

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :
 :
 v. :
 FELIPE SIXTO, :
 :
 Defendant. :

CRIMINAL NO. 08-345 (RBW)
Sentencing Mar. 18, 2009

FILED

MAR 11 2009

**Clerk, U.S. District and
Bankruptcy Courts**

DEFENDANT'S MEMORANDUM IN AID OF SENTENCING

Defendant Felipe Sixto respectfully submits his Memorandum in Aid of Sentencing for his plea of guilty to a one-count information charging Theft Concerning Program Receiving Federal Funds, in violation of 18 U.S.C. § 666, entered on December 19, 2008.1

I. BACKGROUND AND HISTORY OF FELIPE SIXTO

a. Childhood and Family Background

Felipe E. Sixto was born in 1979 in Miami, Florida to Felipe H. Sixto and Ofelia Sixto, each of whom had immigrated with their families as teenagers to the United States as refugees from Cuba; his mother in 1960 and his father in 1962. Ofelia Sixto's family had been prominent in politics in Cuba; her father was the mayor of Holguin, Cuba and her uncle was a senator and vice-presidential candidate.2 Mr. Sixto's father worked as a dish-washer and at his parent's grocery store before joining the U.S. Army following his graduation from high school.3 He served in the Army from 1966 to 1970. He attended college while serving in the Army and has been the co-owner, with his brothers, of Sixto H. Distributors, doing business as Sixto Packaging, in Miami, Florida since 1972. The company prints and laminates packaging for food products. Felipe Sixto's mother, Mrs. Ofelia Sixto, worked in physicians' offices, and as a banker for many years, but rheumatoid arthritis and other

medical conditions have prevented her from working outside the home for over ten years.

The Defendant's parents married in 1968; they both became U.S. citizens in 1970. Felipe Sixto is the youngest of three children; he has two older sisters. The eldest, Susana, is a physician in Miami and the other, Margarita, is an elementary school teacher. As a child, Mr. Sixto attended St. Kevin Catholic School.

b. High School, Parenthood and Marriage

Mr. Sixto attended Christopher Columbus High School in Miami. He was an avid football player, playing defensive end, and also participated in track and field and wrestling. He also enjoyed scuba diving, hunting and fishing. While in high school, his girlfriend, Laura Morejon became pregnant and the young couple decided to keep and raise their child who was born in 1997. Laura was already suffering the effects of ulcerative colitis and the numerous other illnesses that have plagued her since she was a child.⁴ Despite her illness and new responsibilities, Laura completed high school in 1997 and Mr. Sixto in 1998. Mr. Sixto and Laura lived with his parents until he and Laura married in 2002, with their young son in attendance. Their son, Felipe I. Sixto, will be twelve years old in May 2009. After their marriage they continued to live with Mr. Sixto's parents until they moved to Maryland.

While still in high school Mr. Sixto worked part-time in his father's company on the production line from 1997 until 2000, and on week-ends from 1998 to 2002 at Paradise Divers, a diving shop owned by Larry Wright⁵, in Big Pine Key, Florida where he was able to continue his interest in scuba diving. He had become a certified diver at age 12. All the while he kept up his grades in high school and later in college, and helped care for his son. His close friend, Jon A. Rank,

recalls that even then, Mr. Sixto was "a conscientious person that looked out for other people."⁶ Mr. Rank confirms Mr. Sixto's early interest in fishing and diving and says that he is passing on to his son "sportsmanship and leadership in athletics, boy scouts and the classroom."

c. College

Mr. Sixto attended Florida International University ("FIU") in University Park, Florida. He was an avid student, with a particular interest in Cuba which he visited twice in 2001, first as part of a study-abroad program and a second time to do research. His brother-in-law, William Rodriguez, writes of Mr. Sixto's interest in helping the people of Cuba, stating "he traveled to Cuba on two occasions taking clothes, food and medicine to donate."⁷

While Mr. Sixto attended FIU, Laura Sixto attended Miami-Dade Community College and in 1999 started classes at FIU. In mid-2002 she completed her final course requirement for her Associate's degree from MDCC and was due to obtain her Bachelor's degree from FIU in the fall of 2002, but their move to Maryland intervened. While in college, Laura Sixto continued to suffer from the medical conditions that she still has, including ulcerative colitis, lupus and migraine headaches, as described by her physician, William Rodriguez, who is also her brother-in-law.⁸ In addition to working part-time, parenting his son and caring for his wife, Mr. Sixto took advanced classes and completed his undergraduate degree requirements in two years, a feat which was made possible by his having taken advanced courses in high school and waiving approximately 30 credit hours through testing. He enrolled in a Masters program in International Relations at FIU, completing his course work and thesis comparing the healthcare systems of Barbados, Cuba and Panama. Because of his move to Maryland to attend law school he did not

defend his thesis and therefore, did not obtain his master's degree. Chapters of his thesis have been published in various English and Spanish language books and journals.⁹

