

**FOR THE DISTRICT OF COLUMBIA**

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UNITED STATES OF AMERICA	:	Case No. 1:06-cr-00049-RMU-1
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Plaintiff,	:	Judge Ricardo M. Urbina
	:	
vs.	:	
	:	
MITCHELL J. WADE,	:	
	:	
Defendant.	:	

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**SENTENCING MEMORANDUM ON BEHALF OF  
MITCHELL J. WADE  
(Sentencing Date: December 15, 2008)**

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## I. INTRODUCTION

Mitchell Wade stands before the Court having voluntarily admitted to serious crimes. He deeply regrets and takes full responsibility for the fact that he participated in an illegal scheme through which defense contractors and others made improper payments to then-Congressman Cunningham in exchange for earmarks and other favors, inappropriately reimbursed company employees for their contributions to the campaigns of two Members of Congress, and had an improper relationship with officials at the Department of Defense. While his crimes were undeniably serious, it is readily apparent that Mitch Wade's life, both before and after the period in which he committed the crimes for which he has acknowledged guilt, has been characterized by loyalty and dedication to his country, devotion to his family and compassion for others, and that his cooperation with the government has been truly extraordinary. We respectfully request that all of these various facets of his life be given ample consideration by the Court when fashioning an appropriate sentence.

Over the last three years, Mr. Wade has attempted to atone for his misconduct. Indeed, at a critical moment in his relationship with then-Congressman Randall "Duke" Cunningham, long before there was any prospect for personal gain, Mr. Wade rejected a request from the Congressman to conceal an improper payment and thus began the process of cutting himself loose from Mr. Cunningham's vast web of corruption. Instead of hiding the payment, Mr. Wade voluntarily disclosed it and thus began what would become more than three years of extensive and exceptional cooperation that would lead directly to multiple convictions, including that of Mr. Cunningham and businessman Brent Wilkes.

In addition to his life of loyal service to his country, Mr. Wade's offenses should be viewed in relation to the conduct of the other participants in the scheme involving Mr.

Cunningham. Mr. Wade did not disregard an oath of office, did not initiate the crime, and did not leak classified information. He did not obstruct justice, did not offer perjured testimony, did not deny wrongdoing while assessing the strength of the government's case, did not breach his plea agreement, and has no prior criminal record. Compared to the other participants, Mr. Wade's involvement also took place over a shorter period of time. Yet, he faces a Sentencing Guidelines range higher than the sentence received by several of those individuals—including Mr. Cunningham. Mr. Wade respectfully requests that this Court impose a sentence significantly below the Guidelines in order to reflect his acceptance of responsibility and substantial cooperation, his otherwise exemplary character, and the other considerations set forth in detail in this Memorandum.

\* \* \*

Prior to meeting Mr. Cunningham and defense contractor Brent Wilkes, Mr. Wade was a committed government servant and officer in the Navy Reserves who worked on highly sensitive projects that were crucial to the country's national security. Mr. Wade joined the Department of Defense as a civilian following college and over the course of seven years rose to the position of Program Manager. Many of Mr. Wade's assignments remain classified, but they involved supporting counterinsurgency efforts, inspecting nuclear sites, and advancing counter-narcotics missions abroad.

After leaving government service, Mr. Wade founded his own company, MZM, Inc., which he named after the initials of his three oldest children. Mr. Wade envisioned a company that would provide support to the government on highly technical and sensitive national security and intelligence projects. For several years, MZM was primarily a one-man operation that Mr. Wade ran out of his home, receiving support from a handful of retired officers and consultants. As MZM grew, Mr. Wade hired enormously qualified employees, many of whom had honorably

served in the Armed Forces and government. Mr. Wade remains proud of the work that MZM delivered to the government.

Mr. Wade's commitment to his country also led him to join the Navy Reserves and serve as an Intelligence Officer. Despite a demanding career, Mr. Wade willingly gave up his time and autonomy in order to contribute to the nation's defense, knowing that he could be recalled to Active Duty at a moment's notice. In fact, due to his Middle East expertise, Mr. Wade was briefly recalled to Active Duty during Operation Desert Storm. Mr. Wade's superiors recognized the quality of his service through medals, awards, and evaluations that were full of admiration. Though his civilian and military work took him away from his young family, often for weeks at a time as well as on weekends, Mr. Wade took pride in serving his country and remained in the Navy for ten years.

