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March 23, 2018

Honorable Jed S. Rakoff
United States Courthouse
500 Pearl Street
New York, New York 10007

RE: United States v. Earl Simmons
Docket No. 17 CR 172-001(JSR)
REDACTED SUBMISSION FOR ECF

Your Honor:

Please receive this letter in conjunction with our previous letter as a sentencing package for Earl Simmons. This is a difficult letter to write, as it is not often that the defendant is not just a client but one we have viewed as a friend, with all of the warts of knowing a real person rather than an image.

The distinction between image and man in this matter is crucial on a number of levels. Even within the criteria of sentencing considerations set forth in 18 U.S.C. 3553a the separation of image and man alerts us to be vigilant to concern for the man over the marquee character.

It is the directive of sentencing to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C.3553(a) subsections 1 and 2. The point of the Pre-Sentence report, the submissions of the Government and counsel are to permit the Court to understand the individual before it and with the guidance of 18 U.S.C.3553a mete out a just sentence. The concern of counsel is how to do justice to this complex man.

There is so much written, some hyperbole, some legend, some distorted, some promotional, some pure about Earl Simmons. Our goal is to permit the Court to understand this man so that the Court can with all of the pressure, obligation and duty in sentencing a human being recognize that this human being should not be used as an example without understanding to how he came to this place.¹

As for the basic preliminaries, Earl Simmons was arrested on July 14, 2017 and released the same day on a \$500,000 unsecured personal recognizance bond to be co-signed by two financially responsible people, secured by \$50,000 cash/property with various conditions. From the outset the Court will recall that

¹ For a brief biography of Simmon's done approximately eight years ago we commend the Court to VH1 Behind The Music, DMX.

this man of such fame could not find two people who would sign for him; adjustments were made. Coming up with the \$50,000 security was a circuitous path that finally was achieved.

Thereafter there were the accommodations to his work schedule, and the ultimate undoing of his liberty because of his substance abuse. On January 30, 2018 the Court remanded Mr. Simmons for his failures in abiding the conditions of his release. Poignantly Mr. Simmons wrote a letter to the Court, which is attached, acknowledging his failure and thanking the Court for having had faith in him. He reflects via the clarity of sobriety the opportunity that the Court gave and did take away. He is hopeful that the Court will have faith in him again, now that he has experienced the impact of failing the Court. He is in a way quite like the kid who does mischief for attention; however at his age, the scale of the offending mischief is life altering; yet is not intentional it is part of illness. See, Exhibit A, Letter of Earl Simmons 2/6/18. It is a theme in the writings of Earl Simmons of the duality of the giving and taking away of love and trust in his existence; that has again manifested itself even by his own doing. His own self undoing is oft the result in his belief that he himself is not worthy, despite a confidence in his own talent; this is further evidence of his duality and the battles within his mind.

A recurring theme in this life is that of the inability to appreciate self and the search for love to fill a chasm of severe child abuse. He is a child of chaos. He developed a gift that is almost savant in its clarity and voice. He is a modern gospel and is seen as such. He has through his words helped millions of people; some letters are attached attesting to how through him they overcame addiction, found hope at their darkest hour, and gave identity to the perceived loneliness of challenged existences.

As Hillel, and Earl have said, if you save one person you have saved the world.² Hillel, Ethics of the Fathers, 1:14; Earl at VH1 Behind the Music (YouTube), Earl has done this for others, through his conveyance of his experience, words and voice. He however, cannot experience the love; and will challenge those have shown him love by pushing them away until they will not show up, in effect proving his belief he is not worthy. Despite the accolades, the literally screaming and adoring fans, he feels that he is nothing. He is bound to religion; he believes deeply and thanks God for his gift and experiences and believes literally in a Christ/Buddhist fashion that "to live is to suffer." He is keenly cognizant of the fleeting nature of fame and the superficial adoration of others. The lyrics to his work, "When I'm Nothing," speak to his insight. See, Exhibit F, Lyrics Section.

² Tattooed on Earl's belly are his lyrics from "Right Wrong:" "True worth of a man is not measured by what he does for himself, but what he does for someone else." See, Exhibit F Lyrics Excerpts (It is also in the lyrics of Right Wrong where he again references his experiences as a child from age 7).

After much negotiation Mr. Simmons pled guilty to Count Two of the indictment acknowledging his evasion of paying taxes in violation of Title 26, United States Code 7201, with a maximum term of five years; a maximum term of supervised release of three years; a maximum fine of \$100,000; and a \$100 mandatory special assessment. This is a Class D felony.³

There is also the matter of restitution. According to the last updated PSR that amount is \$2,292,200.55; the plea agreement provides that the restitution 'shall be paid according to a plan established by the Court.' For any plan to be successful we must get Mr. Simmons back to work and in a healthy manner. He is one of the few people who indeed can achieve the restitution and make the government whole. As noted in our earlier submission, the creative approach necessary here should involve a trust and a contract condition to insure the security of the Government, Mr. Simmons himself and on behalf of his children.

Another elephant in the room (there is a herd of them in this matter), is the condition that Mr. Simmons file accurate amended tax returns for the years 2010 through 2016 by the 14th of March. This was and remains impossible for we have not received cooperation from prior management/accounting entities; [REDACTED]

[REDACTED] Counsel has requested copies of contracts, receipts, proof of payments directly and often. There is absolutely no response. It is not only distressing but impedes both our and Mr. Simmons' ability to be responsive. It is another disappointment which rings true in his relations with the people he seeks to rely upon. [REDACTED]

[REDACTED] so that the Court could directly see both the possibilities and what now seems to be abuse for and of Mr. Simmons. [REDACTED] and it is distressing.⁴ [REDACTED]

[REDACTED] Earl receives news stoically.

³ The level of felony is mention here as it will be relevant to the sentencing proposals suggested at the end of this application.

⁴ Pat Gallo has provided a letter; we have come to learn of his utter fear in relation to this matter and to the direct fallout upon him due to the contract commitments he has signed on Mr. Simmons' behalf to a roster of concerts. The breach and penalty provisions are a cascade of financial obligations which will result in personal liability for Gallo and Simmons. Where this is a place where significant restitution can be achieved, the failures here will add to the debt by lawsuits and penalties pushing Ms. Simmons deeper into a financial quicksand. Gallo [REDACTED] he has been a friend, despite our frustration, to Mr. Simmons and devoted the last year or so of his life to try to get Mr. Simmons back on track. At the point of his letter, he will speak to his concerns about Mr. Simmons and his at times [REDACTED] behavior, that he perceived that Mr. Simmons wanted to be violated.

The Guidelines provide for a level 22 and with acceptance of responsibility result in a level 19. The applicable Guideline range is 57 to 71 months imprisonment but as the statutory maximum sentence permitted under Title 26 U.S.C. Section 7201 is 60 months the effective Guidelines range is 57 to 60 months' imprisonment. Plea Agreement page 5, section C. Further at level 19, the applicable fine range is \$10,000 to \$100,000. The level falls in Zone D, of the guidelines chart.

The Presentence Report of 2/20/18 at one point recommended alternatively a sentence of 24 months' imprisonment (page 48) and 36 months' imprisonment (pages 44, 45) with a two year term of supervised release. The updated report of 2/22/18 recommends a non guidelines sentence of 36 months' imprisonment with two years supervised release. PSR Recommendation at page 48. The Department of Probation in reviewing information obtained during the course of their investigation and the amount of restitution that Mr. Simmons will be held responsible for, found that he does not have the ability to pay a fine and recommends that the fine be waived.

Another elephant is Mr. Simmons' criminal history. While it seems sweeping upon closer review it is generally petty and highlights the early treatment of this young person as a disposable soul. His first arrests as a youth all resulted in incarceration. From the age of 15 the system failed him too. At the time in Westchester he had just passed his fifteenth birthday by ten days. Rather than assess this youth, and the background with his mother, as this Court has come to know, he was simply incarcerated. He had already been put away by his mother to an institution and yet, he sought to return. No one sought to examine this young life.

A matter that is missing from the list, was that subsequent to the six month sentence as Earl was entering a new school-literally on the first day of a new school, as Yonkers High School had closed; he does not recall if it was Lincoln or Roosevelt High he was arrested for being in a stolen vehicle and sent away to what he recalls as Industry, a Division for Youth, juvenile facility and then redirected to another juvenile facility. The 1988 matter for criminal mischief was due to, in his recollection, he being in a neighborhood and looking suspiciously black and having a screwdriver. The cycle had begun and time was meted out when an attempt at any guidance with court supervision may have been more effective, as we have with our Youth Courts today.