While he was an undergraduate Mr. Sixto worked as an assistant to Professor Guillermo Greiner in the Sociology Department and while he was in graduate school he was a teaching assistant in the International Relations Department, for Dr. Carmelo Mesa-Lago and others.¹⁰ In his letter written on behalf of Mr. Sixto, Dr. Mesa-Lago confirms that Mr. Sixto's work has been used in several of his own books and articles. He states that Mr. Sixto was:

the best student I had in the four years I taught at FIU, and ranks as [one of] the 20 most rewarding students I taught during my 35 [year] teaching career... He was an incredibly hard worker and amazed me with his capacity to gather, systematize and compare statistics... He worked extremely well conducting independent research and had an unusual motivation for graduate work... I was stunned when learning about Mr. Sixto mishandling of funds while employed at the Center for a free Cuba. Nevertheless, it is my understanding that he has restituted the sum of money he embezzled and I read a letter published in a local newspaper where he deeply regretted his conduct and cleaned of all responsibility Mr. Frank Calzon, the Director of said Center."

Dr. Mesa-Lago asks the Court to "take into account this letter documenting Mr. Sixto's exemplary behavior prior to his wrong doing" and hopes that the Court will be "merciful in your sentence."

While in college Mr. Sixto also continued his part-time work at his father's company until 2000 and then again from 2001 to 2007 as a sales representative and computer consultant, a skill he had taught himself, and at the dive shop until 2002.

d. Law School and Professional Employment

In 2002 Mr. Sixto, his wife and his son moved to Gaithersburg, Maryland after Mr. Sixto was accepted into the Washington College of Law at American University. He graduated from law school with his J.D. in 2005 with a specialty in International Law. He took but did not pass

the Maryland bar exam once in February 2006. Because he wanted to work in public policy and not as a practicing lawyer, Mr. Sixto did not pursue bar membership further, but always intended to take the bar examination again eventually and become a licensed attorney.

In February 2003, shortly after starting law school, Mr. Sixto applied for a position and received an offer of employment from The Center for a Free Cuba ("CFC"), as the Chief of Staff, with a starting salary of \$35,000. When he left CFC in the summer of 2007 his salary was approximately \$65,000 per year. He continued working for his father's company as a computer consultant until he left CFC. As a reflection of his personal interest in Cuba, while at CFC, Mr. Sixto collected "thousands of dollars worth of medical supplies for the people of Cuba" and that he "took on the case of three young men who were executed by the Cuban regime," testifying before the Inter-American Commission on Human Rights.¹¹

In the fall of 2003, Mr. Sixto and his wife purchased a home in Urbana, Maryland for which they paid \$330,000. They subsequently refinanced their home, by then valued at \$430,000, for \$399,000, increasing their already substantial monthly payments to about \$3,500. In his statement, Mr. Sixto explains that they were able to make the mortgage payments from his salary and law school loans, until he graduated from law school in 2005, no longer had loan proceeds coming in and had to start repaying the loans.¹²

While working for CFC and continuing his law school classes Mr. Sixto and his wife became active as the Cub Master and Den Leader and Assistant Den Leader for a Cub Scout Pack. Mr. Sixto was the Den leader and Cubmaster of Patrick McConnell's son. Mr. McDonnell commends the "trust and respect the parents of the pack and the scouting leadership" had in Mr. Sixto. Mr. McConnell shared Mr. Sixto's interest in hunting

and writes of Mr. Sixto's "appreciation for nature and respect for wildlife" as well as his determination to uphold hunting laws.¹³ Jason Smith, Mr. Sixto's former colleague at CFC states that Mr. Sixto "had the proper balance and found the time to care for his sick wife and remain actively involved in his son's life" while juggling a heavy workload and rigorous academic demands."¹⁴ Many others have cited his ability to balance and "prioritize his family, a full-time job and demanding law school courses."¹⁵ Kyle Gibeault, another co-worker at CFC, states that he was "impressed by Felipe's ability to balance the many demands he had on his time while also taking care of his family." He bore his responsibilities with "stoic dignity" but never seemed "pessimistic or downcast."¹⁶

In 2004 Laura Sixto pursued her dream of becoming a nurse and enrolled in the Bachelor of Science in Nursing program at the University of Maryland but was unable to complete the program because of her health and dropped out in 2006, one semester short of graduation.

In July 2007, Mr. Sixto was honored to accept employment in the White House Office of Intergovernmental Affairs as an Associate Director. His salary was \$55,000 per year. In March 2008 he was appointed Special Assistant to the President. The new appointment brought a salary of \$102,000 per year, but Mr. Sixto's tenure in the position was short-lived. He resigned within three weeks due to this offense.