Unfortunately, through his associations with Messrs. Wilkes and Cunningham, Mr. Wade destroyed the reputation that he had built through his service, and caused significant harm to his family, friends, former colleagues, and to his country. In the course of working as a consultant for Mr. Wilkes's company, ADCS, Mr. Wade observed a corrupt relationship between Messrs. Wilkes and Cunningham and saw ADCS receive enormous benefits as a result. Mr. Wade's own relationship with then-Congressman Cunningham began as a friendship, both having served in the Navy. Eventually, however, Mr. Cunningham began insisting on payments and other benefits from Mr. Wade. He told Mr. Wade that he was going to make him "somebody." Mr. Wade gave in to those demands, mindful of Mr. Wilkes's enormous success and wanting his company to be successful in an industry that often depended upon congressional appropriations. Unfortunately, Mr. Wade strayed away from his belief in "integrity and fair play" and let his "pride, ego, and desire for power" lead him down the path of public corruption. (Letter from Mitchell Wade to the Hon. Judge Urbina.) (Attached as Exhibit 1.)

Eventually, there came a time when Mr. Wade stood up to Mr. Cunningham's corrupt demands and confronted his own illegal conduct. After Mr. Cunningham began receiving inquiries from the media regarding one of the improper payments, Mr. Cunningham asked that Mr. Wade help him cover up this transaction. Mr. Wade refused and instead fully and truthfully disclosed his wrongdoings, as well as the misconduct of numerous others, to the authorities.

Since that time, now over three years ago, Mr. Wade has been cooperating with the authorities and his cooperation has been truly extraordinary. Mr. Wade directly and through his legal team played a critical role in building the government's case against Mr. Cunningham. That cooperation also led to the guilty pleas or conviction at trial of seven other individuals. Indeed, just one example of the extraordinary nature of Mr. Wade's cooperation is evidenced by his role in producing Mr. Cunningham's so-called "bribe menu" to the government. The "bribe menu" was a critical piece of evidence against Mr. Cunningham that was featured prominently in the government's case against the former Congressman, and was later held out on the floor of the United States Senate as a symbol of corruption in order to encourage the passage of anti-corruption legislation.<sup>1</sup> The menu was not recovered during a government search of the Duke-Stir, the boat on which Mr. Cunningham had resided, and it would not have come to light but for Mr. Wade's diligence in insisting that his lawyers, at his expense, search the boat again. From the moment Mr. Wade turned the corner and disassociated himself with Mr. Cunningham, he became genuinely committed to assisting the government and making amends for his misconduct.

Mitch Wade regrets that he cannot turn back the clock and refuse to assent to Mr. Cunningham's demands from the very beginning. However, since accepting responsibility for his conduct, he has been doing everything that he can to atone for his transgressions. He acted

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<sup>1</sup> See 153 Cong. Rec. S486-S487 (daily ed. Jan. 12, 2007) (statement of Sen. Kerry).

swiftly in selling his company, at a steep discount, in order to preserve his employees' jobs and ensure that the company could fulfill its contractual obligations and continue supporting the nation's security. He cooperated with the authorities to bring himself and others to justice. In his personal life, he has focused on his faith, on being a good father to his five children, and on giving back through charitable volunteer work. Mr. Wade stands humbly before this Court and is committed to leading an honest life in the coming years, one that reflects the ideals that he embraced before committing his offenses and that he has recaptured in recent years.

## **II. MR. WADE'S CHARACTERISTICS, THE NATURE OF HIS OFFENSES, AND HIS ACCEPTANCE OF RESPONSIBILITY**

Mr. Wade feels deep remorse and shame for the significant harm that he has caused. He fully accepts responsibility for his crimes and hopes for an opportunity to prove that he can continue his efforts—already begun in earnest through his cooperation with the government and involvement in charitable work—to be a responsible and productive member of the community.

### **A. Mr. Wade's Personal Background**

Mr. Wade grew up as the youngest of four siblings in a close family just outside of Washington, D.C. His parents raised the family in the Catholic faith, which Mr. Wade continues today. Family has always been important to him. As his older sister remembers, "Mitch would keep [my grandmother] company in the afternoons, after school, when the rest of us were preoccupied with our own interests." (Valerie Wade letter.)<sup>2</sup>

Mitch Wade became interested in a government service career while in his youth. His cousin writes that "[h]is zeal and respect for his country [were] quite evident throughout the many years of my visits and I knew that one day his sincere desire to work with the US Government would become a reality." (Kit Thorburn Peele letter.) While in college at George

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<sup>2</sup> All letters are attached as Exhibit 2.

Washington University, his internship at the United States Information Agency working to counter Soviet propaganda in the 1980s ignited his career goals. Also while in college at George Washington, Mr. Wade married Colleen Swingle. Together they started a family with their sons, Matthew and Zachary, and their daughter, Morgan.