Many in the litany of cases from age 18 forward are all defined criminal events which effect his category but in the scheme of punishment and the impact of such a history in the present moment is incongruous. Nine months for unauthorized use of a vehicle (age 18); disorderly conduct, criminal possession of a controlled substance in the 7th degree (misdemeanor possession for personal use typically resolved with a violation or ACD and treatment court; Earl received ninety days); a subway farebeat; disorderly conduct for dogs, drug paraphernalia, yes the seizure of weapons, maintaining a nuisance; violations for failing to complete substance abuse treatment; a plethora of suspended license charges and aggravated unlicensed operation of motor vehicle charges; only one driving while impaired violation.

The Florida matter defined as battery on a law enforcement officer; disorderly conduct/Miami Dade; while it did not contribute any points to Mr. Simmons' criminal history category it should be made clear that there was no assault upon an officer and the rigidity described in the synopsis at Part B: The Defendant's Criminal History at paragraph 48, was as Mr. Simmons' believed what one is taught to do to in civil disobedience protest. There was a nolo contendere plea for which sentence was suspended following proof of payment of court fines and donations to local charities. Of the charities chosen were Kristi House (in the PSR it is listed as Cristy house) a children's advocacy center to end child sexual abuse which operates the Orlowitz Lee Children's Advocacy Center responsible for all sexual abuse cases in Miami Dade County; and the Gwen Cherry Park Foundation a subset of the Girls & Boys Club providing programs for young inner city kids to find safe haven to learn, play and succeed in life.

In California there was a driving while suspended conviction which resulted in a 24 month term of probation and a still apparently outstanding fine.

His time in Arizona was marred in his then belief in another family member. He permitted his paternal half brother to live in his home there; in exchange, the brother was to care for the dogs. Instead, the young relative threw raucous parties, let the house fall into disrepair and did not properly care for the animals. The interface drew the attention of the notorious "Sherriff Jo," Sherriff Joe Arpaio, who developed a particularly obsessive focus on Mr. Simmons culminating with the actual bulldozing of his home. Some of the articles are attached for the Courts review. Mr. Simmons saw Arizona as calm place of respite and experienced actual terror at the direction of extremely local law enforcement. Many of the Arizona interfaces resulted in desert housing without air conditioning, ordered humiliation and chain gang work for the Sherriff's own home projects. Sherriff Jo was even sued by local judges for this tactics see an attached 12/5/10 article. See Exhibit G. The interfaces with Arizona authorities were press darlings it was a round about of driving with suspended license; possession of marijuana, use of vicodin, possession or use of cocaine, weapons possession, all carried intermittent jail sentences in acknowledged challenging conditions. His charge of theft was the result of having not been able to pay a hospital bill after having been treated for pneumonia, he had checked to the hospital under the name Troy Jones.

The aggravated assault charge at the Maricopa Jail was a result of taking a regular meal instead of the "alternative" meal known as the "loaf" which was to be given as a disciplinary sanction. According to the write up Earl threw the Styrofoam container holding the normal meal. Earl did not mean to hit the officer as he was only struck by the Styrofoam on his shoulder and ear and consequently got food on his faces, hair and uniform shirt. PSR B Defendant's Criminal History at paragraph 65, page 23. Notably Sherriff Joe was sued by a number of judges among many issues, for his serving questionable food to inmates. See 12/5/10 article at Exhibit G.

As years went on there were periods of no interface with authorities (2009-2011) and then a return to driving issues; and possession for personal use charges.

His time in South Carolina was marred with the same aspects of driving and possession of marijuana.

Most significantly and as noted in the Sentencing Recommendation by Probation is that thirteen of Mr. Simmons' convictions were as a result of traffic offenses. Many others were for possession charges as noted above. Significantly as noted, "It appears he has made a concerted effort to avoid any and all legal issues and a review of his record revealed with the exception of his arrest for the instant offense, he has been able to avoid any arrests for approximately five years. Simmons appeared hopeful that the Court will take into account his sincere motivation for personal change." PSR, Sentencing Recommendation, page 46. Indeed in counsels' many discussions with Earl, he reflects he is 47, this is not where he wanted to be. Many of his writings, rue incarceration, its impact on the soul and advises people to avoid the path to jail.

The plea agreement had contemplated a criminal history category of level V; however through the assessment of Probation of his history he has been categorized as a level VI. As the Court must consider the guidelines in evaluating an individual for sentencing, it is submitted, that though this criminal history on paper looks extraordinary, the resulting criminal history categorization overstates the criminality of this individual and fails to take into account the influence of his addiction as a driving factor.

It is suggested that a horizontal departure through understanding this individual is warranted, as the Second Circuit made clear is available to the Court. See, i.e. *United States v. Mishoe*, 241 F.3d 214 (2d Cir. 2001). While *Mishoe* involved a drug seller's matter, the concerns raised by elevated criminal history category and its interface with career offenders, its logic is quite instructive here. In imposing sentence, Judge Scheindlin, *sua sponte*, made what has been called a "horizontal departure," see, e.g., *United States v. Rivers*, 50 F.3d 1126, 1130 (2d Cir.1995), moving horizontally across the Guidelines' Sentencing Table from CHC VI to CHC V, because she concluded that CHC VI overrepresented the seriousness of his criminal record, a ground for departure recognized by U.S.S.G. § 4A1.3.⁵ *Id.*

⁵ In expressing this view, Judge Scheindlin considered *Mishoe*, like the defendant in *Williams*, to be: "a street seller of narcotics-the lowest level on the distribution chain. Not only did this make him the least significant member of the distribution chain, but it made him the person most likely to be arrested and convicted since he was out on the street where he could be easily observed and approached by the police. For this reason, his record of convictions should be considered less significant for sentencing purposes than that of others in the distribution chain who do not expose themselves so readily to the risk of arrest and conviction. To equate two or three convictions for street level sales of narcotics with two prior convictions for distributing wholesale quantities of narcotics would seriously overrepresent the seriousness of the street seller's criminal history." Sentencing transcript at 33-34 (Mar. 8, 2000) (quoting *Williams*, 78 F.Supp.2d at 193) (interpolations omitted).

While Mishoe focused on a low level drug dealer; with Mr. Simmons it is not crimes which prey upon the public but upon his own inability to balance that have led to his many convictions. As noted by U.S. Probation Officer Riley, **in recommending a non guidelines sentence, “[w]e are of the position that although defendant’s willingness to engage in continued illicit behavior must be addressed, Simmons manifests issues that are a result of his own chemical dependence and reflect a disrupted behavior that is triggered by his repeated drug use. While imprisoning the defendant may provide satisfaction with respect to the punitive aspect of this sentence, it does little to reduce the cluster of issues the defendant manifests.”** PSR, Sentencing Recommendation, page 48.

In the Second Circuit’s discussion of Judge Scheindlin’s actions it provided a didactic review of the purpose of the criminal history categorization and the ability of the Court to individually adjust to achieve justice.

“The Sentencing Commission has made the extent of a defendant’s prior criminal record an explicit determinant of a defendant’s applicable sentencing range in order to promote the statutory purposes of the Sentencing Reform Act of 1984, especially the need “to afford adequate deterrence to criminal conduct,” 18 U.S.C. § 3553(a)(2)(B), and “to protect the public from further crimes of the defendant,” id. § 3553(a)(2)(C). See U.S.S.G. Ch. 4, Pt. A, intro. comment. Toward this end, the Sentencing Table establishes six categories of criminal history, see id. Sentencing Table, keyed primarily to the number and length of a defendant’s prior sentences. See id. Ch. 4, Pt. A. The six CHCs specify, for each offense level of the Sentencing Table, increasing ranges of punishments.”

Here, at Simmons’ adjusted offense level of 19, the punishment ranges are: CHC I, 30-37 months; CHC II, 33-41 months; CHC III, 37-46 months; CHC IV, 45-57 months; CHC V, 57-71 months; and CHC VI, 63-78 months. (Paraphrasing Mishoe, at ___). Here, we have a cap of 60 months. The recommendation of Probation is a non guidelines sentence of 36 months. See 2/22/18 PSR Sentencing Recommendation pages, 45, 48, reflecting in effect a criminal history category of I. Counsel commends Probation and particularly P.O. Riley, for its effort to insure that Mr. Simmons is understood as a person with the limitations and obstacles he has endured.

“The Sentencing Commission recognized that in some cases the numerical formula by which points for prior sentences of different severity determine the applicable CHC might result in a sentencing range that was either too lenient or too severe. There may be cases where the court concludes that a defendant’s criminal history category significantly over-represents the seriousness of a defendant’s criminal history or the likelihood that the defendant will commit future crimes.” Id. § 4A1.3. In that event, a court may “consider a downward departure from the guidelines.” Id.