II. CIRCUMSTANCES OF THE OFFENSE

Mr. Sixto agrees with the Statement of the Offense which he affirmed as part of his guilty plea. Mr. Sixto had been employed by CFC since 2003 and from the beginning his duties included obtaining equipment from suppliers for purchase, re-packaging and shipment to Cuba by CFC. This equipment consisted of radios, flashlights and batteries.

He would like the Court to know that at the time that he began his activities he, and everyone else at CFC, believed that they were prohibited by USAID regulations from purchasing equipment from the People's Republic of China.¹⁷ As part of this investigation, in mid-2008 USAID investigators provided a copy of a memorandum dated April 21, 2005 rescinding this prohibition, but Mr. Sixto had never seen or heard of the memo or the lifting of the restriction.¹⁸ He also does not think that anyone else within CFC knew that the restriction had been lifted. If Mr. Sixto had not begun his activities to purchase and re-sell equipment to CFC from China, it appears that CFC would have continued to purchase from their domestic sources at the higher prices it had been paying all along. It was this restriction against foreign which he believed was in place that partially justified his activities in his mind. He believed that because he could purchase the equipment at a lower price than he believed CFC could legally purchase it, he could personally take the profit from the lower prices of Chinese manufactured equipment that CFC could not have legally purchased itself. In addition, he provided equipment of equal quality, at a price no greater than the price CFC had paid previously and the total expenditure by CFC for equipment continued to fall within its budgeted amount for such equipment. While he attempted to justify his activities to himself, nevertheless, Mr. Sixto recognized then, and now, that what he did was wrong and he took effective steps to hide his actions from CFC. He has admitted that he was motivated by greed and selfishness and the desire to provide for his family a lifestyle that they could not afford.

Mr. Sixto initially used the name of his father's company, Sixto H Distributors, for invoices, purchases and banking, to do business with CFC. He told his father he was selling electronics, camping and outdoor equipment. Out of the proceeds of his activities, he sent his father

and uncles, the co-owners of Sixto H Distributors, a total of \$142,000 over the course of three years. He has consistently and credibly asserted that neither his father nor any other family member knew the true nature of his activities. Mr. Sixto has determined that he spent the profits from his illegal activities approximately as follows:

Car purchase	\$ 15,000
NY property	60,000
Truck purchase	40,000
Mortgage	82,000
Student loans	28,000
Medical bills	19,000
Credit cards	20,000
Business cell phone	13,500
Car expenses	10,000
Equipment storage	5,000
Piano	10,200
Deck for house	5,000
Artwork	5,000
Airfare/hotel	16,000
Professional fees	15,000
Son's Tuition and aftercare	5,000
Cub Scout activities	1,200
Groceries, restaurants	50,000
General purchases (Home Depot, Lowes, Walmart, etc.)	35,000
Payments to family members	<u>142,000</u>
Total	\$ 576,900

Mr. Sixto calculated these expenditures by examining bank records and credit card records. These expenditures are in addition to personal expenses he paid from his salary. His salary income was also spent for additional household, transportation and general expenses and for taxes.

Mr. Sixto is aware that, as a result of his offense, USAID suspended its grant to CFC for six months, reinstating it in September 2008, at which point CFC could submit for reimbursement those expenses it had incurred which were covered by the grant. Since USAID funds can only be used for foreign programs, CFC has always relied on private funds for domestic expenses, including a portion of its rent. Given the amount of publicity, particularly in the Cuban press, he also does not doubt the efforts required of the Executive Director to deal with media

inquiries and others, to restore programs and to raise funds for non-government supported expenses. Mr. Sixto's remorse for his offense includes the damage he wrought on CFC.

III. RESTITUTION

Following the discovery of irregularities at CFC, and an initial meeting with the Executive Director and a staff member in January 2008, Mr. Sixto immediately sought counsel to assist him in dealing with CFC and its attorneys to resolve this matter as quickly as possible. Very soon thereafter, Mr. Sixto met with the attorneys for CFC, answered questions and agreed to provide all documentation requested by them, including bank statements and credit card statements. Mr. Sixto put great effort into responding to questions and providing information to assist CFC in determining exactly what he had done and how much money was involved. At about the same time, on March 1, 2008, Mr. Sixto was promoted to a position of Special Assistant to the President of the United States. In mid-March 2008 CFC advised counsel that it intended to notify the White House of Mr. Sixto's offense. Before that notification was accomplished, Mr. Sixto resigned his position on March 19, 2008.

