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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GINA CHILES,

Defendant.

Case No. 3:20-cr-0028-MO

**SENTENCING MEMORANDUM OF DEFENDANT**

**I. Preliminary Statement**

Gina Chiles, by and through her attorneys of record, James O'Rourke and Adam L. Dean, came before the court on March 2, 2020, having waived Indictment and pled guilty to a single-count Information of wire fraud in violation of 18 U.S.C. § 1343. Ms. Chiles is now set to be sentenced on that charge on November 30, 2020. She is filing this Sentencing Memorandum which sets forth the factors that the Court should consider in determining what type and length of

sentence is sufficient in this case. The factors include the nature and circumstances of the offense, Ms. Chiles' exemplary character, the serious detrimental impact of a potential prison sentence on her family, as well as the extraordinary efforts she has made to mitigate the harm that she caused the victims in this matter. In addition, the status of risk of COVID-19 infection in the federal prison system cannot be ignored. Based on a review of these factors, Ms. Chiles is respectfully suggesting that a sentence of probation with a period of home detention is "sufficient, but not greater than necessary," to comply with the goals of sentencing set forth in 18 U.S.C. § 3553(a)(2). She is therefore urging the court to enter a judgment consistent with that sentence.

## **II. The Plea Agreement and Advisory Sentencing Guideline Range**

In order to determine an appropriate sentence, a Court must first accurately calculate a defendant's advisory Guidelines range, and then consider the various factors set forth under 18 U.S.C. § 3553(a). *Gall v. United States*, 552 U.S. 38, 49-50 (2007). The Presentence Report (PSR)—with which both Ms. Chiles and the government agree—has calculated the total offense level at 21. See PSR at 3. This includes a base offense level of 7, pursuant to U.S.S.G. § 2B1.1(a)(1); and an additional 14 levels for a loss of between \$550,000 and \$1,500,000, pursuant to U.S.S.G. § 2T1.1(b)(1); *Id.* at 3. The PSR and the government also agree that Ms. Chiles should receive a 3-level reduction for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1. *Id.* at 3. The government further agrees that Ms. Chiles should receive a 2-level downward variance pursuant to 18 U.S.C. § 3553(a) factors as well as an additional 2-level reduction pursuant to their written plea agreement with her. Ms. Chiles has no prior criminal history. Accordingly, based on a total offense level of 14 and a criminal history category of I, Ms. Chiles' advisory Guidelines range is 15 to 19 months' imprisonment. The government agrees not to seek

any upward departures, adjustments, or variances to the advisory guideline range. Therefore Ms. Chiles' understanding is that the government is requesting that she receive a sentence at the very low end of that range, i.e., 15 months' imprisonment. However, as indicated in the PSR, Ms. Chiles may argue for any lawful sentence including an additional downward variance for consideration of additional 18 U.S.C. § 3553(a) factors as well as a non-guideline sentence which would include a sentence of probation with a period of home detention as well as an order requiring her to pay restitution to help minimize the financial impact of her admitted wrongdoing. As argued below, she respectfully submits that a sentence of probation with a period of home detention is an appropriate sentence in this matter.

### **III. Argument**

#### **A. A review of the factors found in 18 U.S.C. § 3553(a) establish that a probationary sentence with home confinement is an appropriate sentence in this matter**

Though the Guidelines are an important factor in the sentencing analysis, they are only advisory and the court is generally free to impose non-Guidelines sentences. *United States v. Gall*, 552 U.S. 38 (2007); *United States v. Booker*, 543 U.S. 220 (2005). This authority is consistent with the fundamental principle that a sentencing court should consider the full scope of a person's life in an effort to sentence the individual as opposed to the crime:

“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 . . . (1996). Underlying this tradition is the principle that “the punishment should fit the offender and not merely the crime.” *Williams [v. New York]*, 337 U.S. [241,] 247 [(1949)]

. . . *Pepper v. United States*, 562 U.S. 476, 487-88, 131 S. Ct. 1229, 1239-40 (2011) (holding that post-sentencing rehabilitation is an acceptable basis for non-Guidelines sentence on

resentencing after appeal). The Supreme Court and Circuit Courts across the country encourage sentencing courts to exercise great discretion in imposing a just and fair sentence. See e.g., *Spears v. United States*, 555 U.S. 261 (2009); *Rita v. United States*, 551 U.S. 338 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Booker*, 543 U.S. at 220. In exercising its utmost discretion to fashion an appropriate sentence, “the sentencing judge [must] consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). A court “must consider all of the factors set forth in 18 U.S.C. § 3553(a) to guide its discretion at sentencing. *Peugh v. United States*, 569 US 530, 536 (2013). The primary directive in 18 U.S.C. § 3553(a) is for sentencing courts is to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2. Section 3553(a)(2) states that such purposes are:

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

In determining the minimally sufficient sentence, Section 3553(a) further directs sentencing courts to consider the following factors:

- 1) the nature and circumstances of the offense and the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1);
- 2) the kinds of sentences available. 18 U.S.C. § 3553(a)(3);
- 3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a)(6); and

4) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a)(7).