First, departures are to be made on the basis of individualized consideration of the circumstances of a defendant’s case, rather than a general “rule.” For example, in considering a (vertical) departure because of the victim’s misconduct, the Supreme Court

observed that it does not advance the analysis much to determine that a victim's misconduct might justify a departure in some aggravated assault cases. What the district court must determine is whether the misconduct that occurred in the particular instance suffices to make the case atypical. *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996) (emphasis added). *Koon* also appears to instruct that the usual standard required for departures, i.e., whether the departure is based on “an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission,” 18 U.S.C. § 3553(b), applies to horizontal CHC departures authorized by section 4A1.3. In rejecting a sentencing judge's attempt to depart below the sentencing range prescribed for CHC I on the theory that the Commission had not adequately distinguished among defendants in CHC I, the Supreme Court noted that the Commission had adequately considered and foreclosed departures below the range prescribed for CHC I. See *Koon*, 518 U.S. at 111, 116 S.Ct. 2035 (citing U.S.S.G. § 4A1.3, ¶ 5). Our Court has also indicated that horizontal CHC departures require particularized consideration of the circumstances of a defendant's case. See *United States v. Rivers*, 50 F.3d 1126, 1130-31 (2d Cir.1995) (approving horizontal departure from CHC VI initially determined because of defendant's career offender status); see also *United States v. Shoupe*, 35 F.3d 835, 837-39 (3d Cir.1994); *United States v. Bowser*, 941 F.2d 1019, 1022-26 (10th Cir.1991); *United States v. Senior*, 935 F.2d 149, 151 (8th Cir.1991).

The Second Circuit held “the Court would be entitled on remand to consider whether to make a departure based on an individualized consideration of factors relevant to an assessment of whether CHC VI “significantly over-represents the seriousness of [the] defendant's criminal history or the likelihood that the defendant will commit further crimes.” U.S.S.G. § 4A1.3. *Mishoe*, at ___.

“The Commission has also recognized that a horizontal departure may be made where a defendant's CHC overrepresents “the likelihood that the defendant will commit further crimes.” *Id.* § 4A1.3. Although the Commission has specified that prior narcotics offenses count for purposes of career offender status “regardless of the actual sentence imposed,” U.S.S.G. § 4B1.2, comment. (n.1), the fact that prior small sentences cannot be disregarded and cannot justify routine horizontal departures for all street-sellers does not mean that the relationship between a particular defendant's CHC VI sentencing range and the time he served on his prior sentences, in combination with other factors (all assessed on an individualized basis), might not warrant a departure.” *Mishoe* at ___.

“Obviously, a major reason for imposing an especially long sentence upon those who have committed prior offenses is to achieve a deterrent effect that the prior punishments failed to achieve. That reason requires an appropriate relationship between the sentence for the current offense and the sentences, particularly the times served, for the prior offenses. If, for example, a defendant twice served five or six years and thereafter committed another serious offense, a current sentence might not have an adequate deterrent effect unless it was substantial, perhaps fifteen or twenty years. Conversely, if a defendant served no time or only a few months for the prior offenses, a sentence of even three or five years for the current offense might be expected to have the

requisite deterrent effect. We think the Commission's sensible recognition that a CHC may over-represent a defendant's likelihood of recidivism permits a sentencing court, in appropriate cases, to include in its individualized consideration of a section 4A1.3 departure the relationship between the punishment prescribed by a career offender CHC and the degree of punishment imposed for prior offenses. In some circumstances, a large disparity in that relationship might indicate that the career offender sentence provides a deterrent effect so in excess of what is required in light of the prior sentences and especially the time served on those sentences as to constitute a mitigating circumstance present "to a degree" not adequately considered by the Commission. See 18 U.S.C. § 3553(b)." *US v. Mishoe* 241 F.3d 214 (2d Cir. 2001).

To be clear we do have hope that Mr. Simmons will not stumble again. The likelihood however in dealing with a man with a serious addiction issue however must as we have experienced during pre-trial give us pause. However, is he likely to commit the crime for which he stands before this court again is a core issue, as is the issue as to how reparation for that crime can be achieved.

As noted by U.S.P.O. Riley, "[w]hile reviewing the facts of his case, it appears that although the defendant has the ultimate responsibility when it comes to his obligation, Simmons may have allowed his judgment [to] be altered by his documented substance abuse issues and possible lack of overall business knowledge. Specifically, Simmons admitted he sought assistance of associates to address his legal matters and relied heavily on their assistance, which reportedly ended in continued deceit." PSR Sentencing Recommendation at page 47. Notably as well, "As a youth living in the group home setting, the defendant was unable to form true bonds which possibly fueled ongoing trust issues which [are] prevalent to this day. Simmons struggled in school and has only achieved a ninth grade education." PSR Sentencing Recommendation at page 45.

What are we punishing? This man achieved a great deal from his ability to convey his pain through rhyme that has impacted millions of people and provided economically for many including himself. His education was a street education. It did not however provide him the education or protections of what to do at that point of achieving financial success. He has never left the poverty of his youth, emotionally or in any aspect of financial education.

Our refrain is for a creative approach that will permit Earl to repay his debt and financial security through proper management. It was curious that one of the recommendations of Probation were for no new lines of credit; there are none now! Earl Simmons does not even have a bank account. Yet he has earned millions for others and for himself but literally does not know where it is or how to access it.

Five months prior to his arrest in this matter, with the help of Pat Gallo, Lars Weiss was retained on February 3, 2017. Attached at Exhibit B, is Mr. Weiss' letter that details the efforts to literally "find the money." The letter is a primer on the manner in which a recording artist may earn and a detail of the lack of access Simmons has had.

“At the time [Weiss] was retained, for several years Mr. Simmons had not received any accountings or payments with regards to the revenue sources a songwriter and recording artist would normally receive.” Through Mr. Weiss’ efforts we are on a path to reconstruction, a path to meaningful restitution and support for Simmons’ himself and his children. Please review the letter in depth as Weiss succinctly conveys not only the industry but Simmons’ information as hostage to entities and liens that continue to earn from him, yet he literally has no idea of his receipts.

[REDACTED]

Throughout we have learned of the significant abuse Earl suffered as a child. This aspect was highlighted in our earlier submission. [REDACTED]

92.

Consistently there is discussion with various of his therapists in substance counseling that there is an undercurrent of post traumatic stress from his abused childhood; [REDACTED], the abandonment by his mother to an orphanage, his return and [REDACTED]

[REDACTED] and it is consistent with the treating therapists we have had contact with that the illicit drugs are in addition to addiction per se, salves for his inner battles. U.S.P.O. Riley also noted “[t]he [REDACTED]

Specifically, as a youth, he was coached by his mother to never talk about what happens to him and he may have manifested that impression as a true ideation. Despite his apprehension, he was able to find some comfort during the interview and briefly discussed some of the trauma he endured during his past relationships, which presents as something the defendant should continue to address and discuss as it may benefit how he copes with his own issues in the future.” PSR, Sentence Recommendation, page 46.

[REDACTED]

Center forwarded an email noting: “We want nothing but the best for him and we know that he will not be able to get the help he needs in prison. If the people in his life really want to see him get better they need to take some guidance from our program. ... We do not want to set him up for failure. When Earl first arrived to our program he did really well when following the guidelines. We ran into issues with his travel to New York and the constant need for him to be in New York for whatever the reasons. New York has proven to be one of, if not the most, unhealthy place for him to be. It has always resulted in relapse. The traveling with no notice and no plan resulting in complete chaos for us and him has played a role in the current situation. As well as his defiance in thinking he can get better on his own.” See Exhibit C, 2/1/18 email.

In this section it may be most appropriate to also address the aspect of his prolific fatherhood. It is driven by his perception of what love actually is. When he would visit the home of his paternal grandmother, for whom he has a deep love for despite her passing. Notably she died of bone cancer, it was not revealed to him until near the end. He has songs he has written about cancer and loss, which are also reflective of his ability to feel deeply and convey his experience. In any event, in her household there were 11 children, the children of some of his father’s siblings he recalls. Some of these were people who later took advantage of him, one of the young men that lived in his home in Arizona and trashed his house and was an instigator of the issues with Sherriff Joe. The eleven children in grand ma Ella’s house was a representation of love; in every room there was something shared, another kid, a warmth, “there was so much love.”

Mary Ella Holloway died on September 21, 1994, it is a date seared into him; she had provided him unconditional love and it was “one look from her that could tear you down.” He recounts watching her pass. At the time other than going to jail it was the first time he had been fully sober since being turned on to cocaine unknowingly as a teen. It was important to her so he did it. Here is a key insight, the meaning of this woman, Ella Holloway, should be factored into understanding Earl. She is one above all in his memory and the knowledge of her meaning and expectation should be addressed for him forward. Ella was the only person he independently attained sobriety for, though only little more than a month, he did it on his own, for her.