After graduation, in 1985, Mr. Wade began a career in sensitive national security work. He gained a Top Secret, Sensitive Compartmented Information (“SCI”) Clearance to work on high-level security matters. After a year, Mr. Wade advanced to Program Manager in the Navy Special Access Program. Some of Mr. Wade’s responsibilities included supporting counterinsurgency efforts in El Salvador and other Central American countries from a base in Panama, inspecting nuclear sites in Europe, and assisting with counterintelligence efforts in Europe and Asia. This work demanded extensive travel, often three weeks at a time. The extensive work travel schedule took Mitch Wade away from his children, who had not yet entered elementary school, and the schedule put a difficult strain on his young family. Ultimately, Mitch Wade and his wife divorced. However, despite the divorce, Mr. Wade maintained his parental responsibilities toward his children and enjoys a strong relationship with them today. Indeed, his former wife writes that “[a]s a father, he has always put his children’s emotional and environmental health first.” (Rev. Colleen Swingle-Titus letter.)

In his professional life, Mr. Wade’s government responsibilities continued to increase. In 1989, he helped launch the Intelligence Systems Support Office under the Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence. Among other projects of this office, Mr. Wade managed the exchange of information between intelligence agencies based in Washington, D.C. and Drug Enforcement Agency personnel on the ground in South America to advance the counter-narcotics mission along the Andean Ridge, covering Columbia, Bolivia, and Peru. In Europe, he “was assigned government oversight responsibilities

for installing an operational liaison communications system in support of” an Army intelligence office in Germany, where he “ensured the system was designed and installed on time, met all requirements, and functioned efficiently and reliably.” (Thomas Dillon letter.)

While serving as a Department of Defense employee, Mr. Wade was recruited by the United States Naval Reserve. “He worked tirelessly on the Middle East/Africa desk” at the Defense Intelligence Agency (“DIA”). (Charles Nalls letter.) His superiors have written that “[h]e immediately mastered the diverse critical requirements of the DIA Middle East watch officer and provided timely warning and current intelligence updates on fast-breaking national intelligence situations.” Report on the Fitness of Officers, July 17, 1989 (attached as Exhibit 3). He also “[p]rovided concise, timely inputs to formal briefings for the Chairman, Joint Chiefs of Staff and the Secretary of Defense.” Id.

When the Gulf War began in August 1990, Mr. Wade was called to Active Duty to track developing events in the Middle East on a full-time basis. J.M. “Mike” McConnell, currently serving as the Director of National Intelligence, wrote in Mr. Wade’s evaluation that he “[p]rovided outstanding support to the Duty Director for Intelligence, and the National Military Command Center by analyzing key intelligence gaps on Middle East and African Issues.” Report on the Fitness of Officers, Jan. 4, 1991 (attached as Exhibit 4). Mr. Wade was recognized with the Desert Storm Service Medal.

Mr. Wade’s dedication was rewarded with promotions to Lieutenant Junior Grade, Lieutenant, and Lieutenant Commander, as well as additional formal accolades. After rising to Lieutenant, J.M. McConnell recommended him for accelerated promotion, writing that Mr. Wade was a “responsible and conscientious officer who can be counted on to effectively react to a developing crisis situation in a positive, thorough, and confident manner.” Report on the Fitness of Officers, Feb. 1992 (attached as Exhibit 5). His reviews over the next two years

described Mr. Wade as “a superb Naval officer and intelligence professional who made significant and lasting contributions during this tour of duty in the National Military Joint Intelligence Center (NMJIC).” Report on the Fitness of Officers, Sept. 13, 1993 (attached as Exhibit 6) (emphasis in original).

Individually, the Naval Reserve Intelligence Command presented Mr. Wade with a Letter of Commendation, noting his “loyal dedication to duty . . . in keeping with the highest traditions of the United States Naval Service.” Letter of Commendation to Lieutenant Mitchell J. Wade, Sept. 10, 1995 (attached as Exhibit 7). Mr. Wade was also part of units that were awarded a Letter of Commendation, see Letter of Commendation to Naval Reserve Defense Intelligence Agency Current Intelligence Unit Zero One Six Six, Dec. 4, 1994 (attached as Exhibit 8), and the Joint Meritorious Unit Award, see Joint Meritorious Unit Award to the Defense Intelligence Agency, Aug. 1994 (attached as Exhibit 9). In 1997, Mr. Wade was honorably discharged with the rank of Lieutenant Commander.