As argued below upon application of the above-stated framework, imposing a non-Guidelines sentence of probation with a period of home detention on Ms. Chiles will achieve the necessary sentencing goal of being sufficient but not greater than necessary to achieve the goals enumerated in 18 U.S.C. § 3553.

**B. The nature and circumstances of the offense and the “characteristics of the defendant,” warrant a probationary sentence**

**(1) Nature and circumstances of the offense**

Section 3553(a) instructs sentencing courts to consider several relevant factors. Perhaps the most fundamental are the “nature and circumstances of the offense” and “the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1). The statute also insists that courts consider “the need for the sentence to reflect the seriousness of the offense.”

In the present case, Ms. Chiles fully acknowledges the significant harm that she caused the victims in this case including private individuals with whom she had prior close relationships. She quickly admitted her actions and tried to begin mitigating the financial harm and loss of trust that she had caused. Ms. Chiles has every intention of making her victims whole as much as possible. She believes that by allowing her to remain out of prison, she will ultimately be in the best position to do so as quickly as possible.

In addition to the nature of the harm caused, 18 USC. § 3553(a)(1) also directs that a court should provide for a “just” punishment for the offense. 18 USC. § 3553(a)(2)(A). This language embodies a cardinal principle of criminal punishment that requires proportionality between offense seriousness and the sentence imposed. See *United States v. Hansen*, 701 F2d 1078, 1083 (2<sup>nd</sup> Cir 1983) (recognizing that harsh punishment should not be imposed where

moral culpability is lacking), cited in *United States v. Singh*, 877 F3d at 120. In assessing the seriousness of an offense, a court generally looks to the harm caused by the conduct as well as to the unique blameworthiness of the defendant including their “state of mind” See e.g. *Singh*, 877 F3d at 120 (remanding for resentencing and holding that “a defendant’s motivation for engaging in criminal conduct is unquestionably a proper consideration at sentencing.”) (quoting *United States v. Steward*, 590 F3d 93, 140-41 (2<sup>nd</sup> Cir 2009); *Ritta*, 551 US at 364 (describing sentencing as a “unique study” into “human failings”).

The sentencing commission has included some proxy measurements for mental state of financial crimes such as the present offense of conviction (e.g., the sophisticated planning enhancement of the fraud guideline, USSG §2B1.1(b)(10); the upward adjust for abuse of trust, USSG §3B1.3; and the downward adjustment for acceptance of responsibility. USSG §3E1.1). However, the Guidelines do not capture or qualify all of the factors which are essential in assessing the relevant features of a defendant’s state of mind.

In this case, the Court should consider the fact that Ms. Chiles’ conduct was not directed at maintaining some extravagant or exotic lifestyle, but rather as Dr. Kirk Johnson noted in his report:

“is understood as emanating from her energetic and optimistic style, coupled with a belief (albeit a now admittedly seriously incorrect one), that she could manage all difficulties and eventually solve problems by simply working harder. She had been uniquely effective in her career and took substantial pleasure in her ability to provide for those that depended upon her. She is not at all accustomed to failure or less than excellent results, having her identity tied up in a successful presentation.

Ms. Chiles had always been able to meet her business and family responsibilities without difficulty. Her fundamental response to mounting problems was not to “cut back,” admit her need for assistance, or do less, but rather to do more in hopes of getting out of the deepening hole she was creating. Consistent with her psychological testing, she plunged forward, avoiding ominous business signs and ignoring the negative, somewhat believing she would figure out how to manage everything. For what amounts to the first time in her life, she

was unable to “fix it.” Being unaccustomed to admitting or even recognizing her limitations, the situation in even totally collapsed of its own weight.” PSR Addendum pg. 7.