It was common for him to know siblings with different fathers, nor did many of the children in his grandmother’s home.

Earl wanted many children as he wanted to love them and for them to love him. His union with Tashera bore five children, and in our prior submission you learned of the passing of Earl, Jr. He was devastated and is still emotionally raw in recounting the short life of this son. He recalls how he was very supportive through every pregnancy, “the glow of the baby made me love her more.”

He thought they were a team and she did not care for his input on something he held sacred, the creation of family.

He is saddened that his children with Tashera are angry with him. They are

achieving and now almost all young adults. In reflecting on other of his children he was so moved that they call him just to see how he is doing; the very hello was a bond to him that reflected connection even if he could not fully articulate it. It is both poignant and stunning that one so adored feels so little love. He recounts he did not know how to be a father because he never had one.

In his relationship with Tashera, initially she had accepted him with his addiction, it had not fully manifested at that point. Despite their long relationship he felt betrayed, in later years she scolded him for being a drug addict and that he would not be more. He remains vividly wounded by this. It seemed to be a reminder of the tearing down he experienced by his mother. Despite the reality of his addiction, it was a blow that she who he loved did not believe in him. For her the drugs led to other women, to him she and only she had held his heart. For a woman and a mother, it is heart, body and soul.

In his relationship today with Desiree Lindstrom, their relationship is dominated by the care for their son Exodus. Earl is cognizant of having lost one son and he sees the challenges for this child. It frightens and pains him. Exodus underwent [REDACTED] and will require significant surgeries this year. He is not yet two years old. Attached at exhibit D are his medical records. [REDACTED]

[REDACTED] Ms. Lindstrom in her letter below, speaks to the Earl she knows and their concern for Exodus.

In spending time with Earl you can see his mind racing. When he is clear he is an amazingly kind person, his manner of speech is so rapid you must ask to understand at times as his thoughts flow in a cascade. He can recite his works and the bible. He can work through a poem, rhyming and connecting thoughts allegorically in a literally digital fashion. There are aspects that are perhaps indicative of ADD as he is non stop.

He can be agitated, when he is anxious he rocks, he as if the motion is to soothe him. He is actually genius in his abilities, equal to his emotional pain.

Addiction:

Addiction in common parlance is acknowledged as an illness. It is understood that the physical/mental relation of the two is not easily broken. He did not come to this place with intention. At age 14 he was handed what he thought was a marijuana cigarette. It had been sprinkled with cocaine, it was provided by his friend and then performance partner. His affliction is vividly recounted as beginning at that moment.

He is extraordinary for despite addiction he has been able to get up and perform. Yet at times in even performance, when he transforms the addiction has trumped him and there are films of him, distorted and confused. There are other times when he is his best self despite the addiction and is in his full transformation on stage. His addiction is his cancer to beat.

One of the central factors that has driven this man's history, is his addiction. As noted in the PSR it has clouded his ability to make choices, provided abuse of him himself on every level, destroyed relationships both personal and professional and several times has almost literally cost him his life. [REDACTED]

It seems a correlation between the noise in his head and heart; his balances or imbalances; his manic ability to communicate through verse; versus his manic inability to communicate or listen to others at all at times as when he is agitated or frustrated and this man who can communicate so deeply; ceases to be able to communicate at all and there is a return to the rage and frustration of the beaten child. The rocking returns, periods of calm, up and down. His cycling is plain in hindsight and yet in the moment it seems to be only staunch defiance.

This is why we are really here: how do you sentence a good man that [REDACTED] which drive him to fail directives that he intelligently recognizes.

The failure to pay taxes, is an acknowledged responsibility for which acceptance of responsibility is embraced. Yet the man has no access to his own information (we are on a good path to find it out with Lars Weiss); has been financially duped, sold and has no capacity how to manage what he has financially commanded; and for this he stands for punishment. His life again is chaos; and yet he still gets up and performs. The constancy of the pressures to answer what he does not know how to answer is confounding to this man whose actual genius of wordsmith provided him through his intelligence an avenue out of one ring of hell.

Earl Simmons Letters of Recommendations

For Earl even the aspect of letters of recommendation is a complex matter. The people, now famous in their own right, having surpassed him due to his addiction have been too busy to get back to us. Thus the reaffirmance to him, of his lack of faith in others. Many have promised, and at this late hour, they will get back to me.

Some are letters from people who have worked with him who recognize his deep heart and emotion, his great talent and gift and his affliction.

Two are letters from women in his life, Tashera, his first wife and the mother of four of his children and Desiree [REDACTED] the mother of his youngest son, Exodus.

Many however are letters from people who have not ever met him but who have either been saved by the comfort of knowing they are not alone in their

experience because of his words; or that they know him because they see Earl in many a young man in every part of our nation. It is one of these letters that I will first focus upon.

Thallissa Judy [REDACTED] has never met Earl but her letter was so insightful I perceive it speaks to our concerns for this individual. It is excerpted as received, linguistically, emphasis is added for your highlighted review.

“...I don’t know the struggles that Earl Simmons have lived through and still face today. I only know what the media puts out about DMX, I have read about his drug addiction, alcohol addiction, his child support issues, his bankruptcies issues, his violent outburst, his rants and raves, and his overdosing. All of these alleged things I have read through media input. Do I believe there is truth into what the media is saying, in part, yes I do. But I am bright enough to know that you don’t believe everything you hear or read. What I do know is that I see a man who has had a hard life, who did not have the simple tools provided to him life to sustain. That by not having the right direction he has led himself down a pa[th] that it appears to be even hopeless. That through [h]is dismay his self-esteem and self-worth has been destroyed. That there are battles within himself that he fights daily. That along this journey throughout his life he did not walk this path alon[e]. He had others to join him for whatever reason they chose. Earl Simmons did not get in the position he is in all by himself. I most definitely believe in accountability. To, take ownership of your life, and your actions. The problem is I live in Columbus, Ohio and I have visited other states and cities and I see an Earl Simmons on every block. Because I pay attention and I am aware of my surroundings. My heart wept for him, my spirit prayed for him, my lips are speaking for him. My eyes see him. He has been like so many others who have been put in my face to see. And I see him. Other people see him. I see people. He is me. He is my sons, he is my friend, he is my brother, and HE is us. What I saw prompted me to ask a simple question. Who is Earl Simmons? ...We can clearly read and see the damage[] that he himself has inflicted on himself and the damage that the world through the career choices that he has made has done. Hearing his words in a sound body and mind would be a healing process for both Earl Simmons and other artists who have been caught up in the whirlwind of this world.....His presence on this world has impacted a lot of people. His music has touched and saved lives. His music and words, as hard as it for some people to hear, they are not BAD. They are one man’s TRUTH, LIFE, and REALITY. He does not stand alone. I believe it would only be fair, that for the people who truly love DMX/Earl Simmons have an opportunity to save[,] help save him. To be allowed through front page media, news to let him know in his darkest hour that is his loved, that GOD did hear, he DOES answer prayers, and he is sending his people his children, his doggs. WE see you Earl Simmons also known as DMX.If you listen to his words, Earl Simmons is crying out. The manner in which he is crying out, some people in society might not fully understand and deem it to be unacceptable. But in actuality his manners and the behaviors is what majority of the world see every day. This is life for a lot of people that they live every day. The only difference it doesn’t make national TV or news. Until we can show the world

through our courts the judicial system that we can truly see people beyond the limelight, beyond his words, beyond his appearances we will never be able to save our children, our people and our world. HE is the start to something needed and new. He can reach a generation of people that no one else can. We all are accountable for this. We all are responsible for our people. I am asking the courts to allow this opportunity to make peace, to heal the people in our world." See, Exhibit E.

This letter from a fan was so insightful it is one few that view the individual in context with humanity.

Fan Mail:

I read through scores of letters sent to Earl in jail some will be on the defense table at sentencing as a Miracle on 34th Street demonstration of a public's belief in this man. So many of the letters, a few attached for your review, spoke of how Earl's words had meaning to them. His conversations with God, "Convo," "Slippin" about addiction and being overwhelmed are attached for your view and here for your ear were inspirational in saving others from addiction; and in showing them a way to bear their pain and rise above it. Many letters offered him prayer, strength, faith and a belief in Earl.

A number of letters are attached some recognizing where he is and sharing their time in prison reflecting that they have now found god and their children listen to Earl's music for inspiration. Now they are sending Earl demonstration of their positive works after prison; others reflect that Earl always gave of himself in giving an individual fan a positive word encouragement; he always stopped for a photo as noted by civil rights attorney James ██████████, Jr. confined to a wheelchair during a fraternity hazing in 1991, their photo together is also attached at Exhibit E.

