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July 13, 2018

VIA EMAIL & ECF
Honorable Richard D. Bennett
U.S. District Court Judge
United States District Court for the District of Maryland
101 W. Lombard Street
Baltimore, MD 21201

Re: *United States v. Nathaniel Oaks*, Crim. No. RDB-17-288

Dear Judge Bennett:

We submit this second supplemental sentencing letter in response to the government's sentencing letter filed on July 11, 2018 (Dkt. No. 112) ("Govt. Memo").

I. MR. OAKS DID NOT "ROUNTINELY" ENGAGE IN CORRUPT CONDUCT WARRANTING A 60-MONTH SENTENCE.

In its sentencing letter the government makes the prejudicial claim that Mr. Oaks "*routinely* engaged in wrongful conduct as a public official long before he ever met" the government's undercover operative. Govt. Memo. at 23 (emphasis in original). As support for this claim, the government points to a statement by Mr. Oaks to the operative that he received free meals, drinks, and similar benefits from "various sources, including a prominent lobbyist and restaurant owners." *Id.*

But whether or not Mr. Oaks has accepted free meals, drinks, and other benefits in the past does not establish prior corrupt conduct, and certainly does not establish that Mr. Oaks "embraced bribery" as a "standing operating procedure[] in his life." *Id.* at 24. The government has not tied any receipt of benefits to any official act by Mr. Oaks. *See* 18 U.S.C. § 201(b), (c). Indeed, the government has not tied the receipt of benefits to *anything* that Mr. Oaks did or promised in return. Thus, there is no evidence of any bribery, gratuity, or any prior improper exchange of official favors before Mr. Oaks was approached by the government's undercover operative. Whether or not the Court finds the receipt of free meals and drinks "distasteful," *McDonnell v. United States*, 136 S. Ct. 2355, 2375 (2016), it is not in and of itself evidence of criminal corruption.

II. MR. OAKS DID NOT "EGREGIOUS[LY]" "CONTINUE[] TO ENGAGE IN CRIMINAL CONDUCT" AFTER BEING CONFRONTED BY THE FBI.

The government claims in its sentencing memorandum that "[o]ne of the most egregious aspects of Oaks' behavior in this case," apparently supporting its 60-month sentencing recommendation, "is that he continued to engage in criminal conduct even *after*" he was confronted by the FBI in this case. Govt. Memo at 26. Mr. Oaks has admitted that he said to an FBI target (Person #1), without recording it, "I'm going to ask you for something, just say no," and "what we talked about, just say no," or words to that effect. Dkt. No. 98, at 24-25.

However, the government has cited no legal authority for the extraordinary proposition that simply telling someone *not* to commit a crime, and nothing more, is itself a crime. The government does not allege, and the stipulated facts do not indicate, that Mr. Oaks disclosed an ongoing FBI probe to Person #1, or that he revealed to him other putative targets, undercover operatives, or others who were cooperating. Nor is there any indication that Mr. Oaks destroyed any documents, falsified evidence, suborned perjury, or threatened a witness. The long and the short of what Mr. Oaks apparently did was to tell Person #1 not to commit a crime. This is a far cry from the generally accepted meaning of "obstruction of justice." Nor did Mr. Oaks's conduct "derail[]" the FBI's investigation, Govt. Memo at 26, except perhaps as to Person #1. No one else was tipped off, and no one else was exposed. Whether or not Mr. Oaks's failure to record those conversations abridged any oral cooperation agreement with the government does not render Mr. Oaks's behavior a continuing pattern of criminal conduct, and does not support the government's elevated sentencing recommendation.

III. THE CASES RELIED ON BY THE GOVERNMENT DO NOT JUSTIFY A SENTENCE OF 60 MONTHS FOR MR. OAKS.

The government relies on a handful of "public corruption" cases as justification for its sentencing recommendation of 60 months. Govt. Memo. at 30-32. However, not only do these cases fall far short of supporting a 60-month sentence for Mr. Oaks, but a comparison of the criminal conduct and circumstances involved in those cases with that here actually supports a substantially lower sentence for Mr. Oaks.