Despite the serious lapse in Ms. Chiles’ judgment, Dr. Johnson notably also finds that Ms. Chiles is not an individual who presents as concerning for future illegal behavior and will be essentially “reformed” by the shame she had experienced and the harm she recognizes she has caused to others. *Id.* Dr. Johnson has suggested that Ms. Chiles may benefit from participating in personal counseling focusing on better understanding her personal limitations, more realistically setting personal expectations and increasing her capacity to ask for assistance when required. *Id.* Ms. Chiles is certainly willing and able to comply with any such directives ordered by this court which would be facilitated with a probationary sentence with a period of home confinement.

## **(2) Characteristics of the defendant**

Highly relevant—if not essential—to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. *Pepper v. United States*, 131 U.S. 1229 (2011) (citing *Williams v. New York*, 337 U.S. 241, 246-247 (1949) (overruled on other grounds)). “Matters such as age, education, mental or emotional condition, medical condition (including drug or alcohol addiction), employment history, lack of guidance as a youth, family ties, or military, civic, charitable, or public service are not ordinarily considered under the Guidelines. See United States Sentencing Commission, Guidelines Manual 5H1.1-6, 11, and 12 (Nov. 2006). These are, however, matters that Section 3553(a) authorizes the sentencing judge to consider.” *Rita v. United States*, 551 U.S. 338, 364-365 (2007). (Emphasis added). Sentencing judges are statutorily authorized to consider these matters via 18 U.S.C. § 3661: “No 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.”

In that regard, Gina Chiles, age 46, has been a model citizen for her entire life. Despite having at times an unstable childhood, including being a victim of abuse, Ms. Chiles has successfully raised a family and has lived a stable and productive life other than the conduct which led to her conviction in the current case. She has shown to be a person of high moral character including countless examples of putting others first in her life.

As indicated in her objection to the PSR, she is respectfully requesting that that the court consider her exemplary character as a basis for a variance from the guidelines. *United States v. Autrey*, 555 F3d 864, 867-68 (9th Cir 2009) upholding the sentence of a District Court Judge who deviated from the guidelines in a child pornography possession case based on several factors, including: (1) the fact that the defendant had no criminal record; (2) the fact that the Defendant "did not fit the profile of a pedophile;" (3) the defendant had no history of substance abuse; (4) the fact that the defendant was interpersonally stable and had the support of his family; (5) the fact that the defendant was motivated and intelligent; (6) the fact that the defendant had good prospects for rehabilitation (7) and the fact that he could be safely managed in the community. Based on those factors, the District Court departed from a 51-month guidelines sentence to five years of probation. *Id.*

Ms. Chiles respectfully submits that her circumstances fit the criteria found in *Autrey*. Dr. Johnson's evaluation and other available information demonstrate that Ms. Chiles' criminal conduct is an aberration in an otherwise law-abiding life during which she has displayed ongoing exemplary character. Ms. Chiles lives modestly in a small home in Vancouver with her husband who is a pastor of a small church in the community. She is very active in the church and is always available to help those in need. She is a woman of genuine faith. She has extremely



close connections to her family and a large circle of close friends. She and her husband have raised five well-functioning children. She is actively involved in her church and community service. Her reputation among her family, friends, and community is that of a person who would go to any length to help a friend. The defense has been given numerous letters of community and family support for her. Rather than providing a copy of all letters, Ms. Chiles through her attorneys are submitting seven (7) such letters to the court which are a representative sample of their overall sentiment. Damon McPherson captures this theme when he states: “I give the highest recommendation for Gina Chiles as a woman of great character and a heart to help others. She has shown a commitment to her family and to her community that is rarely found in people. I am proud to call her not only a friend but someone I trust wholeheartedly.” The other letters being submitted contain similar sentiments attesting to Ms. Chiles exemplary character.

As Dr. Johnson found, Ms. Chiles has an entirely prosocial environment centered around her family and faith. Those who know her were shocked when she disclosed her wrongdoing. Ms. Chiles has no substance abuse history and was raised by two good parents in a loving family. She has no mental illness, personality disorder or any other disabling emotional disturbance. She does not have anti-social or criminal attitudes and has excellent prospects for rehabilitation. As Dr. Johnson found, “her personal and community connections offer an ongoing structure that will provide protection from future issues.” She clearly can be safely managed in the community as evidenced by her cooperation with the government in this matter and perfect compliance with pre-trial release conditions.

Ms. Chiles’ willingness and ability to fully cooperate with the government’s investigation is also a testament to her exemplary character. Rather than attempting to obfuscate her wrongdoing, Ms. Chiles readily admitted to her conduct and worked cooperatively with the

government in providing them information about specific transactions to assist in resolving this matter. Ms. Chiles readily agreed to do so not only for the sake of reducing the necessary government resources necessary to complete the investigation but also out of respect to the victims of her conduct so they could have a timely resolution of this case.