Many of the letters while filled with praise, all sought something of him. "I have a business we could do;" "I am sent by the lord to be by your side, write me back;" "do for me." Disappointing were letters from his "baby sister," apologizing for not being there for him; vowing not to take and seeking a relationship again with him. The exhaustion and the dichotomy of receiving praise and veiled constant demands is confusing. The adoration should be affirming, but it comes with a price. So many people wanted to reach him because his words had reached them. Yet as Earl had become someone they in turn wanted his recognition.

It is the issue of existentialism. The import of recognition of self by self; and the need for that recognition by others, is a constant in those seeking to achieve anything; yet from a marginalized community who has been taught and told they are worthless, *meaning*, some *respect* is everything.

Respect, is core to esteem and to seeing each other properly. One of the conflicts of the man who has achieved anything is that he should be respected for those achievements. One of the failures of the prison system, is the emotion of

becoming a number and losing one's existence. The internal fight to be someone for an adult is part of self esteem. Earl is someone, but he alternatively lacks esteem as he was never valued by his mother or the system from when he first encountered it. In his treatment records at various rehabilitations he has attended the negative breaking point in therapy is often the perception of a lack of respect and thus in fashioning a sentence respect of the individual and his capacity for brilliance is an important feature to the success of both the penance and sobriety. Respect, achievement and recognition are core themes of Earl's writings and they speak to a nation, and each individual within that nation, that needs to be heard. This humbly is this counsel's perception of one of the roots of much crime.

One friend from childhood now an executive security officer who has served as Earl's security and may prove a support in the resolution of this matter; writes of how he knew Earl in Yonkers and noted how he himself was blessed having been raised by both of his parents and the conflicts within his home between "watching my educated mother work hard holding her family together, then I saw my father hustling in the streets of Yonkers...It was like two different worlds I experience[d] at a young age. He acknowledged knowing the hell of Earl's young life but his belief in him, his talent and his pride at Earl's recognition for his abilities to rap. He knows Earl's battle with drugs and advises him to focus get healthy and let the world know he will finish the marathon. Meech's letter can also be found within Exhibit E.

Many letters are rooted in religion as Earl is; there are references to biblical verse; some are sycophants and yet are committed to him in mind and prayer. See the letter of Prophetas [REDACTED]. (Also at Exhibit E).

Yolanda [REDACTED], "[REDACTED]" of [REDACTED] Outreach Ministries, writes, "No I don't want anything from you-JUST TO TELL YOU that you are still greater than your mistakes. You know that you are chosen: the cycle of insanity will only stop when you totally surrender. Who am I? Well I am glad you asked. Yes I am a fan; yes I love your music but that's not what this notation is all about my name is Yolanda E Robinson-I too have been subject to the [?] of addiction and self destruction. I wanted it to stop but kept falling deeper n deeper into the state of despair-jails-institution-death, but God. No I'm not famous -not plagued by the same massive issues you may face but peace pipe-crack pipe same thang. The principal is what matters.....I know you know all this but sometimes - we must be reminded just like Hezekiah turned his face to the wall-(Isaiah 38:2[] then God turned things around....The Lord just gifted me to write notations of encouragement to those who are bound. Its my passion because He called me out-He then required me to go back in to support others. The struggle is real, 'n somebody has to stand in the point....Yes my son is currently in prison-serving a mandatory 20 years, thank you Jesus -we only have 4 more to go-but it was through this act of God's Mercy -The Lord instructed me how to given 'n use my talent for his glory. My son was 19 'n had support when he went in 'n found so many others who didn't -so-that is where it all begun.

See-Mr. Simmons-its still some real folk in the world 'n like I said -yeah you are the great DMX but God has allowed me to see you as a soul- the rest of that doesn't even matter. It's not by accident this day has come 'n now the end results are up to you-but -it's your choice. The prodigal [stet] son was at his lowest point but The Lord used it as the catalyst that -bought him home. You know we can always go back home-His arms are always open. Keep moving forward -don't look back 'n no matter what or how hard-Forgive yourself-and move on. Do what you must to make it right -but don't hold onto guilt or condemnation. Romans 8:1."

Many are letters of thanks: "And I'm wanting you to know I'm doing it for you! Because if it wasn't for you NONE of this would have happened for me. You inspired me to get back on my grind. ...I've always had a connection with you through your music, but now I look at you as my dog! I remember talking to you in your room and you expressing your gratitude for meeting me. That means so much to me. You have such a POSITIVE impact on so many X and I am one of them for sure!...I hope and pray that God gives you the blessings you deserve! I think of that God verse that you wrote all the time. Such real shit man!...I'm gong keep grindin, stayin positive, and continue to move forward in my journey-for you. Cause I know you want me good. Just like I want you good. I love you like family man, and I hope this letter makes your day!...And by the way I'm meeting with a surgeon at Mass General on Monday morning. I have to have surgery cause that thing is still in my lung. Just wanted you to know that, I should find out when on Monday. Pray for me! I'm praying always for you! Dog Love!" Justin H. (Exhibit E).

Many offer their assistance in his treatment; some seem ludicrous but are between genuine well meaning and the desire to connect to Earl for their own agenda. "Peace Brother Earl, You may not remember me. However I was your therapist a few years back when you were on Rikers Island. I read about your situation in today's news paper and I'm sure I can help you with your current situation. I am retired form Rikers Island and currently have a private practice. I also run my own drug program and would be free to travel with you..." Written in pencil on two torn memo pad sheets with some information on his program "Gifted [REDACTED] Inc., [REDACTED] Avenue, Brooklyn. The slogans are The Youth Of Today Are The Leaders Of Tomorrow; and Education is the Passport To The Future For Tomorrow Belongs To The People Who Prepare For Today, Malcolm X. (See, Exhibit E).

Many letters are well meaning, one hopes, offer prayer, dismay over Earl's detention and reflect upon his words "When I was in my darkest of days I listen[ed] to your prayer it uplifted me as if we was friend[s] through God so we all friend family," the rest of the letter berates him for not giving this fan his number when he met her at a show and requests contact now; thereafter there is a "keep your head up," and a "p.s. This letter is for you... and letter of songs you wrote to the world was heard, I hope [I?] may be heard by you ☺." Rita.

“Dear Earl, My name is Angie and I am your biggest fan in Baltimore, I’m not crazy and I’m not some psycho crazy bitch. I’ve never been able to ever see you in concert and some of it was my fault and some of it was yours. During the height of your career I was strung out on heroin sniffing drugs all day everyday. I will be clean 13 years this April. I listen to your music daily like it just came out. Your prayers have gotten me through some rough days. I was in the darkness and now I see the light. I listen to Slippin every morning before going to work because it keeps me focused and [shows?] how far I’ve come. I know celebrities don’t always have time for the little people or think someone has an agenda. I just want you to know that you are the greatest rapper ever. I have “No weapon formed against me shall prosper”⁶ tattooed on my right arm. I actually cried when the Ruff Ryder tour in Balto was cancelled. I was so hurt that I wouldn’t see a legend perform. I know you probably won’t read this letter but if you do this fan appreciates you. Your songs speak to me, it’s like you knew me.....Sincerely, Angie” (See, Exhibit E).

A greeting card with a lion and the word STRENGTH on the front with an inscription “The only way to discover your true strength is by testing it; and You are smart, strong, brave, and absolutely incredible...You can do anything; with ! added was sent from Texas. The handwritten note while challenging reads: Warmest regard from Texas Mr. Simmons, I wanted to send some positive words your way letting you know you are in my thoughts during this difficult patch in your life. Is there anything I can do to make your life more comfortable, i.e. can I send you funds, books, magazines, newspapers or anything else you can think of that will make your environment more seamless or as seamless as possible. I’ve always been a fan of your work as a STUNNING Artist and would appreciate making incarceration easier to cop with. Any way I can do this I hope you will let me know. I am solidly behind you 100% to provide you anesthesia where you have known excruciating pain. But most of all I want to remind you that you are Earl Simmons/DMX Not inmate # 76031-054. From someone who is on your side and cares about what you are going through.”

Attached are but a few of the outreaches; repeated are thanks for his inspiring words, and that his words reached them.

It is an interesting aspect to be so adored, yet be so alone. It is so much noise to live up to and to feel; and, guilt about not reaching back out. It is frightening to not be able to discern friend or foe, obsessive or sycophant. To some extent this is also exhausting.

