisdiction where you are being supervised, unless granted permission to leave by the court or a probation officer. The probation officer shall provide the defendant with information regarding the district's boundaries.
- (15) you shall report to a probation officer as directed by the court or a probation officer.
- (16)  you shall permit a probation officer to visit you  at any reasonable time or  as specified: \_\_\_\_\_,
  - at home  at work  at school  at a community service location
  - other reasonable location specified by a probation officer
- you shall permit confiscation of any contraband observed in plain view of the probation officer.
- (17) you shall notify a probation officer promptly, within 72 hours, of any change in residence, employer, or workplace and, absent constitutional or other legal privilege, answer inquiries by a probation officer.
- (18) you shall notify a probation officer promptly, within 72 hours, if arrested or questioned by a law enforcement officer.
- (19) (home confinement): you shall remain at your place of residence for a total of \_\_\_\_\_ months during nonworking hours. [This condition may be imposed only as an alternative to incarceration.]
  - Compliance with this condition shall be monitored by telephonic or electronic signaling devices (the selection of which shall be determined by a probation officer). Electronic monitoring shall ordinarily be used in connection with home detention as it provides continuous monitoring of your whereabouts. Voice identification may be used in lieu of electronic monitoring to monitor home confinement and provides for random monitoring of your whereabouts. If the offender is unable to wear an electronic monitoring device due to health or medical reasons, it is recommended that home confinement with voice identification be ordered, which will provide for random checks on your whereabouts. Home detention with electronic monitoring or voice identification is not deemed appropriate and cannot be effectively administered in cases in which the offender has no bona fide residence, has a history of violent behavior, serious mental health problems, or substance abuse; has pending criminal charges elsewhere; requires frequent travel inside or outside the district; or is required to work more than 60 hours per week.
  - You shall pay the cost of electronic monitoring or voice identification at the daily contractual rate, if you are financially able to do so.
  - The Court waives the electronic/location monitoring component of this condition.
- (20) you shall comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by you for the support and maintenance of a child or of a child and the parent with whom the child is living.
- (21) (deportation): you shall be surrendered to a duly authorized official of the Homeland Security Department for a determination on the issue of deportability by the appropriate authority in accordance with the laws under the Immigration and Nationality Act and the established implementing regulations. If ordered deported, you shall not reenter the United States without obtaining, in advance, the express written consent of the Attorney General or the Secretary of the Department of Homeland Security.
- (22) you shall satisfy such other special conditions as ordered below.
- (23) (if required to register under the Sex Offender Registration and Notification Act) you shall submit at any time, with or without a warrant, to a search of your person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, by any law enforcement or probation officer having reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by you, and by any probation officer in the lawful discharge of the officer's supervision functions (see special conditions section).
- (24) Other: \_\_\_\_\_

**SPECIAL CONDITIONS OF SUPERVISED RELEASE PURSUANT TO 18 U.S.C. 3563(b)(22) and 3583(d)**  
The court imposes those conditions identified by checkmarks below:

MWA103

DEFENDANT: MARCEL A. WALTON

CASE NUMBER: 15 CR 723-1

**During the term of supervised release:**

- (1) if you have not obtained a high school diploma or equivalent, you shall participate in a General Educational Development (GED) preparation course and seek to obtain a GED within the first year of supervision.
- (2) you shall participate in an approved job skill-training program at the direction of a probation officer within the first 60 days of placement on supervision.
- (3) you shall, if unemployed after the first 60 days of supervision, or if unemployed for 60 days after termination or lay-off from employment, perform at least 20 hours of community service per week at the direction of the U.S. Probation Office until gainfully employed. The amount of community service shall not exceed \_\_\_\_\_ hours.
- (4) you shall not maintain employment where you have access to other individual's personal information, including, but not limited to, Social Security numbers and credit card numbers (or money) unless approved by a probation officer.
- (5) you shall not incur new credit charges or open additional lines of credit without the approval of a probation officer unless you are in compliance with the financial obligations imposed by this judgment.
- (6) you shall provide a probation officer with access to any requested financial information necessary to monitor compliance with conditions of supervised release.
- (7) you shall notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.
- (8) you shall provide documentation to the IRS and pay taxes as required by law. You are required to receive prior permission of the Court if you wish to file exempt status on your income tax return.
- (9) you shall participate in a sex offender treatment program. The specific program and provider will be determined by a probation officer. You shall comply with all recommended treatment which may include psychological and physiological testing. You shall maintain use of all prescribed medications.
  - You shall comply with the requirements of the Computer and Internet Monitoring Program as administered by the United States Probation Office. You shall consent to the installation of computer monitoring software on all identified computers to which you have access. The software may restrict and/or record any and all activity on the computer, including the capture of keystrokes, application information, Internet use history, email correspondence, and chat conversations. A notice will be placed on the computer at the time of installation to warn others of the existence of the monitoring software. You shall not remove, tamper with, reverse engineer, or in any way circumvent the software.
  - The cost of the monitoring shall be paid by you at the monthly contractual rate, if you are financially able, subject to satisfaction of other financial obligations imposed by this judgment.
  - You shall not possess or use any device with access to any online computer service at any location (including place of employment) without the prior approval of a probation officer. This includes any Internet service provider, bulletin board system, or any other public or private network or email system.
  - You shall not possess any device that could be used for covert photography without the prior approval of a probation officer.
  - You shall not view or possess child pornography. If the treatment provider determines that exposure to other sexually stimulating material may be detrimental to the treatment process, or that additional conditions are likely to assist the treatment process, such proposed conditions shall be promptly presented to the court, for a determination, pursuant to 18 U.S.C. § 3583(e)(2), regarding whether to enlarge or otherwise modify the conditions of supervision to include conditions consistent with the recommendations of the treatment provider.
  - You shall not, without the approval of a probation officer and treatment provider, engage in activities that will put you in unsupervised private contact with any person under the age of 18, or visit locations where children regularly congregate (e.g., locations specified in the Sex Offender Registration and Notification Act.)
  - This condition does not apply to your family members: [Names]
  - Your employment shall be restricted to the district and division where you reside or are supervised, unless approval is granted by a probation officer. Prior to accepting any form of employment you shall seek the approval of a probation officer, in order to allow the probation officer the opportunity to assess the level of risk to the community you will pose if employed in a particular capacity. You shall not participate in any volunteer activity that may cause you to come into direct contact with children except under circumstances approved in advance by a probation officer and treatment provider.
  - You shall provide the probation officer with copies of your telephone bills, all credit card statements/receipts, and any other financial information requested.
  - You shall comply with all state and local laws pertaining to convicted sex offenders, including such laws that impose restrictions beyond those set forth in this order.
- (10) you shall pay any financial penalty that is imposed by this judgment that remains unpaid at the commencement of the term of supervised release. Your monthly payment schedule shall be an amount that is at least \$25.00 or 10% of your net monthly income, defined as income net of reasonable expenses for basic necessities such as food, shelter, utilities, insurance, and employment-related expenses.

MWA104

DEFENDANT: MARCEL A. WALTON

CASE NUMBER: 15 CR 723-1

- (11) you shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court.
- (12) you shall repay the United States "buy money" in the amount of \$            which you received during the commission of this offense.
- (13) if the probation officer determines that you pose a risk to another person (including an organization or members of the community), the probation officer may require you to tell the person about the risk, and you must comply with that instruction. Such notification could include advising the person about your record of arrests and convictions and substance use. The probation officer may contact the person and confirm that you have told the person about the risk.
- (14) Other:

MWA105

DEFENDANT: MARCEL A. WALTON  
 CASE NUMBER: 15 CR 723-1

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<b>Totals</b>	<u>Assessment</u> \$100.00	<u>Fine</u> \$	<u>Restitution</u> \$2,434,727.00
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The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
IRS-Special Services	2,434,727.00	2,434,727.00	100
Attention Mail Stop 6261 restitution			
333 West Pershing Road			
Kansas City, MO 64108			
<b>Totals:</b>			

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the restitution.
  - the interest requirement for the is modified as follows:
- The defendant's non-exempt assets, if any, are subject to immediate execution to satisfy any outstanding restitution or fine obligations.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MARCEL A. WALTON  
CASE NUMBER: 15 CR 723-1

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$100.00 due immediately.
  - balance due not later than \_\_\_\_\_, or
  - balance due in accordance with  C,  D,  E, or  F below; or
- B  **Restitution Payment** to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if Appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States: See attached order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

um

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

DEC 21 2016  
12-21-16  
Judge Thomas M. Durkin  
United States District Court

UNITED STATES OF AMERICA

No. 15 CR 723

v.

Judge Thomas M. Durkin

MARCEL A. WALTON

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant MARCEL A. WALTON, and his attorney, ADAM P. MERRILL, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The indictment in this case charges defendant with mail fraud, in violation of Title 18, United States Code, Section 1341.

3. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the indictment, which charges defendant with mail fraud, in violation of

Title 18, United States Code, Section 1341. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

Defendant MARCEL A. WALTON did devise, intend to devise, and participate in a scheme to defraud and to obtain money and property from the IRS by means of materially false and fraudulent pretenses, representations, and promises, and, for purposes for executing the scheme, did knowingly cause an envelope to be delivered by mail according to the direction thereon, which envelope was addressed to a location in Chicago, Illinois and contained a United States Treasury check made payable to "Marcel Antonio Walton" in the amount of \$310,162.31.

Specifically, beginning no later than in or around February 2010, and continuing through at least in or around 2011, defendant prepared and caused the preparation of Form 1041 trust or estate tax returns for himself and others that contained false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld. Based upon this materially false information,

each of the Form 1041 trust tax returns fraudulently claimed tax refunds for the purported trusts in amounts frequently as high as \$300,000.

On or about February 22, 2010, defendant prepared and filed with the IRS fraudulent Form 1041 trust tax returns on behalf of himself for tax years 2007, 2008, and 2009. Each of the returns was filed in the name of the purported "Marcel Antonio Walton Trust" utilizing an Employer Identification Number previously obtained by defendant and listing "Marcel Antonio Walton" as the trustee of the purported trust. As defendant was well aware, each of the fraudulent Form 1041 trust tax returns contained materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trust in the amount of \$300,000 for years 2007, 2008, and 2009.

One or about January 4, 2011, the United States Department of the Treasury issued an income tax refund check in the amount of \$310,162 in the name of the purported "Marcel Antonio Walton Trust." The Treasury issued the refund check as a result of the 2008 Form 1041 trust tax return defendant filed with the IRS on or about February 22, 2010.

Defendant received the refund check and, on or about January 12, 2011, deposited the proceeds of the tax refund check into an account he opened at a branch of Bank of America under the name of the purported "Marcel Antonio Walton Trust." Defendant knew that he was not entitled to those funds, but nevertheless used the



proceeds of the refund check for his own personal use, including the purchase of a Chrysler Town & Country Touring-L Sport Van.

As part of the scheme, in addition to the fraudulent tax returns he filed on behalf of himself and the purported "Marcel Antonio Walton Trust," defendant encouraged others, including Christopher A. Mietus, to file fraudulent Form 1041 trust tax returns. Defendant further prepared and filed, and caused the preparation and filing, of fraudulent Form 1041 trust or estate tax returns for others, including Christopher A. Mietus, that included materially false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trusts in amounts as high as \$300,000. As a result of his actions, the United States Treasury issued tax refund checks to others in connection with fraudulently filed Form 1041 trust tax returns, including Treasury checks totaling over \$900,000 to Christopher A. Mietus. Defendant then instructed others, including Christopher A. Mietus, to provide him with a portion of the fraudulently obtained refunds and obtained payments as high as \$90,000 from those other individuals. Defendant knew that the other individuals whom he encouraged or assisted in filing fraudulent Form 1041 trust tax returns were not entitled to tax refunds based on the materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, he made, or caused them to make, within their Form 1041 trust tax returns in furtherance of the scheme.

Defendant acknowledges that the intended loss was \$16,391,161.

**Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

**Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote

respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 26, because the intended tax loss resulting from the offense of conviction is more than \$9,500,000, but less than \$25,000,000, pursuant to Guidelines §§ 2T1.1(a)(1) and 2T4.1(K).

ii. The base offense level is increased by four levels, pursuant to Guideline § 3B1.1(a), as defendant was an organizer or leader of the criminal

activity, namely the scheme to defraud, that involved five or more participants or was otherwise extensive.

iii. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

iv. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant to § 3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline § 3E1.1(b) because defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall

not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

#### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full

restitution to the Internal Revenue Service in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

#### **Forfeiture**

17. Defendant understands that by pleading guilty, he will subject to forfeiture to the United States all right, title, and interest that he has in any property constituting or derived from proceeds obtained, directly or indirectly, as a result of the offense.

18. Defendant agrees to forfeiture of the following specific property to the United States: a 2011 Chrysler Town & Country Touring-L Sport Van (VIN: 2A4RR8DG4BR617911). In doing so, defendant admits that the property described above represents proceeds defendant obtained as a result of the offense, as alleged in the indictment. Defendant consents to the immediate entry of a preliminary order of forfeiture as to this specific property, thereby extinguishing any right, title, or interest defendant has in it. If any of the specific property is not yet in the custody of the United States, defendant agrees to seizure of that property so that it may be disposed of according to law.

19. Defendant understands that forfeiture shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

20. Defendant agrees to waive all constitutional, statutory, and equitable challenges in any manner, including but not limited to direct appeal or a motion brought under Title 28, United States Code, Section 2255, to any forfeiture and/or abandonment carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The waiver in this paragraph does not apply to a claim of involuntariness or ineffective assistance of counsel.



**Acknowledgments and Waivers Regarding Plea of Guilty**

**Nature of Agreement**

21. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15 CR 723.

22. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

23. Defendant understands that nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal case.

**Waiver of Rights**

24. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the

judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to

trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

25. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

26. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

27. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information,

may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

28. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

#### **Other Terms**

29. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

30. Regarding matters relating to the Internal Revenue Service, defendant agrees as follows (nothing in this paragraph, however, precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant which directly or indirectly relates to or arises out of the course of conduct that defendant has acknowledged in this Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request.

31. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or

administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

32. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### Conclusion

33. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

34. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on

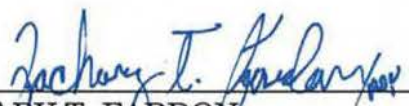
the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

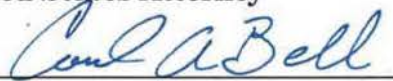
35. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.


36. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

37. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: December 21, 2016

  
\_\_\_\_\_  
ZACHARY T. FARDON  
United States Attorney

  
\_\_\_\_\_  
CAROL A. BELL  
Assistant U.S. Attorney

  
\_\_\_\_\_  
MARCEL A. WALTON  
Defendant

  
\_\_\_\_\_  
ADAM P. MERRILL  
Attorney for Defendant



1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA, ) Docket No. 15 CR 723  
4 )  
4 Plaintiff, ) Chicago, Illinois  
5 ) December 21, 2016  
5 v. ) 2:03 p.m.  
6 )  
6 MARCEL A. WALTON, )  
7 )  
7 Defendant. )

8 TRANSCRIPT OF PROCEEDINGS - Change of Plea  
9 BEFORE THE HONORABLE THOMAS M. DURKIN

10 APPEARANCES:

11  
12 For the Government: MS. CAROL A. BELL  
13 Assistant United States Attorney  
14 Mr. Joel R. Levin  
15 Acting United States Attorney  
16 219 S. Dearborn Street  
17 5th Floor  
18 Chicago, IL 60604

19  
20 For the Defendant: MR. ADAM P. MERRILL  
21 Sperling & Slater  
22 55 W. Monroe Street  
23 Suite 3200  
24 Chicago, IL 60603

25 Also Present: MR. MARCEL A. WALTON

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR  
Official Court Reporter  
219 S. Dearborn Street, Room 1432  
Chicago, IL 60604  
312.435.6053  
laura\_renke@ilnd.uscourts.gov

1 (In open court.)

2 THE CLERK: 15 CR 723, United States of America v.  
3 Marcel Walton.

4 THE COURT: I think we need a defendant and defense  
5 lawyer.

6 Are those the agents?

7 MS. BELL: Yes, your Honor.

8 And they are both out in the hallway.

9 THE COURT: Great. Well, we'll bring them in.  
10 Thanks.

11 (Pause in proceedings.)

12 MS. BELL: Your Honor, I believe they may need just a  
13 couple more minutes.

14 THE COURT: That's fine.

15 MS. BELL: They were reviewing the final plea.

16 THE COURT: No problem. Okay.

17 MS. BELL: Thank you, your Honor.

18 (Pause in proceedings.)

19 THE CLERK: Okay. 15 CR 723, United States of  
20 America v. Marcel Walton.

21 MS. BELL: Good afternoon, your Honor. Carol Bell on  
22 behalf of the United States.

23 THE COURT: Good afternoon.

24 MR. MERRILL: Good afternoon, your Honor. Adam  
25 Merrill here from the Federal Defender Panel on behalf of the

1 defendant, Marcel Walton, who is also present in court.

2 THE COURT: All right. Good afternoon.

3 Good afternoon, Mr. Walton.

4 THE DEFENDANT: How you doing?

5 THE COURT: Okay. I understand the defendant is going  
6 to plead guilty?

7 MR. MERRILL: Yes, your Honor. He is ready to plead  
8 guilty pursuant to a plea agreement that we have worked out  
9 with the government.

10 THE COURT: All right. Very good.

11 I'm going to ask the courtroom deputy to swear  
12 Mr. Walton in.

13 THE CLERK: Can you raise your right hand, please.

14 (Defendant duly sworn.)

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Sir, you understand you're now  
17 under oath, and if you answer any of my questions falsely, your  
18 answers may later be used against you in another prosecution  
19 for perjury or making a false statement.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. I understand you've decided to  
23 offer a plea of guilty. Before I make a decision whether to  
24 accept -- whether or not to accept your plea of guilty, I must  
25 determine that you're competent to plead guilty at this time,

1 THE COURT: Has anyone forced you in any way to plead  
2 guilty?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone threatened you in any way to  
5 cause you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: You've acknowledged you've signed the plea  
8 agreement, correct?

9 THE DEFENDANT: Yes.

10 THE COURT: Other than this plea agreement, have any  
11 promises been made to you to cause you to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Is your decision to plead guilty entirely  
14 voluntary?

15 THE DEFENDANT: Yes.

16 THE COURT: Have any promises been made to you about  
17 what your sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: The final decision as to what your  
20 sentence will be rests with me, and I may sentence you to a  
21 longer period or a shorter period than you expect.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, I have to be convinced you're guilty  
25 beyond a reasonable doubt before I'll accept your plea of

1 guilty. So listen carefully to what the government attorney  
2 says the evidence will show. She's going to outline what the  
3 evidence would show.

4 Then I'm going to ask you if you agree with what she  
5 said. You can either agree with it, disagree with it, add to  
6 it, or subtract from it, but I'm going to ask you those  
7 questions.

8 Once that's done, I'm then going to ask you to explain  
9 to me in your own words what you did. If you haven't had a  
10 chance to talk to your attorney about that, I'll give you a  
11 moment to talk to him. It's not meant to be a period where you  
12 apologize or talk in mitigation. I just want to hear a few  
13 sentences from you in your own words as to what you did so that  
14 I know you're pleading guilty because you are guilty.

15 So the first step, though, is I'm going to ask the  
16 government to outline the evidence should this case go to  
17 trial, and then I'm going to ask you if you agree with it.

18 Go ahead, Ms. Bell.

19 MS. BELL: Yes, your Honor.

20 If this case were to proceed to trial, the government  
21 would be prepared to prove beyond a reasonable doubt that the  
22 defendant devised, intended to devise, and participated in a  
23 scheme to defraud and to obtain money and property from the IRS  
24 by means of materially false and fraudulent pretenses,  
25 representations, and promises, and, for purposes of executing

1 the scheme, did knowingly cause an envelope to be delivered by  
2 mail to an address in Chicago, Illinois, that contained a  
3 U.S. Treasury check made payable to Marcel Antonio Walton in  
4 the amount of \$310,162.31.

