

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)
)
 v.)
)
 W. SAMUEL PATTEN,)
)
 Defendant.)

Case No. 1:18-CR-00260-ABJ

DEFENDANT W. SAMUEL PATTEN’S MEMORANDUM IN AID OF SENTENCING

I. INTRODUCTION

On April 12, 2019, defendant W. Samuel Patten will appear before this Court to be sentenced for the offense of failing to register under the Foreign Agents Registration Act (“FARA”), 22 U.S.C. §§ 612 and 618. As this Court will see, however, this case is unlike other FARA cases brought by either the Special Counsel’s Office (“SCO”) or other U.S. Attorney’s offices around the country. Mr. Patten was never hired to lobby U.S politicians or to advocate for or against any specific U.S. policy. Mr. Patten did not create or hire intermediaries for the purpose of concealing from the American public or government his work on behalf of a foreign client. He did not charge exorbitant fees to advance his client’s causes and did not hide his assets around the globe and far away from the IRS. And perhaps most importantly for a FARA case, he never concealed who his clients were. Instead, during the course of a long business relationship where Mr. Patten advised his clients on matters related solely to Ukrainian politics and elections, he did a few favors for his clients that crossed the line into FARA-registrable activity.

Mr. Patten understands that this Court must affix a punishment sufficient but not greater than necessary to comply with the stated purposes of federal sentencing. He asks the Court, in

fashioning his sentence, to recognize that his crimes were not motivated by greed or a desire to conceal relevant information from the American public or to aid or cover up any potential interference with the 2016 Presidential election. To the contrary, Mr. Patten's decisions in this case stemmed primarily from a desire to accommodate his clients' requests and to present himself in the best possible light after unexpectedly finding himself a subject of the Russian interference investigation. He at times also made choices that were too heavily influenced by his loyalty to friends, clients, and his own self-interests.

Mr. Patten's actions were inconsistent with his character and moral standards. He violated the very principles he long has advocated for in the United States and abroad – honesty, integrity and transparency. Importantly, however, when eventually approached by the Special Counsel's Office, Mr. Patten admitted his offenses and took full responsibility for his actions. He agreed to cooperate with the ongoing investigation without any guarantee of how his own potential case would be resolved. And, over the course of that cooperation, which will be described in sealed pleadings, Mr. Patten earned the trust of the government and became a reliable and valuable resource. For those reasons, and the ones that follow, we respectfully ask this Honorable Court to impose a probationary sentence that will allow Mr. Patten to continue on the progress he has made since his August 2018 guilty plea and continue to contribute to his family, community and country.

II. MR. PATTEN'S PLEA AGREEMENT

Mr. Patten pled guilty on August 31, 2018, to a one-count criminal information charging him with violating FARA. The plea agreement was the result of extensive meetings and negotiations with the SCO and later with the United States Attorney's Office for the District of Columbia. Under the terms of the agreement, both the United States and Mr. Patten agreed that

the United States Sentencing Guidelines (“U.S.S.G.”) do not apply to a FARA violation and that because there is no analogous guideline provision, the 18 U.S.C. § 3553 sentencing factors exclusively guide the Court’s sentencing considerations. The probation office likewise concluded that there is no applicable guideline and, therefore, “an advisory guideline range could not be determined for this offense.” *See* Presentence Investigation Report (“PSR”) ¶83. Under the terms of the plea agreement, this Court is free to sentence Mr. Patten to a period of probation without any active term of incarceration. *Id.* ¶77; *see also* Plea Agreement (Dkt. # 6) at 6, #10 (“Defendant will then be free to argue for any sentence within the statutory range, including probation. Depending on the precise nature of the defendant’s substantial assistance, this Office may not oppose defendant’s application.”).

III. THE 18 U.S.C. § 3553 SENTENCING FACTORS

Section 3553 requires district courts to consider the following factors in imposing sentence: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the kinds of sentences available; (3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (4) the need to provide restitution to any victim(s). 18 U.S.C. § 3553(a)(1)-(7). The end result of the analysis must be a sentence that is “sufficient, but not greater than necessary” to comply with four purposes of federal sentencing, i.e., the need for the sentence imposed (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; and (4) to provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a)(2). For the reasons that follow, a sentence of

probation is “sufficient but not greater than necessary” to serve the purposes of federal sentencing under the circumstances of this case.

1. The Nature and Circumstances of Mr. Patten’s Offenses

The nature and circumstances of Mr. Patten’s offense is recounted in the Statement of Facts (Dkt. #7) as well as in the PSR. (*See* PSR ¶¶7-15). While the facts constituting Mr. Patten’s offense need no repetition, it may assist the Court in fashioning a sentence, to better understand the additional facts, circumstances and motivations surrounding Mr. Patten’s conduct. Although these additional factors might provide an explanation for his conduct they do not excuse or mitigate the seriousness of the decisions Mr. Patten made at various times over the past several years. Instead, this information is offered for the sole purpose of providing the Court with greater context from which to evaluate Mr. Patten’s actions. In sum, it is intended to help the Court understand why and how Mr. Patten, who has lived an honorable life marked by substantial contributions to furthering his country’s interests, finds himself a part of one of the largest and most high-profile investigations in our country’s history and, ultimately, before a federal judge for sentencing.

a. The FARA violation

As explained in the introduction, Mr. Patten’s relationship with Foreigner B and the Opposition Bloc did not contemplate any work that would be considered lobbying in the United States. Instead, Mr. Patten’s engagement required him to assist and advise his clients with regard to Ukrainian politics and elections. Typically, this work involved drafting polling questions and interpreting polling data to predict and prepare for the issues and opinions driving the political climate in Ukraine. Mr. Patten would explain the significance of the polling data and would propose ways in which his clients could shape their message to align with the public attitudes and

issues that would dominate the political cycle. In sum, Mr. Patten was hired to be a political consultant in Ukraine, not a lobbyist, and certainly not to lobby any U.S. officials.