Desiree Lindstrom, Earl’s fiancé and mother to his youngest son Exodus:

“I have known Mr. Simmons for over seven years. We met in the state of Arizona. If I could describe the man I met at that time, I would have to say bright, personable, spiritual, and soon [he] became my best friend. Of course, I did go on to

⁶ This is one of Earl’s tattoos.

know the performer, lyricist, and multi-talented artist known as DMX. What many fail to recognize is that there is a difference between the two. Through the years behind closed doors, I have stood by a man that is mentally fragile, suffers from insomnia, traumatic memories, shame, depression and year of what I call street education. This makes for a very difficult daily existence. But somehow, he gathers the strength of a warrior, and performs flawlessly before thousands two to three times a month. It's a mental, emotional, physical battle all co-existing for the man to survive.

Together we have traveled the United States. I can attest to the thousands of people he has met and how they have shown him nothing but love. His music reaches the unreachable. He is known all over the world. True fans are aware of his lifelong struggle with addiction. But this does not break the love. In fact, it makes him that much more human to them. If their words of support alone could heal him, then Mr. Simmons would be whole.

Our friendship became love and we became engaged on October 10, 2014. Years later I bore Exodus Earl Simmons on [REDACTED]. Our son was diagnosed immediately with [REDACTED]. This requires frequent visits to [REDACTED] Hospital in [REDACTED]. It also requires a strict diet to keep his [REDACTED] stable and hourly bladder catheterizations. At this point in time, our son is still [REDACTED].

On December 24, 2017, my son had a fever of 104 degrees and was rushed to the emergency room...diagnosed with a [REDACTED], he remained in the hospital for four days. We were advised at that time that due to his medical condition Within 2018 he will undergo extensive surgery [REDACTED] can commence every three hours within a 24 hour day."

At the time of the letter Ms. Lindstorm was asking for leniency once again. At the time she hoped he could work prior to sentencing. "I need his presence and financial support in the care of our child. I am thankful for the presence of our son in this world..no regrets. However, I cannot express the amount of stress and worry we feel as his parents. I need to make serious lifelong health decisions regarding our son soon and I hope to do so with his father out of prison and sober." Attached at Exhibit E.

Tashera Simmons reflects that she and Earl knew each other from when they were eleven years old. "The young man I met decades ago is not the man that stands before you today. The boy I met was full of love hopes and dreams to make himself and the world a better place by inspiring through his music." ... "Unfortunately due to his younger years of his mother's verbally, emotionally and physical abuse he suffered from a lot of mental trauma, as a young girl and now older woman, [I] had [no] idea how to bring him to true healing and love of self. Even tho I thought I

could, sadly I'm not super wom[a]n. Anyway, needless to say we had an amazing 25 years together. When I look back the good definitely outweighs the bad but the bad was bad! ...I literally watched my best friend gain the world and lose his soul....The first 10 years of our relationship being broke with no money was the best years of our life literally. Earl and I share four beautiful children together. Our oldest is 25, then 18, 15, 13. Three boys and one girl. ...Me and my children have suffered tremendous hurt. I would be lying if I said anything else, from his actions. Judge I'm writing you because finally after years of ups and down's with me and my kids, Earl finally has been trying to do the right thing. Finally admitted he has a serious drug problem. Finally apologized to me and the kids for all his mistakes. Don't get me wrong I know he has a long journey ahead of him but he needs help! The kind of help he needs he's not going to get behind bars in a jail cell...I know he has to take responsibility but he should be put somewhere where he can realize and face responsibility clearly..how he could change and make a difference...Earl has a heart of gold and needs help. He has so much to offer to his children, family and world, until he gets the right help he needs he's never going to be any good to himself or anyone else." See, Exhibit E.

Randy Acker, Esq. has known Earl for approximately 20 years. He details their history from when Acker was an employee of Def Jam records where Earl was signed at the time. Acker managed Earl after his work at Def Jam for about a year. During the time of their business relationship Earl "was also represented by a business management firm who appeared to have a good hold on his financial situation. I did not involve myself in that aspect of his career as it had been my experience that although Mr. Simmons had a substance abuse problem he relied and trusted those around him in their capacity to properly handle those issues."

After he stopped working with Mr. Simmons they remained friends. I always saw he had a good heart but unfortunately had severe substance abuse problems that significantly clouded his judgement.....He genuinely, in my opinion, believed and trusted those around him to a fault. It was under their watch he ended up almost dead with no money in a basement with an ever growing amount of debt.

I believe that Mr. Simmons, after having greatest success from 1997 -2003, could not control his demons which resulted in his career imploding. He then went into a constant state of survival and was never quite able to catch up or get the help he needed to get his substance abuse under control. I saw him make excellent progress in 2016, during which time he went as far as having an attorney call every state to find out what he owed in child support and try to figure out a way to clear up those obligations while rebuilding relationships with his many children.

Mr. Simmons always had a good heart and without the proper education and guidance, it was impossible for him to know the right thing to do. Having come from nothing, this was very challenging and his career did not lend itself to proper surroundings. He needed people he could trust and learn from but the reality is those people in his life were few and far between.

I am hopeful that he will have the chance to continue to rebuild what he has lost given the proper medical care and trusted guidance by people who actually care about Earl Simmons, not DMX. I wish him all the success and blessing and hope you can see how this wasn't a man who was trying to "game" the system but one stuck in permanent survival mode haunted by demons and struggling with substance abuse." See, Exhibit E.

Ron Sweeney, an entertainment attorney in Los Angeles, had tried to assist Earl over the years. It was Sweeney that filed the bankruptcies on Earl's behalf but Earl could not provide the necessary information. The government has criticized him for this and it is perceived it is part of his method of evasion, but Earl genuinely had no knowledge or answers to explain his financial existence. Sweeney recounts his concern over a number of managers that Earl has that were unscrupulous, how records were not kept and how many literally either took his money for themselves or simply failed to account for its management.

I have a litany of people who were "managers," some had no skill in the realm, one is currently under indictment in the Eastern District of New York, some signed him to contracts and will not provide the contracts so Earl can even source his due (see again Lars Weiss letter at Exhibit B); some signed extensions of agreements on his behalf for their personal signing bonus gain without regard to impact to Earl. This is not unique, this industry is replete with the exploitation of the talented but not financially savvy. Even i.e., Billy Joel, Tom Petty, Greatful Dead, were pilfered by their own representatives. [REDACTED]

Earl's initial deal with [REDACTED] then Earl, recognized by Irving Lorenzo was, as it is said, "furnished" to Def Jam. The one positive is that accounting had to be made to Earl; that no one followed up on this is something Lars Weiss is hunting down. The purchase of the soul of the artist and the binding for extraordinary periods compounded with the selling of his services to other companies is not as comic as the sale of Barbara Streisand's contract in her quest to save her husband in "For Pete's Sake," but it demonstrates the odyssey of the artist and his lack of control without learned and honest management.

The letter from Pat [REDACTED] comes amid frustration. He has been so fearful of this process he has been frozen. He has not been able to be supportive to counsel yet he does love Earl, but his fear which is blooming with every day of Earl's detention is manifesting to financial devastation beyond Earl. Gallo has signed all of Earl's recent contracts. There have been shows booked which Earl has obviously missed due to his failure to abide by the Court's direction. Gallo appreciated "the patience and compassion" of the Court throughout this process, by allowing him to work while he is awaiting trial and "I fully understand why you felt

it necessary to revoke this privilege. Though X's addiction is a sickness, I too am disappointed when he struggles to remain sober."

"That said, there are many of us who are now in a difficult position. Prior to Mr. Simmons' incarceration I had booked a number of concerts on his behalf. The contracts signed carry substantial penalties if X fails to appear. In addition, there are promoters who have already begun selling tickets to the concerts and fans who have purchased them-all of whom are now in limbo waiting to see whether X will be able to perform. In light of this, I would respectfully ask that X be released, at least long enough to fulfill his contractual commitments." See, Gallo letter at Exhibit E.

Earl's talent and perpetual promise was also detailed to the Court by Irving Lorenzo. Lorenzo is a brilliant music executive and now also television producer. He was responsible for the introduction of Earl to Def Jam records which was a lightning rod union resulting in Earl's album releases. Lorenzo helped to birth Earl's career as one of the biggest rap recording artists in the world. When record companies viewed him as too street and would not sign him, Lorenzo recognized in Earl the power of his performance, his emotional depth and reach. Lorenzo is quoted as noting that Earl "would speak for the have nots."