**(3) A prison sentence will have a devastating impact on Ms. Chiles' family**

As explained and outlined in the objections to the PSR, including the report of Dr. Johnson, a sentence of imprisonment will also have a devastating impact on specific members of Ms. Chiles' family. As indicated in her objection, Ms. Chiles acknowledges that family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted. However, such circumstances may provide operative in extraordinary cases. See *United States v. Spero*, 382 F.3d 803 (8th Cir. 2004) (a situation in which one parent is critical to a child's well-being qualifies as an exceptional circumstance justifying a downward departure); See *United States v. King*, 201 F. Supp. 3d 167 (D.D.C. 2016) (downward departure to three years' probation with condition of evening home confinement with location monitoring was appropriate where defendant was sole caretaker of seven-year-old daughter who would otherwise become a ward of the state); See *United States v. Lehmann*, 513 F.3d 805 (8th Cir. 2008) (affirming a downward variance to probation where the district court found that a prison sentence would negatively affect the defendant's disabled young son) Ms. Chiles submits that that her continued role as the primary support system for a loved one should qualify as an exceptional circumstance justifying a downward departure or variance from the otherwise applicable sentencing range in this matter. In the alternative, if the court does impose any incarceration, Ms. Chiles' role in this regard should justify a voluntary surrender date after August 2021. It is the understanding of defense counsel that the government would not oppose that request.

**C. The protection of the public under 18 USC § 3553(a)(2)(C) and 18 USC § 3553(a)(2)(B) which also requires that a sentence adequately deter criminal conduct**

In fashioning an appropriate sentence, the Court is required to analyze the purpose of protecting the public from future crimes of defendant. 18 U.S.C. § 3553(a)(2)(C). 18 USC § 3553(a)(2)(B) also requires that a sentence adequately deter criminal conduct. A probationary sentence in the present case would adequately address those considerations.

First, as noted by Dr. Johnson, Ms. Chiles presents at a very low risk for re-offense. She has no prior criminal history and is certainly amenable to treatment including being supportive of the treatment recommendations set forth in Dr. Johnson's report. Ms. Chiles will undoubtedly be placed on supervision as part of any sentence imposed which will allow access and release to any requested financial information. A probationary sentence in this matter will clearly still protect the public.

A probationary sentence will also satisfy the considerations of specific and general deterrence. As found by Dr. Johnson, Ms. Chiles has been deeply affected "by the shame she had experienced and the harm she recognizes she has caused to others." Again, the likely chance of her putting herself and her family at risk of further involvement in the criminal justice system appears remote.

A sentence of probation with a period of home detention would also be sufficient to address the need for general deterrence against others from committing similar acts. As with many individuals charged with financial crimes, the specter of deterrence arises primarily from the prospect of being caught itself, not from the harshness of the resulting sentence. Again, Ms. Chiles has experienced great shame and is sorry for the pain she has caused the victims, her family, as well as the public in general. Research in the area of general deterrence has shown

that, while the specter of being caught and punished has a deterrent effect, “increases in severity of punishments do not yield significant (if any) marginal deterrent effect.” Michael J. Lynch, *Beating a dead horse; Is there any basic empirical evidence for the deterrent effect of punishment?* 31 *Crime, Law and Social Change* 347 (199). This is particularly true for financial offenses where as law school professor Peter Hennings has noted,

{it}t is certainly questionable whether a punishment imposed on onw white-collar criminal has an impact on others because the violations are usually the product of a unique set of circumstances that allowed the crime to occur, and the offenders often do not believe they engaged in wrongdoing that needs to be deterred.

Peter J. Henning, *Is Deterrence Relevant in Sentencing White-Collar Criminals?*, 61 *Wayne L. Rev.* 27 (2015), 31. *United States v. Adelson*, 441 F Supp 2d 506, 514 (noting that “considerable evidence that even relatively short sentences can have a strong deterrent effect t on prospective white collar offenders.”). Indeed, Courts have cautioned against too much emphasis on deterrence as a sole or determinant factor in sentencing. See *United States v. Corsey*, 723 F3d 366, 381 (2<sup>nd</sup> Cir 2013); *United States v. Cavera*, 50 F3d at 191.