Over time, however, his clients infrequently asked for help in drafting or editing speeches, talking points, or op-eds. For example, Foreigner B, through Mr. Patten's former business partner, Konstantin Kilimnik, asked Mr. Patten to draft a letter to a Department of State official regarding Ukraine's Central Election Commission. Mr. Patten helped draft and edit the letter but the letter itself was sent by Foreigner B directly – not Mr. Patten. Therefore, although Mr. Patten's involvement with the letter required him to register for this type of assistance, his failure to do so did not, unlike traditional FARA nondisclosures, conceal the foreign national/entity looking to contact or arguably influence a U.S. official.

Additional examples can be found in the limited instances where Mr. Patten was asked to help arrange a meeting between Foreigner B and Congressional staffers while Foreigner B was visiting the United States. In all, Mr. Patten's efforts consisted of sending a few emails to friends on the Hill explaining why a meeting with Foreigner B was worthwhile and drafting talking points for the scheduled meetings. It was clear to anyone who received those emails that Mr. Patten was proposing a meeting on Foreigner B's behalf because the meeting was going to be with Foreigner B himself, not Mr. Patten. Therefore, like the previous example involving the Department of State official, Mr. Patten's brief contacts violated the letter of FARA but not the spirit. As the SCO has noted, “[t]he purpose of FARA is to ensure the United States government and the United States people are *informed of the identity of foreign entities*...behind information or propaganda being used to influence public opinion, policy and laws.” See Government's Memorandum in Aid of Sentencing, *United States v. Michael T. Flynn*, Case No. 1:17-cr-00232-EGS (Dkt. #46) at 4 (emphasis added).

To be sure, Mr. Patten knew better and should have taken his FARA responsibilities more seriously.¹ It is no excuse that the government historically has been reluctant to enforce FARA's criminal penalties. It is likewise no excuse that the FARA statute is, by the government's own description, "esoteric." *See* Government's Memorandum in Aid of Sentencing, *United States v. Paul J. Manafort, Jr.*, Case No. 1:17-cr-00201-ABJ (Dkt. #525) at 1. However, it is relevant to this Court's sentencing analysis whether Mr. Patten sought to conceal his client from the government for some improper reason, which was not the case. It is also relevant that unlike many of the more recent FARA prosecutions, of which this Court is well aware, Mr. Patten did not create companies or entities to hide who he was working for or to conceal foreign influence. *See id.* at 10 ("Secrecy was integral to the effectiveness of the foreign lobbying Manafort orchestrated...; compliance with FARA would have revealed the deceptive tactics Manafort and his Ukraine client were using to lobby in the United States."). There was no such deception in Mr. Patten's case as Foreigner B's identity was fully known, Foreigner B was the named author of any op-eds, and Foreigner B himself attended any scheduled meetings.

b. Foreign Payments to the Presidential Inauguration Committee

As this Court is aware from the "other conduct" section of the Statement of Offense (Dkt. #7), Mr. Patten arranged a payment from an American business in order to conceal that a Ukrainian national was the true purchaser of four tickets to the 2017 Presidential Inauguration festivities. Like the facts giving rise to his FARA violation, Mr. Patten should have simply turned down his client's request. Instead, in order to accommodate his client and to demonstrate his ability to

¹ Mr. Patten was familiar with FARA as he had previously registered under FARA for work performed on behalf of a different client. That work, unlike Mr. Patten's role in the instant case, included Mr. Patten's personal attendance and involvement at meetings intended to influence U.S. officials.

deliver when needed, Mr. Patten, who was working in Africa at the time, arranged for the payment to come from an intermediary located in the U.S., whom he later reimbursed.

Mr. Patten recognizes the importance of prohibiting foreign contributions to the Presidential Inauguration Committee (“PIC”). He simply did not think long enough or clearly enough about the significance of his decision at the time he made it. He knew, for example, that foreigners routinely attend inaugurations. He also knew that one of the Ukrainian politicians who would attend had previously attended President Obama’s inauguration. In Mr. Patten’s mind, these were tickets to a post-election party and not an attempt to influence an election or politician. More importantly, he was blinded by a desire to accommodate his client. While the above explains why Mr. Patten did what he did it provides no justification for his decision. It was a complete breakdown in judgment and Mr. Patten regrets his involvement with the inauguration tickets.

Unlike the narratives being pushed by some media outlets, however, Mr. Patten’s involvement in the purchase of the PIC tickets was not motivated by a desire to “funnel” foreign money to the Trump campaign. For starters, Mr. Patten did not support the Trump campaign and while he may have known people who worked for the campaign at various times, he had no personal connection to it. Indeed, Mr. Patten not only openly opposed the Trump candidacy but even broke with his party when he voted for President Trump’s opponent in the 2016 presidential election. To the extent it matters to the Court, there was no political agenda or motive behind Mr. Patten’s role in the purchase of the inauguration tickets. It was entirely the product of a wrong-headed effort to accommodate a client’s request. And as the Court has seen, Mr. Patten’s failure to think through the full ramifications and significance of his acts also led to his issues with the United States Senate Select Committee on Intelligence (“SSCI”).

c. Incomplete Production and Senate Testimony

Mr. Patten's involvement in the alleged Russian interference investigation began innocently enough when he received SSCI's September 22, 2017 letter asking him to *voluntarily* produce several categories of documents. Mr. Patten opted to respond to the request despite the fact he had not been subpoenaed and was not under any other obligation to provide the requested information. He also decided, regrettably, to respond to the SSCI request without first seeking the advice of a lawyer. Believing he had little connection to SSCI's investigation, he decided to handle it alone. Therefore, he did not benefit from a lawyer's advice on (1) whether to produce documents voluntarily, (2) whether to limit the scope of the request, (3) whether to seek immunity for any potential criminal exposure, (4) how to search for responsive documents, (5) how to produce any responsive documents, and (6) how best to preserve responsive and/or produced documents.