In *United States v. McClung*, 483 F.3d 273 (4th Cir. 2007), the defendant, the Assistant State Superintendent of Schools for West Virginia, pled guilty to using his public position to steer government contracts to a friend in exchange for money and other benefits. As the government correctly accounts, the trial court did impose an upward variance, because it found that a sentence within the defendant's guideline range of 51 to 63 months would not sufficiently promote respect for the law. Govt. Memo at 30. However, the government's account entirely elides any details about Mr. McClung's criminal conduct—a brief consideration of which reveals it was far more egregious that any conduct in this case. First and foremost, Mr. McClung was convicted of *extortion*—he used his positon as a high-ranking Department of Education official to coerce and direct the awarding of government contracts to his friend in return for money and other benefits. *McClung*, 483 F.3d at 274. Moreover, to achieve his criminal objective, Mr. McClung "created '*an elaborate, well thought-out extortion scheme* that exploited [his] position of trust'" and his criminal conduct directly "'*affected . . . the state's most vulnerable.*'" *Id.* at 275, 277 (quoting

sentencing judge) (emphases added). As a result of the elaborate scheme, Mr. McClung's briber received a net profit of more than $400,000. *Id.* at 275.

Through no lens is the conduct involved here remotely similar to that in *McClung*. Unlike Mr. McClung, Mr. Oaks did not (nor did he have the power to) direct government contracts to a briber. No "elaborate, well thought-out extortion" scheme is involved here. None of Maryland's "most vulnerable" residents were injured by Mr. Oaks's conduct. Unlike in *McClung*, the briber here received no monetary or commercial benefit. And, unlike in *McClung*, Mr. Oaks did not author or create the criminal scheme involved in his case—it was the government's creation as part of its sting operation. Mr. Oaks's conduct of taking bribes or payments to send two false letters in pursuit of a federal grant (over which he had **no** decision-making authority) and submit a bond bill request (for a bill that was never introduced, and never could have taken effect without the independent actions of countless more people) is diminished in scope, effect, and execution than the conduct and scheme involved in *McClung*. If anything, *McClung* helps demonstrate why a sentence of 18 months for Mr. Oaks is reasonable and justified.

The other case on which the government primarily relies, *United States v. Geddings*, 497 F. Supp. 2d 729 (E.D.N.C. 2007), is even more far afield. In that case, the defendant, who contested his case *at trial*, was convicted of five counts of honest services mail fraud and three counts of honest services wire fraud. *Id.* at 731. The convictions stemmed from the defendant's term as North Carolina's first-ever lottery commissioner, shortly after the state's legislature approved a bill authorizing lotteries in the state for the first time. *See generally* Ex. 1 (Order, *United States v. Geddings*, Case No. 06-cr-136-D3 (E.D.N.C. May 7, 2007)). As commissioner, the defendant steered key lottery contracts to a vendor who had paid the defendant $160,000 immediately prior to his becoming commissioner (payments the defendant failed to disclose upon becoming commissioner). *Geddings*, 497 F. Supp. 2d at 733-34 ("Gedding entities received approximately $160,000 from lottery vendor Scientific Games."). To steer the contracts, Mr. Geddings exploited the "extraordinary powers" of his position in the vendor selection process. Ex. 1 at 15-16.

As the government highlights, the trial court did impose a seven-month upward variance in sentencing Mr. Geddings, in light of the "unique harm" of his criminal conduct. Govt. Memo. at 30. But the "unique harm" identified by the sentencing court was "the loss of public confidence about the lottery's management and harm to the lottery *at its inception.*" Ex. 1 at 28 (emphasis added); *see also id.* at 27. In other words, it was the criminality's infecting the lottery *in its infancy* that made Mr. Geddings's breach of the public trust so particularly harmful. The court was explicit about the uniquely harmful impact of the defendant's criminal conduct on the state's lottery:

> Further, this court finds that the defendant's conduct caused serious doubts about the lottery's management at the lottery's inception. This caused a loss of public confidence in the lottery's management and in the [Lottery] Commission. Defendant's conduct seriously disrupted and harmed [Lottery] Chairman Sanders' efforts to launch the lottery effectively and harmed the lottery. Defendant's conduct also harmed North Carolina because, in essence, his conduct resulted in North

> Carolina only having one company . . . be able to compete effectively for the lottery contract.