About the same time, Mr. Wade’s parents had retired and needed his help. His sister writes that, “[a]s my dad’s [Alzheimer’s] disease progressed, Mitchell, although the youngest sibling, took the responsibility to assist my mother in acquiring the Medicare assistance she needed to get my dad the best possible nursing home care.” (Diane Wade letter.) During that time, “Mitch who lived two states away, made regular visits to be by his bedside and to keep my mother company, often bringing his children with him to cheer her up.” (Valerie Wade letter.) In 2001, Mr. Wade’s mother passed away unexpectedly. “Mitchell took the emotional and financial responsibility of the funeral and all other arrangements.” (Diane Wade letter.) About a year later, when his father also passed on, Mr. Wade did the same. His family has described him as a “support system,” (Kit Thorburn Peele and Robert Thorburn letters), and “the rock” upon whom his siblings depend, (Michael Brennan letter).

While caring for his parents, Mr. Wade was not only nurturing and supporting his children from his first marriage but also raising his two younger daughters from his second marriage. He met Christianne Shipley through the International Foundation, a Christian organization known for organizing the annual National Prayer Breakfast in Washington, D.C. Mr. Wade volunteered his time at various International Foundation events, including the National Prayer Breakfast, and made annual contributions to the organization. After his marriage to Ms. Shipley, they eventually had two daughters, Abigail, who is now six years old, and Hannah, now four years old. Ultimately, the strain of Mr. Wade's current legal situation had a devastating impact on his marriage and he is presently in the midst of a divorce from Ms. Shipley. However, although the divorce is pending, Mr. Wade remains a committed father. (See Simon Ayouch and Cindy Ayouch letters.) For example, another father at the same school at Mr. Wade's daughters described how Mr. Wade finger-painted with his children and how they both took part in "Dads' Day" at the school. (Gare Smith letter.)

Outside his family, Mr. Wade lent his business expertise to his friends. When his former Navy colleague started a legal practice, "Mitch encouraged me throughout that effort, freely giving of his time and business talent to help the fledgling practice. At all times, Mitch conducted himself with the utmost integrity, refusing to bend rules or cut corners even though it meant personal financial loss in those transactions." (Charles H. Nalls letter.) When another friend wished to make a property investment but did not have sufficient capital, Mitch "was very honest and fair in negotiating the transaction." (W. Patrick Evans letter.)

In 1993, with the change of administration and his supervisor's departure, Mr. Wade left government service to found MZM, Inc. Joined by a handful of retired officers and consultants, Mr. Wade created MZM as a government contractor to work on specialized projects with national security intelligence goals. In MZM's early years, it helped establish the U.S. Army's

Land Information Warfare Activity at Fort Belvoir in Virginia by developing missions, charters, budgets, counterintelligence, and security efforts for the Office of the Secretary of Defense/C3I. MZM provided technical and programmatic assistance to the National Security Agency at Fort Meade in Maryland. It also supported the National Ground Intelligence Center in Charlottesville, Virginia and the U.S. Air Force's BIG CROW Program Office in Albuquerque, New Mexico. In another example, MZM helped establish the Foreign Infrastructure Engineering System ("FIRES") database, a computerized system for integrating intelligence from all branches of the military at the National Ground Counterintelligence Center. The project involved acquiring and digitally converting documents, usually engineering documents, from around the world to geographically aid military targeting tasks. In other projects, MZM dispatched linguists in the Iraq war zone, provided technical support to the Director of the National Security Agency, gave support to the Central Intelligence Agency, and worked for the Special Operations Command in Florida. In 2002, the United States Secret Service issued a Certificate of Appreciation to MZM for its work tracking potential threats made against the President, Vice-President, and their families.

Mr. Wade has always been driven to fulfill the government interests served by MZM's various projects. As one of his former colleagues writes, Mitch Wade is "a patriot." (Frank Miller letter.) He not only has worked diligently to carry out sensitive government military projects but has also maintained a deep appreciation and admiration for others who serve their country. For example, during MZM's holiday preparations, Mr. Wade "suggested . . . the possibility of inviting some wounded soldiers to join us in the celebration." (Shui-ing Jenny Lau letter.) "Mitch would always go out of his way to recognize the veterans and their service to this wonderful nation," by hosting combat-wounded veterans from the Walter Reed Army Medical Center during holiday and sporting events. (Anastasios Christian letter.) His former employees

explain that “[n]ot only were we intense about what we saw as a national defense mission but Mitch saw to it that our families, who suffered from our absence were taken care of . . . .” (Frank Miller letter.)