5 Specifically, beginning no later than in or around  
6 February 2010, and continuing through at least in or around  
7 2011, defendant prepared and caused the preparation of  
8 Form 1041 trust or estate tax returns for himself and others  
9 that contained false information regarding the trust's income,  
10 fiduciary fees, exemptions, and federal tax withheld.

11 Based upon that materially false information, each of  
12 the Form 1041 trust tax returns fraudulently claimed tax  
13 refunds for the purported trusts in amounts frequently as high  
14 as \$300,000.

15 On February 22nd, 2010, the defendant prepared and  
16 filed with the IRS Form 1041 trust tax returns that were  
17 fraudulent on behalf of himself for tax years 2007, 2008, and  
18 2009. Each of those returns was in the name of the Marcel  
19 Antonio Walton Trust and utilized an employer identification  
20 number previously obtained by the defendant which listed  
21 himself as the trustee of that trust.

22 As the defendant was well aware, each of those returns  
23 contained materially false information relating to income,  
24 fiduciary fees, exemptions, and federal tax withheld, and  
25 fraudulently claimed tax refunds for the purported trust in the

1 amount of \$300,000 for each year.

2 On January 4th, 2011, the Department of Treasury  
3 issued the income tax refund check for \$310,162 in the name of  
4 that trust, and this trust check was issued as a result of the  
5 2008 trust tax return that the defendant filed.

6 The defendant received that check and deposited the  
7 proceeds of that check into an account in the name of the  
8 Marcel Antonio Walton Trust that he opened at Bank of America.  
9 He knew he wasn't entitled to those funds, but he nevertheless  
10 used the proceeds for his own personal use, including  
11 purchasing a Chrysler Town & Country Touring-L Sport van.

12 As a part of the scheme, in addition to the returns he  
13 filed on behalf of himself, he also encouraged others,  
14 including Christopher Mietus, to file fraudulent Form 1041  
15 trust tax returns. The defendant prepared and filed, and  
16 caused the preparation and filing, of trust -- fraudulent trust  
17 tax returns for others, including Mr. Mietus, that contained  
18 materially false information regarding income, fiduciary fees,  
19 exemptions, and federal tax withheld, and fraudulently claimed  
20 tax refunds, again, in amounts as high as \$300,000.

21 As a result of those actions, the U.S. Treasury issued  
22 tax refund checks to others in connection with those fraudulent  
23 returns, including over \$900,000 in checks to Mr. Mietus.

24 Defendant instructed others, including Mr. Mietus, to  
25 provide him with a portion of those fraudulently obtained

1 refunds and obtained payments from others as high as \$90,000.

2 Defendant knew the other individuals whom he  
3 encouraged or assisted in filing those fraudulent returns were  
4 not entitled to refunds based on the materially false  
5 information relating to income, fiduciary fees, exemptions, and  
6 federal tax withheld that he made and caused them to make  
7 within those Form 1041 trust tax returns in furtherance of his  
8 scheme.

9 The defendant acknowledges that the intended loss to  
10 the IRS was \$16,391,161.

11 THE COURT: All right. Have you heard the statement  
12 of the government?

13 THE DEFENDANT: Yes.

14 THE COURT: Is the statement correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you disagree with any part of the  
17 statement?

18 THE DEFENDANT: No.

19 THE COURT: Do you wish to add to any part of the  
20 statement?

21 THE DEFENDANT: No.

22 THE COURT: You've already signed the plea agreement  
23 in which you admitted to these facts. Is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: And the government attorney has summarized



1 the facts. And so as I mentioned a moment ago, I'm going to  
2 ask you to tell me in a few sentences what you did relating to  
3 the charge you intend to plead guilty to. And if you need a  
4 moment to talk to Mr. Merrill, you can have a moment to talk to  
5 him.

6 (Counsel and defendant conferring.)

7 MR. MERRILL: Would you like a second to talk, or are  
8 you ready?

9 THE DEFENDANT: Oh, I'm ready.

10 MR. MERRILL: Okay. Go ahead.

11 THE COURT: All right. Go ahead, sir.

12 THE DEFENDANT: Yeah. Well, I just thought they was  
13 correct.

14 THE COURT: Pardon me?

15 THE DEFENDANT: I said I thought what I'm filing, I  
16 didn't know -- understand what the intended fraudulent.

17 THE COURT: Speak to Mr. Merrill for a minute --

18 THE DEFENDANT: Okay.

19 THE COURT: -- before you go any further.

20 (Counsel and defendant conferring.)

21 THE COURT: All right, Mr. Walton. Tell me in your  
22 own words, in a few sentences, what you did.

23 THE DEFENDANT: Well, we filed those -- we filed them  
24 on basis of fraudulent activity.

25 THE COURT: All right. You filed trust returns,

1 correct?

2 THE DEFENDANT: Yes, we did.

3 THE COURT: And they contained false information in  
4 them?

5 THE DEFENDANT: Yes.

6 THE COURT: And you got money back from the government  
7 as refunds from those returns, correct?

8 THE DEFENDANT: Yes.

9 THE COURT: And you knew that you weren't supposed to  
10 get that money, correct?

11 THE DEFENDANT: Yes.

12 THE COURT: Because it was based on false information  
13 on those returns?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. All right.

16 Does the government or defense know of any reason why  
17 the defendant should not plead guilty?

18 MS. BELL: No, your Honor.

19 MR. MERRILL: No, your Honor.

20 THE COURT: And, Mr. Walton, do you have any questions  
21 of me before I ask you whether you plead guilty or not guilty?

22 THE DEFENDANT: No, I do not.

23 THE COURT: All right. So what is your plea to the  
24 indictment: guilty or not guilty?

25 THE DEFENDANT: Guilty.

1           THE COURT: The -- since you acknowledge you're in  
2 fact guilty as charged in the indictment, you've had the  
3 assistance of counsel, you know of your right to trial, what  
4 the maximum possible punishment is, and you are freely and  
5 voluntarily pleading guilty, I'll accept your plea of guilty  
6 and enter a finding of guilty on your plea to the indictment.

7           I will order a presentence investigation to assist me  
8 in making a decision as to what your sentence should be.  
9 You'll be asked to give information for that report, and your  
10 attorney may be present if you wish. You must be truthful and  
11 completely -- and cooperate completely with the probation  
12 office in connection with the presentence investigation report.

13           It's very important you appear at the probation office  
14 when they ask you to. It's very important you appear here on  
15 the sentencing date. If you don't appear here for the  
16 sentencing date, I'll issue a warrant for your arrest, and upon  
17 arrest, you will not be released. You'll be held until I  
18 sentence you.

19           You've made your bonds -- you've made your appearances  
20 up to now, but don't stop. Make sure you come in to court when  
21 you're required to, and make sure you go to the probation  
22 office when they ask you to.

23           THE DEFENDANT: Okay.

24           THE COURT: I will order that any presentence report  
25 where there's a recommendation -- the recommendation from the

1 probation office that accompanies the presentence report be  
2 disclosed to both the government and defense.

3 Ms. Bell, are there other defendants involved? Not in  
4 this indictment, obviously, but in this scheme?

5 MS. BELL: Yes, your Honor.

6 THE COURT: All right. Have they been charged?

7 MS. BELL: Some have, and some have not.

8 THE COURT: All right. I would appreciate in any  
9 government version or sentencing memo those who have been  
10 charged and, if so, if they've been sentenced, what they've  
11 received.

12 MS. BELL: Certainly, your Honor.

13 THE COURT: That's information you'd have and I  
14 wouldn't. So I would like to know what other similarly  
15 situated defendants have received, along with the amounts  
16 they're alleged to have been involved in so I can differentiate  
17 between the different defendants based on the amount they --

18 MS. BELL: Sure.

19 THE COURT: -- sought to obtain and the amount they  
20 did obtain.

21 Okay. The suggested sentencing date for a plea today  
22 is March 15th. I don't think that's going to work.

23 THE CLERK: You're supposed to be on trial. Maybe  
24 later in the week, maybe -- I don't know -- 17th or --

25 THE COURT: How does March 17th work for everyone?

1 either doesn't go or is completed, we'll likely move the time  
2 up to 10:00 a.m.

3 MR. MERRILL: I'm sorry. What time, your Honor?

4 THE COURT: We'll set it currently for noon, but we  
5 will likely move it up to 10:00 a.m. if the -- either of those  
6 trials is either completed or they didn't happen, which is very  
7 possible.

8 I'll order the presentence report to be prepared by  
9 February 10th, any objections to the presentence report to be  
10 filed by March 3rd, any response to those objections by  
11 March 10th, and I would like any sentencing memorandums also  
12 filed by March 10th.

13 Okay. Anything else we need to discuss?

14 MS. BELL: No, your Honor.

15 MR. MERRILL: No, your Honor.

16 THE COURT: Same bond to stand?

17 MS. BELL: Yes, your Honor.

18 THE COURT: All right. It will.

19 Okay. Very good. Thank you all.

20 MR. MERRILL: Thank you, your Honor.

21 MS. BELL: Thank you, your Honor.

22 (Concluded at 2:29 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/ LAURA R. RENKE  
LAURA R. RENKE, CSR, RDR, CRR  
Official Court Reporter

November 7, 2017

**Adam Merrill**

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**From:** Bell, Carol (USAILN) 2 <Carol.Bell@usdoj.gov>  
**Sent:** Thursday, September 7, 2017 10:23 AM  
**To:** Sandy\_Newland@ilnd.uscourts.gov  
**Cc:** Adam Merrill; Missy\_Kolbe@ilnp.uscourts.gov  
**Subject:** U.S. v Marcel Walton, 15 CR 723  
**Attachments:** Sentencing Chart 09 06 17.pdf

Sandy:

In anticipation of tomorrow's sentencing in *U.S. v. Walton*, attached please find an updated version of the sentencing chart requested by Judge Durkin. I will bring a hard copy of the chart to court tomorrow, and can drop off a hard copy today if you prefer. I have provided copies to U.S. Probation and defense counsel.

Sincerely,

Carol Bell  
312-353-8898

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To: [amerrill@sperling-law.com](mailto:amerrill@sperling-law.com) [Remove this sender from my allow list](#)  
From: [carol.bell@usdoj.gov](mailto:carol.bell@usdoj.gov)

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SUMMARY OF SENTENCES

Date:	Defendant:	Case No.	Judge:	Trial or Plea:	Criminal History	Intended Loss:	Actual Loss:	Range:	Sentence:
12/17/2014	Hodges, Dianne	13-CR-678-1	Leinenweber	P	I	\$427,755	\$215,584	27 to 33	6
2/12/2015	Hodges, Rahsaan	13-CR-678-2	Leinenweber	P	I	\$77,737	\$77,737	27 to 33	6
2/12/2015	Hodges, Darrius	13-CR-678-3	Leinenweber	T	I	\$164,117	\$104,117	33 to 41	6
6/10/2015	Crayton, Ethan	14-CR-448	Darrah	P	I	\$901,218	\$601,218	24 to 30	24
8/31/2015	Norwood, Corey	13-CR-267	Guzman	P	I	\$1,020,053	\$120,053	30 to 37	24
9/17/2015	El-Bey, Hakeem	14-CR-447	Posner	T	I	\$2,100,000	\$600,000	46 to 57	28
10/13/2015	Cahill, Fani	14-CR-198-1	Tharp	T	I	\$2,200,000	\$216,666	41 to 51	24
10/13/2015	Cahill, Cutchlow	14-CR-198-2	Tharp	T	I	\$2,200,000	\$216,666	41 to 51	21
1/13/2016	Dawson, Kazz	15-CR-037	Kendall	P	I	\$900,000	\$300,000	24 to 30	15
1/19/2016	Harris, John F.	15-CR-091	Guzman	P	I	\$192,740	\$192,740	12 to 18	3
7/18/2016	Carter, Henry	14-CR-432	Coleman	P	I	\$508,991	\$259,082	18 to 24	Probation
9/15/2016	Smith, Solomon	15-CR-162	Kocoras	P	II	\$762,393	\$386,310	27 to 33	18
11/9/2016	Taylor, Ronald	15-CR-159	Pallmeyer	T	II	\$900,000	\$300,000	37 to 46	24
1/17/2017	Lukes, Candice	15-CR-283	Der-Yeghiayan	P	I	\$600,000	\$600,000	24 to 30	Probation
1/27/2017	Moore, Erica	15-CR-705	Bucklo	P	II	\$1,200,000	\$324,575	27 to 33	12
4/28/2017	Perry, Alda Jean	14-CR-463-3	Wood	P	I	\$1,051,322	\$479,580	24 to 30	12
5/3/2017	Mietus, Christopher	15-CR-293	Blakey	P	I	\$900,000	\$902,210	24 to 30	16*
5/3/2017	Burns, George	15-CR-181	Der-Yeghiayan	P	I	\$606,831	\$306,831	24 to 30	Probation
5/3/2017	Shannon, Dawn	15-CR-503	Norgle	P	I	\$900,000	\$300,000	24 to 30	2
5/10/2017	Segura, Florentina	14-CR-464	Chang	T	I	\$900,000	\$300,000	41 to 51	51
7/12/2017	Wright, Brian	16-CR-101	Coleman	P	I	\$768,382	\$272,657	24 to 30	1 day
8/7/2017	Derek Jackson	14-CR-463-2	Wood	T	I	\$1,333,332	\$342,328	33 to 41	18
8/11/2017	Jefferson, Phillip	14-CR-734	Durkin	T	I	\$900,000	\$300,000	33 to 41	30

\* = Government made motion pursuant to USSG § 5K1.1



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 15 CR 723
vs.	)	
	)	Judge Thomas M. Durkin
MARCEL A. WALTON	)	

**GOVERNMENT’S SENTENCING MEMORANDUM**

The UNITED STATES OF AMERICA, through its attorney, JOEL R. LEVIN, Acting United States Attorney for the Northern District of Illinois, respectfully submits this sentencing memorandum. For the reasons set forth below, the government respectfully requests that the Court impose a sentence within the advisory Guidelines range of seventy to eighty-seven months imprisonment.

**I. Background**

Defendant Marcel A. Walton proclaimed to be the “Grand Sheik” of the Moorish Science Temple of America located on South Cicero Avenue in Chicago. Beginning no later than in or around February 2010, and continuing through at least in or around 2011, defendant devised and participated in a scheme to defraud and obtain money and property from the IRS by means of materially false and fraudulent pretenses, representations, and promises. Defendant told numerous individuals that, if they became members of his temple, they could claim money purportedly owed to the Moors by the United States government. Defendant told his potential recruits that the Moors were the original discoverers of America and a Moorish prophet named Noble Drew Ali was given a land deed to, among other

things, the lands making up North America. Defendant explained that modern-day Moors were entitled to back pay, back taxes, or reparations from the United States' government for its use of Moorish lands, and could file claims through tax returns for that money in increments of up to \$300,000, going back three years, for a total possible claim of \$900,000.

To access the money defendant bogusly claimed was owed to the members of his temple, defendant took advantage of the IRS's processing of tax returns for trusts and estates. Defendant prepared and caused the preparation of trust or estate tax returns for himself and other individuals that contained false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld. Based upon this false information, defendant frequently claimed fraudulent refunds of \$300,000 per return for himself and his followers.

On February 22, 2010, defendant prepared and filed with the IRS fraudulent tax returns on behalf of himself for years 2007, 2008, and 2009. Each of the returns was filed in the name of the purported "Marcel Antonio Walton Trust," utilizing an Employer Identification Number previously obtained by defendant, and listing "Marcel Antonio Walton" as the trustee of the purported trust. Each of these trust tax returns contained materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld. Based upon this materially false information, each of the trust tax returns fraudulently claimed tax refunds for the purported trust in the amount of \$300,000 for years 2007, 2008, and 2009.

On January 4, 2011, in response to defendant's fraudulent 2008 trust tax

return, the United States Department of the Treasury issued an income tax refund check in the amount of \$310,162 in the name of the purported “Marcel Antonio Walton Trust,” and mailed the refund check to defendant’s home address in Chicago, Illinois. A few days after receiving the check, on January 12, 2011, defendant opened a bank account at Bank of America under the name of the purported “Marcel Antonio Walton Trust” with himself listed as the trustee for the purpose of depositing the tax refund check. Over the course of the next several months, defendant converted all of the money to his own personal use.

In addition to filing false returns himself, defendant induced several other members of his temple to file false returns. Defendant prepared and filed, and caused the preparation and filing of, fraudulent trust or estate tax returns for at least seventeen other individuals. Those returns, in combination with defendant’s own fraudulent returns, sought refunds totaling \$16,391,161 and caused refunds in the amount of \$3,286,948 to be paid out by the IRS (of which \$852,221 was subsequently recovered). Defendant stood to gain from the returns filed by his temple members, as well as the ones he filed for himself, because he instructed others to pay him “a tithe” of 10% of the money they received from the IRS through the filing of the fraudulent trust tax returns. For example, one of his temple members, Christopher Mietus, paid \$90,000 to defendant after receiving \$900,000 in refunds as part of the scheme in 2010.

## **II. Advisory Guidelines Range**

The Probation Office recommends that the Court find defendant's total offense level to be twenty-seven. This calculation is premised upon a base offense level of twenty-six pursuant to U.S.S.G. §§ 2B1.1(c)(3), 2T1.1(a)(1), and 2T4.1(K) because the loss stemming from this tax-related offense was more than \$9,500,000; an enhancement of four levels because defendant was an organizer or leader of a criminal activity that involved five or more participants pursuant to U.S.S.G. § 3B1.1(a); and a three-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1. An offense level of twenty-seven in combination with a criminal category of I results in an advisory Guidelines range of seventy to eighty-seven months. The government does not object to this calculation.

## **III. A Sentence Within the Guidelines Range is Appropriate**

Section 3553(a) requires the Court to impose a sentence that is "sufficient, but not greater than necessary," to comply with the purposes of sentencing. In order to determine the "particular" sentence to impose, the Court must consider the statutory factors listed in 18 U.S.C. § 3553(a)(1)-(7). These factors include the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to afford adequate deterrence, and to protect the public from further crimes of the defendant; and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. Section 3553 also requires the Court to consider the advisory range

set by the Sentencing Guidelines. *Id.* § 3553(a)(4), (a)(5). Although the Guidelines are advisory only, “[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007).

Here, the government respectfully submits that a sentence of imprisonment within the advisory Guidelines range is needed in order 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. Defendant identified a vulnerability in the IRS’s trust tax return processing system and orchestrated a massive tax scheme to exploit that vulnerability by filing numerous false returns. Defendant himself filed three fraudulent returns seeking \$900,000 in refunds and received over \$300,000. In addition to his own fraudulent returns, defendant recruited others who joined his temple to file similarly fraudulent returns premised upon the false pretense that they were entitled to remuneration from the United States for its purported use of Moorish lands. At least seventeen others filed close to fifty returns seeking over \$15 million dollars in refunds and obtaining about \$3,000,000 in refunds as a result of defendant’s scheme.<sup>1</sup>

While certain aspects of the scheme may be described as relatively simple, defendant was disturbingly bold in the size of refunds he sought as part of this scheme

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<sup>1</sup> The government limited its calculation of the loss for Guidelines to instances where defendant’s role was corroborated by an interview of one of his temple members. However, it is likely that this calculation under represents the harm intended to be caused by defendant as defendant can otherwise be linked through various public filings to individuals who filed fraudulent tax returns seeking refunds exceeding \$100 million dollars.

and undertook elaborate steps to execute the scheme to massive proportions by inducing others to join his temple and file these fraudulent returns. To some extent, defendant preyed upon his temple members and their vulnerabilities in the same manner that he preyed upon the United States and the vulnerabilities of the IRS's tax filing system. Defendant largely sought out unsophisticated individuals who were desperate enough to do almost anything to obtain the vast amounts of money that defendant told them about. In doing so, he distorted the beliefs of an otherwise legitimate religious movement in order to make others believe that they were part of something much larger and then, after cultivating them, induced them to do his bidding by submitting fraudulent tax returns seeking exorbitant refunds, with defendant telling them to provide him 10% of any recovery as part of a "tithing" to his temple. The boldness and long-running nature of the scheme, the elaborate steps that defendant took to induce others to follow him and do his bidding as part of this scheme, and the significant losses resulting from the scheme require a significant term of imprisonment in order to the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

It is also noteworthy that, while the government is the direct victim of the crime, all citizens and residents of the United States ultimately suffer the consequences of this type of criminal conduct. Defendant and his followers stole over two million dollars from the general revenues of the United States. While that amount will not bankrupt the government by any means, such losses put additional and unnecessary strain on various government programs, including public assistance

and educational programs, that are already under a great deal of strain as a result of the massive budget deficits and large national debt faced by the country. Moreover, defendant's theft of public funds is particularly disturbing based upon the fact that he is a government employee. Defendant has worked for the Chicago Park District since 2004. He relies upon government funds to provide his wages and sustain himself, but then bites the very hand that feeds him by engaging in this massive seem to defraud the government (albeit the federal government, and not the local government that employed him).