As a result, Mr. Patten made several mistakes during the search and production process. He searched too narrowly and did not concern himself with providing *every* email or document, such as attachments to emails and word or pdf documents. He also failed to retain his own copy of what had been produced in the event there was ever a dispute over the production. More importantly, he allowed his concerns about the potential leaking of his business emails to influence what he produced.² He also withheld a few documents that could have implicated his friends and/or clients in the purchase of the PIC tickets.

² Prior to his production, emails between Kilimnik and Manafort had been leaked to the Washington Post and possibly other publications. There was reason for Mr. Patten to believe that his production would not be kept confidential. As it ultimately turned out, Mr. Patten's concerns were well-founded, even if misplaced. As this Court is aware, SSCI's Director of Security, James Wolfe, the very person to whom Mr. Patten delivered his production, pled guilty to lying to the FBI about his sharing of confidential SSCI information with reporters. The Honorable Ketanji Brown-Jackson sentenced Mr. Wolfe to serve a two-month term of incarceration. *See United States v. James A. Wolfe*, Case No. 1:18cr00170-KBJ.

It is important to note, however, that even though his production was not as fulsome as it should have been, Mr. Patten did produce over 1,300 pages of documents to SSCI, including communications he had with U.S. officials on behalf of Foreigner B. He also produced emails that clearly established that he had helped draft talking points and op-eds for Foreigner B. Moreover, he produced materials that documented Kilimnik's and Foreigner B's travel to the United States for the inauguration as well as efforts to purchase tickets to the National Prayer Breakfast. So, while Mr. Patten wrongly withheld some documents, he also *voluntarily* provided SSCI with materials that incriminated him.

Regarding Mr. Patten's subsequent voluntary closed-door interview with SSCI, it would be fair to conclude that Mr. Patten minimized his contacts with U.S. officials on behalf of foreign clients. However, this portion of his questioning was confusing, primarily because his attorney at the time and SSCI staff had reached a pre-interview agreement not to discuss areas that might implicate FARA issues. Mr. Patten's former attorney communicated to SSCI that he did not have any experience with FARA and would need to delay the interview in order to educate himself and to determine whether Mr. Patten had any exposure. As a result, SSCI staff agreed to avoid questions about FARA related activities. Nevertheless, the Committee staff still raised FARA issues and Mr. Patten's answers were arguably misleading in that they may have given the impression that he had not done "any work" in the United States on behalf of foreign clients. Again, Mr. Patten had previously registered under FARA on behalf of another client and many of the documents Mr. Patten had voluntarily produced two months prior to his interview clearly established the opposite so there was little reason for Mr. Patten to deny *any* contacts or "work" in the United States. While Mr. Patten's testimony on this point is perhaps best attributed to a

misunderstanding, he acknowledges that his answers could have been clearer and that he could have volunteered more information than what he provided.

Finally, as to this issue, Mr. Patten admittedly erred when he deleted his email archive folder on or about March 2, 2018, without first seeking SSCI's permission. SSCI's original letter requesting the voluntary production of documents also asked Mr. Patten to preserve any and all responsive documents. Mr. Patten responded to that letter with his production on October 31, 2017. Approximately two months after his voluntary production, the Committee contacted Mr. Patten in order to arrange a voluntary in-person interview. At that time, Mr. Patten retained counsel to assist with the interview process and the Committee provided Mr. Patten's former counsel with approximately 100 emails that it intended to raise during the interview. Mr. Patten's voluntary interview occurred on or about January 5, 2018 and lasted five hours.

Approximately two months later, in March 2018, Mr. Patten's laptop began to malfunction and he was having difficulty completing basic tasks. Mr. Patten believed it was a memory issue related to his Gmail account so on or about March 2, 2018, Mr. Patten manually deleted his Gmail archive folder, which contained approximately 200,000 emails. Regrettably, although Mr. Patten believed he had fulfilled his obligations to the Committee, he did not consult with his previous attorney or the Committee prior to the deletion of his archived emails. Having produced responsive documents and having submitted to a voluntary interview, Mr. Patten incorrectly believed that he was free to delete his emails. He understands now that he should not have done so without, at a minimum, the Committee's approval.³

³ Mr. Patten, through undersigned counsel, retained a data management company in order to attempt to recover the deleted materials. He also devoted a substantial amount of his own time working on responses to the Committee's follow-up subpoena and recreating his business meetings for the past three years. Mr. Patten has spent more than \$10,000 in an effort to recover the deleted data alone. It was not Mr. Patten's intent, in March 2018, to frustrate the Committee's

The Court now has additional facts surrounding Mr. Patten's offense conduct including that to which he pled guilty and that which was included as "other conduct" in his Statement of Offense. The facts outlined above are presented so that the Court has a more complete picture of Mr. Patten's conduct and intent. It is also important, however, for the Court to consider how Mr. Patten's conduct compares to the way he has lived his life and whether, and to what extent, his personal history and characteristics should factor into this Court's punishment.