"Though some might view Earl Simmons as a complex individual, he is one of the most talented individuals I have ever worked with. He wrote to the Court in August "Simmons is not a perfect man, like all of us he has his flaws and makes some poor choices at times, but I can attest that at his core, he is one of the most loving and passionate friends someone could have. It would sadden my heart on multiple levels if my friend's life is thrown away and he misses out on the opportunity of a lifetime." Lorenzo also reknown as a visionary; most recently began as series on BET called Tales, each episode tells a new "tale" inspired by past and current hip-hop songs weaved into stories. It was for this series he requested travel permission for Earl to appear. Tied to this, as it is Earl's 20th anniversary year, there is a potential biopic on his life the rights for which could be valued from [REDACTED] for his participation in the film. This too could go toward his restitution." See Irving Lorenzo letter at Exhibit E.

Good Works

Despite his conflicts, addiction and demons Earl keenly recognizes where he was from. He has always participated and given to children's causes and even back to the police who once so pursued him. Attached is a letter of thanks from LIFE Camps, Inc. for participating in their "Day of Peace." Life Camp provides at risk youth ages 14-24 years, valuable tools they need to stay in school and out of the criminal justice system. The programs also offer these individuals educational, employment and social opportunities they might not otherwise have; it is a social service agency committed to providing violence prevention, intervention and positive youth development. Their base in is South Jamaica, Queens. In conversation, with Earl he is attuned to the realities and platitudes that are as well ineffectual. He notes if you take away a person's method of

earning be they a drug dealer or a thief they need some way to earn to eat and support their families.

The City Council of Yonkers presented Earl with a Certificate of Recognition for his exceptional generosity at the First Annual Turkey Drive held at the Yonkers Police Athletic League in November, 2017. He has appeared for fundraising fallen officers' families for the Yonkers Police Department. In choosing charities to give for various restitutions they have always involved kids like he himself was.

Earl Simmons, Voice and Existentialist of the Ghetto

Senior counsel recently suggested junior counsel read Oscar Wilde's, The Portrait of Dorian Grey and Albert Camus, ' The Fall. Perhaps it seems an odd parallel for reflection at sentencing for a modern rapper however it is keenly on point. Wilde's and Camus' writings captured the perceptions of privilege and vanity of the effete and effectual of a particular societal class in man's search for meaning and interface with his existence. Dorian Grey and Jean-Baptiste Clamence reflect on the gifts and privilege of their societal positions and the elevation of their perceived selves as above and entitled as compared to those they interfaced with. Their expectation is that of a level above the lower classes; their folly in life is the exploitation of their privileges and the manner in which each copes with the inevitable ennui of life as against its finiteness. For Grey the privilege of his wealth and Faustian bargain of his beauty permits a life of debauchery, excess, opium to drown out his creeping guilt, through the discussions of the boredom of life's mundane and exhaustion of experience. For Clamence it is the surety of his elevation and charm above all else that provides him the pleasure of his position and profession.

For Simmons' his experience and writing is the reality of a class not recognized in classical literature but in ode, that is rap. His reflection and experience is of the proverbial ghetto but the proverbial ghetto is expanded beyond the urban project to the poverty throughout the communities challenged economically and spiritually by the limitations and lack of support expected in the middle and upper class enclaves we pretend are the standard of society. He has a genuine gift; his bargain is with God for if you are not spiritual ironically he will not permit to embrace you. His Achilles heel is cocaine, initially given to him sprinkled in a marijuana cigarette as a teen, which has resulted in a life of organic privilege- the gift of poetry and revelation of experience; torpedoed by the chaos and drive of the addict.

When I ask him what can be done to fight the urge to use; one of his responses is boredom; another is the pain in his experience and another is that of being overwhelmed. His rebellion in return to use and not following direction, even of the court, he perceives as coming from being "overwhelmed," too many things to do. I asked what is necessary and his response was balance. In counsel's view that

fulcrum is structure. A set plan for recovery and a set plan for performance work with an avoidance of New York as recommended by The [REDACTED] Center.

When confronted with the frustrations prior to the Court remanding him, his manager was frustrated as was counsel, there was the logic of following direction; his work in therapy was positive; he was wanted, not by the authorities but by the public and, that public served the Government as it would pave the path to restitution and the re-affirmance of his career.

As with many that do not feel worthy the self sabotage took over, he did not deserve this in his mind. Yet Earl's explanation was there was too much going on; he asked for work breaks and he sought the solace of his girlfriend and son, Exodus and he went off the rails. In a way he acknowledges the fact that he has been institutionalized and thus trained – he can become accustomed to anything as that is how he survived his childhood. Please do not mistake that for the acknowledgement that an extended sentence is something we seek; all must make due as circumstance directs; however here we have a person that expects to be caged as it is a recurrent theme in his writings. It is not an answer [REDACTED] and addiction; as this history has demonstrated. Save for this matter, he had not been arrested in five years. Accord, PSR at page 46.

He felt frustration at being punished for his line of work. His work is not frivolous despite its rarity in comparison to the usual day to day job. His work delivers a meaningful message to masses to whom he translates and provides inspiration. His work also delivers to the companies who literally own him; to the children who have rights to his income and to the Government in his ability to earn to both repay his past debt to the IRS and upon his anticipated future grosses.

Further incarcerating him at this time however potentially creates a cascade of additional lawsuits and debt due to contracts that have and will be broken through this critical time that of the 20th anniversary of his debut albums, May 12, 2018 (U.S.) and May 19, 2018 (U.K.) for It's Dark and Hell Is Hot; and December, 2018 for Flesh of My Flesh, Blood of My Blood. He is a unique entity in the music world having been the only rapper to release back to back platinum performing albums in one year. He stands to earn enough that potentially his debt can be repaid within two years.

His expiration date however is limited. We can compound the failure of the state in failing to see and understand this man when he was 15 years old and remove the real ability for Simmons to complete his debt to the Government. The suggestion in the letter of March 5, 2018 is meaningful as it will provide a stabilizer to insuring that payments are properly received and properly distributed upon a schedule.

Interestingly in my discussions with Lars Weiss who has been working arduously to find and secure Simmons' streams of income it seems that his [REDACTED]

██████████ rights are not even tapped and this alone could provide another source for recoupmnt. Of course, there is outlay with anything but there is potential here.

“X on this second album made the people understand that he was them. And he was going through what they was going through.” Joaquin Dean, Interviewed in *Bring Your Whole Crew The remarkable true story of how DMX’s Flesh of My Flesh, Blood of My Blood Was Made*; Compiled by Jason Parham, Lakin Starling, and Ben Dandridge-Lemco; Photography by Jonathan Mannion. “When people are like that, when they lay themselves bare-to an extent, you know, he wasn’t telling everything. He was telling a lot. He had real issues. He was dealing with serious addiction issues and had a lot of pain. X couldn’t really be fake. I don’t think he knows how, really. There was no artifice. ..He would throw biblical references around and just be talking really frankly about his demons, which is what made him endearing. He could do both.” Karen R. Good, Interviewed in *Bring Your Whole Crew The remarkable true story of how DMX’s Flesh of My Flesh, Blood of My Blood Was Made*; Id. See Exhibit G.

Attached as Exhibit F are some lyrics to some of Earls, songs. Many of his songs, are actually spoken word. His work is truly revelatory in its depiction of his experience and its ability to resonate with others; and its demonstration of faith and gospel. The existentialism of our modern day is revealed; many may not want to hear it as Ms. ██████████ stated in her letter but it is real. Yet, he speaks of his gift, questions why him, why the pain, why the abuse and the choice to write and rhyme rather than engage in the expression of pain through the type of violence that was reigned down upon him as a child physically and emotionally by his mother and by society for casting him away. He is a self made being and he had to forge that self as his personal island. P.O. Reilly recognized this in his recommendation as well.

In his existence from his mother you never knew what was going to happen. The beatings and abuse were brutal. There was no place to go so he took it. “I didn’t deserve it but that is the way I was raised.” He was raised in chaos and now his world looks like it is crumbling at this precipice because although he achieved his way to the American dream when there were few options, through his sheer talent; he had no preparation or ability to manage the bounty returned to him by his talent. The chaos of addiction, the chaos of mismanagement, relationships and inner turmoil and the chaos of his fans is a tornado in which has contributed to tear this man asunder.

Chaos, however, was according to Greek mythology the origin of everything and the first thing that existed. It was the primordial void, the source of which everything was created. The first primordial deities that that emerged out of chaos were Gaea (earth), Tartarus (the underworld), and then Eros (love); later there was Erebus (darkness) and Nyx (the night). Earl was born of chaos and he has been each of the characters that emerged in this abbreviated Greek pantheon, he is a survivor and present as the earth; his addiction is the underworld; he is founded despite all

he has experienced in love, and his inner turmoil is darkness. When he falls off the wagon it is night. "I am a living example of it's darkest before dawn," Earl Simmons.