Mr. Wade also often went out of his way to help MZM employees. “Once, when he heard that one of his employee[s] could not afford airfare to Florida, to attend a talent competition in which her daughter was participating and had a good chance to win, Mr. Wade, unprompted, purchased a round trip ticket for that employee so she could attend the competition.” (Shui-ying Jenny Lau letter.) Another employee remembers that “[o]n my 20<sup>th</sup> wedding anniversary, he had a limousine come to my house to take my wife and me to dinner.” (Anastasios Christian letter.) Other former employees describe him as “reliable,” “loyal to his country,” (Thomas Dillon letter), “kind” and “generous,” (Shui-ying Jenny Lau letter).

Mr. Wade deeply regrets the shadow of suspicion that his conduct has cast on the many honorable employees of MZM. He set out to build a company that would serve national security needs in an effort to continue providing the type of honorable work that he had provided as a Naval reservist and a Department of Defense employee. As his former employee writes, “[h]e’s always wanted what was right and best for the nation, national security and its service members/veterans.” (Anastasios Christian letter.)

## **B. The Offense Conduct**

In 1998, five years after founding his company, Mr. Wade began working as a consultant for Brent Wilkes’s defense contracting company, ADCS. By that time—and unbeknownst to Mr. Wade—Mr. Wilkes had been carrying on his corrupt relationship with Mr. Cunningham for several years. *See, e.g.,* Gov’t Sent. Mem. at 5, United States v. Wilkes, No. 07-cr-0330 (S.D. Cal. Feb. 14, 2008) (stating that Mr. Wilkes’s crimes with respect to Mr. Cunningham spanned nearly a decade from the mid-1990s). Mr. Wilkes hired Mr. Wade for Mr. Wade’s knowledge of

the Department of Defense, his ability to execute work, and particularly to help ADCS deliver on a Defense Department contract, which involved scanning documents of the Panama Canal into an intelligence database.

Through Mr. Wilkes, Mr. Wade was introduced to then-Congressman Cunningham and eventually to the manner in which Messrs. Cunningham and Wilkes conducted business. Mr. Wade saw that Mr. Wilkes secured a significant stream of revenue for ACDS from congressional earmarks. Mr. Wade then made the profound mistake of following Mr. Wilkes's example. As he explained in his letter to this Court, Mr. Wade strayed away from his belief in "integrity and fair play" and let his "pride, ego, and desire for power [lead him] down [a] terrible path." (Letter from Mitchell Wade to the Hon. Judge Urbina.)

Mr. Wade's relationship with Mr. Cunningham began as a friendship as they shared the common bond of having served in the Navy. Eventually, however, Mr. Cunningham began demanding gifts from Mr. Wade. See, e.g., Gov't Sent. Mem. at 8-10, 14-15, 25, United States v. Cunningham, No. 05-cr-2137 (S.D. Cal. Feb. 17, 2006) (describing how Mr. Cunningham "told," "demanded," "instructed," and "asked" Mr. Wade to give him improper payments). Mr. Wade gave in to these demands in an effort to keep his company competitive in obtaining appropriations from Mr. Cunningham's congressional committee.

For example, on November 16, 2001, Mr. Cunningham called Mr. Wade and suggested that they go shopping for antiques. Mr. Wade agreed, thinking that each of them would shop for themselves. However, when it came time to pay, Mr. Cunningham left Mitch Wade alone at the cash register. Having observed Messrs. Wilkes and Cunningham's pattern of dealing, Mr. Wade understood what Mr. Cunningham expected of him. After Mr. Wade paid the bill, Mr. Cunningham came back to the checkout area to indicate where the items that he had selected

should be delivered. On the way back from the shopping trip, Mr. Cunningham told Mr. Wade that he was going to make him “somebody.”

Mr. Wade’s efforts to keep MZM in Mr. Cunningham’s good graces proved to be a slippery slope—and an expensive one. Beginning in the autumn of 2001 and continuing through the spring of 2005, Mr. Wade made many improper payments to Mr. Cunningham in exchange for Mr. Cunningham’s support of MZM. The transaction that would eventually end the corrupt relationship took place in November 2003. Earlier that year, Mr. Cunningham decided that he wanted to buy a Spanish style mansion that he had seen in a magazine featuring “Dream Homes.” Mr. Cunningham’s “Dream Home” was located in Rancho Santa Fe, an exclusive community in San Diego, and had a price tag of \$2,550,000. Unable to afford such a property, he turned to Mr. Wade and demanded that Mr. Wade purchase his existing home located in Del Mar for \$1,500,000, a price set by Mr. Cunningham. Immediately after both signed a sales agreement, Mr. Cunningham told Mr. Wade that he needed an additional \$175,000, and had another agreement drafted to replace the original one. A few weeks later, Mr. Cunningham demanded even more money from Mr. Wade in order to help him pay the taxes that he owed following the sale of the Del Mar home. Mr. Wade eventually sold the Del Mar home he had purchased from Mr. Cunningham at a loss of \$700,000.