2. History and Characteristics of Mr. Patten

Section 3553(a) "requires courts to take into account relevant facts to a defendant's history and characteristics," such as a defendant's lack of criminal history, age, efforts at rehabilitation and efforts to cooperate with the government. *United States v. Delaney*, 651 F.3d 15, 20 (D.C. Cir. 2011) (*internal citations omitted*). In addition, "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." *Id.* 18 U.S.C. § 3661; *see United States v. Anderson*, 632 F.3d 1264, 1270 (D.C. Cir. 2011) (citing 18 U.S.C. § 3661; *United States v. Tucker*, 404 U.S. 443, 92 S. Ct. 589, 30 L.Ed.2d 592 (1972)).

Mr. Patten's history and characteristics weigh heavily in favor of a probationary sentence. As detailed below, Mr. Patten has no prior criminal history and has served his country by advancing American principles, values and ideals in difficult circumstances and dangerous locations around the world. Those who know Mr. Patten, whether by blood, friendship, or employment, uniformly regard him as a principled, inclusive, thoughtful and caring individual.

investigation. To the contrary, Mr. Patten fully believed at that time that the Committee's interest in him and his documents had concluded.

He is not only an asset to his immediate community, but he has been an asset to the United States' interests overseas. Moreover, and as will be detailed in under seal filings, Mr. Patten has been a valuable asset to the SCO and the U.S. Attorney's office in relation to several ongoing investigations.

a. Background

Mr. Patten was born in 1971, in Washington D.C. He was raised in Massachusetts and Maine, where he graduated from Camden-Rockport High School. His father, Bill Patten, was a local newspaper publisher and his mother, Kate Bacon, worked as a social worker. They divorced in 1987 and are both re-married and retired. Mr. Patten has two younger sisters who live in California.

Mr. Patten graduated from Georgetown University in 1993 with a major in American Government and a minor in International Relations. While at Georgetown, he was actively involved in student life and politics and helped co-found a support hotline for sexual assault survivors as well as an alternative political newspaper. It was also during his time at Georgetown that Mr. Patten began his life in politics when he interned for Senator William Cohen (ME), Congress Joe Brennan (ME), and British Member of Parliament Dudley Fishburn, who wrote a letter to the Court on Mr. Patten's behalf (Exhibit 1).⁴ Mr. Patten also volunteered for the D.C. Public Defender's Service as an investigator.

Following graduation, Mr. Patten returned home to Maine where he spent a year working as a reporter for his father's newspaper, the Camden Herald. In 1994, he returned to politics by working on two state political campaigns (congressional and gubernatorial). In 1996, he worked

⁴ All of the character letters submitted on Mr. Patten's behalf have been consolidated as Exhibit 1.

as the finance director for Susan Collins' successful campaign for the Senate seat she still holds today. It was also around this time that Mr. Patten began a lifelong connection to Eastern Europe and the former Soviet Republics.

From 1995 to 1999, apart from his stint with the Collins campaign, Mr. Patten lived and worked in Kazakhstan. He first worked as a teacher but later transitioned to public and government relations work for several international companies that operated there. It was in Kazakhstan that Mr. Patten met his first wife, Aizhan, learned basic Russian, and fathered his only child.

In 1999, Senator Collins hired Mr. Patten to run her Portland office and later to be her foreign affairs and defense legislative assistant. In 2000, Senator Collins recommended Mr. Patten to the Bush-Cheney campaign as a state coordinator. Following the Bush campaign, Mr. Patten left his job in the Senate to join the International Republican Institute ("IRI") as the democracy group's Russia program officer, and later resident country director in Moscow until 2004. While serving in Russia, Mr. Patten also re-opened IRI's Kazakhstan operation.

From 2004 to 2005, Mr. Patten worked for IRI to promote democracy in Iraq in the period leading up to their 2005 elections. From 2005 to 2007, Mr. Patten worked for a Washington-based political consulting firm for whom he managed a number of international assignments, which he interrupted to take a speechwriting position with Maine Senator Olympia Snowe from 2005 to 2006. In 2008, Mr. Patten was appointed as Senior Advisor for Democracy and Global Affairs to Under Secretary of State Paula Dobriansky. He became her speech writer and was responsible for helping her promote democracy around the world including coordinating the work of Secretary Condoleeza Rice's Advisory Committee on the Promotion of Democracy.

His appointment at the State Department ended with the Bush administration and he subsequently founded his own political consulting firm and took on a number of special

assignments. Among those assignments, Mr. Patten became the Eurasia program director for Freedom House from 2009 to 2011. Among other duties, Mr. Patten was responsible for promoting freedom of expression, human rights and adherence to the Organization for Security and Co-operation in Europe commitments for the countries of Eastern Europe and the former Soviet Union, with a special emphasis on Central Asia.⁵

In 2014, he joined with Konstantin Kilimnik, a friend since 2001 and a former IRI co-worker, to form a political consulting firm focused primarily on Ukraine but with an eye towards expanding to other former Soviet republics and foreign countries. It was Mr. Patten's work and relationship with Kilimnik, primarily during the time period they worked for Foreigner B, that made Mr. Patten of any interest to SSCI and the SCO. Despite the more recent speculation and revelations, at no point did Mr. Patten know, believe, or suspect that Kilimnik was connected in any way to Russian intelligence.

b. *Personal Characteristics*

Mr. Patten has lived a life focused on improving the lives of those around him as well as spreading the democratic principles he believes in to faraway places. The letters submitted on Mr. Patten's behalf paint a clear and reliable picture of a self-less friend, family member, citizen, and patriot, who has always put others and the causes he has advanced before his own safety and needs. He has never been motivated by greed or a desire to be wealthy. What drives him is the opportunity to bring real change to the people and parts of the world he believes desperately need it.