A significant term of imprisonment is also necessary to adequately deter defendant and others from engaging in this type of conduct. Due to the large volume of returns processed annually, the IRS frequently relies upon the information contained on the face of a tax return in processing the return. While there are mechanisms to capture frivolous returns like those filed in this case, the pressure placed on IRS employees to quickly process returns and provide refunds to taxpayers entitled to such refunds sometimes results in bad returns, such as the ones here, slipping through and improper refunds being paid by the IRS. There need to significant ramifications in order to deter individuals like defendant from exploiting this vulnerability, otherwise the entire system would need to be changed and law abiding members of our society would see undue delay in obtaining the refunds to which they are entitled under the law.

A significant sentence is needed here because even otherwise law abiding individuals can be tempted to go astray when presented with the opportunity, as

defendant gave them here, to receive significant amounts of money by simply filling out a single-page tax return and mailing it to the IRS. Indeed, as noted above, there have been fraudulent returns seeking over \$100 million dollars in refunds filed by various individuals who have been linked to defendant.

Finally, a significant term of imprisonment is necessary to avoid unwarranted sentencing disparities. As reflected in the sentencing chart attached to the Presentence Investigation Report, seven individuals have been sentenced to terms of imprisonment of eighteen months or greater despite being responsible for significantly lesser amounts than defendant. For example, Ronald Taylor received a sentence of twenty-four months' imprisonment despite being responsible for an intended loss of \$900,000 and an actual loss of \$300,000. *United States v. Ronald Taylor*, 15 CR 159 (J. Pallmeyer). Due to his role as a leader and organizer, defendant is at least responsible for sixteen times the amount of the intended loss involved in Mr. Taylor's case. A sentence within the range would not be more than necessary to avoid unwarranted disparities and otherwise satisfy the purposes of § 3553.



**Conclusion**

For the reasons set forth above, the government requests that the Court impose a sentence within the advisory Guidelines range.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA	)	Case No. 15 CR 723
	)	
vs.	)	Hon. Thomas M. Durkin
	)	
MARCEL A. WALTON	)	

**DEFENDANT MARCEL WALTON'S SENTENCING MEMORANDUM AND  
OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT**

Pursuant to *United States v. Booker*, 543 U.S. 220 (2005), its progeny, and 18 U.S.C. § 3553(a), Defendant Marcel Walton respectfully requests that this Court impose a below-Guidelines sentence of 12 months' imprisonment and submits this memorandum in support thereof. Although there is no dispute that the Guidelines range is 70 to 87 months (based on an adjusted offense level of 27 and a criminal history category of I), a Guidelines sentence here would be unnecessarily punitive and inconsistent with a fair application of the § 3553(a) factors. Moreover, defendants in similar cases have all been sentenced well below the Guidelines range even though many of those defendants had prior records, never accepted responsibility, and/or engaged in other conduct that imposed unnecessary and undue burdens upon the Government and this Court. Mr. Walton, in contrast, is a 47 year old first-time offender who has overcome significant personal challenges to become a productive member of society, has accepted responsibility early in his case, has been cooperative, respectful, and compliant throughout this case, and has not engaged in needless and burdensome tactics. Indeed, this offense is an aberration for which Mr. Walton is sorry and for which he is willing to serve a reasonable sentence and make as much restitution as he can. Given these unique facts, a 12 month sentence would give equal and appropriate weight to each § 3553(a) factor, and would constitute a sentence sufficient, but not greater than necessary, to achieve statutory purposes.

**I.  
BACKGROUND**

On December 9, 2015, the Government unsealed a one-count indictment against Mr. Walton, which charged Defendant with mail fraud in connection with the filing of Form 1041 federal tax returns in violation of Title 18, United States Code, Section 1341. (Dkt. 1.) The Defendant was arraigned on December 17, 2015, and released pursuant to conditions. (Dkt. 8.) Thereafter, Defendant has always appeared in Court (when required) and has otherwise complied with the conditions of his bond.

On December 21, 2016, this Court accepted Defendant's change of plea pursuant to a written plea agreement, in which Mr. Walton admitted guilt with respect to the charges and in which Defendant acknowledged the following conduct (the "Plea Agreement"):

Defendant MARCEL A. WALTON did devise, intend to devise, and participate in a scheme to defraud and to obtain money and property from the IRS by means of materially false and fraudulent pretenses, representations, and promises, and, for purposes for executing the scheme, did knowingly cause an envelope to be delivered by mail according to the direction thereon, which envelope was addressed to a location in Chicago, Illinois and contained a United States Treasury check made payable to "Marcel Antonio Walton" in the amount of \$310,162.31.

Specifically, beginning no later than in or around February 2010, and continuing through at least in or around 2011, defendant prepared and caused the preparation of Form 1041 trust or estate tax returns for himself and others that contained false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld. Based upon this materially false information, each of the Form 1041 trust tax returns fraudulently claimed tax refunds for the purported trusts in amounts frequently as high as \$300,000.

On or about February 22, 2010, defendant prepared and filed with the IRS fraudulent Form 1041 trust tax returns on behalf of himself for tax years 2007, 2008, and 2009. Each of the returns was filed in the name of the purported "Marcel Antonio Walton Trust" utilizing an Employer Identification Number previously obtained by defendant and listing "Marcel Antonio Walton" as the trustee of the purported trust. As defendant was well aware, each of the fraudulent Form 1041 trust tax returns contained materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax

refunds for the purported trust in the amount of \$300,000 for years 2007, 2008, and 2009.

On[] or about January 4, 2011, the United States Department of the Treasury issued an income tax refund check in the amount of \$310,162 in the name of the purported "Marcel Antonio Walton Trust." The Treasury issued the refund check as a result of the 2008 Form 1041 trust tax return defendant filed with the IRS on or about February 22, 2010.

Defendant received the refund check and, on or about January 12, 2011, deposited the proceeds of the tax refund check into an account he opened at a branch of Bank of America under the name of the purported "Marcel Antonio Walton Trust." Defendant knew that he was not entitled to those funds, but nevertheless used the proceeds of the refund check for his own personal use, including the purchase of a Chrysler Town & Country Touring-L Sport Van.

As part of the scheme, in addition to the fraudulent tax returns he filed on behalf of himself and the purported "Marcel Antonio Walton Trust," defendant encouraged others, including Christopher A. Mietus, to file fraudulent Form 1041 trust tax returns. Defendant further prepared and filed, and caused the preparation and filing, of fraudulent Form 1041 trust or estate tax returns for others, including Christopher A. Mietus, that included materially false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trusts in amounts as high as \$300,000. As a result of his actions, the United States Treasury issued tax refund checks to others in connection with fraudulently filed Form 1041 trust tax returns, including Treasury checks totaling over \$900,000 to Christopher A. Mietus. Defendant then instructed others, including Christopher A. Mietus, to provide him with a portion of the fraudulently obtained refunds and obtained payments as high as \$90,000 from those other individuals. Defendant knew that the other individuals whom he encouraged or assisted in filing fraudulent Form 1041 trust tax returns were not entitled to tax refunds based on the materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, he made, or caused them to make, within their Form 1041 trust tax returns in furtherance of the scheme.

Defendant acknowledges that the intended loss was \$16,391,161.

(Dkt. 27 ¶6.)

As further noted in the Plea Agreement, with respect to sentencing issues, Defendant understands, among other things, that (a) this Court can impose a maximum sentence of 20

years' imprisonment and (b) the Court can impose a maximum period of supervised release of three years. (Dkt. 27 ¶7.)

Although the Court ultimate task is to impose a sentence consistent with the factors set forth in 18 U.S.C. §3553(a), Mr. Walton understands that the Court must perform a Sentencing Guidelines calculation and consider it as part of its Section 3553(a) analysis. As reflected in the Plea Agreement (and confirmed in the Presentence Investigation Report (or "PSR")), the Government, the Defendant, and the Probation Department all now agree as to the following Guidelines calculations:

- **Base Offense Level of 26** because the intended tax loss resulting from the offense of conviction is more than \$9,500,000, but less than \$25,000,000, pursuant to Guidelines §§ 2T1.1(a)(1) and 2T4.1(K);
- **Plus Four Levels** pursuant to Guideline § 3B1.1(a), as defendant was an organizer or leader of the criminal activity, namely the scheme to defraud, that involved five or more participants or was otherwise extensive;
- **Minus Three Levels** pursuant to Guideline §§ 3E1.1(a)-(b) because (i) Walton is clearly accepting responsibility for his offense and (ii) has timely notified the government of his intention to seek to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently;
- **Adjusted Offense Level of 27;**
- **Criminal History Category of I** (based on 0 criminal history points); and
- **Sentencing Guidelines Range of 70-87 months.**

(Dkt. 27 ¶9; PSR ¶¶ 24-33, 43, 80.)

## II. DEFENDANT'S OBJECTIONS TO THE PSR, GOV'T VERSION, AND THE SENTENCING RECOMMENDATION

Pursuant to Federal Rule of Criminal Procedure 32, Defendant has objected to certain information contained in the March 7, 2017 PSR, the February 14, 2017 Government's Version of the Offense (the "Gov't Version"), which the Probation Department attached to the PSR, and to the Probation Department's Sentencing Recommendation dated March 7, 2017 (the

“Recommendation”). On May 26, 2017, pursuant to Rule 32, Defendant notified the Probation Department via email of each of these objections, a copy of which is attached as Exhibit A.

Among other things, Defendant objected to the following:

- The Probation Department’s unsubstantiated, false, and prejudicial assertions that Mr. Walton is currently involved with the Vice Lords street gang and currently carries (and has threatened the use of) a gun;
- The Probation Department’s false assertions that Mr. Walton failed to cooperate with its presentence investigation;
- The Probation Department’s imputation of “sovereign citizen” beliefs to Mr. Walton that are not contained in the record and have not been proven;
- The Probation Department’s recommendation of an enhanced sentence based on uncharged and unproven allegations of “paper terrorism;”
- The Probation Department’s recommendation of an enhanced sentence based on unsupported assertions concerning the number of tax returns and total loss amount;
- The Probation Department’s recommendation of a condition that would prohibit Mr. Walton from practicing his religion; and
- The Probation Department’s recommendation of a condition (*i.e.*, immediate notification to Mr. Walton’s employer of his guilty plea) that would lead to the immediate loss of his job.

(*See Ex. A.*)

The Probation Department, however, never responded to Defendant’s objections and has not amended the PSR. Thus, in connection with his Section 3553(a) analysis, *see, infra*, Defendant reiterates each of his objections herein, and respectfully requests that the Court address each objection at the Sentencing Hearing.

**III.**  
**APPLICATION OF THE §3553(A) FACTORS DEMONSTRATES THAT**  
**A BELOW GUIDELINES SENTENCE OF 12 MONTHS WOULD BE**  
**SUFFICIENT, BUT NOT GREATER THAN NECESSARY,**  
**TO ACCOMPLISH STATUTORY SENTENCING GOALS.**

It is unquestioned that the Sentencing Guidelines are advisory and that district courts retain discretion to sentence appropriately. *United States v. Booker*, 543 U.S. 220, 245-46 (2005). The Supreme Court has firmly instructed that sentencing courts “may not presume that the Guidelines range is reasonable.” *Gall v. United States*, 552 U.S. 38, 50 (2007) (citing *Rita v. United States*, 551 U.S. 338, 351 (2007)). Rather, a sentencing court must make an “individualized assessment based on the facts presented.” *Gall*, 552 U.S. at 50. Above all, a court’s final determination of a sentence must reflect “§3553(a)’s overarching instruction to ‘impose a sentence sufficient, but not greater than necessary’ to accomplish the sentencing goals advanced in 3553(a)(2),” namely, retribution, deterrence, incapacitation, and rehabilitation. *See Kimbrough v. United States*, 552 U.S. 85, 111 (2007).

*Rita* made clear, and *Kimbrough* affirmed, that in making these individual assessments, sentencing courts are free to disagree with the Guidelines’ recommended sentence in any particular case, and may impose a different sentence based on a contrary view of what is appropriate under §3553(a). This includes the freedom to disagree with “policy decisions” of Congress or the Sentencing Commission that are contained in the guidelines. As the Supreme Court noted, “[a]s far as the law is concerned, the judge could disregard the Guidelines . . . .” *Rita*, 551 U.S. at 353. And there need not be extraordinary reasons to justify a sentence outside the Guidelines range. *Gall*, 552 U.S. at 47. Several of the 3553(a) factors justify the imposition of a 12 month sentence here, a sentence that would be consistent with sentences imposed in similar cases in this district.

**A. The History and Characteristics of the Defendant.**

**1. *Walton has Overcome Substantial Personal Obstacles, Received an Education, and Has Held a Steady Job for More than 20 Years.***

Walton was born and raised in a poor neighborhood on the far west side of Chicago. (PSR ¶¶ 51, 53.) Because Walton's mother suffered from schizophrenia and psychosis, Walton was raised by his grandmother, Mattie Walton, who provided for Walton and others by working as a gift wrapper at a large department store. (PSR ¶¶ 52, 63.) Walton lived with his grandmother at 4901 West Van Buren until he was 44 years old, and did not get his own place until 2013. (PSR ¶¶ 53, 57.)

Walton was abandoned by his father, Willie Thompson, who was an alcoholic, when Walton was six or seven years old. (PSR ¶¶ 51, 65.) Walton last spoke to his father when he was 15 years old. (PSR ¶ 51.)

Walton was born with a "club foot," and had multiple surgeries as a child to address this condition. (PSR ¶¶ 52, 61.) He also had two hernia surgeries and a surgery to address a raised testicle problem. (PSR ¶ 61.)

When Walton was around 15 or 16 years old, he started drinking alcohol and smoking marijuana, was expelled from high school, joined the Vice Lords street gang, and began carrying a gun. (PSR ¶¶ 58, 59, 64, 68.)

In his early twenties, however, Walton began to get his life together. He enrolled in an alternative high school, the Academy of Scholastic Achievement, and in 1991, he received his high school diploma. (PSR ¶ 68.) Moreover, Walton stopped using drugs in 1989 (when he was 20), ceased all affiliation with the Vice Lords gang when he was 25 or 26, and stopped carrying a weapon. (PSR ¶¶ 59, 64.)

Moreover, except for a period of unemployment from 1990 through 1994 (PSR ¶ 72), Walton has been gainfully employed throughout his adult life. From 1988 through 1990, he



worked for the Cook County Park District. (PSR ¶ 73.) From 1994 through 2004, Walton worked for the Cook County Forest Preserve. (PSR ¶ 71.) Since 2004, Walton has worked as a custodian for the Chicago Park District at Garfield Park, and earns approximately \$40,000 a year. (PSR ¶ 71.) As set forth in his signed financial disclosures (a copy of which is attached as Exhibit B), Walton has no assets of any significance, and has monthly expenses of close to \$2,000. (*See also* PSR ¶ 74.)

Walton was married to and lived with Jennifer West from 2001 until 2007, but is now separated. (PSR ¶ 55.) Walton has no children. (*Id.*)

Walton is the Grand Sheik of the Moorish Science Temple of America located at 259 North Pulaski Road in Chicago, and has lived at the Temple since 2013. (PSR ¶¶ 56-57.)

## **2. *Defendant's Objections to the PSR.***

### **a. The PSR Falsely Suggests that He Failed to Cooperate with the Probation Department's Presentence Investigation.**

In the Recommendation, the Probation Department claims that Mr. Walton was “difficult” to work with “as he did not provide his financial forms in the requested timely manner, with the supporting documentation, and he also did not return text messages as he agreed to do during the initial face-to-face interview with this officer.” (Recommendation at 2; *see also* PSR ¶ 32 (“The undersigned received his financial documents, on February 17, 2017, without proper documentation, signatures, and later than requested. . . .”).) Based on this, Probation recommends that Mr. Walton receive a longer sentence—75 months—than Probation would have otherwise recommended. (PSR ¶ 32 (“The undersigned will address [Mr. Walton’s tardy submissions] as an 18 U.S.C. 3553(a) factor.”); *see also id.* ¶¶ 74, 78.) Probation’s assertions are inaccurate. Mr. Walton did cooperate with the Probation Department’s presentence investigation. And nothing about his interaction with the Probation Department justifies the imposition of an enhanced sentence based on Mr. Walton’s post-guilty plea conduct.

**First**, on February 20, 2017, on behalf of Mr. Walton, Defendant's counsel did submit a *signed* set of financial disclosures. (*See* Ex. B.) This was more than two weeks before the Probation Department completed the PSR. The Probation Department, however, has refused to correct its PSR and Recommendation, which wrongly assert that Defendant never submitted signed forms.

**Second**, although Defendant provided the signed financial disclosures later than when Probation had requested them and Walton didn't always return Probation's text messages, Defendant's counsel was the reason for the tardy submissions—not Mr. Walton. From the Probation Department's first contact after Mr. Walton's change of plea, Defendant's counsel asked to be present for/involved with all contact between the Probation Department and Mr. Walton.<sup>1</sup> Unfortunately, Defendant's counsel had had an eight-day jury trial in early February that prevented counsel from following up with and passing along Mr. Walton's financial disclosures sooner. And Mr. Walton was simply complying with the advice of his counsel when he failed to respond to communications where counsel was not copied. Nonetheless, the Probation Department seems intent on punishing Mr. Walton for the sins of his attorney.

**Third**, no relevant documentation that Mr. Walton has in his possession has been withheld. As the Probation Department discovered by reviewing Mr. Walton's financial disclosures and his credit report, Mr. Walton has no significant assets, a modest income, and modest expenses. (*See, e.g.*, Ex. B.) Indeed, based on similar financial disclosures, the Court found Mr. Walton to be indigent and appointed Defendant's counsel pursuant to the Criminal Justice Act. Given that Mr. Walton has provided the Probation Department with documentary support for his income, Probation's failure to receive documentation concerning each of Mr.

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<sup>1</sup> The only exception was that Mr. Walton's counsel agreed that Probation could conduct a home visit without counsel being present on the condition that the Probation Officer not discuss the substance of the case with Mr. Walton during the home visit.

Walton's monthly expenses, which include rent, groceries, utilities, transportation, clothing, and fridge rental, and all of which add up to just \$1,898 per month, is insignificant and should play no role in Probation's recommendation of a sentence. Indeed, after having served on the Federal Defender Panel for many years, Defendant's counsel cannot recall a CJA client being required to provide similar documentation. Nor has Defendant's counsel ever been involved in a case where the Probation Department recommended an enhanced sentence of imprisonment based on a CJA client's failure to provide such documentation.