Ex. 1 at 27. Additionally, Mr. Geddings *committed perjury during his trial. Id.* ("As for imposing a sentence that provides just punishment, the court has considered the defendant's felony convictions and has considered the defendant's perjurious testimony.").

Taking into account the facts and circumstances of Mr. Geddings's offense, including the unique public harm that it caused, the more than $160,000 in payments he received, his failure to accept responsibility, and his perjurious testimony, the sentencing court imposed a sentence on Mr. Geddings of ***48 months' imprisonment***—that is, 12 months *less* than the sentence the government is seeking for Mr. Oaks. Ex. 1 at 28. But Mr. Oaks is less culpable than Mr. Geddings, not more. Unlike Mr. Geddings, Mr. Oaks did not exercise any power to fraudulently direct government contracts to a briber. Nor did his conduct uniquely harm a state program or initiative in its infancy. And Mr. Oaks did not go to trial and did not commit perjury on the stand. Mr. Oaks should receive a sentence that is less than the 48-month sentence imposed on Mr. Geddings.

The last two cases that the government mentions are of no help.[1] In *United States v. Bromwell*, Crim. No. 05-358-JFM, the former state senator was convicted of racketeering crimes in which he received secret payments of more than $190,000 (disguised as a no-show job for his wife) and $85,000 in home repairs for steering a multi-million contract to the briber that netted the briber $1.8 million in profit. Ex. 2 (Dan Morse, "Contrite Bromwell Sentenced to 7 Years," *Washington Post*, Nov. 17. 2007).

And in the other case, *United States v. Jack Johnson*, Crim. No. 11-075-PJM, the defendant county executive was convicted of committing extortion under color of official right and witness and evidence tampering. Just with respect to the extortion conduct, in return for between $400,000 to $1 million in cash payments to him (including the $79,000 in cash seized from his wife's bra and underwear) the former county executive engaged in rampant corruption *over a period of seven years*, including:

> obtaining a waiver of [a] HOME Program Regulation . . . ; securing millions of dollars in HOME funds [for the bribing developers]; assisting in the acquisition of surplus property and land from the County for development by certain developers; providing the conspirators with non-public County information; obtaining necessary state and local approvals and permits for certain developments and businesses in the County; obtaining employment with the County; obtaining management rights for County bond funds; obtaining County funding for certain developments and businesses in the County; assisting with state and County legislation regarding liquor store hours; influencing certain County officials to

[1] The government also cites to the interrelated liquor board corruption cases before Judge Xinis in the Southern Division of this District. Govt. Memo at 31. As explained in our original sentencing letter, the sentences in these cases are consistent with imposing an 18-month sentence on Mr. Oaks. Dkt. No. 108 at 24-25.

> approve and/or facilitate County business; and, securing County commitments to lease property from certain developers at developments in the County.

Ex. 3 at 3 (Statement of Facts from Johnson Plea Agreement).

The only similarity that Mr. Oaks's case shares with *Bromwell* and *Johnson* is that all three cases involve elected officials. The $15,300 that Mr. Oaks received in improper payments is dwarfed by the $275,000 in cash and benefits that defendant Bromwell received and the more than $400,000 that defendant Johnson received. And the benefits accorded to the bribers are also of no comparison. The fictitious $750,000 in *gross* potential funding involved here—of which not a dollar actually issued, and which would have been required to be invested in low-income housing—is quantitatively and qualitatively dwarfed by the multimillion-dollar contract in *actual* state funds that Bromwell directed to his briber, leading to ***$1.8 million in actual profit***, as well as the untold benefits in *actual* County funds, lands, and permits that Johnson directed to his various private developer bribers. In consideration of the scope, nature, and personal benefit of the criminal conduct, *Bromwell* and *Johnson* are simply on another level from Mr. Oaks, and a substantial difference in their respective sentences is more than warranted.

In short, the cases upon which the government relies do not justify the government's requested sentence of 60 months for Mr. Oaks. The nature, extent, and scope of the criminal conduct of those cases greatly surpass that of Mr. Oaks. If anything, these cases highlight the relatively limited nature of Mr. Oaks's offending conduct, and further support the defense position that a sentence of 18 months is the appropriate sentence in this case.

Respectfully,

----------/s/----------
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----------/s/----------
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