⁵ This work included advocacy on behalf of political prisoners and dissidents in repressive regimes as well as promoting respect for human rights as a means of countering the stigma of ethnic violence. The State Department subsequently awarded Freedom House a \$250,000 grant to engage in post-genocidal work in Kyrgyzstan, which Mr. Patten implemented on the ground.

As Mr. Patten's ex-wife, Aizhan, writes to the Court, Mr. Patten's chosen overseas assignments were "far from lucrative" and often "quite dangerous." Exhibit 1 (Letter from Aizhan Kulakhmetova Patten). He often represented opposition parties and candidates that were "blacklisted by local despots." He has a soft spot for movements against corrupt regimes and as his wife Laura writes, he "so passionately believes in giving voice to the voiceless, that I lost track of how many times he accepted pro-bono clients."⁶ Exhibit 1 (Letter from Laura Patten). One such experience that has had a long-lasting impact on Mr. Patten's life was his work in Iraq around the time of the country's first post-invasion elections in 2005. Mr. Patten's friend, Dr. Ahmed Al-Nagr, best summarizes his impression of Mr. Patten's contributions to his country as follows:

In my short time working with Sam directly, we were under constant threat in Iraq. Our lives were at risk on a daily basis, car bombs, suicide vests and snipers. You get to know people much better and their true colours show in a war environment. Sam was a true patriot and a believer in democracy. He helped my country come from ruins and genuinely wanted to help my country become a better place. He helped all the locals and developed us to speak our mind and analyse the truth. Sam was nothing less than a hero to me and the team. Sam helped educate the locals on how to get their rights and how to the local politicians govern fairly. Sam risked his life every day to turn Iraq into a true democracy and he did it with pride. There were many organisations in Iraq at the time but Sam did more [than] what he was getting paid for and this is why I chose to continue to work with him and risk my life every day.

See Exhibit 1 (Letter from Dr. Ahmed Al-Nagr). As this Court is aware from the PSR and the letter submitted by Dr. Fiester, Mr. Patten continues to suffer from PTSD as a result of his experiences in Iraq and other conflict zones. *See* Exhibit 2 (Letter from Susan M. Fiester, MD) (Redacted).

⁶ *See* Exhibit 1 (Letter from M. Marty Youssefiani) ("Sam has been an unwavering friend and colleague through his restless support, always on a pro-bono basis, for the promotion of liberal and democratic values for the Iranian people.").

Just as insightful into what motivates Mr. Patten's work, however, are the opportunities he has turned down, despite their substantial financial rewards. In the year before Mr. Patten's involvement in this investigation began, he turned down a lucrative offer to get involved with the elections in Montenegro. He declined the request because it would have required him to advocate on behalf of a prospective client who had taken anti-NATO policy positions, which he believed were contrary to U.S. interests. He also declined a job strategizing for European nationalist-populist parties despite the substantial financial security the job would have offered.

Not only would Mr. Patten pass on opportunities that conflicted with his democratic and pro-American principles, but he was also known to volunteer his services at no charge when he thought the circumstances warranted it. For example, Mr. Patten watched closely the Alabama Special Senate Election to replace Jeff Sessions in 2017. Motivated by a desire to stop Roy Moore's election, Mr. Patten reached out directly to a write-in candidate, Colonel Lee Busby. Following their conversation, Mr. Patten packed his car and drove to Alabama to live with Col. Busby for several weeks and to serve as his spokesman, communications director, and strategist. He was not compensated for his work but the approximately 25,000 total write-in votes, of which Col. Busby received approximately 5,500, ended up being the difference in the election.⁷

In addition to describing Mr. Patten's professional motivations and commitment to American values, the letters sent on Mr. Patten's behalf also reveal an individual who is *genuinely* caring, kind and loyal to those he comes into contact with. Those traits have been on display from his early childhood through today. Mr. Patten's sister, Eliza, has written a heartfelt letter to this Court describing the impact her big brother had on her while growing up. She describes an

⁷ Col. Busby has written to the Court to share his opinion that Mr. Patten is a good man "who has much potential for good and who has experienced a catharsis of self-examination as a result of this episode." *See* Exhibit 1.

environment where the kids were often on their own and how Mr. Patten’s “creativity and curiosity added depth and excitement to my childhood, while his loyalty and kindness offered shelter.” Exhibit 1 (Letter from Eliza Patten). The family’s former babysitter, Jennifer Wickenden, echoes much of Eliza’s letter and speaks vividly about Mr. Patten’s interactions with his siblings and others. *See id.*

Whether it is treating everyone with respect, regardless of their lot in life or political views, to taking an interest in a friend or family member’s cause, Mr. Patten is actively engaged in the lives of those he comes into contact with. Corrine Graff writes that she knows Mr. Patten “to be a devoted and loving father and spouse, a good friend to our family, and a kind and gentle person...”). *See id.* Robert and Elena Ames write about how Mr. Patten “cares a lot about his family and friends,” and that he is “the kind of friend that’s truly always available to share his time and lend a friend a helping hand.” *See id.* Marty Youssefiani even writes of the impact Mr. Patten has had on his family and how his son “picked, among all our friends, Sam to seek advice when it was time for him to choose a career path and his college education.” *See id.* He attributes much of his son’s success to Mr. Patten’s advice. *Id.*

c. Acceptance of Responsibility

In addition to providing the Court insight into who Mr. Patten is as a person, the letters submitted on his behalf demonstrate that Mr. Patten has truly and completely accepted responsibility for his conduct in this case. Beginning with his sister, Eliza, Mr. Patten’s friends and family have witnessed first-hand how Mr. Patten has come to terms not only with what he has done, but how he had been living his life:

...these present circumstances, and the severity of the consequences he is facing, have led Sam to come to terms with his use of alcohol, to address his underlying depression, and to seek help from a place of true powerlessness and humility. I am proud to witness him reject

temptations to view himself as a victim, instead claiming responsibility in a manner befitting someone of his integrity and decency.