Between January and April 2008 attorneys for CFC prepared detailed spreadsheets of Mr. Sixto's income and expenditures and Mr. Sixto provided documentation to support every purchase of equipment he had made, every payment he had received from CFC and all other information necessary for an accurate accounting. On April 1, 2008, Mr. Sixto repaid \$142,000 to CFC and on April 4, 2008 he signed a Confession of Judgment Promissory Note which required that he repay an additional \$442,884.60 by April 7, 2008 and the remaining \$60,000 by January 1, 2010.19 The debt of \$60,000 was backed by a mortgage he gave CFC on the property he had purchased in New York. The total amount he paid

included 6% interest. On April 7, he made the payment required by the promissory note in the amount of \$442,884.60. He immediately placed the New York property on the market and when it sold he repaid the balance of the funds he owed CFC, with additional interest in August 2008.²⁰ The attorney for CFC acknowledged the full payment of restitution in a letter dated September 23, 2008.²¹

IV. CURRENT CIRCUMSTANCES

By the time Mr. Sixto resigned from his position at the White House, USAID had begun a criminal investigation which Mr. Sixto had hoped would be completed quickly, given the amount of information he had provided CFC and CFC presumably had provided to USAID. Unemployed and unable to make payments on his home, Mr. Sixto and his family moved back to Florida in May 2008 where they live with his parents, where Mr. Sixto's maternal grandmother also lives. They sold their home in Maryland in the summer of 2008 for \$309,000, approximately \$98,000 less than the principal balance of their mortgage; however, their mortgage holder allowed a short sale. Mr. Sixto also sold their car and truck, artwork, piano, firearms and other personal assets. Their financial situation is dire. Mr. Sixto provided documentation to Ms. Brandon, the Probation Officer, of his debts for medical and household expenses, student loans and taxes. His largest debt is to his father, who loaned him the funds to make restitution. That loan is supported by a promissory note;²² both Mr. Sixto and his father realize he will likely be paying that loan back for the rest of his life.

Anticipating a quick resolution to the criminal investigation and a guilty plea, he did not immediately seek employment when he moved back to Florida, but spent time with his family. He undertook to volunteer with Habitat for Humanity between Thanksgiving and January 2009, completing over 100 hours of service.²³ In early January he began

performing computer consulting services for C & D Professional Services Inc. and for his sister's medical practice, Rodriquez & Sixto Medical Associates, P.A. Since January 2009 Mr. Sixto has earned between \$1,500 and \$2,000 per month from this work. He has also has been serving as a track and field coach and parent volunteer at his son's school, St. Kevin Catholic School, which Mr. Sixto also attended.²⁴ He is also teaching a merit badge course on Civics and American government to his son's Boy Scout troop, and raising funds for St. Jude hospital by participating in an athletic event.

V. FACTS SUPPORTING A VARIANCE FROM THE SENTENCING GUIDELINES

a. History and Character of Mr. Sixto

i. Familial Considerations

Mr. Sixto is the sole physical and emotional support of his wife and son. Laura Sixto continues to suffer from numerous conditions, including severe migraine headaches, ulcerative colitis, Lupus, and renal insufficiency as well as other ailments. Her health and ability to function are unpredictable. She is on medication for anxiety and she is unable to be employed. She says that she does not know what she would do without him on a daily basis. "Emotionally, I do not know how I or our son will survive without Felipe."²⁵

Mr. Sixto's parents have provided him and his family housing in their home, which is also shared by Mr. Sixto's maternal grandmother, Nora Ochoa, who is 87 years old and suffers from Alzheimer's disease and debilitating arthritis.²⁶ Mr. Sixto's mother, who cares for her own mother, also is limited by medical conditions and would be unable to care for Laura Sixto or young Felipe in the likely event that Laura needs medical care. In addition, young Felipe is suffering emotional distress from the abrupt re-location of his family to Florida, from the embarrassment and humiliation of the publicity about his father and from

the prospect of being without his father for any length of time. His mother reported to the Probation Officer that her son has been on an "emotional roller coaster" and has begun to "act out" in school. In her letter to the Court she writes that she believes their son "has been through so much in his life...that losing his dad for any period of time, while fearing, "when is my mom going back to the hospital" will be very detrimental for him."²⁷

Mr. Sixto's support and dedication to his wife and son are deep and long-standing commitments. Writer after writer on his behalf speak of his relationship with his son and his selfless assistance to his wife. Andre Keuck, a former co-worker at CFC described how Mr. Sixto brought his son to the office in the summer and taught him "the responsibility and pride that comes with hard work." He states that "the Felipe Sixto I know is a man of upstanding integrity, loyalty and dedication to his family and work; he conducts himself with dignity and respect for others, and I'm pleased to call him my friend."²⁸