Once on this “terrible path,” Mr. Wade followed Mr. Wilkes’s example in other ways. One of the first things that Mr. Wilkes required of Mr. Wade when Mr. Wade began consulting for ADCS was that he, like others working for ADCS, make political contributions. Knowing that MZM’s success depended on congressional earmarks, Mr. Wade also encouraged his employees to make such contributions. In furtherance of developing relationships with two Members of Congress who had the ability to request funding beneficial to MZM, between 2003 and 2005, Mr. Wade reimbursed several MZM employees, and some of their spouses, for

contributions made to the two Members' campaigns. In some cases, Mr. Wade made the reimbursements because the employees could not otherwise afford to make the contributions; in others, he wanted to encourage future contributions. In all cases, however, the contributions and reimbursements were improper.

Between 2002 and 2004, Mr. Wade further emulated Mr. Wilkes's pattern of conduct, by providing benefits to Defense Department officials, and in particular Robert Fromm, in exchange for favorable treatment of MZM. Mr. Wade had met Mr. Fromm through his work for ADCS and over time became Mr. Fromm's trusted confidante. Mr. Fromm had pointed his son in MZM's direction, and Mr. Wade hired him to work in the IT field. Mr. Fromm also communicated to Mr. Wade that he was looking for jobs at other government agencies and Mr. Wade offered that Mr. Fromm could join MZM, should he want to work in the private sector. Mr. Wade eventually hired Mr. Fromm after his retirement from government service. Though the benefits provided to Mr. Fromm were on a much smaller scale (e.g., meals and offers of employment) than those that he provided to Mr. Cunningham, they were nevertheless inappropriate.

Significantly, despite having started down this path of corruption, Mr. Wade's belief in integrity eventually prevailed. Facing scrutiny from the media regarding his sale of the Del Mar home to Mr. Wade, Mr. Cunningham was quick to deny any wrongdoing and tried to cover up his tracks. He first pressured his realtor to draft a letter that justified the lower selling price that Mr. Wade obtained when he subsequently sold the Del Mar home. Having succeeded with the realtor, Mr. Cunningham then turned to Mr. Wade in an effort to fabricate a story that explained their transaction. Mr. Cunningham wrote a letter to Mr. Wade in which he expressed surprise over the low price generated by the sale of his former home and asserted that he would pay Mr.

Wade the difference between Mr. Cunningham's sales price and the home's true market value.<sup>3</sup> Mr. Cunningham offered to pay Mr. Wade \$50,000 up front, the remaining balance to be paid monthly with interest. To his credit, Mr. Wade refused to participate in Mr. Cunningham's cover-up, deciding instead to take responsibility for his illegal actions.

### **C. Acceptance of Responsibility**

In June 2005, Mr. Wade decided to come forward voluntarily and to accept responsibility for his conduct. Since that time, Mr. Wade has sought to make amends for his mistakes. During the past three and one half years, and continuing to this day, his cooperation with the authorities, which is described in more detail below, has been complete, truthful and unwavering, and the benefits to the government have been significant. In addition to coming forward with information regarding his involvement with Mr. Cunningham, Mr. Wade also disclosed his illegal campaign contributions to the government. He has paid a \$1,000,000 civil fine to the Federal Elections Commission on behalf of all parties involved, and paid millions of dollars in additional taxes, interest, and penalties.

After he had disclosed his misconduct to the government, Mr. Wade took decisive action to ensure that MZM would continue operating and that its employees would not lose their livelihoods as a result of his actions. He stepped down as President and CEO of the company and quickly arranged for its sale at a steep discount. His primary concern during the sale was ensuring that all jobs would be protected, that employee holdings in MZM would hold their value, that salaries would continue to be paid to all employees, subcontractors and vendors, and that the company could fulfill its obligations on contracts that were important to the nation's security.

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<sup>3</sup> See Gov't Sent. Mem. at 20, United States v. Cunningham, No. 05-cr-2137 (Feb. 17, 2006) (reproducing the letter).