See id.

Mr. Patten's wife, Laura, confirms that Mr. Patten has accepted full responsibility for his conduct and that he has used this experience to make positive changes in his life. *See id.* ("He has channeled his shame and anguish into getting healthy, volunteering, and 'digging deep' to figure out what led him astray."). His stepfather, Robert Perkins, writes about his own experiences as a lawyer and his opportunities to observe his own clients and others tell a Judge that "they had seen the error of their ways." *See id.* As he states, for some it was just talking the talk. He goes on to write that he can tell, "from the bottom of my heart, and with absolutely no equivocation, that Sam has used the excruciating process that has confronted him for the last year to assess the direction of his life and 'who he really is.'" *Id.*

Long-time family friend, Robert Morgan, wrote to the Court to offer his perspective on Mr. Patten's character. In particular, he writes that "[t]here is a consistent strain of idealism in Sam that includes setting high standards and holding himself to account when he fails to meet them. Over a long trajectory of time Sam has taken personal responsibility for his career, his family and his choices, good and bad." *See id.* John McGovern tells the Court how Mr. Patten wrote his friends and relatives to admit his wrongdoing and to apologize for what he had done. *See id.* He also provides that this has been a particularly painful experience because Mr. Patten "cares so deeply about values of honor and character." *Id.*

This should be a significant consideration for this Court in fashioning Mr. Patten's sentence. Both from the media and from many of the defendants who have found themselves prosecuted as a result of the Special Counsel's investigation, there has been a sometimes subtle (and sometimes not so subtle) effort to delegitimize the investigation in order to shift blame to

politics and away from an individual's own actions. Many of the accused connected to this investigation have taken to the media to complain about the fairness of their prosecution, to raise doubts about their guilt even after pleading guilty, and to capitalize on the public sentiment of their supporters. But through it all, even in the face of media reporting that has falsely labeled Mr. Patten a lobbyist, or a Manafort "associate," or a Trump-supporter, as well as the personal attacks and death threats he has received, Mr. Patten has quietly and without fanfare or attention, worked to improve himself and to make sure he understands what led him to act in a manner inconsistent with his own principles and character. *See* Exhibit 3 (Letter from W. Samuel Patten). He has sought mental health treatment, he has given up alcohol, and he has spent this time of great uncertainty, which brings its own anxiety, bettering himself and his community. He has attended more than 150 AA⁸ meetings since his August 31 guilty plea and has volunteered with three different organizations including well over 60 hours spent tutoring local students through a nonprofit organization.⁹

To complete the cliché, Mr. Patten has done more than talk. He has walked the walk. And not because he is trying to better position himself for leniency from the Court. He has done so because it is who he is and because he knows that he alone is responsible for what has happened. As his longtime neighbor, writes, "When I asked him what lesson [his son] should take from this, Sam replied, 'When you mess up, own up.' This is one of the valuable messages he also brings

⁸ *See* Exhibit 1 (Letter from Mervin Wampold, Jr.) (attesting to Mr. Patten's commitment and dedication to the AA program and sharing his sincere belief that Mr. Patten "has not only owned the mistakes he made, but more importantly is ready to be the best person he can be").

⁹ *See* Exhibit 1 (Letter from For Love of Children ("FLOC")) (providing that Mr. Patten "is dedicated and shows great concern for his student and always willing to step in to be a substitute for other students when needed. It has been an incredible pleasure working with Sam these past few months and I look forward to finishing out the year with him"). In addition to his work with FLOC, Mr. Patten has volunteered with Sasha Bruce Youthworks and Beacon House.

with him in his local volunteer work with at-risk youths because he firmly believes that moral compasses, including his own, can and must be recalibrated when they go off track.” *See* Exhibit 1 (Letter from Lauren Solnik). Due to Mr. Patten’s sincere and remarkable rehabilitation over the past several months, especially during a time of great stress and uncertainty, we respectfully submit that a non-incarceration sentence would best serve the purposes of federal sentencing in this case.

3. The Kinds of Sentence Available

This Court has tremendous authority and discretion over what kind of sentence to impose on Mr. Patten. As stated in the PSR, this Court has the ability to impose a sentence of probation should it find such a sentence appropriate under the § 3553(a) factors. Given the reasons provided in this pleading, as well as those to be addressed through the government’s U.S.S.G. § 5K1.1 motion, we respectfully request that the Court sentence Mr. Patten to a term of probation.

4. The Need to Avoid Unwarranted Disparity Among Similar Offenders

Historically, there have been very few prosecutions under FARA. Indeed, a 2016 DOJ report counted seven total prosecutions under FARA since 1966.¹⁰ According to the report, only one of those charged was convicted at trial, two pled guilty, two were convicted on non-FARA charges and two had their cases dismissed. For that reason, it is difficult to measure the potential disparity between similar offenders particularly because, historically, offenders have not been prosecuted at all.¹¹ Instead, up until recently, most individuals or entities found to have violated FARA were only required to come into compliance. Therefore, the mere prosecution of a FARA charge *alone* results in substantial disparity among similar offenders.