**D. Ms. Chiles has made exceptional efforts to mitigate the harm caused by her conduct and has fully cooperated with the government in regards to this prosecution**

In fashioning a sentence, 18 USC § 3553(a)(7) requires the court to consider the need to provide restitution to any victims of the offense. Here there is no doubt that restitution is needed and in fact, Ms. Chiles has stipulated to an order for restitution. However, even before being prosecuted, Ms. Chiles made several exceptional efforts to remedy the harm caused by her conduct which led to this prosecution. For example, early into the investigation, Ms. Chiles agreed to waive \$11,000 that she had billed that was due for management fees to one of the victims. She also agreed to specifically waive over \$70,000 in management fees that were not yet billed but were otherwise due to her.

Ms. Chiles also voluntarily transferred the entirety of her business interest in her previously owned and profitable wedding event business, Inspire Wedding and Events, to one of the victims after admission to her that she had misappropriated funds. It is presumed this business continues to operate profitably. Ms. Chiles is including an inventory list of the items from the business which reflect a portion of the overall value of the business. Although defendant is not requesting a specific dollar offset to any court-ordered restitution amount, defendant gave up this interest which included a substantial amount of business equipment, intellectual property and business goodwill as a way to mitigate the financial impact of her conduct on the named victims. This was done very early into the investigation of this matter.

Ms. Chiles is respectfully requesting that the efforts she has taken to try to mitigate the harm caused by her should be considered in determining an appropriate sentence. In addition, defendant recently received funds as part of her hard work and earnings. Despite having severe financial hardships currently, defendant has set aside \$30,000 to the victims currently held in trust to further mitigate financial harm caused by her conduct. She is working hard to ensure that the victims' losses are mitigated as much and as quickly as possible. See *United States v. Oligmueller*, 198 F.3d 669, 672 (8th Cir. 1999) (upholding departure for extraordinary restitution where defendant made voluntary payments a year prior to indictment, often worked sixteen-hour days on his farm to raise the money, took on a second job, turned over his life insurance policy and his wife's certificate of deposit, and gave up his home). Again, she has every intention of paying restitution in full. A sentence of probation with a period of home detention will clearly put in her the best position possible to do so.

**E. A prison sentence creates unreasonable risk of potential COVID-19 exposure**

On January 31, 2020, U.S. Department of Health and Human Services Secretary Alex Azar declared a Public Health Emergency related to the spread of the 2019 novel coronavirus. On March 11, 2020, the World Health Organization declared COVID-19 virus a pandemic. On March 13, 2020, President Trump declared a National Emergency related to the COVID-19 virus.

The number of confirmed cases of COVID-19 is so uncertain and has increased so rapidly, that between the time that this memorandum is filed and sentencing, the numbers will have increased again substantially. According to the CDC, the total number of confirmed cases in the United States as of November 22, 2020 is 12,028,081.<sup>1</sup> The total new cases since the prior day was 184,591. The total number of deaths in the United States as of that date is 255,076. (Id at fn1). Within these statistics, however, two categories of people are vastly more likely to suffer severe symptoms or die: older people and people with underlying medical conditions.

In addition, people who are incarcerated are finding it impracticable to practice social distancing. The CDC urges that it is “extra important” for older people and those with chronic medical conditions “to take actions to reduce [their] risk of getting sick with the disease.”<sup>2</sup> The CDC has explained that people in this higher risk category must “[a]void crowds as much as possible” and “stay home as much as possible,” particularly once there a COVID-19 outbreak in their community.<sup>3</sup> There is general consensus in the public health community and Washington state that there is one most important thing for those at risk of severe illness or death from COVID-19 is to avoid any public gatherings and to stay at home.

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<sup>1</sup> See CDC, [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days)

<sup>2</sup> Centers for Disease Control and Prevention, *People at Risk for Serious Illness from COVID-19*, available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited 11/23/20).

<sup>3</sup> Id.

The dangers of COVID-19 are especially acute in jail and detention settings. On March 13, 2020, recognizing the dangers a prison or jail setting poses to the spread of communicable diseases such as COVID-19, the Federal Bureau of Prisons declared that, for the next 30 days, inmates at all 122 federal correctional facilities across the United States will no longer be allowed visits from family, friends, or even attorneys.<sup>4</sup>

The Attorney General's original memo<sup>5</sup> to the Bureau of Prisons on March 26, 2020 instructed the BOP to prioritize home confinement as an appropriate response to the COVID-19 pandemic. According to BOP, given the surge in positive cases at select sites and in response to the Attorney General's directives, the BOP has been immediately reviewing all inmates who have COVID-19 risk factors, as described by the CDC, to determine which inmates are suitable for home confinement. It is reported that BOP case management staff continue to urgently reviewing all inmates to determine which ones meet the criteria established by the Attorney General. The Department has also increased resources to review and make appropriate determinations as soon as possible. While all inmates are being reviewed for suitability, any inmate who believes they are eligible may request to be referred to Home Confinement and provide a release plan to their Case Manager.<sup>6</sup>