Mr. Wade has struggled to repair the damage he has done to himself and to others. When he came forward to cooperate with the government's efforts in prosecuting ongoing corruption, he worked in other ways to "accept responsibility," to "make amends for his actions and to rebuild his life in a way that will be a benefit to his family and to others." (Fr. Charles F. Nalls letter.) He sought counseling and "clearly understood that he had gone very far astray . . . ." (William W. Commins letter.) He helped to organize a prayer group, (see Michael T. Foster letter), and began regularly attending mass at his parish church, the Basilica of Baltimore. As his longtime friend from Navy service, Fr. Charles H. Nalls, writes:

During my time at Georgetown Law Center and following my call to the D.C. Bar, I have had many cases at all levels of the local and Federal Courts. As this court well knows, there are many sorts of people who come before the courts: some contrite and some not; some responsible and some cavalier in their actions; some who can be a part of reparation for their actions and some simply waiting to repeat those actions. I can speak to this case—one case—that impacts a friend of many years: Mitch Wade. I understand that he has been and continues to be responsible for his actions.

(Fr. Charles F. Nalls letter.) His crimes are not reflective of "the true person he really is." (Matthew Wade letter.) "[H]e is a man of honor and integrity." (James D. Wise letter.) As part of an effort to make amends, Mr. Wade has dedicated himself to volunteer and charitable efforts, and "to work in cooperation with the prosecutors and the legal system by this desire to do all he could to rectify the wrongs he had committed." (William W. Commins letter.)

Those around Mr. Wade have observed first-hand that remorse and desire to make amends weigh heavily on his shoulders. Mr. Wade's counselor wrote that he had "found Mitch to be very broken and remorseful [and had] never heard him make excuses for his mistakes or try to justify what he did." (Letter from Stan L. Holmes.) A friend recognized that "[w]hile [Mitch] has stepped forward with admirable strength of character, he has been plagued by great regret, pain and shame. He often sets himself apart, and when he is not focusing on family or helping others, he has isolated himself. Sadly, this time has been very much a personal prison." (Letter

from Vicki Scheer Foster.) Another friend wrote, “I have seen Mitch not only suffer great personal loss and remorse, but more importantly I have seen him grow as a person of great character. In his humility, he has quietly helped others . . . .” (Letter from Michael T. Foster.)

**D. Making Amends Through Cooperation**

Central to Mr. Wade’s acceptance of responsibility has been his full and tireless cooperation with the government with respect to Mr. Wade’s own conduct and many related investigations. We understand that the government will request a downward departure for cooperation under 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1. Ultimately, it is for this Court to weigh Mr. Wade’s efforts to cooperate as part of its evaluation of the relevant sentencing factors under § 3553(a).

In late June 2005, prior to the execution of a single subpoena or request from the Government for information, Mr. Wade instructed his legal team to contact the Public Integrity Section of the Department of Justice to express his interest in providing information relating to public corruption and Mr. Cunningham. Since that date, Mr. Wade has personally participated in extensive debriefing sessions with federal prosecutors and other law enforcement personnel from Washington, D.C., San Diego, and Los Angeles. Either he or his counsel has participated in at least 23 meetings and teleconferences with the authorities and the compilation and review of over 150,000 documents on their behalf. Mr. Wade’s counsel established a database of MZM documents, which allowed for electronic searching of those documents and expeditious production of the most relevant documents to the authorities. Mr. Wade and his lawyers have devoted over 6,000 hours to various cooperation efforts, and Mr. Wade has expended approximately \$2 million in legal fees and costs in support of his efforts to cooperate.

Information provided by Mr. Wade to various authorities has included key evidence of wrongdoing on the part of Mr. Cunningham and others. Much of this evidence had not yet been

uncovered by investigators—some could not have been discovered without Mr. Wade’s assistance—and there can be little doubt that it significantly expanded the Government’s understanding of the scope of the conspiracy. Mr. Wade’s efforts have led directly or indirectly to seven federal criminal convictions including:

***Randy “Duke” Cunningham.*** Mr. Wade’s cooperation was among the most important factors leading to the guilty plea of Mr. Cunningham—a sitting Member of Congress, Chair of the House Intelligence Subcommittee on Human Intelligence Analysis and Counterintelligence and a senior member of the House Appropriations Committee. According to press reports, Mr. Cunningham’s attorney told the court “that he recommended [accepting a plea] ... after evaluating the U.S. Attorney’s Office’s overwhelming evidence of political corruption.”<sup>4</sup> Much of that “overwhelming evidence” was provided by Mr. Wade between July 2005 and Mr. Cunningham’s guilty plea in late-November 2005, a period during which Mr. Wade or his counsel met with government authorities at least ten times, provided crucial documents and explained a number of convoluted (but critical) relationships and transactions in detail.