¹⁰ *See* Office of the Inspector General, Department of Justice, Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act, *available at* <https://oig.justice.gov/reports/2016/a1624.pdf> (last visited March 25, 2019).

¹¹ A fact that likely explains why the Sentencing Commission has to date not promulgated a Guideline for FARA violations.

The few cases that might provide some guidance for a disparity analysis are so different from Mr. Patten's case that they are of limited value. To begin with, all of the potentially relevant recent FARA prosecutions have involved extensive efforts to conceal foreign government involvement in proactive and well-coordinated campaigns to change U.S. policy. They have also typically involved efforts to lobby on behalf of Specially Designated Nationals¹² ("SDNs") or other prohibited/sanctioned entities or countries.

For example, in *United States v. Ben Israel*, Case No. 1:13-cr-00572 (N.D. Ill.), the defendant was originally charged with acting as a foreign agent without notice to the Attorney General (18 U.S.C. §951(a)), failing to register under FARA, and violating the International Emergency Economic Powers Act (50 U.S.C. §1705(c)). In summary, the case involved unregistered work on behalf of several SDNs that had been sanctioned based on their history of human rights abuses, election fraud, and voter intimidation. The defendant's conduct included extensive efforts to lobby U.S. officials to remove the foreign principals from the SDN list. For that reason, the government and the defendant agreed, as part of the plea agreement, that U.S.S.G. § 2M5.1 applied to the offense conduct, which resulted in an advisory guideline range of 10-16 months. The defendant did not receive any credit for cooperation and the Court ultimately imposed a below-Guideline sentence of seven months.

In *United States v. Mark Deli Siljander*, Case No. 4:07-cr-00087 (W.D. Mo.), the defendant, a former member of the United States House of Representatives, was charged along with several other individuals and an Islamic charitable organization with numerous offenses

¹² See <https://www.treasury.gov/resource-center/sanctions/sdn-list/pages/default.aspx> (defining SDNs as individuals or companies that are controlled by or are acting on behalf of targeted countries or because of non-country specific designations such as a connection to terrorism or drug trafficking).

including FARA violations, money laundering and obstruction of justice. In summary, the charity in question hired Siljander and others to lobby on its behalf in an effort to have the charity removed from a list of debarred entities and from the Senate Finance Committee's list of charities suspected of funding terrorism. Siljander was interviewed by the FBI and falsely denied having performed any advocacy on behalf of the charity and denied having received any payments for any alleged work. After he was indicted, he again met with the FBI, this time in the presence of his own lawyers and the prosecutors, and again lied about his involvement in the offense conduct.

Siljander eventually pled guilty to two counts on the eve of trial. The Sentencing Guidelines recommended a sentence of 10-16 months on an obstruction of justice count and the government agreed that there was no analogous Guideline for the FARA count. Based on the extensive nature of Siljander's conduct on behalf of a debarred organization with terrorist ties and his repeated lies, the government requested a total sentence of 36-48 months. The court sentenced Siljander to a period of incarceration of 12 months and one day.

Another defendant in the Siljander case, Abdel Azim El-Siddiq, also pled guilty to a FARA offense on the eve of trial. El-Siddiq was a U.S. citizen who worked as a fundraiser for the debarred charity. El-Siddiq was also the individual who hired both Siljander and another former Congressman to lobby on the charity's behalf. He was instrumental in structuring the financial payments in a way that would conceal the charity as the source of funds. Despite the government's request for a sentence of incarceration, the Court sentenced El-Siddiq to serve a two-year term of probation.

As stated at the outset, Mr. Patten's FARA conduct is far different from that found in other FARA prosecutions. Unlike the Manafort case and those cited above, Mr. Patten was not hired to lobby in the United States. While that does not mean he cannot now be found to have violated

FARA, it does show a substantial difference between his state of mind and that of the other defendants. Manafort, Siljander, etc., were specifically hired to lobby U.S. politicians. With that knowledge and intent, they then created layers of transactions and entities in order to hide from the individuals they were lobbying, the foreign country or actor who was footing the bill and who was behind the campaign to influence. Mr. Patten, on the other hand, had no intention or desire to lobby U.S. officials on behalf of his Ukrainian clients. Nevertheless, he did over time cross the line on more than one occasion and for that he must be punished, but we submit that the punishment should take into account the vastly different nature of his offense as compared to other FARA prosecutions.

To the extent the Court intends to consider other cases brought by the Special Counsel's office when evaluating potential disparity between sentences, we submit that the requested probationary sentence for Mr. Patten falls in line with the sentences imposed on Alex van der Zwaan, George Papadopoulos and the government's recommended sentence for Lt. Gen. Michael Flynn.

As the Court no doubt recalls, van der Zwaan was an attorney who, while represented by counsel, lied to the Special Counsel on multiple occasions during a voluntary interview. Even when confronted with some of those lies, he persisted in them. He also withheld documents responsive to the SCO's investigation. van der Zwaan did not receive any credit for cooperation and this Court sentenced van der Zwaan to 30 days of incarceration following his guilty plea to making false statements under 18 U.S.C. § 1001.