Moreover, although the Probation Department repeatedly bemoans Mr. Walton's failure to provide documentation concerning his Chicago Park District retirement/pension benefits (PSR ¶¶ 74-75, 78), other than his paystubs (which Defendant provided), Mr. Walton has no documentation concerning his retirement/pension benefits. Nonetheless, Mr. Walton is attempting to secure such documents from his employer, and Defendant's counsel will promptly provide any such documents to Probation if and when he receives them.

b. Mr. Walton Objects to the PSR's Unsubstantiated, False, and Prejudicial Assertions that Defendant is Currently Involved With the Vice Lords Street Gang and Currently Carries (and Threatens the Use of) a Gun.

The Probation Department wrongly asserts that Mr. Walton is still part of the Vice Lords Gang. (PSR ¶ 59.) This is not true and Mr. Walton never said this. Indeed, both Defendant and Defendant's counsel recall Mr. Walton simply mentioning (as an aside) the long-standing and common street gang precept that "once you are a member of a gang, you are always a member of the gang." Thus, you can never truly be "out" of a gang. But given that Mr. Walton has had *no involvement* with the gang (or carried a gun) *for decades* and that there is no evidence to the contrary, Mr. Walton's explanation (when placed in proper context) is not a basis for suggesting he is an active Vice Lord or that he carries a gun, and any such references should be removed or stricken from the PSR.

Moreover, the PSR also claims that at some unspecified time, Mr. Walton “made threats to shoot court employees.” (PSR ¶ 58.) Mr. Walton denies this and Defendant and Defendant’s counsel know of no evidence to support this inflammatory, prejudicial, and extraneous assertion. Such information cannot fairly be considered at sentencing unless it is established by a preponderance of the evidence at sentencing, *see Mitchell v. U.S.*, 526 U.S. 314, 330 (1999) and *U.S. v. Reuter*, 463 F.3d 792, 792-93 (7th Cir. 2006), which the Government does not intend to do. This assertion should also be removed from or stricken from the PSR.

**B. The Nature and Circumstances of the Offense.**

As set forth in the indictment and the Plea Agreement, Mr. Walton was charged with and pled guilty to one count of mail fraud, whereby Mr. Walton filed false Form 1041 federal tax returns, for which he received a \$300,000 refund check, and helped others do the same. (*See* Dkt. Nos. 1, 27.) In the Plea Agreement, Mr. Walton and the Government have agreed that “the *intended loss* was *\$16,391,161*” (Dkt. 27 ¶ 6), and that those losses stemmed from the *twenty trust tax returns* listed on the Government’s summary of “tax loss amounts” attached to the Government’s Version.

What Mr. Walton did was wrong, and he has so admitted. But Mr. Walton was charged only with mail fraud and was never charged with “paper terrorism.” Nor has the Government suggested that Mr. Walton ever engaged in acts of “paper terrorism.” And neither the indictment nor the Plea Agreement discuss whether Mr. Walton’s illegal acts were based on “sovereign citizen” beliefs, or suggest that Mr. Walton is presently engaged in illegal conduct based on such beliefs.

Nonetheless, in the PSR and the Recommendation, the Probation Department presses for a lengthy prison sentence: (1) because of Mr. Walton’s supposed “sovereign citizen” beliefs; (2) because of supposed acts of “paper terrorism;” and (3) because the real *intended loss* was

**\$116,515,757**—an amount more than **seven** times the amount the parties agreed to as part of Mr. Walton’s plea negotiations. Needless to say, it is inappropriate and unfair for the Probation Department to press for a lengthy and **enhanced** prison sentence based on uncharged and unproven beliefs and conduct and on a loss amount that has never been proven and is dramatically exceeds the amount the parties agreed to. These irrelevant, extraneous, and prejudicial assertions should be stricken from the PSR and the Recommendation, and this Court should not consider them when imposing a sentence upon Mr. Walton.

***1. Defendant Objects to the Probation Department’s Imputation of “Sovereign Citizen” Beliefs to Him that Are Not Contained in the Record.***

The Recommendation imputes “sovereign citizen” beliefs to Mr. Walton that are found nowhere in the record, and recommends a Guidelines sentence in order to deter future unlawful conduct based on such beliefs.

The defendant's sovereign beliefs about being owed monetary compensation from the United States government may place him in a difficult position where he still has to live in society and interact in a world where these views are not widely accepted as a tangible fact. Given these constructs, it may be challenging for this defendant to find resolution with his beliefs and how he will be able to accept his participation in this offense, repay the government, and avoid any future criminal financial offenses in the future.

(Recommendation at 2; *see also id.* (claiming 75-month sentence is necessary as “[g]eneral deterrence in order for other individuals within his church or subscribing to *sovereign ideologies* who could be potentially deterred should they consider utilizing the same fraudulent tax filing measures in order to obtain money for which they are not entitled”).) These unsupported assertions should be stricken from the PSR and Recommendation.

Mr. Walton has a Constitutional right to be sentenced based on the charges to which he has pled guilty and other relevant conduct to which he has admitted or which the Government proves at sentencing. Yet nothing in the Plea Agreement or in Mr. Walton’s responses to Probation’s interview questions (at which counsel was present) indicated that Mr. Walton is

presently engaging in illegal conduct based on sovereign citizen beliefs, or even that he presently harbors such beliefs. To the contrary, the Plea Agreement and Walton's change of plea reflect Walton's acknowledgement that the trust tax return filings described in the indictment were illegal and lacked justification. (*See* Dkt. Nos. 26, and 27 ¶¶6.) And the only specific "sovereign citizen" statements that the Probation Department refers to were supposedly made by Mr. Walton on October 19, 2012 (*see* PSR ¶ 19)—well before his arrest, charge, and change of plea. Absent credible evidence that Walton is *presently* engaged in illegal conduct based on "sovereign citizen" beliefs, the Probation's Department's speculation concerning Mr. Walton's beliefs should not be included in the PSR or Recommendation, and should not serve as the basis for any recommended sentence.

**2. *The Defendant Objects to the Probation Department's Recommendation of an Enhanced Sentence Based on Uncharged and Unproven Allegations of "Paper Terrorism."***

Based solely on assertions from Agent Howard, the PSR claims that Mr. Walton "filed various Moorish documentation in Cook County, which held defendant Walton's name or signature," none of which is in the record. (PSR ¶ 13.)<sup>2</sup> The Recommendation goes on to call such conduct "paper terrorism," and suggests that Mr. Walton is himself a "paper terrorist" and should be punished accordingly. (Recommendation at 1.) Mr. Walton, however, has never been

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<sup>2</sup> Apparently, Government agents are the sole source for a number of hearsay assertions in the PSR. (*See, e.g.*, PSR ¶¶ 7-9, 12, 58.) Just because something is said by an investigating officer to a probation officer does not make it sufficiently reliable to consider at sentencing. And the Fifth Amendment of the United States Constitution protects a defendant's right to be sentenced based on accurate information. *U.S. v. Tucker*, 404 U.S. 443, 447 (1972); *Townsend v. Burke*, 334 U.S. 736, 741 (1948). Even hearsay evidence can still be excluded as insufficiently reliable under the Due Process Clause of the Fifth Amendment. *United States v. Martinez*, 413 F.3d 239, 244 (2d Cir. 2005) (The due process clause "'is plainly implicated at sentencing'" and hearsay statements must bear some indicia of reliability to be there considered). Thus, it violates a defendant's rights to due process for a court to consider such information without the government first producing the evidence that supports the assertions and opinions, the investigating officer testifying at the sentencing hearing under oath, and the defendant being given the opportunity to cross-examine the officer. This is particularly true where, as here, the government agent lacks first-hand knowledge of the facts and is not expected to testify at the sentencing hearing.

so charged. Indeed, the charge and plea in this case relate **only** to mail fraud in connection with Mr. Walton's filing of federal trust tax returns. Nor do we anticipate that the government will seek to introduce evidence concerning the filing of Moorish documentation in Cook County at Mr. Walton's sentencing, or that such filings would even constitute "relevant conduct" for purposes of sentencing Mr. Walton. *See, e.g.*, USSG 1B1.3(a) ("relevant conduct" includes conduct "that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense"); *U.S. v. Chube II*, 538 F.3d 693, 702-03 (7<sup>th</sup> Cir. 2008) (to constitute "relevant conduct," conduct must be "unlawful" and must be established at sentencing by a "preponderance of the evidence"). The government, of course, is familiar with and does bring "paper terrorism" charges. *See, e.g.*, *U.S. v. Cherron Marie Phillips*, No. 12 CR 872 (indictment charging the filing of false liens in violation of 18 U.S.C. § 1521) (attached as Exhibit C). But the government did not do so here. Thus, it is irrelevant and unfairly prejudicial for either the PSR or the Recommendation to mention such filings or imply that this is a case of "paper terrorism," and any such references should be stricken from the PSR and Recommendation. Moreover, given what this case is actually about, there is no basis for Probation's recommendation of a condition prohibiting Mr. Walton "from filing any liens or legal documents against or for any individual/s, businesses or entities without prior permission of this Court," and this recommended condition should be dropped from the PSR and Recommendation. (*See* PSR at 24 (recommended special condition); *see also* Recommendation at 1-2, 9.)

**3. *The Defendant Objects to the Probation Department's Unsupported Assertions Concerning the Number of Tax Returns and Total Loss Amount.***

Mr. Walton and the Government have agreed that "the *intended loss* was **\$16,391,161**" (Plea Agreement ¶ 6) and that those losses stemmed from the *twenty trust tax returns* listed on the Government's summary of "tax loss amounts" attached to the Government's Version.

According to the Government, this loss calculation was “limited . . . to instances where defendant's role was corroborated by an interview of one of his temple members.” (Gov't Sentencing Mem. at 5 n.1.) Nonetheless, the Probation Department claims that “the IRS has connected this defendant to approximately *ninety* individuals who filed fraudulent trust or estate tax returns for approximately *103* different purported trusts for tax years 2005 through 2012, seeking approximately *\$116,515,757*, from the U.S. government.” (PSR ¶ 13.) Based on this, the Probation Department even characterizes the agreed \$16 million intended loss amount as “conservative” (PSR ¶ 24), and the Recommendation suggests that Mr. Walton’s “involvement in what points to significantly higher loss amounts than what he ultimately agreed to in the plea agreement” is an “*aggravating factor*” for purposes of sentencing (Recommendation at 1 (emphasis added)).<sup>3</sup> Needless to say, the Probation Department’s attempt to enhance Mr. Walton’s sentence based on an intended loss amount that is seven times higher than the amount to which the parties agreed in the Plea Agreement is unusual and troubling.

Indeed, if the government felt it could establish this higher loss amount, then presumably the government would never have entered into the Plea Agreement. And had the government insisted upon a \$116 million total loss amount, Mr. Walton would not have agreed to such a plea, and would have either pled blind or pled pursuant to an agreement that preserved his ability to challenge the inflated intended loss amount at sentencing. Here, of course, the parties specifically negotiated the terms of the Plea Agreement, including the \$16.4 million loss amount. Previously, the parties had disagreed about the extent to which the larger amount the PSR references could be established as “relevant conduct” for purposes of sentencing. It would

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<sup>3</sup> Pursuant to USSG §§ 2T1.1 and 2T4.1, this higher total loss amount, if reliably established, would increase Mr. Walton’s base offense level by 4 points (from 26 to 30), and would increase his guidelines range by 38-48 months (from a range of 70-87 months to a range of 108-135 months).



be unprecedented and unfair to now “backdoor” this larger loss amount into the case via the PSR and Recommendation.

Further, the Government has never provided the Defendant (or the Probation Department) with the details concerning the 120 trust returns and the \$116.5 million loss referred to in the PSR. And none of these details are in the record before the Court. Critically, “[t]he Government retains the burden of proving facts relevant to the crime at the sentencing phase,” *Mitchell v. U.S.*, 526 U.S. 314, 330 (1999), and the standard of proof for sentencing factors is a preponderance of the evidence, *see, e.g.*, USSG § 6A1.3 (commentary ¶ 3) and *U.S. v. Reuter*, 463 F.3d 792, 792-93 (7th Cir. 2006). The Government has never indicated its intent to prove up these 103 trust returns or the \$116.5 million loss amount at Mr. Walton’s sentencing hearing. Nor, given the Plea Agreement, should the Government be permitted to attempt such a prove-up now. Instead, as noted, the Government has admitted that it was unable to “corroborate” losses beyond the \$16.4 million amount to which the parties agreed. Thus, the larger intended loss amount should be removed (or stricken) from the PSR and Recommendation, and should play no role in the sentence this Court imposes upon Mr. Walton.

**C. Section 3553(a)(2) Factors of Retribution, Deterrence, Incapacitation, and Rehabilitation.**

Given that Mr. Walton has overcome significant personal obstacles, pled guilty early in the case, and has otherwise been cooperative and compliant, there is no denying that even a 12 month sentence—particularly for a first-time offender—would be serious punishment, have a deterrent effect, and would “incapacitate” Mr. Walton for a substantial period of time.

Indeed, much of the push for longer and longer sentences stems from a myth that longer sentences serve as a general deterrent. Research, however, suggests otherwise. Indeed, there is “no real evidence of a deterrent effect for severity.” Raymond Pasternoster, *How Much Do We Really Know About Criminal Deterrence*, 100 J. Crim. L. & Criminology 765, 817 (2010).

Lengthy sentences do not provide meaningful deterrence because most offenders do not think about the criminal consequences of their actions. See Anthony N. Doob & Cheryl Marie Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 *Crime & Just.* 143, 182-83 (2003). To the extent that offenders weigh the perceived costs and benefits, “in virtually every deterrence study to date, the perceived certainty of punishment was more important than the perceived severity.” Pasternoster, at 812; Doob & Webster, at 189 (“no consistent and plausible evidence that harsher sentences deter crime”); see also *United States v. Kloda*, 133 F. Supp. 2d 345, 347-48 (S.D.N.Y. 2001) (in context of business crimes).

Respect for the law is promoted by punishments that are fair, however, not those that simply punish for punishment sake. As the Supreme Court has noted, “a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing.” *Gall v. United States*, 552 U.S. 38, 54 (2007); see also *United States v. Cernik*, No. 07-20215, 2008 WL 2940854, \*9 (E.D. Mich. July 25, 2008).

Moreover, even with a 12 month sentence, Mr. Walton is not a young man and will be close to 50 when he is released. Age matters. It is undisputed that recidivism rates drop as defendants age. See U.S.S.C., *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at 12, 28; see also *United States v. Nellum*, No. 2:04-CR-30-PS, 2005 WL 300073, \*3 (N.D. Ind. Feb. 3, 2005); see also *Simon v. United States*, 361 F. Supp. 2d 35, 48 (E.D.N.Y. 2005); *United States v. Carmona-Rodriguez*, No. 04 CR 667RWS, 2005 WL 840464, \*4 (S.D.N.Y. April 11, 2005) (30-month sentence for 55-year-old defendant where guideline range was 46-57 months); *United States v. Hernandez*, No. 03 CR. 1257(RWS), 2005 WL 1242344, \*5 (S.D.N.Y. May 24, 2005) (50-month sentence for 49-year-old defendant where guideline range was 70-87 months). In *Nellum*, the court found that the likelihood of recidivism

by a 65-year-old is very low. 2005 WL 300073 at \*3. Thus, even if sentenced to just 12 months, by the time Defendant would be released, his age (in addition to his lack of prior criminal history) will make it unlikely that he will recidivate.

**IV.**

**THE PROBATION DEPARTMENT HAS REFUSED TO CORRECT ERRORS  
IN THE PSR AND RECOMMENDATION AND PRESSES THIS COURT TO  
IMPOSE UNIQUE, ONE-OF-A-KIND CONDITIONS THAT ARE  
INAPPROPRIATE, UNLAWFUL, AND UNNECESSARILY PUNITIVE.**

The Defendant has no objection to most of the conditions the Probation Department recommends, most of which are standard (or expected) in cases similar to Mr. Walton's. But the Probation Department misstates the law concerning whether Mr. Walton is eligible for probation, and presses this Court to impose conditions that would impermissibly restrict Mr. Walton's religious practices and would cause Mr. Walton to be fired from his job. Although the Probation Department has refused to correct its legal error and to withdraw its recommendation of these improper conditions, this Court should clarify the legal parameters for Mr. Walton's sentence and should refuse to impose the offensive conditions.

**A. Mr. Walton is Eligible for Probation.**

The Probation Department incorrectly suggests that pursuant to USSG § 5B1.1, Mr. Walton is not eligible for a sentence of probation. (PSR ¶ 86.) That is not correct. Notably, after *United States v. Booker*, 543 U.S. 220, 245-46 (2005), the guidelines are merely advisory. And here, just as in *United States v. Warner*, 792 F.3d 847, 855 (7<sup>th</sup> Cir. 2015), “no statute expressly require[s] the district court to send [Walton] to prison,” “[t]he law that [Walton] violated, [18 U.S.C. § 1341], permits the court to impose a fine instead,” and Walton is “eligible for probation under 18 U.S.C. § 3561.” Indeed, according to 18 U.S.C. § 3559(a)(3), Walton's 18 U.S.C. § 1341 mail fraud offense (punishable by a maximum of 20 years imprisonment) is a Class C felony, and 18 U.S.C. § 3561(a)(1) precludes probation only for those guilty of Class A

or Class B felonies. The PSR should be corrected with respect to this point. Thus, although Mr. Walton respectfully requests a sentence of 12 months' imprisonment, this Court could (in its discretion) impose a sentence of probation, and the record should so reflect.

**B. Mr. Walton Should Not be Prohibited From Practicing his Religion.**

The Probation Department claims that Mr. Walton operated an "extremist" segment of the Moorish Science Temple of America ("MSTA"), that the "national organization does not affiliate with his views," and that "the National Moorish Science Temple of America [has] no direct allegiance with the defendant's local run chapter." (PSR ¶ 8; *see also* Recommendation at 2.) According to the Probation Department, Mr. Walton "could utilize his right to practice his religion as a method to shield potential future criminal tax fraud activities." (Recommendation at 2.) Thus, Probation recommends that as part of Mr. Walton's sentence, the Court prohibit Mr. Walton from practicing his religion after his release. (*See* PSR at 20 (recommended discretionary condition); *see also* Recommendation at 4, 7.) These assertions and this recommendation are ill-informed, inappropriate, and unconstitutional.

**First**, although the MSTA was founded in 1913 by Drew Ali, it is well known that shortly thereafter, the MSTA split into at least three "competing factions," which "schisms" accelerated after Ali's death in 1929. *See* [https://en.wikipedia.org/wiki/Moorish\\_Science\\_Temple\\_of\\_America](https://en.wikipedia.org/wiki/Moorish_Science_Temple_of_America). Thus, it is inaccurate and misleading to suggest there is one MSTA national organization.

**Second**, Mr. Walton's religious beliefs are not on trial here. His filing of trust tax returns in violation of the mail fraud statute is what is at issue and Mr. Walton's religious practices are not an element of (nor even relevant to) the charges to which he has pled guilty. *See U.S. v. Johnson*, 374 Fed. Appx. 1, \*2 (11<sup>th</sup> Cir. 2010) ("The religion of a defendant is a constitutionally

impermissible sentencing factor”). Indeed, the Guidelines explicitly provide that “religion” is “not relevant in the determination of a sentence.” See USSG § 5H1.10.

**Third**, the U.S. Constitution protects Mr. Walton’s free exercise of religion, regardless of whether his religious practices are considered by the Probation Department (or anyone else) to be “mainstream,” and any sentence that sought to limit Mr. Walton’s exercise of religious beliefs would be unconstitutional on its face. See, e.g., *Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680, 689 (7<sup>th</sup> Cir. 1994) (“The Free Exercise Clause recognizes the right of every person to choose among types of religious training and observance”); *Kay v. Bemis*, 500 F.3d 1214, 1220 (10<sup>th</sup> Cir. 2007) (“[I]t is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment”) (quoting *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953)); and *U.S. v. Culbertson*, 406 Fed. Appx. 56, 59 (7<sup>th</sup> Cir. 2010) (“It is ill-advised for district courts to refer to a defendant’s religious background since such comments are easy to mischaracterize”). Thus, any characterizations of the legitimacy or mainstream nature of Mr. Walton’s religious beliefs, along with the recommendation that Mr. Walton’s religious freedom be restricted, should be stricken from the PSR and Recommendation.