As of November 23, 2020, there have been 141 deaths in federal prisons attributed to COVID-19 and 2 BOP staff member deaths attributed to COVID-19 disease. Of the inmate deaths, four did occur while on home confinement, substantially less than those in custody. Of the inmates

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<sup>4</sup> See [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp). (last visited 11/23/20)

<sup>5</sup> see [https://www.bop.gov/coronavirus/docs/bop\\_memo\\_home\\_confinement.pdf](https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf) (last visited 11/23/20)

<sup>6</sup> see [https://www.bop.gov/coronavirus/docs/correcting\\_myths\\_and\\_misinformation\\_bop\\_covid19.pdf](https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformation_bop_covid19.pdf) (last visited 11/23/20)

and staff within the Bureau of Prisons, 3,624 federal inmates and 1,225 BOP staff have tested positive for the virus as of November 22, 2020.<sup>7</sup>

Media outlets have reported positive tests for COVID-19 among either inmates or employees in correctional facilities in California, Georgia, Michigan, New Hampshire, New York City, New York state, Illinois, and Washington. Brian Osgood, *Worker at County Jail Tests Positive for COVID-19*, Santa Barbara Independent, March 17, 2020. available at <https://www.independent.com/2020/03/17/worker-at-county-jail-tests-positive-for-covid-19/> (last visited November 23, 2020); Christian Boone, *DOC Employee Contracts COVID-19 Amid Calls for Prison Depopulation*, Atlanta Journal Constitution, March 18, 2020, available at <https://www.ajc.com/news/crime--law/employee-inside-prison-tests-positive-for-covid/a40bWvX7LFFERMjoeLggyH/> (last visited November 22, 2020); Steven Frye, *Two Prison Employees Diagnosed with COVID-19 in Michigan*, The Oakland Express, March 18, 2020, available at [https://www.theoaklandpress.com/news/two-prison-employees-diagnosed-with-covid--in-michigan/article\\_599ec29c-691c-11ea-91ab-c7e5dd4708c3.html](https://www.theoaklandpress.com/news/two-prison-employees-diagnosed-with-covid--in-michigan/article_599ec29c-691c-11ea-91ab-c7e5dd4708c3.html) (last visited November 22, 2020); Nancy West, *Federal Prison Staffer in Berlin Tests Positive for COVID-19*, New Hampshire Center for Public Interest Journalism (March 18, 2020) available at <http://indepthnh.org/2020/03/18/one-staffer-at-federal-prison-in-berlin-tests-positive-for-covid-19/> (last visited November 22, 2020); Chelsia Rose Marcus, *Rikers Island Inmate has Contracted Coronavirus: Officials*, N.Y. Daily News (March 18, 2020) available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzmqmrmuevzz3y-story.html> (last visited November 23, 2020); *COVID Infections Hit 31 inmates and 6 staff at Federal Detention Center in SeaTac*, by Jim Brunner,

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<sup>7</sup> See <https://www.bop.gov/coronavirus/index.jsp> (last visited 11/23/20)



August 28, 2020 available at <https://www.seattletimes.com/seattle-news/health/covid-infections-hit-31-inmates-and-6-staff-at-federal-detention-center-in-seatac> (last visited November 23, 2020); *Press Release: Third Incarcerated Individual in Washington Dies of COVID-19*, Department of Corrections Washington State (November 22, 2020) available at <https://www.doc.wa.gov/news/2020/11222020p.htm> (last visited November 23, 2020). *Four Illinois Federal Prisons Among Nation's 20 Most Infected with COVID-19*, <https://abc7chicago.com/illinois-covid-federal-prisons-19-cases/7935674/> as reported by ABC Chicago on November 13, 2020. ((last visited November 23, 2020).

Like the common flu, COVID-19 can be contagious even when a person has no symptoms.<sup>8</sup> Federal prisons have a constant stream of employees who come to work and leave. Any of those employees could be carrying COVID-19 without knowing it. That risk cannot be mitigated and is why Americans have been ordered to shelter in place and minimize all social contact.

Under the circumstances of this pandemic, a sentence which includes prison now raises additional constitutional concerns. The Eighth Amendment bars “cruel and unusual punishments,” to include deliberate indifference to unsafe, life-threatening conditions. *See generally, Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014). “That the Eighth Amendment protects against future harm to inmates is not a novel proposition.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). “[A] remedy for unsafe conditions need not await a tragic event.” *Id.* At bottom, the Eighth Amendment forbids placing a frail individual at risk of death in the absence of any danger to the community or serious risk of flight.