Mikael Garcia worked with Mr. Sixto in the White House and got to know him "quite well, considering how many hours a day we spent on the job." He says that Mr. Sixto "showed a strong sense of moral character and virtue" and "cares deeply about his family's well-being and prosperity." Mr. Garcia says that no example of Mr. Sixto's "success as a human being shines more than his son" who "reflects the effort Mr. Sixto puts into his family and their future." "Mr. Sixto was able to juggle his duties as a servant to the President and spend an adequate amount of time with his family" because "he knew that it was his duty as a father and an assistant to the president to do so."²⁹ Kyle Gibeault states that "he can say "with certainty that any time Felipe is away from them will be an enormous loss..." and asks that the Court "not judge harshly a man who surely regrets his missteps and is without

question needed by his wife and young son."30

Mr. Sixto's mother-in-law, Josefa Morejon, says she "always felt a little better" because Mr. Sixto "was there for [Laura], checking with the doctors, making sure things were done right at the hospital and that the medicines were the right ones and that she could take them..." She states that her daughter and grandson "need him dearly" and that "he is a great father and husband with everything he does." She says that "emotionally the fear of losing his best friend for any amount of time is slowing (sic) eating away at [her grandson]."31 Mr. Sixto's father-in-law, Rafael Morejon, recounts in his letter his separation from his own father at the same age as his grandson is now and how he suffered from that separation. He states that he is "completely sure that the separation of his father will affect [young Felipe] for the rest of his life."32

Mr. Sixto and his family were in counseling until the end of December when their insurance coverage expired. The counselor has continued to see young Felipe at no charge. Despite the report of the psychologist cited in the Presentence Report, Mr. Sixto has been directed by her not to come to the sessions with his son because his son is not ready to confront Mr. Sixto. Although the psychologist reported that Mr. Sixto made little progress while he was seeing her, she makes inconsistent statements about his awareness and acceptance of the "potential consequences." We do not understand her to be saying that he is unaware of the consequences of his criminal conduct, but rather unaware of the consequences of failing to deal with his emotions and the psychological consequences of his actions. Mr. Sixto remains committed to doing whatever is necessary to assist his family in coping with the very difficult situation he has created. Mr. Sixto truly has been and can continue to be the backbone of his family.

ii. Remorse

Mr. Sixto has repeatedly expressed his remorse for his criminal conduct, as evidenced by his personal statement and described in numerous letters submitted on his behalf. In his statement he says, "Words will never express my remorse for my actions and the consequences they have caused, not to me but to the victims who include my family."³³ In addition, Mr. Sixto took the extraordinary step of sending a letter of apology to be published in the Miami Herald on January 4, 2009 to address the rampant speculation in the press that others at CFC were involved and that the money was actually used for propaganda or other illegal purposes. Mr. Sixto made clear that he took the funds for his own personal profit. Mr. Sixto took full responsibility for his actions, exonerating anyone else who may have come under suspicion. He apologized to CFC, his family and his former colleagues.³⁴ He has also apologized in private to members of CFC's Board of Directors and Administration in emails and telephone calls. Janet Weir Creighton, the former Director of the White House Office of Intergovernmental Affairs noted that Mr. Sixto has apologized publicly and has taken full responsibility for his actions. While some individuals may not be as forthright, Felipe demonstrated his character by admitting to the mistake and errors in judgment.³⁵

iii. Character and contributions to the community

As confirmed by the Presentence Investigation Report, Mr. Sixto has no juvenile or adult criminal record other than this offense. Moreover, he has been an honest person all his life, as attested by the numerous letters written on his behalf. For example, Larry Wright gave him responsibilities in his dive shop which included handling cash and credit card transactions. In addition, to financial matters, Mr. Wright addressed other aspects of Mr. Sixto's character in pursuing his Divemaster course, saying "Felipe mastered all of the requirements which

show his dedication, perseverance, communication abilities, and concern for himself and others." Mr. Wright says that he completely trusts and believes in Mr. Sixto. In diving situations, someone's integrity and who they really are shows very clearly in a life and death situation, such as deep underwater. I have personally been in a situation where someone has lost their life and personally know how individuals can react. Some run for their own life, others, the true 'partner' stays and does everything they can, including putting their own life on the line. Felipe is of the later category, in all ways.³⁶

Mr. Wright and numerous others stated that they would fully trust Mr. Sixto with anything, financial or otherwise.

Others speak of other aspects of Mr. Sixto's character. His wife describes how he has faced the challenges of her illnesses with uncomplaining patience and steadfastness, even when doing her hair and helping her get dressed. He "managed to be a husband, father, mother, caretaker and best fiend to us while he worked 10-12 hours a day."³⁷ Gladys Gonzalez Martinez, writing from Cuba, with "words of praise admiration and respect" states that he is "a man that is simple, sincere, human, profound and cheerful; a man without arrogance..." She mentions "some of his most fundamental principles...his concept of justice, of humanity, his sincerity, his sense of responsibility, his dignity, his prudence."³⁸ Michael Smith writes of Mr. Sixto's focus and fairness during law school mock appellate briefing and oral arguments, as well as his loyalty and consideration.³⁹ Linda Kruszka, another diver who worked at Paradise Divers, shares the trust that Larry Wright feels toward Mr. Sixto. She also observed his patience in assisting his wife overcome her fear of the ocean, his positive attitude, and kindness.⁴⁰