**C. This Court Should Not Permit the Probation Department to Notify Mr. Walton’s Employer of his Guilty Plea, which Would Lead to the Immediate Loss of his Job.**

The PSR and Recommendation indicate that as part of Mr. Walton’s sentence, the Court should order that Mr. Walton’s current employer, the Chicago Park District, be informed of his guilty plea and/or sentence, which undoubtedly would lead to the immediate loss of his job. (See PSR at 24 (recommended special condition); see also Recommendation at 4-5, 8.) This recommendation appears to be based, in part, on Agent Howard’s assertions that unnamed witnesses told the government that Mr. Walton “utilized” Chicago Park District facilities to hold religious meetings. (*Id.*; see also PSR ¶ 8.) As noted above, there is nothing wrong with Mr.

Walton participating in (or even holding) religious meetings, and a sentence that prohibited Mr. Walton's exercise of his religious beliefs would be very troubling, and likely unconstitutional.

*See, e.g., U.S. v. Johnson*, 374 Fed. Appx. 1, \*2 (11<sup>th</sup> Cir. 2010); and USSG § 5H1.10.

Moreover, there is no indication that Mr. Walton is presently holding religious meetings at any Chicago Park District facility (or elsewhere), let alone that he is engaged in any illegal activity in connection with such meetings. Such a requirement, if imposed, would prematurely and unnecessarily impose a financial hardship upon Mr. Walton and negatively impact his ability to begin paying restitution. This Recommendation is inappropriate and unnecessary and should not be adopted by the Court.

#### V.

#### RECENT SENTENCES IN SIMILAR CASES SUPPORT THE IMPOSITION OF A 12-MONTH SENTENCE HERE.

The Government initially identified 15 similar cases where sentences have been imposed and provided a chart that summarized the sentences, which the Probation Department attached to the PSR. According to the government, Walton was involved in only two of the 15 cases listed on the chart (Taylor and Moore). Walton, therefore, is not alleged to have been involved in 13 of the 15 cases listed on the Government's chart of sentences in similar cases.<sup>4</sup>

Since then, Defendant's counsel has learned of eight additional defendants who have been charged with similar crimes, but also appear to have no connection whatsoever to Mr. Walton. These unrelated defendants facing similar charges include: Kori Broady, No. 17 CR 63 (Der-Yeghiayan, J.), Ulric Jones, No. 15 CR 505 (Blakey, J.), Betty Phillips, No. 11 CR 34-2 (Zagel, J.), Wayne Phillips, No. 11 CR 34-1 (Zagel, J.), Kristopher Smith, No. 15 CR 105

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<sup>4</sup> The Government does allege that Walton was involved with four defendants that are not listed on the chart, three of whom have since been sentenced: Chris Mietus, No. 15 CR 293 (Blakey, J.) (16 month sentence), Florentina Segura, No. 14 CR 464 (Chang, J.) (51 month sentence), and Dawn Shannon, No. 15 CR 503 (Norgle, J.) (60 day sentence). The case against the other defendant, Chris Mietus, No. 15 CR 293 (Blakey, J.), is still pending.

(Lefkow, J.), Willa Joy Smith, No. 10 CR 81 (Castillo, J.), Cheryl Spear, No. 15 CR 139 (Dow, J.), and Cathy Truitt, No. 14 CR 718 (Lee, J.).

Thus, although the Government implies that Mr. Walton was somehow the mastermind and ringleader of every similar case (Gov't Sent. Mem. (Dkt. 33) at 5 ("Defendant identified a vulnerability in the IRS's trust tax return processing system and orchestrated a massive tax scheme to exploit that vulnerability by filing numerous false returns.")), particularly those involving Moors, that is simply not the case. Specifically, of the 27 similar defendants that are on the Government's chart (or that Defendant's counsel has otherwise identified), Walton is alleged to have been involved in only six cases.

Moreover, Government documents (and Government pleadings in similar cases) demonstrate that Mr. Walton did not mastermind the scheme, but rather that Fani and Cutchlow Cahill, both of whom were convicted and sentenced in 2015, taught Mr. Walton and other members of his Temple about federal Form 1041 trust tax returns. (*See, e.g., U.S. v. Fani and Cutchlow Cahill*, No. 14 CR 198 (Gov't Sentencing Mem. (Dkt. 86) at 10 ("Fani Cahill not only perpetrated her own crimes, but she has also aided others in committing similar fraud, providing bogus Form 1041 examples to others, and providing instructions about filling out the forms falsely and recommendations about opening a trust bank account for purposes of the fraud"); *see also* 1/2/2010 email from F. Cahill to M. Walton and others (attached as Exhibit D).)

Further, unlike Mr. Walton, 16 of the 27 defendants the parties have identified went to trial (or have thus far refused to plead guilty). And in many of these cases, the defendants represented themselves *pro se* (or with appointed "stand-by" counsel) and filed numerous pleadings asserting "sovereign citizen" and similar arguments that federal courts in this circuit and elsewhere have found to be frivolous. *See, e.g., U.S. v. Fani and Cutchlow Cahill*, No. 14 CR 198 (Gov't Sentencing Mem. (Dkt. 86) at 9-10 (noting that defendants reject the jurisdiction

of the Court and that even after their convictions at trial, defendants continue to assert frivolous defenses and other arguments); *U.S. v. Hakeem El Bey*, No. 14 CR 447 (Gov't Sentencing Mem. (Dkt. 74) at 7-8 (noting that defendant's behavior throughout his case, including his post-conviction filing of a "notarial verification of established truth" that made "nonsensical" claims about his "sovereign status," "reflect[ed] a total contempt for the law and for the judicial process"); and *U.S. v. Betty Phillips*, No. 11 CR 34-2 (Gov't Sentencing Mem. (Dkt. 90) at 5 (noting "[d]efendant has never accepted responsibility for this crime . . . [and] has repeatedly insisted on the patently irrelevant defense that she has no tax liability due to her alleged 'status' as an 'Indigenous Aboriginal Moor'").)

Similarly, one similar defendant fled after being convicted and was sentenced *in absentia*. *U.S. v. Florentina Segura*, No. 14 CR 464 (sentenced *in absentia* to above-Guidelines sentence of 51 months by Judge Chang after defendant failed to surrender and was reported to have fled the country).

Finally, a number of the similar defendants, unlike Mr. Walton, had prior criminal records and were in criminal history category II (or higher), including Solomon Smith, Ronald Taylor, and Eric Moore.

Given that Mr. Walton has pled guilty early in the case, has no prior record, has not burdened the Court with frivolous arguments, and has always appeared before this Court when required to do so, the most relevant similar sentences are the 10 defendants who proceeded in a similar fashion, as shown in the following chart:



Date:	Defendant:	Case No.	Judge:	Trial or Criminal Plea:	Criminal History:	Intended Loss:	Actual Loss:	Range	Sentence:
12/17/2014	Hodges, Dianne	13-CR-678-1	Leinenweber	P	I	\$427,755	\$215,584	27 33	6 months
2/12/2015	Hodges, Rahsaan	13-CR-678-2	Leinenweber	P	I	\$77,737	\$77,737	27 33	6 months
6/10/2015	Crayton, Ethan	14-CR-448	Darrah	P	I	\$901,218	\$601,218	24 30	24 months
8/31/2015	Norwood, Corey	13-CR-267	Guzman	P	I	\$1,020,053	\$120,053	30 37	24 months
1/13/2016	Dawson, Kazz	15-CR-037	Kendall	P	I	\$900,000	\$300,000	24 30	15 months
1/19/2016	Harris, John F.	15-CR-091	Guzman	P	I	\$192,740	\$192,740	12 18	3 months
7/18/2016	Carter, Henry	14-CR-432	Coleman	P	I	\$508,991	\$259,082	18 24	Probation
1/17/2017	Lukes, Candice	15-CR-283	Der-Yeghiayan	P	I	\$600,000	\$600,000	24 30	Probation
5/3/2017	Mietus, Chris	15-CR-293	Blakey	P	I	\$902,210	\$902,210	24 30	16 months
5/3/2017	Shannon, Dawn	15-CR-503	Norgle	P	I	\$900,000	\$60,772	8 14	60 days

Notably, all but one of these defendants received sentences that were substantially below their Guideline range, and a majority received sentences that were only a small fraction of the calculated range. On average, these defendants received prison sentences of 9.6 months. Thus, when Mr. Walton's situation is fairly compared to similarly situated defendants, a 12 month sentence is consistent with the Section 3553(a) factors and would be fair and just.

#### CONCLUSION

In sum, given Mr. Walton's background, his lack of criminal history, and his acceptance of responsibility without the dramatic tactics employed by defendants in similar cases, a 12-month sentence of imprisonment would constitute an appropriate period of punishment, include a strong message of deterrence, and would protect society, but it would also provide a path for Mr. Walton to rehabilitate himself and re-enter society, and to resume working so that he can begin paying restitution. Such a sentence would be sufficient, but not be greater than necessary, to comply with the statutory sentencing objectives of 3553(a).

Dated: July 10, 2017

MARCEL A. WALTON

/s/ Adam P. Merrill

Adam P. Merrill

Adam P. Merrill (6229850)  
SPERLING & SLATER  
55 West Monroe St., Suite 3200  
Chicago, Illinois 60603  
(312) 641-3200

# Exhibit A

**Adam Merrill**

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**From:** Adam Merrill  
**Sent:** Wednesday, May 24, 2017 5:47 PM  
**To:** Missy\_Kolbe@ilnp.uscourts.gov  
**Cc:** Rick Young (rick.young@usdoj.gov); Carol A. Bell (carol.bell@usdoj.gov)  
**Subject:** US v Marcel Walton--Objections to PSR & Sentencing Recommendation  
**Attachments:** 2017.02.20--LJS to M Kolbe forwarding Executed M Walton financial packet.pdf

Hi Missy,

On behalf of Mr. Walton, we have a number of objections to information/recommendations that are included in the Probation Department's Presentence Investigation Report ("PSR") or its sentencing recommendation (the "Recommendation"). To hopefully limit the number of disputed issues at sentencing, I herein detail Defendant's objections and respectfully request that Probation revise the PSR and/or Recommendation. Defendant's objections are as follows:

1. **Defendant's Religious Practices.** The PSR and Recommendation claim that Mr. Walton operated an "extremist" segment of the Moorish Science Temple of America ("MSTA"), that the "national organization does not affiliate with his views," and that "the National Moorish Science Temple of America [has] no direct allegiance with the defendant's local run chapter." (PSR 8; *see also* Recommendation at 2.) Mr. Walton, in Probation's view, "could utilize his right to practice his religion as a method to shield potential future criminal tax fraud activities." (Recommendation at 2.) Thus, Probation recommends that as part of Mr. Walton's sentence, the Court prohibit Mr. Walton from practicing his religion after his release. (PSR at 20 (recommended discretionary conditions); *see also* Recommendation at 4, 7.) These assertions and this recommendation are ill-informed, inappropriate, and unconstitutional. **First**, although the MSTA was founded in 1913 by Drew Ali, it is well known that shortly thereafter, the MSTA split into at least three "competing factions," which "schisms" accelerated after Ali's death in 1929. *See* [https://en.wikipedia.org/wiki/Moorish\\_Science\\_Temple\\_of\\_America](https://en.wikipedia.org/wiki/Moorish_Science_Temple_of_America). Thus, it is inaccurate and misleading to suggest there is one MSTA national organization. **Second**, Mr. Walton's religious beliefs are not on trial here. His filing of trust tax returns in violation of the mail fraud statute is what is at issue and Mr. Walton's religious practices are not an element of (nor even relevant to) the charges to which he has pled guilty. *See U.S. v. Johnson*, 374 Fed. Appx. 1, \*2 (11<sup>th</sup> Cir. 2010) ("The religion of a defendant is a constitutionally impermissible sentencing factor"); *see also* USSG § 5H1.10 ("religion" is "not relevant in the determination of a sentence"). **Third**, the U.S. Constitution protects Mr. Walton's free exercise of religion, regardless of whether his religious practices are considered to be mainstream, courts are not permitted to consider religion for purposes of sentencing, and any sentence that sought to limit Mr. Walton's exercise of religious beliefs would be unconstitutional on its face. *See, e.g., Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680, 689 (7<sup>th</sup> Cir. 1994) ("The Free Exercise Clause recognizes the right of every person to choose among types of religious training and observance"); *Kay v. Bemis*, 500 F.3d 1214, 1220 (10<sup>th</sup> Cir. 2007) ("[I]t is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment") (quoting *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953); and *U.S. v. Culbertson*, 406 Fed. Appx. 56, 59 (7<sup>th</sup> Cir. 2010) ("It is ill-advised for district courts to refer to a defendant's religious background since such comments are easy to mischaracterize"). Thus, any characterizations of the legitimacy or mainstream nature of Mr. Walton's religious beliefs, along with the recommendation that Mr. Walton's religious freedom be restricted, should be omitted from the PSR and Recommendation.
2. **"Sovereign Citizen" Beliefs.** The Recommendation imputes sovereign citizen beliefs to Mr. Walton that are nowhere in the record, and recommends a Guidelines sentence in order to deter similar sovereign citizen conduct. "The defendant's sovereign beliefs about being owed monetary compensation from the United States government may place him in a difficult position where he still has to live in society and interact in a world where these views are not widely accepted as a tangible fact. Given these constructs, it may be challenging for

this defendant to find resolution with his beliefs and how he will be able to accept his participation in this offense, repay the government, and avoid any future criminal financial offenses in the future.” (Recommendation at 2.) Indeed, Probation claims a 75-month sentence is necessary as “[g]eneral deterrence in order for other individuals within his church or subscribing to sovereign ideologies who could be potentially deterred should they consider utilizing the same fraudulent tax filing measures in order to obtain money for which they are not entitled.” (Recommendation at 2.) Mr. Walton has a right to be sentenced based on the charges to which he has pled guilty and other relevant conduct either admitted by the Defendant or proven at sentencing. Yet there is nothing in the Plea Agreement or in Mr. Walton’s responses to Probation’s interview questions that indicates he presently harbors sovereign citizen beliefs that are contrary to U.S. law. To the contrary, the Plea Agreement and Walton’s admission of guilt at his change of plea hearing reflect Walton’s acknowledgement that the trust tax return filings described in the indictment were illegal and lacked justification. The only “sovereign citizen” statements referenced in the PSR were supposedly made by Walton on October 19, 2012 (see PSR ¶ 19), well before Walton’s arrest and change of plea. Absent evidence that Walton presently possesses “sovereign citizen” beliefs that would permit or justify illegal conduct, Probation’s assertions that Mr. Walton presently possesses such beliefs should not be included in the PSR or Recommendation, and should not serve as the basis for Probation’s recommended sentence.

3. **Informing the Chicago Park District of Mr. Walton’s Guilty Plea.** The PSR and Recommendation indicate that as part of Mr. Walton’s sentence, the Court order that Mr. Walton’s employer, the Chicago Park District, be informed of his guilty plea and/or sentence, which undoubtedly would lead to the loss of his job. (PSR at 24 (recommended special condition); see also Recommendation at 4-5, 8.) This recommendation appears to be based, in part, on Agent Howard’s assertions that unnamed witnesses told the government that Mr. Walton “utilized” Chicago Park District facilities to hold religious meetings. (*Id.*; see also PSR ¶ 8.) As noted above, there is nothing wrong with Mr. Walton participating in (or even holding) religious meetings, and a sentence that prohibited Mr. Walton’s exercise of his religious beliefs would be unconstitutional. Moreover, there is no indication that Mr. Walton is presently engaged in any illegal activity with respect to religious meetings, at any Chicago Park District facility or elsewhere. Finally, since such a requirement would undoubtedly lead to the prompt loss of Mr. Walton’s job, such a requirement would serve as a hardship to Mr. Walton and would negatively impact Mr. Walton’s ability to begin paying restitution. This Recommendation should be omitted.
4. **“Paper Terrorism.”** Based solely on assertions from Agent Howard, the PSR claims that Mr. Walton “filed various Moorish documentation in Cook County, which held defendant Walton’s name or signature.” (PSR ¶ 13.) The Recommendation goes on to call such conduct “paper terrorism,” implying that Mr. Walton is himself a “paper terrorist.” (Recommendation at 1.) Setting aside for the moment whether such filings can fairly be characterized as “paper terrorism,” as you know, the charge and plea in this case relate only to mail fraud in connection with Mr. Walton’s filing of federal trust tax returns. Mr. Walton has not been charged with (or pled guilty to) any crime that can be characterized as “paper terrorism.” Nor do we anticipate that the Government will seek to introduce evidence concerning the filing of Moorish documentation in Cook County at Mr. Walton’s sentencing. Thus, it is irrelevant and unfairly prejudicial for either the PSR or the Recommendation to mention such filings or imply that this is a case of “paper terrorism,” and any such references should be removed. Nor should any such filings play a role in Probation’s recommendation of a sentence for Mr. Walton. Moreover, given what this case is actually about, there is no basis for Probation’s recommendation of a condition prohibiting Mr. Walton “from filing any liens or legal documents against or for any individual/s, businesses or entities without prior permission of this Court,” and this recommended condition should be dropped from the PSR and Recommendation. (PSR at 24 (recommended special condition); see also Recommendation at 1-2, 9.)
5. **Unsupported Assertions Concerning the Number Tax Returns/Loss Amount.** Although Mr. Walton has “acknowledged] that the intended loss was \$16,391,161” (Plea Agreement ¶ 6) and that those losses stemmed from the twenty trust tax returns listed on the Government’s summary of “tax loss amounts” attached to the Government’s version, the PSR nonetheless claims that “the IRS has connected this defendant to approximately ninety individuals who filed fraudulent trust or estate tax returns for approximately 103 different purported trusts for tax years 2005 through 2012, seeking approximately \$116,515,757, from the U.S. government.” (PSR ¶ 13.) Based on this, the PSR even characterizes the \$16 million loss amount as “conservative” (PSR ¶ 24), and the Recommendation suggests that Mr. Walton’s “involvement in what points to significantly higher loss amounts than what he ultimately agreed to in the plea agreement” is an “aggravating factor” for purposes of

sentencing (Recommendation at 1). As you know, the Government and the defendant specifically negotiated the Plea Agreement, including the loss amount. Among other things, the parties had disagreed about the extent to which the larger amount the PSR references could be established as “relevant conduct” for purposes of sentencing. Moreover, the Government has never provided the Defendant (and we assume Probation) with the details concerning the 120 trust returns and the \$116.5 million loss figure. As you know, “[t]he Government retains the burden of proving facts relevant to the crime at the sentencing phase,” *Mitchell v. U.S.*, 526 U.S. 314, 330 (1999), and the standard of proof for sentencing factors is a preponderance of the evidence, *see, e.g.*, USSG § 6A1.3 (commentary ¶ 3) and *U.S. v. Reuter*, 463 F.3d 792, 792-93 (7th Cir. 2006). Although Mr. Young or Ms. Bell can correct me if I’m wrong, I don’t believe the Government intends to prove up these 103 trust returns or the \$116.5 million loss amount at sentencing. Thus, neither the PSR nor the Recommendation should mention these larger amounts. Nor should the larger amounts play any role in Probation’s recommendation of a sentence for the Defendant.