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<sup>8</sup> See <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-disease-2019-vs-the-flu> (last visited November 23, 2020).

Rather than putting her at risk of contracting COVID-19 while incarcerated, allowing Ms. Chiles to complete a term of probation along with home confinement in lieu of prison fulfills the mandates of these constitutional protections.

#### **IV. Conclusion**

In summary, Ms. Chiles is respectfully requesting the court impose a sentence of probation with a period of home detention along with a term of supervision and order for restitution.

RESPECTFULLY SUBMITTED this 25th day of November, 2020.

*s/ James F. O'Rourke, Jr.*  
James F. O'Rourke Jr., OSB #783286  
Of Attorneys for Defendant  
jfo@jfolaw.com

*s/ Adam L. Dean*  
Adam L. Dean, OSB #952481  
Of Attorneys for Defendant  
adam@deanlawpc.com

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing *Sentencing Memorandum of Defendant* upon:

Ryan Bounds  
Assistant US Attorney  
United States Attorney's Office  
1000 SW 3<sup>rd</sup> Avenue, Suite 600  
Portland, OR 97204

by using the CM/ECF system which sent notification of such filing to the above-named individual on the date set forth below.

DATED this 25th day of November, 2020.

*s/ Adam L. Dean*

Adam L. Dean, OSB #952481  
Of Attorneys for Defendant

## **Inspire Wedding & Events LLC - Items Turned Over to Victim**

1. Bins of Christmas Ornaments – Located in Basement on white shelving.  
-everything that has to do with Christmas on those shelves  
-including the blow-up movie theater screen located in a black bag
2. Small Canister Vacuum (for inside and outside use) -located in basement
3. Square Register in Black Box and all items that come with it including cash drawer and receipts - located in make shift room next to my desk on the metal shelving unit
4. White Square Register in clear Bin and all items that go with it--located in make shift room next to my desk on the metal shelving unit
5. Computer- located in basement downstairs on connection desk
6. Printer-located in basement downstairs on desk
7. 2 Ikea Desks + Filing cabinets + connection desk + chairs -located in basement
8. Apple IPAD stuff --located in make shift room next to my desk on the metal shelving unit
9. New Iron (Red Shark) -located by washer and dryer
10. Bins of LED Bulbs- in basement on black shelving units
11. Bins of Christmas Lights- - in basement on black shelving units
12. Bins of Electrical Cords, Adapters, Timers, Surge Protectors -in basement on black shelving units
13. Bin of White cotton Napkins -located on back wall of basement by built in shelving by square table and chairs
14. All Cleaning Products -located in the basement on black shelving unit closet to the basement stairs
15. All Liquor- located in the liquor cabinet on shelves and still in boxes
16. All Food in basement- Everything on metal shelf Located downstairs in mini room where extra plates and tea sets are that is food related including sugar, syrups, coffee supplies, etc
17. New Stemware- Downstairs (any flutes that are wider and longer -no short ones)
18. Blue and grey stemware racks-located with flutes
19. New goblets- 6 Racks on goblets located downstairs
20. 6 glass Racks-located with goblets
21. Gold Chargers (94 count)- located downstairs basement next to security monitor
22. Paper products, cups, napkins, paper towels-located in basement by breaker boxes
23. Carafes- located on top of the goblet and flute racks, also may be on shelves next to breaker box
24. Cookie Sheet Metal Rolling Stand- in basement in mini room that has the extra plates and tea sets
25. Red Rack Covers- I Located downstairs in mini room where extra plates and tea sets are
26. New Chafing Dishes- located in basement in mini room with tea sets and extra plates are  
- The ones that don't have the fancy foots on them
27. Beverage Dispensers-located by security camera monitor and chargers
28. Coffee Dispenser- located in basement in mini room where tea set, and extra plates are
29. Big plastic round containers- Located downstairs in mini room where extra plates and tea sets are
30. Big pots- 1 its Located downstairs in mini room where extra plates and tea sets are and the others are in the kitchen