Dr. German Munoz, who has known Mr. Sixto for almost 25 years, states that Mr. Sixto "made a mistake that is not characteristic with his personality." Further he says that Mr. Sixto has lost "his job at

The White House, his possessions, his home, and his reputation" and asks for leniency for "he has been and will continue to be an asset to his family, his friends, and his community."⁴¹

Mr. Sixto's actions in committing this offense were truly an aberration in an otherwise completely honest and honorable life. His contributions to his community, including his family, his fellow students, supervisors, co-workers, Cub Scouts, neighbors, the international community, have been life-long and continue to this day. As he prepares himself and his family for sentencing in this case, he continues to parent his son, care for his wife, work, coach track and field, participate in Boy Scouts as a Committee Member and merit badge instructor with his son's troop, and volunteer for Habitat for Humanity, St. Jude's Hospital and St. Kevin school. Mr. Sixto will continue his lifelong contributions to society immediately if he is permitted to remain in the community. He has always worked, studied and been a good parent and husband, all the while finding time and energy to contribute to his community.

b. NO PROBABILITY OF RECIDIVISM

Mr. Sixto's expressions of remorse, his lack of criminal activity in the past and the price he has paid for his criminal conduct reduce the probability of recidivism by him to nothing. As his mother states in her letter to the Court, "I know that my son has learned his lesson well."⁴² His father, too, says "I know that he has learned a big lesson from all of this and will reemerge with the same strength, dedication and vitality that runs in his blood line."⁴³ Mr. Sixto truly has learned his lesson. We submit that he poses no danger to the public of any future criminal conduct.

c. PUNISHMENT AND DETERRENCE ARE SUFFICIENTLY ACCOMPLISHED BY A SHORTER SENTENCE

i. Collateral consequences

Mr. Sixto has paid dearly for his crime and will continue to pay for it for the rest of his life. He lost the home he had purchased in Maryland; he sold his two vehicles; he liquidated personal assets; he owes his father hundreds of thousands of dollars; he owes other creditors hundreds of thousands of dollars; he owes IRS over \$100,000 plus interest and penalties that will double or triple the amount owed. How he and his family will recover financially is unknown. But all of these are monetary costs. The far greater costs are non-monetary. Mr. Sixto has lost the honor, dignity and respect that he had earned over the course of a life of extraordinary accomplishment and opportunity. His family has been embarrassed and humiliated, publicly and privately. His son and wife suffer from his crime. Although many, many people in his life continue to support him, he is diminished forever in their eyes. He has lost the friendship and respect of others with whom he worked. Three teachers from St. Kevin Catholic School, where Mr. Sixto attended and where his son is now a student and Mr. Sixto now volunteers, wrote to say that they have difficulty understanding the "seriously wrong choice" he made, "especially when we know the kinder, loving and serving person that he has always been." They see that he is "learning that it is not easy to regain respect and trust from a community that he let down."⁴⁴

Most painful to Mr. Sixto is the disappointment and shame that he has caused his son, and his diminishment in his son's eyes. In addition, he son is suffering from uncertainty about the future and is angry with his father for all the losses he has faced.⁴⁵

Mr. Sixto lost a dream job—working in the White House as a Special Assistant to the President of the United States. As a convicted felon, he will never again qualify for such a position; indeed, he will not even be able to vote. He will never be able to take a bar examination

and be licensed as an attorney. His job prospects are dim far into the future. He recently was informed that he had been suspended and proposed for debarment from future procurement contracts with USAID and all other US Government agencies.⁴⁶ Mr. Sixto does not intend to contest his proposed debarment. Finally, Mr. Sixto will have to give up the hunting activity that he loves, because he cannot own a firearm.

As Mr. Sixto's lifelong friend, Jose Toledo, said in his letter, "regardless of your sentence, he has already lost all that he has worked so hard to achieve." Mr. Toledo says that he prays "that you will be lenient and show mercy in your sentencing."⁴⁷ Many others have written to describe their knowledge of Mr. Sixto, his character, his relationship with his family and his remorse and to express their requests for leniency. These include family members,⁴⁸ former co-workers,⁴⁹ and friends and neighbors.⁵⁰

**ii. Publicity about Mr. Sixto's offense will accomplish
deterrence of others**

Mr. Sixto's conduct has received substantial publicity, especially in Miami and in the Cuban press and community. In addition, Mr. Sixto himself has explained his criminal conduct to many of his friends, family members and associates, as well as the consequences he faces. The many writers whose letters are submitted with this Memorandum are aware of the nature of Mr. Sixto's offense, if not all of the details, the publicity it has received and the toll it has taken and will continue to take on his life. Many of these individuals are members of the Cuban-American community; others work in law firms, accounting firms, non-profits, and government, including the White House. Carlos Montaner, a journalist with *Firmas Press*, writes that

Mr. Sixto...has hurt himself greatly, and his family has suffered..., but Mr. Sixto has had the decency to publicly acknowledge the error of his ways asking for forgiveness in an exemplary gesture by publishing his moving apology in *The Miami Herald*, the newspaper that is read precisely by the community where he is well known.