6. **Defendant’s Financial Submissions Is Not a Basis for Probation’s Recommendation of an Enhanced Sentence.** The PSR claims Mr. Walton failed to submit a signed set of financial disclosures, and bases its recommendation for a Guideline sentence (at least in part) on this deficiency. (PSR ¶ 32 (“The undersigned received his financial documents, on February 17, 2017, without proper documentation, signatures, and later than requested. . . . The undersigned will address this as an 18 U.S.C. 3553(a) factor.”); *see also id.* ¶¶ 74, 78.) In the Recommendation, Probation elaborated that it “found working with this defendant difficult as he did not provide his financial forms in the requested timely manner, with the supporting documentation, and he also did not return text messages as he agreed to do during the initial face-to-face interview with this officer.” (Recommendation at 2.) These statements are inaccurate and inappropriately punitive. **First**, on February 20, 2017, on behalf of Mr. Walton, we did submit a **signed** set of financial disclosures. (*See* attached.) **Second**, I was the reason for the tardy submissions—not Mr. Walton. From your first contact with me after Mr. Walton’s change of plea, I asked that I be present for/involved with all contact between Probation and my client. (The only exception I authorized was Probation’s home visit, which I permitted to go forward on the condition that Probation not discuss the substance of the case with Mr. Walton during the home visit.) And as you may recall, I had an eight-day jury trial in early February that prevented me from following up with and passing along Mr. Walton’s forms sooner, and from responding sooner to your emails and voice messages seeking Mr. Walton’s executed financial packet. **Third**, no relevant documentation that Mr. Walton has in his possession has been withheld. As you can see from the financial disclosures and the credit report Probation pulled, Mr. Walton has no significant assets, a modest income, and modest expenses. (Indeed, based on similar financial disclosures, the Court appointed CJA counsel to represent Mr. Walton.) Given that Mr. Walton has provided documentary support for his income, Probation’s failure to receive documentation concerning Mr. Walton’s monthly rent, groceries, utilities, transportation, clothing, and fridge rental, all of which add up to just \$1,898 per month, is insignificant and should not play no role in Probation’s recommendation of a sentence. Indeed, I cannot recall a CJA client providing similar documentation in any case I’ve handled while a member of the Federal Defender Panel. Nonetheless, if there are particular monthly expenses that Probation seeks documentation concerning, please indicate what they are and I will work with Mr. Walton to gather and provide such documents to Probation prior to his sentencing. Moreover, although the PSR repeatedly bemoans Mr. Walton’s failure to provide documentation concerning his Chicago Park District retirement/pension benefits (PSR ¶¶ 74-75, 78), other than his paystubs (which Mr. Walton provided to Probation), Mr. Walton has no documentation concerning his retirement/pension benefits. Nonetheless, I am working with Mr. Walton to see if he can secure documents concerning his retirement/pension benefits from the Chicago Park District, and will promptly provide such documents to Probation as soon as I receive them.
7. **Unsubstantiated and Inflammatory Statements Concerning Gangs and Firearms.** Although Mr. Walton acknowledges that in the 1980s, he was a member of the “Vice Lords” street gang, the PSR mistakenly suggests that Mr. Walton is still a part of the gang. (PSR ¶ 59.) That is not true and that is not what Mr. Walton said. Although Mr. Walton admitted he was a Vice Lord as a young man and at times carried a gun (*see* PSR ¶ 58), both he and I recall him saying that he was no longer involved **in any way** with the Vice Lords gang, and simply mentioned (as an aside) the long-standing gang belief that once you are a member of a gang, you are always a member of the gang. Thus, you can never truly be “out” of a gang. Given that Mr. Walton has had no involvement with the gang (or carried a gun) for decades and that there is no evidence he has since been (or is

still) involved in the gang or carries a gun, Mr. Walton's explanation (when placed in proper context) is not a basis for suggesting he is presently a member of the Vice Lords gang or carries a gun, and any such references should be stricken from the PSR. Moreover, the PSR also claims that at some unspecified time, Mr. Walton "made threats to shoot court employees." (PSR ¶ 58.) Mr. Walton denies this and we know of no evidence to support this inflammatory and prejudicial assertion, which is unrelated to the charged conduct in any event. Nor do we expect the Government to attempt to establish such facts at sentencing. This assertion should be stricken from the PSR as well.

8. **Mr. Walton's Eligibility for Probation.** The PSR claims that pursuant to USSG § 5B1.1, Mr. Walton is not eligible for a sentence of probation. (PSR ¶ 86.) That is not correct. Notably, after *United States v. Booker*, 543 U.S. 220, 245-46 (2005), the guidelines are merely advisory. And here, just as in *United States v. Warner*, 792 F.3d 847, 855 (7<sup>th</sup> Cir. 2015), "no statute expressly require[s] the district court to send [Walton] to prison," "[t]he law that [Walton] violated, [18 U.S.C. § 1341], permits the court to impose a fine instead," and Walton is "eligible for probation under 18 U.S.C. § 3561." Indeed, according to 18 U.S.C. § 3559(a)(3), Walton's 18 U.S.C. § 1341 mail fraud offense (punishable by a maximum of 20 years imprisonment) is a Class C felony, and 18 U.S.C. § 3561(a)(1) precludes probation only for those guilty of Class A or Class B felonies. The PSR should be corrected with respect to this point.

I know there's a lot here. If it'd be helpful to discuss some (or all) of these items over the phone or in person, please let me know and we can arrange a call or meeting. Thanks.

Adam Merrill  
Sperling & Slater  
312.368.5932

# Exhibit B

**Adam Merrill**

---

**From:** Laura Sands  
**Sent:** Monday, February 20, 2017 3:24 PM  
**To:** 'Missy\_Kolbe@ilnp.uscourts.gov'  
**Cc:** Adam Merrill  
**Subject:** US v. Walton - Marcel Walton Financial Packet  
**Attachments:** 217.01.25.US v. Walton--M Walton Financial Packet for Probation Dept--Fully Executed--11 pages.pdf

Dear Ms. Kolbe,

Adam asked that I forward you the attached financial packet for Marcel Walton, which is now fully-executed.

Laura Sands, Assistant to  
Claire P. Murphy, Adam P. Merrill  
& Scott F. Hessell  
**Sperling & Slater, P.C.**  
55 West Monroe, Suite 3200  
Chicago, IL 60603  
312.242.6282 - Direct  
312.641.3200 - General  
312.641.6492 - Facsimile



PROB 48D  
(Rev. 07/13)

**DECLARATION OF DEFENDANT OR OFFENDER  
NET WORTH & CASH FLOW STATEMENTS**

I, Marcel A Walton

residing at

259 North Pulaski Road  
Chicago, IL 60624

have completed the attached  Net Worth Statement (Prob. Form 48) or  Net Worth Short Form Statement (Prob. Form 48EZ) and/or  Cash Flow Statement (Prob. Form 48B) that fully describe my financial resources, including a complete listing of all assets owned or controlled by me as of this date and any transfers or sales of assets since my arrest. The Cash Flow Statement (Prob. Form 48B) also includes my financial needs and earning ability and the financial needs and earning ability of my spouse (or significant other) and my dependent(s) living at home.

Net Worth Statement (Total pages, including additional pages \_\_\_\_\_ )

Net Worth Short Form Statement (Total pages, including additional pages \_\_\_\_\_ )

Cash Flow Statement (Total pages, including additional pages \_\_\_\_\_ )

I declare under penalty of perjury that the foregoing is true and correct.

False statements may result in revocation of supervision, in addition to possible prosecution under the provisions of 18 U.S.C. § 1001, which carries a term of imprisonment of up to 5 years and a fine of up to \$250,000, or both.

  
(Defendant Signature)

Executed on

25th day of January, 2017.

PROB 48B  
(Rev. 03/15)

Last Name	First Name	Middle Name	Social Security Number
Walton	Marcel	A	332-62-7370

### Instructions for Completing Monthly Cash Flow Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer a statement fully describing your financial resources, including a complete listing of all monthly cash inflows and outflows.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your spouse, significant others, or dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

Amendments were made to 18 U.S.C. §§ 3663 (a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant; liabilities, and the financial needs and earning ability of a defendant and a defendant's dependents are all relevant to the court's decision regarding a defendant's ability to pay. Your Cash Flow Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) living in your home that you enjoy the benefits of or make occasional contributions toward.

Please complete the Monthly Cash Flow Statement in its entirety. You must answer "None" to any item that is not applicable to your financial condition. Attach additional pages if you need more space for any item. All entries must be accompanied by supporting documentation (see Request for Cash Flow Statement Financial Records (Prob. 48C)). Initial and date each page (including any attached pages) and sign and date the last page of the Cash Flow Statement.

PROB 48B  
(Rev. 03/15)

MONTHLY CASH FLOW STATEMENT		Net	Gross
Last Name - Walton			
Monthly Cash Inflows		\$2,674	\$2,900
Defendant			
Your Salary/Wages (List both monthly gross earnings and take-home pay after payroll deductions.)		1,337 (2x a month)	1,450 (2x a month)
Your Cash Advances (List all payroll advances or other advances from work.)		0	
Your Cash Bonuses (List all payments from work in addition to your salary that are not an advance.)		0	
Commissions (List all non-employee earnings as an independent contractor.)		0	
Business Income (List both monthly gross income and net income after deducting expenses.)		0	
Interest (List all interest earned each month.)		0	
Dividends (List all dividends earned each month.)		0	
Rental Income (List all monthly income received from real estate properties owned.)		0	
Trust Income (List all trust income earned each month.)		0	
Alimony/Child Support (List all alimony or child support payments received each month.)		0	
Social Security (List all payments received from Social Security.)		0	
Other Government Benefits (List all amounts received from the government not yet reported (e.g., Food stamps and unemployment compensation))		0	
Pensions/Annuities (List all funds received from pensions and annuities each month.)		0	
Allowances-Housing/Auto/Travel (List all funds received from housing allowances, auto allowances, travel allowances, and any other kind of allowance.)		0	
Gratuities/Tips (List all gratuities and tips received each month from any and all sources.)		0	
Spouse/Significant Other Salary/Wages (List all gross and net monthly salary and wages received by your spouse or significant other.)		0	
Other Joint Spousal Income (List any monthly income jointly earned with your spouse or significant other [e.g., any income from spouse or income from a business owned or operated by the spouse that you have a joint ownership interest in or control]).		0	
Income of Other In-House (List all monthly income of others living in the household or the monthly amount actually paid for household bills by these persons.)		0	
Gifts from Family (List all amounts received as gifts from family members each month.)		0	
Gifts from Others (List all gifts received from any sources not yet reported.)		0	
Loans from Your Business (List all loan amounts received each month from all businesses owned or controlled by you.)		0	
Mortgage Loans (List all amounts received each month from mortgage loans owed to you.)		0	
Other Loans (List all other loan amounts received each month not yet reported.)		0	
Other (specify) (List all other amounts received each month not yet reported.)		0	
TOTALS		2,674	2,900

Last Name - Walton	
Necessary Monthly Cash Outflows	
	Amount
Rent or Mortgage (List monthly rental payment or mortgage payment.)	600.00
Groceries (List the total monthly amount paid for groceries and number of people in your household.) #	<del>1400</del> / 4 / 0.500
Utilities (List the monthly amount paid for electric, heating oil/gas, water/sewer, telephone, and basic cable.)	
Electric	210.00
Heating Oil/Gas	170.00
Water/Sewer	
Telephone	70.00
Basic Cable (no premium channels)	
Public Transportation (List monthly amount paid for public transportation.)	\$433 per month (166.00 week)
Car Payments (List all payments made to purchase or lease vehicles.)	
Commuting Expenses (List monthly amount paid for gasoline, tolls etc.)	
Auto Insurance (List the monthly amount paid for auto insurance.)	
Health Insurance (List the monthly amount paid for health insurance.)	
Homeowner/Rental Insurance (List the monthly amount paid for homeowner/rental insurance.)	
Clothing (List the monthly amount actually paid for clothing.)	250.00
Loan Payments (List all monthly amounts paid toward verified loans, other than loans to family members, which are non-allowable expenses.)	
Credit Card Payments (List all minimum monthly credit card or charge card payments.)	
Medical (List all expenses not covered by insurance)	
Alimony/Child Support (List all alimony or child support payments made each month.)	
Criminal Monetary Penalty (List all monthly payments for court-ordered criminal monetary penalties.)	
Court-ordered Costs (List the total monthly payments made for location monitoring and drug and mental health treatment.)	
Other (specify) (List all other necessary monthly amounts paid each month not yet reported.)	
Other Factors That May Affect Monthly Cash Flow (Describe)	Fridge Rental \$75
<b>TOTAL</b>	<b>\$1,898</b>
<b>NET MONTHLY CASH FLOW: \$</b>	<b>(CASH INFLOWS LESS NECESSARY CASH OUTFLOWS)</b>
<b>MONTHLY CRIMINAL MONETARY PENALTY PAYMENT: \$</b>	
<b>PROSPECT OF INCREASE IN CASH INFLOWS</b> (Give a general statement of the prospective increase of the value of any cash inflows reported.)	

Signature [Handwritten Signature]

Date 07-25-2017

SA78

PROB 48  
(Rev. 07/13)

Last Name	First Name	Middle Name	Social Security Number
Walton	Marcel	A	332-62-7370

### Instructions for Completing Net Worth Statement

Having been convicted in the United States District Court, you are required to prepare and file with the probation officer an affidavit fully describing your financial resources, including a complete listing of all assets you own or control as of this date and any assets you have transferred or sold since your arrest. Amendments were made to 18 U.S.C. §§ 3663(a)(1)(B)(i), 3664(d)(3), and 3664(f)(2), and Rule 32(b)(4)(F) to clarify that the assets owned, jointly owned, or controlled by a defendant, and liabilities are all relevant to the court's decision regarding the ability to pay. Your Net Worth Statement should include assets or debts that are yours alone (I-Individual), assets or debts that are jointly (J-Joint) held by you and a spouse or significant other, assets or debts that are held by a spouse or significant other (S-Spouse or Significant Other) that you enjoy the benefits of or make occasional contributions toward, and assets or debts that are held by a dependent (D-Dependent) that you enjoy the benefits of or make occasional contributions toward.

If you are placed on probation or supervised release (or other types of supervision), you may be periodically required to provide updated information fully describing your financial resources and those of your dependents, as described above, to keep a probation officer informed concerning compliance with any condition of supervision, including the payment of any criminal monetary penalties imposed by the court (see 18 U.S.C. § 3603).

PROB 48  
(Rev. 07/13)

Page 2 of 8

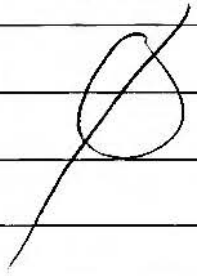
Last Name - Walton

### NET WORTH STATEMENT

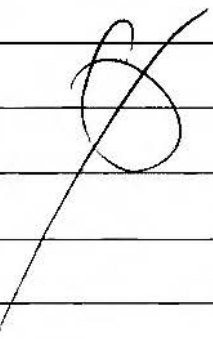
NOTE: I = Individual J = Joint S = Spouse/Significant Other D = Dependent

#### ASSETS

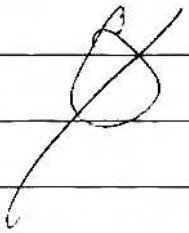
**BANK ACCOUNTS** (Include all personal and businesses checking and savings accounts, credit unions, money markets, certificates of deposit, IRA and KEOGH accounts, ROTH IRA's, Thrift Savings, 401K, etc.)

	I/J S/D	Name of Institution	Address	Type of Account	Account Number	Personal or Commercial	Balance	
Section A								

**SECURITIES** (Include all stocks in public corporations, stocks in businesses you own or have an interest in, bonds, mutual funds, U.S. Government securities, etc.)

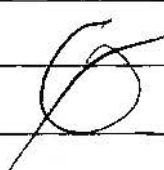
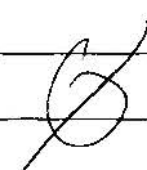
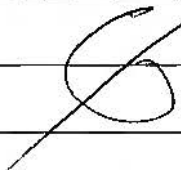
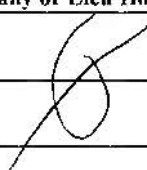
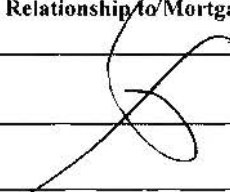
	I/J S/D	Name and Kind of Security	Location of Security	Number of Units	Fair Market Value	
Section B						

**MONEY OWED TO YOU BY OTHERS** (Include all money owed to you by any person or entity.)

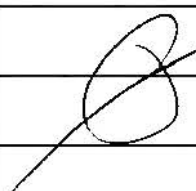
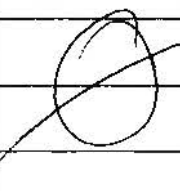
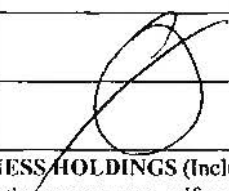
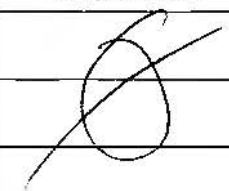
	I/J S/D	Name and Address of Debtor	Amount Owed to You	Reason Owed to You	Date Money Loaned	Relationship to Debtor (if any)	Monthly Payment or Date Full Payment Expected	Is Debt Collectible ?	
Section C									

Initials M.W Date 1/25/2017  
**SA80**

PROB 48  
(Rev. 07/13)

Last Name - Walton								
Section D	LIFE INSURANCE (Include type of policy [whole life, variable, or term], face amount [the stated amount of coverage] and cash surrender value [the value of the investment portion of a whole life or variable policy.]							
	I/J S/D	Name and Address of Company and Name of Beneficiary	Policy Number	Type of Policy	Face Amount	Cash Surrender Value	Amount Borrowed	Amount You Can Borrow
								
Section E	SAFE DEPOSIT BOXES OR STORAGE SPACE FACILITY (Include all safe deposit boxes or storage space you rent or places you have access to in which others are holding assets or items belonging to you.)							
	I/J S/D	Name and Address of Box or Facility Location		Box Number or Space	Contents	Fair Market Value		
								
Section F	MOTOR VEHICLES (Include all cars, trucks, mobile homes, motorcycles, all terrain vehicles, boats, airplanes, etc.)							
	I/J S/D	Year, Make & License Number/Vehicle Identification Number	Mileage	Loan/Lease Balance (if any)	Date Loan/Lease Will be Paid Off or Ends	Monthly Payment	Fair Market Value	
								
Section G	REAL ESTATE (Include property, parcels, lots, timeshares, and developed land with buildings.)							
	I/J S/D	Real Estate Address (include county and state)/ Mortgage Company or Lien Holder	Purchase Date	Purchase Price	Mortgage Balance (if any)	Date Mortgage Will be Paid Off	Monthly Payment	Fair Market Value
								
Section H	MORTGAGE LOANS OWED TO YOU (Include name, address, and relationship [if any] to the mortgagee [the party that bought the real estate you sold and is making payments to you].)							
	I/J S/D	Mortgagee (name & address)/ Relationship to Mortgagee	Mortgage Balance	Date Mortgage Will be Paid Off	Balloon Payment? If Yes, Date?	Monthly Payment	Is Debt Collectible?	
								