George Papadopoulos also pled guilty to violating 18 U.S.C. § 1001 after having lied repeatedly to the SCO regarding his interactions with Russians and the timeframe when those contacts occurred. Papadopoulos worked for the Trump campaign and directly impeded the FBI's

investigation into the existence of links between Russian operatives and the campaign, as well as alleged efforts to interfere with the 2016 Presidential election. Papadopoulos did not receive any credit for his cooperation and the Honorable Randolph D. Moss sentenced him to serve 14 days of incarceration.

Finally, Lt. Gen. Michael Flynn served in a number of roles for the campaign and transition team and briefly served as the National Security Advisor to President Trump. His interactions with Russian officials during the election, transition and administration went to the very heart of what the FBI was investigating at the time of his interview. Not only was Flynn found to have lied about his contacts with Russian officials but he was also found to have made materially false statements or omissions in connection with his FARA filings for work done on behalf of the Republic of Turkey. *See United States v. Michael T. Flynn*, Case No. 1:17-cr-00232-EGS (Dkt. #46). He pled guilty to making false statements and his offense conduct included the facts surrounding his FARA violation. His advisory Guideline range is 0-6 months and based on his substantial assistance, the SCO filed a § 5K1.1 motion on his behalf providing that “a sentence that does not impose a term of incarceration – is appropriate and warranted.” *Id.* at 1. Flynn is still awaiting sentencing.

In all, we respectfully submit, especially in light of the government’s anticipated § 5K1.1 motion, that a sentence of probation will ensure that there is no unwarranted disparity between Mr. Patten’s sentence and that imposed on other defendants guilty of similar conduct.

5. Purpose of Federal Sentencing

As noted earlier, Congress has identified four purposes of federal sentencing that must guide district courts in selecting a sentence. The sentence must be “sufficient, but not greater than

necessary” to serve those purposes. We respectfully submit that all the purposes of federal sentencing would be fully served in this case by a probationary sentence.

The first purpose of federal sentencing is “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” From this day forward, Mr. Patten will stand convicted of a federal felony offense. His prosecution reflects the seriousness of his offense and a sentence of probation will promote respect for the law, especially considering the specific facts of this case. For the reasons outlined throughout this pleading and because of Mr. Patten’s extensive cooperation, a sentence of probation is a just punishment for his offenses.

The second purpose of federal sentencing is “to afford adequate deterrence to criminal conduct.” We respectfully submit that this goal would be fully served by a sentence of probation. A strong message of deterrence has already been sent as a result of Mr. Patten’s prosecution, as well as that of other individuals recently charged with FARA violations. According to one source, FARA supplemental filings “more than doubled from 618 to 1,244 last year....”¹³ Even beyond the new focus on using criminal prosecutions to enforce FARA violations, a sentence of probation, coupled with community service and other restrictions on Mr. Patten’s liberty, is sufficient to send a strong message of deterrence to the public especially under the unique circumstances presented here where, unlike other FARA prosecutions, Mr. Patten did not conceal from those he interacted with the foreign person or entity he was acting on behalf of. As the Supreme Court recognized in *Gall v. United States*, 522 U.S. 38, 48-49 (2007), although custodial sentences are more severe than probationary sentences:

¹³ See <https://www.nbcnews.com/news/us-news/mueller-effect-fara-filings-soar-shadow-manafort-flynn-probes-n838571> (last visited March 22, 2019).

[o]ffenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty. See *United States v. Knights*, 534 U.S. 112, 119, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001) (“Inherent in the very nature of probation is that probationers ‘do not enjoy the absolute liberty to which every citizen is entitled’ ” (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987))). Probationers may not leave the judicial district, move, or change jobs without notifying, and in some cases receiving permission from, their probation officer or the court. They must report regularly to their probation officer, permit unannounced visits to their homes, refrain from associating with any person convicted of a felony, and refrain from excessive drinking. USSG § 5B1.3. Most probationers are also subject to individual “special conditions” imposed by the court. Gall, for instance, may not patronize any establishment that derives more than 50% of its revenue from the sale of alcohol, and must submit to random drug tests as directed by his probation officer.

The third purpose of federal sentencing is “to protect the public from further crimes of the defendant.” Mr. Patten, at age 47, is being sentenced for a crime for the first time in his life. He has had no prior contact with the criminal justice system. To the extent his decision-making over the past few years was influenced by mental health or substance abuse issues, those are, for the first time, being fully addressed through ongoing treatment and programing. Mr. Patten has a lifelong history of obeying the law and contributing to his family and society. The fact that he has used this situation to understand his behavior and reflect on how and why he got here, strongly suggests that he presents no danger of recidivism.

The fourth purpose of federal sentencing is “to provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner.” This factor militates in favor of a probationary sentence so that Mr. Patten can continue with the treatment and programs he has voluntarily attended since his guilty plea. We respectfully submit that Mr. Patten’s rehabilitation over the past seven months as well as his performance on pre-sentence release

demonstrates that he is worthy of a non-custodial sentence so that he can continue uninterrupted with his treatment and recovery.

IV. CONCLUSION

As evidenced by his letter to the Court, Mr. Patten is sincerely remorseful for his offenses. *See Exhibit 3.* Since his guilty plea on August 31, 2018, Mr. Patten has put in the time and effort to understand his conduct and to address all of the issues that may have led to his behavior. He has not only accepted responsibility through his guilty plea and extensive cooperation, but he has reexamined his life and committed himself to the principles and morals that guided him prior to the events of the instant case. For these reasons and any others that may appear to the Court or that may develop at the sentencing hearing, we respectfully request that the Court impose a sentence of probation to include community service and continued substance abuse and mental health treatment.

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Respectfully submitted,

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