31. White Ramekins in a bin in dishware area of mini room in basement with tea sets and extra plates are
32. Sound system equipment -downstairs basement
33. 4 coolers (2 blue, 2 white) -basement and mini room where tea set and extra plates are
34. White towels- located in the 2<sup>nd</sup> floor linen closet
35. 2 white comforters in Vac Bags-located in the 2<sup>nd</sup> floor linen closet
36. Small Rocker (Bentwood)-located in Middle room
37. Christmas Tree- located in Closet on 2<sup>nd</sup> floor inside Bridesmaids room (where the fancy couch is)
38. Christmas Lights-)- located in green shed below the gazebo by black berry bushes
39. Huge Orange Beverage containers (3 hot and cold)- located in green shed below the gazebo by black berry bushes
40. 2 Metal Ice Coolers on wheel- located in Wedding shed (biggest shed the property has)
41. All Chairs White and Plastic – located in wedding shed, in Gazebo and one is in the grand stair case closet
42. Dollies + chair Dollies- located in Wedding shed (biggest shed the property has)
43. Big Bower- located in Wedding shed (biggest shed the property has)
44. Gas Cans- located in Wedding shed (biggest shed the property has)
45. 2 6ft foldable rectangle table- in green room 1<sup>st</sup> floor or in wedding shed
46. 2 8ft foldable rectangle table- in green room 1<sup>st</sup> floor or in wedding shed
47. Christmas Blow-ups- located in any of the sheds
48. Christmas Trees- Located on the top area of Wedding Shed and also located in the Middle shed which is the shed between the wedding shed and grey shed
49. Christmas Decorations-located in the Middle shed which is the shed between the wedding shed and grey shed- but an be located in any of the sheds
50. Wheel barrow- in open Shed off of Garbage Area
51. Shovel- in open Shed off of Garbage Area
52. Rake- in open Shed off of Garbage Area
53. Garden Tools- in open shed off of Garbage area
54. Various linins
55. 2 white benches- located on porch
56. Weed Wacker-last seen on back stairwell when we left the property
57. Edger- last seen on back stairwell when we left the property
58. Power Washer- last seen on back stairwell when we left the property
59. Printer/ Fax- In Hobbit House
60. Stick Vac (shark purple)- In Hobbit House
61. Desk and any other items that go with the desk - In Hobbit House
62. Fire pit- In smaller Gazebo on the North Lawn
63. Fire Place- In Smaller Gazebo on The East Lawn
64. 2 black wagons- Located in Wedding Shed
65. 4 Tiki Torches- Located on the outside of the Gazebo
66. All lace white votives- located on decoration shelves in basement
67. 4 dozen Tan Napkins- located on back wall of basement where the napkins and sashes are

68. 9 Tan Table Cloths -located on linen Racks
69. 12 Ivory Round Table Cloths- located on linen Racks
70. 12 White Round Table Cloths- located on linen Racks
71. 12 Black Fitted Table Cloths- located on linen Racks
72. Navy Napkins (120 count)-located on back wall of basement where the napkins and sashes are
73. All square and circle mirrors still in boxes -located on decoration shelves
74. Shed-located below the gazebo by black berry bushes (all contents)
75. Shed- Grey shed closest to the exit gate with white trim (all contents)
76. Popcorn Machine-Located downstairs in mini room where extra plates and tea sets are
77. Chocolate fountain- Located downstairs in mini room where extra plates and tea sets are
78. Hot dog maker- Located downstairs in mini room where extra plates and tea sets are
79. Hand Mixer- Hanging in Kitchen
80. Keurig coffee pot machine-in Kitchen
81. Crock Pot- located in kitchen
82. Sander and staple guns- located downstairs in bins on black shelves that read sander
83. Light pink Mirror for Displaying Table Numbers-
84. Vacuum Dyson Ball -
85. Green Hitachi Drill plus two batteries-
86. Black Ikea staircase shelving + bins
87. Blue steamer-located in basement
88. Dark grey Hand steamer
89. Lanterns- some are white, off white, and rose gold.
90. round white cake stands-
91. Rosette table linens-
92. Easels- All the easels that are not small and gold are min
93. Off blue hexagon shape vases-located on the decoration shelves
94. Light pink skinny vases-
95. Dark Green vases- located on decoration shelve
96. Clear Bin has extra wedding Stuff includes a ring bearer pillow-located on decoration shelve
97. Fancy silver or Gold Signs that spell out Bar, Sweets, Gifts, guest book-located on the top shelve of decoration area
98. Fancy laced rim chargers- they come in different colors. In a stack in the charger area next to the security camera footage in the basement. They are to the left side on the second shelve to the back
99. A black and white sign that has a wedding saying on it-
100. Blush Napkins -and table runners
101. Birch trees- giant closet in alcove of bride's bedroom
102. lack and white fleur-de-lis table runners- located in a bin on the wall of napkins and sashes