Mr. Montaner states that he believes Mr. Sixto "to be someone deserving a second chance in life" and he is "convinced that Mr. Sixto has learned a painful lesson" and he will "rebuild his life by strictly following the precepts of the law."⁵¹

Mr. Sixto's grandmother, Carmen Mijares Sixto says that he has been branded a thief by the Cuban government, the media, and others... He has issued public apologies telling those in the community not only that he was sorry, but that he takes full responsibility and that others were not involved in any means. Through his actions he has shown his true nature; that of an honorable man that can accept responsibility, make restitution, and move forward with his life for the sake of his family.⁵²

Mr. Sixto serves as a highly-publicized model of deterrence to anyone who may contemplate using their intelligence and access to commit theft.

d. RESTITUTION

As described above, Mr. Sixto has made full restitution of the funds he took, with interest, beginning as early April 1, 2008, with complete restitution made by August, 2008. In order to make restitution, Mr. Sixto obtained a loan from his father which is supported by a promissory note. Complete restitution, with interest, made so quickly, with no negotiation or discounting of the amount owed, is extremely rare. Mr. Sixto's actions in making voluntary, total and timely restitution prior to any adjudication of his guilt through the extraordinary effort of borrowing the funds merit strong consideration for a variance from a Guidelines Sentence.

VI. CONCLUSION

Based on all of the facts, considerations and factors presented we respectfully request that the Court impose the lowest possible sentence, in variance from the Sentencing Guidelines calculation. While we have agreed that, on appeal, a sentence within the Guidelines range is a reasonable sentence, we submit that the Guidelines determination is not

the only reasonable disposition, especially under the circumstances of this case, and that a sentence below the Guideline range is a reasonable one here.

Moreover, reasonableness is the appellate standard. *U.S. v. Rita*, 127 S. Ct. 2456 (2007), and a non-Guidelines sentence is not presumptively unreasonable. *U.S. v. Gall*, 128 S. Ct. 586 (2007). *Post-Booker*, after the Court considers the applicable range under the advisory sentencing guidelines, the Court is required to consider the factors under 18 U.S.C. § 3553(a). *See, United States v. Dorcely*, 454 F.3d 366, 376 (D.C. Cir. 2006), *cert. denied*, 127 S. Ct. 691 (2006). Extraordinary circumstances are not required in order to impose an outside-the-Guidelines sentence. *U.S. v. Gall*, 128 S. Ct. at 595. The role of the Guidelines is to serve as one factor among many to be considered in determining an appropriate sentence. *U.S. v. Kimbrough*, 128 S. Ct. 558 (2007). In balancing all the relevant factors for sentencing, not all factors may point in the same direction. *U.S. v. Gardellini*, 545 F.3d 1089 (DC Cir. 2008), but we have shown that a balancing of all the factors will produce a sentence well below the guideline range that will adequately serve the purposes of sentencing as set forth in 18 U.S. Code § 3553(a): reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, and protecting the public. We have shown that the nature and circumstances of the offense and the history and characteristics of the defendant support a non-Guidelines sentence. We have demonstrated extraordinary restitution, family needs and collateral consequences that show that a sentence well below the Guidelines range would fulfill all the requirements of a sentence sufficient but not greater than necessary to fulfill the purposes of 18 U.S. Code § 3553 (a).

We join all those that wrote in Mr. Sixto's behalf in requesting leniency. We note that a sentence of probation in this case would impose significant burdens on Mr. Sixto, consisting of a substantial restriction on his freedom. If the Court determines that probation is not warranted, then we request a period of home confinement as an alternative to incarceration, so that Mr. Sixto can continue to take care of his family.

Respectfully submitted,

/s/ Kathleen E. Voelker

Kathleen E. Voelker
DC Bar #273714
1776 K Street, NW, Suite 800
Washington, DC 20006-2333
(202)835-2200 (phone)
(202)835-3939 (fax)
kathleenvoelker@aol.com

Retained Counsel for Felipe Sixto

March 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that Defendant Felipe Sixto's Memorandum in Aid of Sentencing was served via ECF notification on March ___, 2009 on the following parties:

Vasu Muthyala, Esq.
Assistant United States Attorney
United States Attorney's Office
for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530

Kathleen E. Voelker

1 Mr. Sixto's statement to the Court is attached as Exhibit 1.

2 Exhibit 2, Letter from Ofelia Sixto

3 Exhibit 3, Letter from Felipe H. Sixto

4 Exhibit 4, Letter from Laura Sixto

5 Exhibit 5, Letter from Larry Wright

6 Exhibit 6, Letter from Jon A. Rank

7 Exhibit 7, Letter from William Rodriguez

8 Exhibit 8, Letter from Laura Sixto's current physician, William Rodriguez, D.O. Additional letters from Mrs. Sixto's previous physicians were supplied to the Probation Officer on February 24, 2009.