We seek a sentence that is necessarily creative and factors all of the concerns of 18 U.S.C. 3553a. This should be a dawn for Earl Simmons; the Court has demonstrated respect for him and its power in his failing; Earl Simmons can repay his obligation and incarceration will not address the issues this man is battling, inner demons, both organic to him and organically used by him. This is a particular moment for a particularly unique individual where he can repay his debt and continue to serve others in his words and his desire to become a pastor.

Conclusion

In considering 3553(a)(1), "[s]urely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of its overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all great religions, moral philosophies and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, "the history and characteristics of the defendant." (Judge Rakoff, United States v. Adelson, 441 F. Supp. 2d 504, 514.

After an assessment of the Guidelines exposure in this matter, an assessment of the factors under 18 U.S.C. 3553(a), recognition of Earl's contributions to society and community and recognizing his potential, we respectfully submit that the minimum sentence akin to that which the defense advocates would be "*sufficient, but not greater than necessary*," to reflect the seriousness of the offense, promote respect for the law, provide just punishment and deter others. See, *United States v. Garcia*, 413 F.3d 201 (2d Cir. 2005), *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). Earl Simmons is complex and perhaps his defining experience is struggle; to him to live is to struggle, yet he ends every show and day with a prayer.

"I ain't supposed to be nothing. I didn't know how to take the love." Earl Simmons. "He is the most compelling performer of his generation; his music gave him escape, purpose and kept him alive." Irving Lorenzo.

Before this Court imposes sentence it must consider the factors set forth in Title 18 U.S.C. § 3553(a). When imposing sentence under these factors, courts are instructed to impose a sentence that is "sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of 18 U.S.C. 3553a:

- "The court, in determining the particular sentence to be imposed, shall consider—
- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
 - (2) the need for the sentence imposed—
 - (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;
(3) the kinds of sentences available;
(4) the kinds of sentence and the sentencing range established for—
(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced;

We all owe taxes. Earl had no handle or control over his affairs in many permutations. He does not fail in his acceptance of responsibility regardless. Action is being taken to correct and find his funds and he is poised at the 20th anniversary of his stellar debut albums to return, retake and provide restitution. He needs help but he has been compliant for long periods in the past; he needs structure and there is a plan that can be made with programs ready to take him and guide him if the Court provides its blessing.

His criminal history has an explanation and he has not been arrested in five years save for this matter. This matter perhaps is the one that will save his life. In addition you must be ready to embrace; and in Earl's perception that is through God.

In our discussions at MCC, Earl has reflected that he has appreciated his time there. It was a salvation of sort to shut out the noise. He recognizes his age, now 47, he believes he has a gift from god that is not only life, but his ability to meaningfully reach people bringing gospel and he does not want to squander it. He has been so institutionalized he is numb to it; it is a reinforcement of his lack of worth, the cage for a beast. He is not a beast, he is refinement and intelligence forged of pain seeking a manner to cope. He makes a difference to others. He has saved many worlds in each individual he has touched, he has not been able to save himself and that is where there is the opportunity on March 28, 2018.

Attached at Exhibit F are some of Earl's lyrics. A disk will be provided by hand; it is raw Earl. At sentencing as he may be too emotional to speak we will ask to play a few of his compositions so that the Court may understand him genuinely in his voice. We recommend first viewing Slippin' and Convo with the lyrics. We are not here or desirous of molding him into what some may want to see; Earl is uniquely him and that is both his beauty of mind and his genius.

Earl respects the Court; he needs help to respect himself.

Here to sentence this complex person in context and with a view of the potentials of restitution we seek a unique resolution. Strict supervised release to an in patient program and there are two who stand ready to take him. One the Court has approved and Earl has rented a home near by for Desiree and Exodus. He should be able to perform with the accompaniment of a sober coach and scheduling should not be last minute or random. Planned appearances and schedules are necessary, as the chaos for Earl is detrimental. We suggest revelations of all contracts to an appointee so that payments can be assured and an apportionment goes to the Government. The alternative will remain in the hands of the Court and as we have experienced the Court will not hesitate to exercise its ability to detain Mr. Simmons.

Another suggestion can be found at 18 U.S.C. 3552(b): Presentence Study and Report by Bureau of Prisons provides:

If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a misdemeanor or felony, it may order a study of the defendant. The study shall be conducted in the local community by qualified consultants unless the sentencing judge finds that there is a compelling reason for the study to be done by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. The period of the study shall be no more than sixty days. The order shall specify the additional information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 3581(b) for the offense committed. The study shall inquire into such matters as are specified by the court and any other matters that the Bureau of Prisons or the professional consultants believe are pertinent to the factors set forth in section 3553(a).

The period of the study may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of the study, or by the expiration of any extension granted by the court, the United States marshal shall, if the defendant is in custody, return the defendant to the court for final sentencing. The Bureau of Prisons or the professional consultants shall provide the court with a written report of the pertinent results of the study and make to the court whatever recommendations the Bureau or the consultants believe will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau or the consultants concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that they believe are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

The Court could direct a study by The [REDACTED] Center for the next sixty days during which Earl with supervision could perform his duties and work on his

sobriety. We are at a clear moment. Earl may with the guidance of *this* Court be able to break his bond of addiction; the financial chaos can fall away and he can then seek to quiet his demons with through therapy. We do not seek a pass; we seek a path.

Alternative Sentencing in the Federal Justice System⁷ discusses the reinforcement of sentencing courts' discretion to vary below the sentencing ranges recommended by the Guidelines after *Gall v. United States*; 552 U.S. 38 (2007). There are possibilities to craft a positive result in accord with the 18 U.S.C. 3553a.

Sadly Earl has been groomed that jail is a respite a reset. It does not serve him and it will not serve this moment. It will not serve the goals of restitution. He is sober now and invigorated. The focus this detention has served has renewed his drive to stay sober. The failure to pay taxes and the litany of complaints about his inability to fill out a financial forms; his statements in his bankruptcy that he did not know his worth; all true. He has been overwhelmed and the pressures of the addiction, debts owed to the mothers of his many children; the complete lack of personal knowledge of his financial condition is a continuation of the stress of the hunger he grew up on yet there is a meal for this man. He is capable of the phoenix' rise and impediments are motivators to him. He is struggle and he does not believe in his own worth. At the very height of his career; at one of his most powerful shows he broke down crying and on his knees screamed why me, I am nothing. He says, "I am a living example of its darkest before dawn;" we hope this astute Court will fashion a sentence that permits the sun to rise.

Most respectfully,


Murray Richman

Stacey Richman

cc:
AUSA Richard Cooper (via email)
U.S. Probation Officer Larren Riley (via email)

⁷ Alternative Sentencing In the Federal Criminal Justice System, U.S. Sentencing Commission; attached as Exhibit H.

Exhibit List

Exhibit A: Earl Simmons Letter To Court 2/6/18

Exhibit B: Lars Weiss, Esq. Financial Tracing

Exhibit C: Treatment Provider Letters

[REDACTED]

[REDACTED]

Exhibit D: Medical Records: Exodus Simmons

Exhibit E: Letters of Recommendation and Letters of Thanks

Judy Bowman

Desiree Lindstrom

Tashera Simmons

Frederick Acker, Esq.

Irving Lorenzo

Pat Gallo

Jayson Williams

Addie (2 letter/cards)

"Ru"

"Meech" Friend from growing up in Yonkers

Sister Evangelist Prophetess Davis

Justin H.

Gary Graves

"Rita"

Yolanda Robinson, Mama P

"Angie"

"Dewayne" (?) (handwriting difficult) from Texas

"Kim"

"Steph"

James W. Schottel, Jr. Esq.

Stephanie Reed, LIFE Camps, Inc.

Office of the Council President, City Of Yonkers, Certificate of Recognition

Exhibit F: Lyrics, Selected: Earl Simmons

Convo

A Minute For Your Son

The Prayer IV

Slippin'

Right/Wrong

When I'm Nothing

Exhibit G: Article slight sample

“Bring Your Whole Crew; The Remarkable True Story Of How DMX’s Flesh of My Flesh, Blood of My Blood Was Made;” Compiled by Hson Parham, akin Starling, and Ben Dandridge-Lemco, Photography by Jonathan Mannion
Judges Sue Longtime DMX Detractor Sherriff Joe Arpaio. [Hiphopdx.com/news](http://hiphopdx.com/news)

**Exhibit H: Alternative Sentencing in the Federal Criminal Justice System,
United States Sentencing Commission**

**“Rise Of ABA Task Force’s ‘Shadow Sentencing Guidelines,’” Robert J.; Anello, Richard F. Albert, New York Law Journal,
Volume 255-N0.;64. April 5, 2016.**