Initials M.W. Date SA 8/5/2017

<b>Last Name - Walton</b>								
Section I	<b>OTHER ASSETS</b> (Include any cash on hand, jewelry, art, paintings, coin collections, stamp collections, musical instruments, collectibles, antiques, home furnishings, copyrights, patents, etc.)							
	I/J S/D	Description	Loan Balance (if any)	Date Loan Will be Paid Off	Monthly Payment	Where is Asset Located?	Fair Market Value	
								
Section J	<b>ANTICIPATED ASSETS</b> (Include any assets you expect to receive or control from lawsuits for compensation or damages, profit sharing, pension plans, inheritance, wills, or as an executor or administrator of any succession or estate.)							
	I/J S/D	Amount Received or Expected to Receive	Date Expected to Receive	Reason You Expect This	Name and Address of Person or Company That Can Verify This (e.g., attorney, financial institution, executor)			
								
Section K	<b>TRUST ASSETS</b> (Include all trusts in which you are a grantor or donor [the person who establishes the trust], the trustee or fiduciary [who controls the trust assets and income or the beneficiary who has or will receive benefits from the trust].)							
	I/J S/D	Name of Trust/ Taxpayer ID#	Value of Trust	Your Annual Income From Trust	Your Interest in Trust Assets			
								
Section K	<b>BUSINESS HOLDINGS</b> (Include all businesses in which you have an ownership interest or with which you had an affiliation within the last three years; e.g., self-employed sole proprietor, officer, shareholder, board member, partner, associate, etc.) Complete Section N (attach additional pages, if necessary).							
	I/J S/D	Name and Address of Business/ Taxpayer I.D.#	Type of Business Entity	Industry of Business	Date Business Started	Capital Investment to Start	Your Ownership Interest Percentage	Sale Price or Fair Market Value of Your Interest
								

Initials M.W Date 1/25/2017  
**SA82**



<b>Last Name - Walton</b>							
<b>Section L</b>	<b>INCOME TAX RETURNS</b>						
	<b>Type of Income Tax Return Filed</b>			<b>Last Filing Year</b>		<b>Years of Last 5 Income Tax Returns You Will Submit to the Probation Officer</b>	
	Individual (Form 1040)						
	Partnership/Limited Liability Company (Form 1065)						
	Corporation (Form 1120)						
S Corporation (Form 1120S)							
<b>Section M</b>	<b>TRANSFER OF ASSETS</b> (Include any assets you have transferred or sold since the date of your arrest with a cost or fair market value of more than \$1,000.00. Also list any assets that someone else is holding on your behalf.)						
	<b>I/J S/D</b>	<b>Description of Asset/ Reason Transferred/Sold</b>	<b>Date of Transfer/Sale</b>	<b>Original Cost</b>	<b>Amount You Received, if Any</b>	<b>Name of Purchaser or Person Holding the Asset</b>	<b>Sale Price or Fair Market Value at Transfer</b>
<b>Section N</b>	<b>NAMES OF SHAREHOLDERS OR PARTNERS</b> (Include all shareholders, officers, and/or partners, indicating each respective ownership interest.)						
	<b>Name of Business</b>			<b>Names of Shareholders/Partners</b>			<b>Ownership Interest Percentage</b>

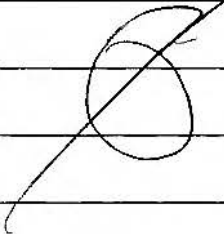
Initials M.W Date 1/25/2017  
SA83

PROB 48  
(Rev. 07/13)

Last Name - Walton

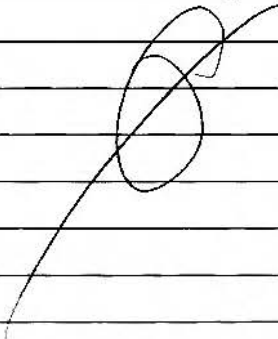
**ASSETS YOU WILL LIQUIDATE** (Include all assets you intend to liquidate to satisfy any criminal monetary penalties that may be imposed.)

Section O

Asset Description	Estimated Value of Asset	Date You Will Liquidate	Current Location of Asset (if real property, county and state)
			

**PROSPECT OF INCREASE IN ASSETS** (Give a general statement of the prospective increase of the value of any asset you own.)

Section P



Initials M.W. Date 1/25/2017  
SA84

PROB 48  
(Rev. 07/13)

Page 7 of 8

<b>Last Name -</b> Walton							
<b>LIABILITIES</b>							
<b>CHARGE ACCOUNTS AND LINES OF CREDIT</b> (Include all bank credit cards, lines of credit, revolving charge accounts, etc.)							
Section A	I/J S/D	Type of Account or Card	Name and Address of Creditor	Credit Limit	Amount Owed	Credit Available	Minimum Monthly Payment
<b>OTHER DEBTS</b> (Include mortgage loans, notes payable, delinquent taxes, and child support.)							
Section B	I/J S/D	Owed To	Address	Relationship (if any)	Amount Owed	Reason Owed	Monthly Payment
<b>PARTY TO CIVIL SUIT</b> (Include any civil lawsuits you have ever been a party to.)							
Section C	I/J S/D	Name of Plaintiff in the Case	Court of Jurisdiction and County	Case Number	Date of Suit Filed	Date of Judgment	Judgment Amount/ Unpaid Balance
<b>BANKRUPTCY FILINGS</b> (Include information requested for any Chapter 7, 11, or 13 bankruptcy filings you have ever been a party to as an individual or as a business entity.)							
Section D	I/J S/D	Type of Bankruptcy (Voluntary or Involuntary)/ Name and Address of Trustee	Bankruptcy Case Number	Bankruptcy Court of Jurisdiction	County and State of Discharge	Date Filed	Date of Discharge

Signature *Harold Walton* Date 1/25/2017

SA85

# Exhibit C

**FILED**

NF

NOV 08 2012

JUDGE SHADUR

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MAGISTRATE JUDGE KIM

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

v.

CHERRON MARIE PHILLIPS,  
aka "Cherron Phillips El," "River Tali El Bey,"  
"River Tali Bey," "River Tali," and "River"

**12 CR 872**

No.

Violation: Title 18, United States Code,  
Section 1521

INDICTMENT

**RECEIVED**

NOV 08 2012

The SPECIAL JANUARY 2012 GRAND JURY charges that:

MICHAEL T. MASON  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT

COUNTS 1-12

On or about the dates set forth below, at Chicago, within the Northern District of Illinois, Eastern Division, the defendant, CHERRON MARIE PHILLIPS, also known as "Cherron Phillips El," "River Tali El Bey," "River Tali Bey," "River Tali," and "River," while aiding and abetting and while being aided and abetted by other persons both known and unknown to the Grand Jury, did file, and attempt to file, in the public record of the Cook County Recorder of Deeds, a false lien and encumbrance against the real and personal property of the persons listed below, all of whom were then employees and officers of the United States Government:

<u>Count</u>	<u>Date</u>	<u>Person</u>	<u>Official Title</u>
1	03/14/2011	V1	Chief United States District Judge
2	03/14/2011	V2	United States District Judge
3	03/14/2011	V3	United States Attorney
4	03/14/2011	V4	Assistant United States Attorney
5	03/14/2011	V5	United States District Court Clerk
6	03/17/2011	V6	Federal Task Force Officer
7	03/17/2011	V7	Federal Task Force Officer
8	03/17/2011	V8	Federal Task Force Officer
9	03/17/2011	V9	Federal Task Force Officer
10	04/13/2011	V10	Federal Agent
11	04/19/2011	V11	United States Magistrate Judge
12	04/19/2011	V12	United States Magistrate Judge

SA87

The defendant filed the false liens and encumbrances against each of the listed persons on account of the performance of their official duties, knowing and having reason to know that each lien and encumbrance was false and contained a materially false, fictitious, and fraudulent statement and representation, including a false claim that the listed persons each owed the defendant's brother one hundred billion dollars.

In violation of Title 18, United States Code, Sections 1521 and 2.

A TRUE BILL:

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Foreperson

ERIC H. HOLDER, JR.  
Attorney General of the United States

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STEPHEN R. WIGGINTON  
United States Attorney  
Southern District of Illinois

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NATHAN D. STUMP  
Special Assistant United States Attorney

# Exhibit D

 **DEFINE TRUST LEGAL WORDS.docx**  
15 KB

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**Fwd: Fw: On Trusts esp Jack Smith's Explanation**

---

**From :** Eric Young-El <elyoung21@gmail.com>  
**Subject :** Fwd: Fw: On Trusts esp Jack Smith's Explanation  
**To :** ebulard777@gmail.com

Sun, Dec 02, 2012 07:25 PM

 5 attachments

----- Forwarded message -----

**From:** "marcel walton" <marcelbey13@yahoo.com>  
**Date:** Jan 3, 2010 5:15 AM  
**Subject:** Fw: On Trusts esp Jack Smith's Explanation  
**To:** "eric young" <elyoung21@gmail.com>

----- Forwarded Message -----

**From:** marcel walton <marcelbey13@yahoo.com>  
**To:** jonathan.lanell.smith@gmail.com  
**Sent:** Sat, January 2, 2010 6:47:34 PM  
**Subject:** Fw: On Trusts esp Jack Smith's Explanation

----- Forwarded Message -----

**From:** Fani Cahill <fanicahill@yahoo.com>  
**To:** Romulus Dorsey El <rdorsey@att.net>; Jade Micheal Young <Jademichaelyoung@sbcglobal.net>; Imhotep Bey <imhotepbey@yahoo.com>; Marcel Walton Bey <marcelbey13@yahoo.com>  
**Sent:** Sat, January 2, 2010 12:41:35 PM  
**Subject:** On Trusts esp Jack Smith's Explanation

Jade,

You asked me if TRUSTS are "private". Here is a variety of sources. TRUSTS are public. We set up expressed DEEDS OF TRUSTS where we are the TRUSTEES. The govt. is implied beneficiary. Since we cannot be both trustee and beneficiary too, we are still studying. As the "grantor" well . . . we will discuss all of this. I HAVE to go right this minute!

Read Trust 2 by Jack Smith. Go to last line. And just who is the "State"???????

We must develop the ability to read between the lines everywhere -- they ALL try to talk over our heads. No one acknowledges who we are.

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 **3 - TRUSTEES-TRUSTS - Part II - Jack Smith.doc**  
53 KB

 **2 - TRUSTEES-TRUSTS - Part I - Jack Smith.doc**

SA90



54 KB

**1 - IMPLIED TRUST RELATIONSHIP - Adask.doc**

46 KB

**New\_Trustee\_Handbook 2008.pdf**

2 MB

**Jack's Box Diagrams on Trusts.pdf**

25 KB

**Fwd: Fw: The Muqarrabeen Files Book Two Parts 1 thru 10****From :** Eric Young-El <elyoung21@gmail.com>

Sun, Dec 02, 2012 07:24 PM

**Subject :** Fwd: Fw: The Muqarrabeen Files Book Two Parts 1 thru 10

1 attachment

**To :** ebullard777@gmail.com

----- Forwarded message -----

From: "marcel walton" &lt;marcelbey13@yahoo.com&gt;

Date: Jan 31, 2010 4:22 AM

Subject: Fw: The Muqarrabeen Files Book Two Parts 1 thru 10

To: "eric young" &lt;elyoung21@gmail.com&gt;

----- Forwarded Message -----

**From:** joel bratton-bey <jbrattonbey@yahoo.com>**To:** marcelbey13@yahoo.com**Sent:** Sat, January 30, 2010 9:21:51 PM**Subject:** Fw: The Muqarrabeen Files Book Two Parts 1 thru 10PUBLIC INFORMATION  
MOORISH AFFAIRS  
PROCLAIMING YOUR MOORISH AMERICAN NATIONALITY

"...We must enforce the law in order to save the nation".

BY: Honorable Prophet Noble Drew Ali

OUR WEBSITE:

[WWW.MOORISHNATIONALREPUBLIC.COM](http://WWW.MOORISHNATIONALREPUBLIC.COM)contact: Grand Sheik Joel Bratton-Bey  
OFFICE OF THE NATIONAL CHAIRMAN  
Phone: 410-369-8874  
Email: [jbrattonbey@yahoo.com](mailto:jbrattonbey@yahoo.com)

~~~~ UPLIFTING FALLEN HUMANITY ~~~~

— On Fri, 1/29/10, RE-EL1 &lt;tjijiel@yahoo.com&gt; wrote:

From: RE-EL1 &lt;tjijiel@yahoo.com&gt;

Subject: Fw: The Muqarrabeen Files Book Two Parts 1 thru 10

To: "Bro. A. Anderson-El" <a.andersonel@yahoo.com>, "Sister J. Arthur-El" <toby ladyi@verizon.net>, "Brother W. Barnes-El" <barnesel@aol.com>, "Bro. C. Bennet-Bey" <cbey3@hotmail.com>, "Sandra Bey" <sandra\_bey@yahoo.com>, "Brother Bradford El" <brotherei@aol.com>, "Brother M Bryant-Bey" <matheno\_1@hotmail.com>, "Brother P. Chase-El" <dfcmgmtsrvc@aol.com>, "Bro. M. Cook-Bey" <cookbeymatheno@yahoo.com>, "Sis. B. Cook-Bey" <bcookbey@gmail.com>, "Brother J. Crum-Bey" <Jamesbey777@yahoo.com>, "J Fielder-Bey" <Kcinspector2@yahoo.com>, "Brother J. Frazier-Bey" <JimmyBey@aol.com>, "Brother C. P. Fuqua-Bey" <grandgovernorav@peoplepc.com>, "Sister L. Gaines-Bey" <jclendeninbey@chubb.com>, "Brother D. Gantt-Bey" <ganttbey@hotmail.com>, "Bro. M. Hayse-Bey" <mahb226@yahoo.com>, "Sis. R. Higgins-Bey" <ruthmobites@peoplepc.com>, "Brother A. Hopkins-Bey" <moor777@aol.com>, "Bro. J Williams-Bey III" <jwilliamsbey@yahoo.com>, "Brother T. Irons-El" <toddironsel@yahoo.com>, "G Johnson-Bey" <gjohnsonbey@outcomeshope.org>, "Brother D. Johnson-Bey" <NadJohnsonB@aol.com>, "Brother M. Johnson-Bey" <mstofabt57@yahoo.com>  
Cc: "Sister M. Brown-Bey" <bey\_brown@yahoo.com>, "Sis. B. Carrington-El" <bthomasei@yahoo.com>, "Crenshaw-El" <crenshaw-

SA91

**CERTIFICATE OF SERVICE**

I, Adam P. Merrill, an attorney, hereby certify that on July 10, 2017, I caused a true and correct copy of the foregoing **DEFENDANT MARCEL WALTON'S SENTENCING MEMORANDUM AND OBJECTIONS TO SUPPLEMENTAL PRESENTENCE INVESTIGATION REPORT** to be filed *via* the Northern District of Illinois' CM/ECF e-filing system, and also to be served via email as follows:

Carol A Bell  
Rick D. Young  
Assistant U.S. Attorneys  
219 South Dearborn, Suite 500  
Chicago, IL 60604  
[carol.bell@usdoj.gov](mailto:carol.bell@usdoj.gov)  
[rick.young@usdoj.gov](mailto:rick.young@usdoj.gov)

Missy Kolbe  
Probation Officer  
230 S. Dearborn, 34th Floor  
Chicago, IL 60604  
[missy\\_kolbe@ilnp.uscourts.gov](mailto:missy_kolbe@ilnp.uscourts.gov)

/s/ Adam P. Merrill  
Adam P. Merrill

# Memorandum

United States Attorney  
Northern District of Illinois



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**Subject**

*United States v. Marcel A. Walton*, 15 CR 723

**Date**

February 14, 2017

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**To**

Missy K. Kolbe  
U.S. Probation Office

**From**

Carol A. Bell  
Assistant United States Attorney

## GOVERNMENT'S VERSION

### **I. Introduction**

On December 9, 2015, a grand jury returned an indictment charging defendant Marcel A. Walton with mail fraud, in violation of 18 U.S.C. § 1341. The indictment alleged that defendant participated in a scheme to defraud the Internal Revenue Service by submitting a series of tax returns seeking refunds based upon false information and ultimately received a refund in the amount of \$310,162.31, which he then converted to his own use. Defendant appeared for his arraignment before the Honorable Daniel G. Martin, United States Magistrate Judge, on December 17, 2015 and pleaded not guilty to the charge. Magistrate Judge Martin released defendant on an unsecured bond pending trial.

On December 21, 2016, defendant appeared before the Honorable Thomas M. Durkin, United States District Judge, to withdraw his plea of not guilty and pleaded guilty to the indictment. Judge Durkin accepted defendant's plea of guilty to the indictment, and the matter is set for sentencing on April 13, 2017.

## II. Government's Version of the Facts

Defendant Marcel A. Walton styles himself as the "Grand Sheik" of a Moorish Science Temple of America ("MSTA") located on South Cicero Avenue in Chicago. Outside of that role, he has been employed by the Chicago Park District as a janitor at Douglas Park, using that park to hold MSTA meetings and look for individuals to become "Moors" and join his temple.

### The Scheme

Beginning no later than in or around February 2010, and continuing through at least in or around 2011, defendant devised and participated in a scheme to defraud and obtain money and property from the IRS by means of materially false and fraudulent pretenses, representations, and promises. Specifically, defendant told numerous individuals that if they joined his temple and became Moors, they could claim money he said was owed to the Moors by the United States government. According to witnesses, Walton explained that the Moors were the original discoverers of America and a Moorish prophet named Noble Drew Ali was given a land deed to, among other things, the lands making up North America. Defendant explained that modern-day Moors were entitled to back pay, back taxes, or reparations from the United States' government for its use of Moorish lands, being North America, and could file claims through tax returns for that money in increments of up to \$300,000, going back three years, for a total possible claim of \$900,000.

To access this money he claimed was owed to the members of his temple, Walton took advantage of the U.S. tax system related to trusts and estates. Specifically, he prepared and caused the preparation of Form 1041 trust or estate tax returns for himself and other individuals that contained false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld. Under U.S. tax laws, an estate or trust entitled to a refund

of federal income taxes can claim that refund by submitting a Form 1041 United States Income Tax Return for Estates and Trusts to the IRS (as opposed to a Form 1040 submitted by an individual taxpayer). As part of the Form 1041 return, the IRS requires the estate or trust to provide its name and address, the name and title of its fiduciary, its Employer Identification Number (“EIN”), its total income for the tax year, the amount of federal income tax withheld during the tax year, the amount of federal income tax, and the amount of tax due or refund claimed by the trust or estate. The IRS considers information contained in the Form 1041 return in determining, among other things, whether to issue a refund to the trust or estate. After receiving this information, the IRS issues a refund to the trust or estate if there appears to be an overpayment of income taxes and there were no outstanding tax liabilities or other federally authorized deductions on record with the IRS.

The tax system is reliant upon estates and trusts, like individuals, to report accurately their income in order to assess the proper amount of taxes due. Walton instead reported false information for the purported trusts for himself and others. Based upon this materially false information, each of the Form 1041 trust tax returns Walton prepared, or caused the preparation of, fraudulently claimed tax refunds for the purported trusts in amounts frequently as high as \$300,000.

#### *Defendant's Fraudulent Returns*

On February 22, 2010, defendant prepared and filed with the IRS fraudulent Form 1041 trust tax returns on behalf of himself for tax years 2007, 2008, and 2009. Each of the returns was filed in the name of the purported “Marcel Antonio Walton Trust,” utilizing an Employer Identification Number previously obtained by defendant, and listing “Marcel Antonio Walton” as the trustee of the purported trust. The returns were signed by defendant and listed his home

address per employment records. Each of these Form 1041 trust tax returns filed by defendant contained materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld. Based upon this materially false information, each of the Form 1041 trust tax returns fraudulently claimed tax refunds for the purported trust in the amount of \$300,000 for years 2007, 2008, and 2009.

On January 4, 2011, in response to defendant's fraudulent 2008 1041 return, defendant caused the United States Department of the Treasury to issue an income tax refund check in the amount of \$310,162 in the name of the purported "Marcel Antonio Walton Trust," and to mail the refund check to his home address in Chicago, Illinois.

Use of Money

A few days after receiving the check, on January 12, 2011, defendant used his State Identification card to open a bank account at Bank of America under the name of the purported "Marcel Antonio Walton Trust" with defendant listed as the trustee for the purpose of depositing the tax refund check. Over the course of the next several months, defendant converted all of the money to his own personal use. Among other things, Walton used the proceeds of the refund check to purchase a 2011 Chrysler Town & Country Touring L Sport Van from a car dealership in Chicago. The remaining money he withdrew from the bank account or spent on hotels, dining out at restaurants, shopping at stores, buying jewelry, buying Chicago Bulls tickets or merchandise worth over \$2,100, etc. By approximately mid-July 2011, defendant had drained the account of all \$310,162.

### Other Individuals' Fraudulent Returns

Walton not only deliberately misled the IRS when it came to his own returns—he prepared and filed, and caused the preparation and filing of, fraudulent Form 1041 trust or estate tax returns for others, including Christopher A. Mietus, that included materially false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trusts in amounts as high as \$300,000. Some of these fraudulent returns caused the United States Treasury to issue tax refund checks to others in connection with fraudulently filed Form 1041 trust tax returns, including Treasury checks totaling over \$900,000 to Christopher A. Mietus. Walton stood to gain from this scheme because he instructed others to pay him “a tithe” of 10% of the money they received from the IRS through the filing of the fraudulent Form 1041 trust tax returns. For example, if a temple member received \$300,000 from the IRS, Walton expected to receive \$30,000. In the case of Christopher A. Mietus, Walton requested and received \$90,000, being 10% of the fraudulently obtained refunds, via a check dated July 2, 2010. Throughout the charged timeframe, Walton continued to misrepresent, conceal, and hide the acts done in furtherance of his scheme to defraud the U.S. Treasury of money.

### Interviews of Defendant

IRS-CID agents interviewed defendant at the MSTTA temple in October 2012. During that interview, Walton told agents that the Moorish Science Temple of America had a “vast estate” that superseded federal jurisdiction and that its founding prophet Drew Ali owned the land of the United States. When agents explained that they were investigating the filing of fraudulent Forms 1041, Walton claimed that he had heard of Forms 1041 but did not know anything about Forms 1041 filed with the IRS. Defendant acknowledged that he knew that

Forms 1040s were for personal taxes. During that interview, agents advised defendant that they were aware that he filed fraudulent Forms 1041 and may have assisted in the preparation of other fraudulent Forms 1041. Agents also told defendant that they were aware that he received payments from individuals known to have filed fraudulent Forms 1041 that resulted in the issuance of U.S. Treasury checks. Agents advised defendant to stop filing fraudulent Forms 1041 with the IRS.

In April 2013, agents seized defendant's van, explaining to him that his van was purchased with funds obtained from the filing of fraudulent trust tax returns. Defendant replied, "Okay."

*Plea Agreement*

Through his plea agreement, Walton now admits preparing and filing each of the "Marcel Antonio Walton Trust" fraudulent Form 1041 trust tax returns, which he was aware contained materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trust in the amount of \$300,000 for years 2007, 2008, and 2009. He further admits that, in response to his own fraudulently filed Form 1041 trust tax returns, he received a refund check for \$310,162, and that he deposited the proceeds of the tax refund check into an account he opened at a branch of Bank of America under the name of the purported "Marcel Antonio Walton Trust." Walton acknowledges that, despite knowing that he was not entitled to those funds, he nevertheless used the proceeds of the refund check for his own personal use, including the purchase of a Chrysler Town & Country Touring-L Sport Van.

Further, defendant acknowledges that, as part of his scheme, he encouraged others, including Christopher A. Mietus, to file fraudulent Form 1041 trust tax returns. Defendant



further prepared and filed, and caused the preparation and filing, of fraudulent Form 1041 trust or estate tax returns for others, including Christopher A. Mietus, that included materially false information regarding the purported trust's income, fiduciary fees, exemptions, and federal tax withheld, and fraudulently claimed tax refunds for the purported trusts in amounts as high as \$300,000. As a result of his actions, the U.S. Treasury issued tax refund checks to others in connection with fraudulently filed Form 1041 trust tax returns, including Treasury checks totaling over \$900,000 to Christopher A. Mietus. Defendant then instructed others, including Christopher A. Mietus, to provide him with a portion of the fraudulently obtained refunds and obtained payments as high as \$90,000 from those other individuals. Defendant admitted that he knew that the other individuals whom he encouraged or assisted in filing fraudulent Form 1041 trust tax returns were not entitled to tax refunds based on the materially false information relating to income, fiduciary fees, exemptions, and federal tax withheld, he made, or caused them to make, within their Form 1041 trust tax returns in furtherance of the scheme. Lastly, defendant admitted through his plea agreement that the intended loss from his scheme was approximately \$16,391,161.

*Losses Caused by Walton's Scheme*

Through its investigation, IRS has connected Marcel Walton to approximately ninety individuals who filed fraudulent trust or estate tax returns for approximately 103 different purported trusts for tax years 2005 through 2012, seeking approximately \$116,515,757 from the U.S. government. IRS connected Walton to the fraudulent returns because the individuals who filed the fraudulent 1041 returns also filed various Moorish documentation with Cook County which bears Walton's name or signature. For purposes of sentencing, the government is seeking only to hold Walton accountable for the filing of his own fraudulent trust tax returns and returns

filed by others where IRS interviewed specific individuals and those individuals identified Walton as the one who prepared, or caused the preparation and filing of, their false 1041 returns or others known to them. Measured this way, the intended loss from defendant's scheme totals \$16,391,161, being the total amount of refunds he and at least seventeen others claimed through the filing of fraudulent 1041 trust tax returns for tax years 2006 through 2012. See the attached tax loss chart. Of the claimed \$16,391,161 in refunds, Walton and others who were a part of his scheme received \$3,286,948 in the form of refund checks from the U.S. Treasury to which they were not entitled. \$852,221 of those fraudulently obtained funds was later recovered, but approximately \$2,434,727 was never recovered.

As described by numerous individuals who participated in Walton's scheme, Walton was instrumental in causing the filings of their fraudulent trust tax returns and the resulting losses to the U.S. government. Walton was the leader and organizer of the scheme who assisted in obtaining EINs and setting up fake trusts, preparing almost all of the returns, and encouraging individuals who viewed him as a religious leader of sorts to commit tax fraud. He should be held accountable as such.

Of those individuals listed on the attached tax loss chart, nine, namely, Christopher Mietus, Ildefonso Lara (one of two CPD officers on the chart), Deborah Jenkins, Eric Lemoyne Young, Erica Moore, Dawn Rennell Shannon, Ronald Taylor, Eduardo Hernandez, and Phillips Vernon Crowell (Anael-Bey), were interviewed regarding Marcel Walton's involvement in the preparation of their fraudulent 1041 filings identified on the chart. Those same individuals, and/or others interviewed by the government, described Walton's involvement in the preparation of the other individuals' fraudulent returns included on the tax loss chart. For example, Dawn Shannon described Walton's involvement in the preparation of fraudulent 1041 returns for

several of her family members, including Fabiene Denise McGee and Leslie Sabrina Decoster (her sisters), Leslie Vernita McGee (her niece), Dolores Shirley Aurel (her mother), and Alfred McGee (her brother in law). A few examples of the tax fraud committed by some of these individuals under Walton's leadership, and Walton's own attempted enrichment from that fraud, are discussed below.

- *Christopher Mietus* -- *United States v. Christopher Mietus*, 15 CR 293 (N.D.Ill., J. Zagel)

Christopher Mietus, identified in the indictment in this case, was a member of Marcel Walton's temple whom Walton encouraged to file trust tax returns claiming tax returns from the U.S. government. As described in Mietus' plea agreement, Walton (identified as "Individual A") told Mietus that he was entitled to receive large sums of money from the U.S. government based upon his membership in the Moorish Science Temple of America. See *United States v. Mietus*, 15 CR 293, at R 21 (Plea Agreement). Walton further showed Mietus samples of refund checks that other members had received by filing false returns. In December 2009, at Walton's request, Mietus gave Walton his social security number and date of birth for purposes of obtaining an EIN. Mietus later learned that the IRS had issued an EIN for a purported trust named the "Vast Express Trust," with Mietus listed as the trustee.

For months, Walton continued to encourage or pressure Mietus to file trust tax returns. In February 2010, Walton provided Mietus with three trust tax returns. Walton told Mietus that the returns were complete and that Mietus simply had to sign them and send them in. Mietus did as Walton instructed. The returns were for tax years 2007, 2008, and 2009, and utilized the EIN described above and the name "Christopher Andrew Mietus Trust." Each return contained false information relating to income, fiduciary fees, and tax paid, and sought a refund of \$300,000.

Mietus received three refund checks from the U.S. Treasury made payable to the “Vast Express [Trust], Christopher Andrew Mietus, [Trustee]” in the following amounts: \$300,000 for tax year 2007, \$302,210.72 for tax year 2008, and \$300,000 for tax year 2009. Walton told Mietus to deposit the checks and give him 10% of the proceeds.

In June 2010, Mietus opened two bank accounts at Chase Bank in the trust’s name and deposited all three checks, although he knew he was not entitled to receive those funds. Mietus then used the money for personal purchases, including a Ford Expedition SUV and a residence in Indiana. He also withdrew \$90,000 in the form of a check made payable to the “Moorish Science Temple” and provided the check to Walton. By the time the government identified and sought to seize the refund proceeds, only \$224,265 of the \$902,210.72 remained.

Defendant was later indicted and has since pleaded guilty to theft of government funds. He is awaiting sentencing.

- *Erica Moore* -- *United States v. Erica C. Moore*, 15 CR 705 (N.D.II., J. Bucklo)

As reflected on the chart, another individual who participated in Walton’s scheme was Erica Moore. IRS records show that, between February 2010 and February 2011, the agency received a total of seven fraudulent trust tax returns relating to tax years 2007 through 2010 for Erica Moore.<sup>1</sup> Each of the trust returns listed Erica Moore as the trustee and contained her apparent signature. Each of these returns claimed that, during the applicable year, the trust had earned \$900,000 in income, had \$900,000 in deductions (stemming from fiduciary fees), and had

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<sup>1</sup> The loss chart attached to this Version only includes four of Moore’s seven returns as the government is not double-counting returns filed for the same years (Moore filed two returns for 2007, 2008, and 2009) as Moore’s intent appears to have been to obtain only a single refund for any of those years.

\$300,000 in federal income tax withheld by the IRS. All of these representations were false and defendant's purported trust was not entitled to any refund from the IRS.

The IRS initially identified these returns as frivolous filings and began issuing frivolous filing letters to Moore at the addresses listed on the returns, but one return slipped through. On May 8, 2012, the IRS issued a refund check to defendant in the amount of \$324,575.73. This check represented the refund purportedly due to Moore in connection with the 2008 trust return that she filed in February 2010 under the "Erica Moore Trust" name. It appears that someone at the IRS mistakenly processed the refund because there was an overpayment reflected on the system notwithstanding the assessment of the frivolous penalty.

Records obtained from Chase Bank establish that Moore opened two accounts in the name of the "Erica Moore Trust" on May 19, 2012, which would have been less than two weeks after the IRS mailed the check. She then deposited the check two days later and split the proceeds between the two accounts. Over the course of the next several months, Moore spent virtually all of the money. She made several large payments, ranging from \$6,000 to \$25,000, to various family members and paid \$30,000 for a Range Rover SUV (which was subsequently seized by agents pursuant to a seizure warrant). There were also numerous cash withdrawals and smaller expenditures of a personal nature (furniture, restaurants, merchandise from the Apple Store and Best Buy, and purchases at department stores, including Nordstrom and Bloomingdale's, or online clothing retailers, including Net-A-Porter and BCBG, etc.).

IRS-CID agents interviewed Moore in December 2012. During that interview, she acknowledged receiving the refund check, endorsing it, and depositing the check into a bank account at Chase Bank. Moore stated that she joined Marcel Walton's temple and that he told her that she was entitled to the money as "back pay" for land taken from the Moors. She

explained that Walton completed multiples sets of Form 1041 returns for her and others in her presence.<sup>2</sup> Moore claimed that she merely signed and sent in the returns, and that she was otherwise unaware of what was going on. She also explained that she filed the second set of returns using a different EIN because Walton told her that there had been a mistake with the first set of returns. Moore stated that the check was mailed to Walton's residence, where she previously lived with Walton. She then opened accounts at Chase Bank in order to deposit the check because she had been told by another Moor that other members had deposited checks at Chase Bank. Moore told agents that Walton attempted to collect \$30,000 from anyone who received a check, but that she never provided Walton with any money.

Moore was later indicted, pleaded guilty via plea agreement to theft of government funds (and identified and discussed Walton by name in her plea), and was recently sentenced to 12 months and one day imprisonment. *See United States v. Moore*, 15 CR 705, at R 35, 51.

- *Dawn Shannon* – *United States v. Dawn Shannon*, 15 CR 503 (N.D.II., J. Norgle)

Dawn Shannon became involved with the Moorish Science Temple of America after meeting Marcel Walton. As described in her plea agreement, in 2008, Walton encouraged Shannon to file trust tax returns and told her that she was entitled to receive large sums of money from the U.S. government through the trust tax returns based on her membership in his temple. *See United States v. Shannon*, 15 CR 503, at R 58 (Plea Agreement). Between March 2010 and January 2011, Walton or others obtained an EIN for the purported "Dawn Renell Shannon Trust," and Walton provided Shannon with seven Form 1041 trust tax returns for tax years 2007

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<sup>2</sup> During a later interview on April 2, 2013, Moore told agents that Walton also prepared trust tax returns for Deborah Jenkins, Eric Young, and Ramadan Ali (Moore's ex-boyfriend). Moore later identified (CPD Officer) Steve Segura as being present at Walton's house as Walton prepared amended trust tax returns, and discussed how Deborah Jenkins' husband (Christopher Mietus) received refund check(s) as did Ronald Taylor.

through 2009. Each return listed Shannon as the trustee and contained materially false information relating to trust income, fiduciary fees, exemptions, federal tax withheld, and the trust's entitlement to an income tax refund. Shannon noticed that the returns claimed \$900,000 in fiduciary fees for tax year 2007, and told Walton that she did not work in 2007 and had not earned \$900,000. In response, Walton told Shannon that he was preparing a trust tax return and that this was the procedure to prepare such returns. Shannon agreed to sign the returns and filed them with IRS.

On June 22, 2010, Shannon received a refund check for \$300,000 for the purported trust for tax year 2008. She opened a bank account at Chase Bank identifying herself as a trustee and deposited the check. She then used the proceeds for her own personal use and paid \$30,000 as a "gift" to Marcel Walton by personal check on July 23, 2010. She also later paid Walton \$5,000 by cashier's check dated December 15, 2010.

Shannon was later indicted, pleaded guilty via plea agreement to theft of government funds, and is awaiting sentencing before Judge Norgle.

- Ronald Taylor – *United States v. Ronald Taylor*, 15 CR 159 (N.D.II., J. Pallmeyer)

Ronald Taylor, a CTA conductor, also joined Walton's temple and filed three fraudulent trust tax returns on behalf of the purported "Ronald Taylor Trust," listing himself as the trustee. Like the returns filed by the other members of Walton's temple, each of his returns contained fraudulent information, including that the trust earned \$900,000 in income, had paid \$900,000 in fiduciary fees, and was entitled to a refund of \$300,000. He received a refund check dated May 25, 2010 for \$300,000 for tax year 2007, and, like the other temple members, opened an account at Chase Bank in the name of the trust and deposited the proceeds. He withdrew \$5,000 in

proceeds by personal check made payable to Marcel Walton on July 2, 2010 and wrote another check for \$4,400 made payable to the Moorish Science Temple (both deposited by Walton).

Taylor was later indicted and went to trial on the charges related to his fraudulent trust tax returns. He testified during the trial and explained that he met Marcel Walton in 2007 at a local park and began attending meetings led by Walton, who was the “Grand Sheik” who wore a fez, from 2007 through 2010. According to Taylor, Walton, using Taylor’s personal identifiers, set up a trust for him and told him to sign tax forms Walton presented to him. Walton told Taylor that he was entitled to money due to his being a Moor, and Taylor testified that he trusted Walton. Taylor also testified that he signed the trust tax returns at Walton’s urging and that someone, presumably Walton, filed the returns on his behalf. After Taylor received the check for \$300,000, he called Walton and Walton told him to open a bank account at Chase Bank. Taylor testified that he later withdrew \$30,000 in cash and gave the cash to Walton, and paid him another \$4,400 by check. According to Taylor, Walton later told him to withdraw the remaining cash from his bank account and put it in the form of checks, which Taylor did.

Taylor was convicted at trial of multiple counts of presenting a false claim to the IRS and theft of government funds, and sentenced to 24 months’ imprisonment. *See United States v. Taylor*, 15 CR 159, at R. 139.

### **III. Sentencing Guidelines**

The government’s calculation of the offense level for Marcel Walton under the Sentencing Guidelines is as follows:



### Offense Level

The base offense level is 26, because the intended tax loss resulting from the offense of conviction is more than \$9,500,000, but less than \$25,000,000, pursuant to Guidelines §§ 2T1.1(a)(1) and 2T4.1(K).

The base offense level is increased by four levels, pursuant to Guideline § 3B1.1(a), as defendant was an organizer or leader of the criminal activity, namely the scheme to defraud, that involved five or more participants or was otherwise extensive.

### Acceptance of Responsibility

As set forth in the plea agreement, the government reserves the right to take any position at the time of sentencing on a reduction for acceptance of responsibility, but will move for a one-level reduction for timely acceptance if the Court determines that defendant has accepted responsibility within the meaning of Guidelines § 3E1.1(a).

### **IV. Statutory Maximums**

The statutory maximum term of imprisonment for the count of conviction is 20 years' imprisonment and the maximum fine is \$250,000, or twice the gross gain or gross loss resulting from the offense.

### **V. Victim Impact**

The victim of the offense is the IRS, which suffered actual losses of \$310,162 from Walton's fraudulent trust tax return filing, being a small portion of the total \$2,434,727 in actual losses and \$16,391,161 in intended losses from his larger scheme.

### **VI. Investigating Agent and Agency**

The investigation was conducted by Special Agent Jordan Hicks of the IRS. Special Agent Hicks may be reached at (847) 737-6483.

15 CR 723 Tax Loss Amounts

| Name of Trust/Tax Return        | Amount of Refunds Claimed for Tax Year 2005 | Amount of Refunds Claimed for Tax Year 2006 | Amount of Refunds Claimed for Tax Year 2007 | Amount of Refunds Claimed for Tax Year 2008 | Amount of Refunds Claimed for Tax Year 2009 | Amount of Refunds Claimed for Tax Year 2010 | Amount of Refunds Claimed for Tax Year 2011 | Amount of Refunds Claimed for Tax Year 2012 | Amount of Refunds Claimed for Tax Year 2012 | Total Refunds Claimed | Total Refunds Received |
|---------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|-----------------------|------------------------|
| Christopher Andrew Matus Trust  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Marcel Antonio Valbon Trust     | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Chloris Trust                   | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Baldono Trust                   | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Chloris Ann Jenkins Trust       | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Eric Lemoyne Young Trust        | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Chloris Trust                   | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Richard Ali Trust               | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Chawn Rennell Shinnin Trust     | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Fabiana Dennis McGee Trust      | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Leola Verba McGee Trust         | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Dolores Shirley Aveni Trust     | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Leola Sabina Decoster Trust     | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Edward E. Hawthorn Trust        | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Allred Odell McGee III          | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Allred Odell McGee Jr Family Tr | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Johnnie McGee Family Trust      | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| Annex-Boy Trust                 | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 300,000.00                                  | 3,000,000.00          | 3,000,000.00           |
| <b>Tax Loss by Year</b>         | <b>3,800,000.00</b>                         | <b>4,200,000.00</b>                         | <b>600,000.00</b>                           | <b>4,241,161.00</b>                         | <b>300,000.00</b>                           | <b>1,300,000.00</b>                         | <b>1,000,000.00</b>                         | <b>850,000.00</b>                           | <b>850,000.00</b>                           | <b>18,361,161.00</b>  | <b>3,288,846.76</b>    |

Total Refunds Claimed 18,361,161.00  
 Total Refunds Received 3,288,846.76