9 See, 2000 "Cuba: From Revolution to Development" in Economic and Human Development in the Caribbean Basin. Trinidad: University of the West Indies; 2003 "An Evaluation of Four Decades of Cuban Healthcare" in Cuba in Transition, Volume 12, Proceedings from the Annual Conference of the Association for the Study of the Cuban Economy; 2005 "U.S. Cuba Policy: Promoting Civil Society - Establishing Democracy" in Cuba in Transition, Volume 14, Proceedings from the Annual Conference of the Association for the Study of the Cuban Economy; 2006 "Cuban Trade and Tourism: Economic, Political, and Social Concerns" in Cuba in Transition, Volume 15, Proceedings from the Annual Conference of the Association for the Study of the Cuban Economy; 2003 "Una Evaluación de Cuatro Décadas de Atención a la Salud en Cuba" in La seguridad social en Cuba. Caracas: Nueva Sociedad; 2007 "Comercio Y Turismo Con Cuba: Factores Económicos, Políticos Y Sociales Preocupantes" Revista Hispano Cubana, Madrid, Spain.

10 Dr. Carmelo Mesa-Lago's letter is attached as Exhibit 9.

11 Exhibit 7, Letter from William Rodriguez

12 Exhibit 1, Statement of Felipe Sixto

13 Exhibit 10, Letter from Patrick McConnell

14 Exhibit 11, Letter from Jason Smith

15 Exhibit 12, Letter from Lauren De Cecio.

16 Exhibit 13 , Letter from Kyle Gibeault

17 Exhibit 1, Statement of Felipe Sixto

18 Exhibit 14, USAID Notice

19 The Government in its Memorandum in Aid of Sentencing, states that Mr. Sixto only agreed to pay restitution "when threatened with criminal

prosecution." This statement is inaccurate. Mr. Sixto had been working out the details of restitution for weeks when CFC suddenly threatened to file a civil lawsuit immediately. Wanting to avoid any civil legal proceedings, Mr. Sixto rushed to make and complete his restitution payments as quickly as possible.

20 Exhibit 15, Letter from Chad D. Defina, Esq. dated August 22, 2008 and check payable to Steptoe & Johnson

21 Exhibit 16, Letter from Robert L. Moore, Esq. dated September 23, 2008

22 Exhibit 17, Promissory Note

23 Exhibit 18, Record of Hours from Habitat for Humanity

24 Exhibit 19, Log sheet of volunteer hours at St. Kevin Catholic School; Exhibit 20, Letter from Mrs. Lourdes Abella, Mrs. Lizette Molina, Mrs. Diane Perez-Cubas of the Religious Education Department at St. Kevin Catholic School

25 Exhibit 4, Letter from Laura Sixto

26 Exhibit 2, Letter from Ofelia Sixto

27 Exhibit 4, Letter from Laura Sixto

28 Exhibit 21, Letter from Andre Keuck

29 Exhibit 22, Letter from Mikael Garcia

30 Exhibit 13 , Letter from Kyle Gibeault

31 Exhibit 23, Letter from Josefa Morejon

32 Exhibit 24, Letter from Rafael Morejon

33 Exhibit 1, Statement of Felipe Sixto

34 Exhibit 25, Letter to the Editor, Miami Herald, January 4, 2009

35 Exhibit 26, Letter from Janet Weir Creighton

36 Exhibit 5, Letter from Larry Wright

37 Exhibit 4, Letter from Laura Sixto

38 Exhibit 27, Letter from Gladys Gonzalez Martin, handwritten in Spanish with English translation

39 Exhibit 28, Letter from Michael Smith

40 Exhibit 29, Letter from Linda Kruszka

41 Exhibit 30, Letter from Dr. German Munoz

42 Exhibit 2, Letter from Ofelia Sixto

43 Exhibit 3, Letter from Felipe H. Sixto

44 Exhibit 20, Letter from Mrs. Lourdes Abella, Mrs. Lizette Molina, Mrs. Diane Perez-Cubas of the Religious Education Department at St. Kevin Catholic School

45 Exhibit 1, Statement of Felipe Sixto

46 Exhibit 31, letter dated February 26, 2009 from USAID

47 Exhibit 32, letter from Jose Toledo

48 Exhibit 35, letters from family members

49 Exhibit 36, letters from former co-workers

50 Exhibit 37, letters from friends and neighbors.

51 Exhibit 33, Letter from Carlos Alberto Montaner

52 Exhibit 34, Letter from Carmen Mijares Sixto