At an initial proffer session on July 14, 2005, counsel for Mr. Wade met with representatives from the U.S. Attorney's Offices in Washington D.C. and San Diego, the Department of Defense Criminal Investigative Service, and the Internal Revenue Service, providing a general overview of Mr. Cunningham’s misconduct. In addition to answering questions regarding the purchase of the Cunningham house and Mr. Cunningham’s use of the Duke-Stir yacht, through counsel, Mr. Wade provided *new* information regarding attempted obstruction of justice by Congressman Cunningham and a far broader criminal conspiracy involving additional individuals and companies as well as additional improper transactions.

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<sup>4</sup> Onell R. Soto, ‘Overwhelming case’ forced Cunningham to accept deal, SAN DIEGO UNION-TRIB, Nov. 30, 2005, <http://www.signonsandiego.com/news/politics/cunningham/20051130-9999-1n30duke.html>.

Counsel for Mr. Wade also raised the subjects of ADCS and Mr. Wilkes, and Thomas Kontogiannis and his role as another corrupt Cunningham associate.

Less than a week later on July 20, Mr. Wade personally met with the government in San Diego for a six-hour debriefing session during which he provided a more detailed description of Mr. Cunningham's corruption. Mr. Wade walked the government through a chronology of Mr. Cunningham's initial offer to bring Mr. Wade into his bribery scheme, a detailed list of requests for items such as cars and antiques and improper transactions involving the sale and purchase of homes, boats, and home furnishings. Mr. Wade also provided investigators with additional leads regarding the nature and scope of the corrupt dealings among Messrs. Cunningham, Kontogiannis, and Wilkes.

On July 22, Mr. Wade proactively provided to the San Diego U.S. Attorney's Office critical documents believed to have been overlooked by the government during the execution of the initial search of the Duke-Stir yacht, including a note card, which has since become known as Mr. Cunningham's "bribe menu," that contained the level of payments that Mr. Cunningham required in order to achieve certain corresponding levels of funding from Federal government contracts. The bribe menu, which featured prominently in the government's sentencing memorandum for Mr. Cunningham, had been overlooked by the government in searches for evidence. On July 25, Mr. Wade provided contact information for a range of individuals of interest as well as stores and merchants where Mr. Cunningham had engaged in inappropriate transactions.

On July 26 and July 28, counsel for Mr. Wade participated in teleconference calls with the Government, providing additional documents and information on a variety of topics, including Mr. Cunningham's improper relationship with ADCS and Mr. Wilkes, the likely location of and custodians for ADCS and Wilkes-related documents, and payments for an

additional boat for Mr. Cunningham, and the complex relationship between MZM and ADCS in the government procurement and contracting process.

On August 3, Mr. Wade again met with government officials in California for a five and one half hour debriefing session, reviewing photos of various Mr. Cunningham residences, identifying furniture and rugs that were improperly acquired and discussing other topics including payments made by Mr. Wade to Mr. Cunningham, Mr. Cunningham's relationship with ADCS and Mr. Wilkes, the bribe menu, and Mr. Cunningham's relationship with Mr. Kontogiannis.

On September 1, Mr. Wade provided the government with a variety of MZM documentation including expense reports related to Mr. Cunningham's interactions, information tying specific checks and credit card charges to particular antique items supplied by Mr. Wade to Mr. Cunningham, and copies of invoices and checks regarding moving services, air travel, and lodging provided to Mr. Cunningham. On September 8 and 13, Mr. Wade met again with prosecutors to continue discussing the nature of MZM and Mr. Cunningham's relationships with various government officials and the government contract procurement process.

Nearly all of the information that Mr. Wade provided appears to have been used in the plea negotiations, charging instruments, and sentencing memorandum for Mr. Cunningham. In short, Mr. Wade personally provided a well-documented roadmap of Mr. Cunningham's vast network of corruption, and directed his lawyers to provide a virtually uninterrupted line of communication with prosecutors in order to assist their efforts.

**Brent Wilkes.** Mr. Wilkes was a defense contractor who secured millions in federal contracts through corrupt relationships with Mr. Cunningham and former CIA Executive Director Dusty Foggo. As noted above, Mr. Wade provided the government with its initial leads regarding ADCS and Mr. Wilkes. He first raised the subject during the July 14, 2005 proffer

session, and personally described the role of ADCS and Mr. Wilkes in Mr. Cunningham's scheme in detail during the July 20 meeting with prosecutors in San Diego. During the ensuing months, and in addition to the information detailed above, Mr. Wade provided a complete accounting of relevant facts concerning Mr. Wilkes and ADCS including:

- Mr. Cunningham's support of a \$25 million appropriation for the so-called Fortress program in exchange for large bribes intended to pay off the mortgage on Mr. Cunningham's Rancho Santa Fe home;
- Mr. Wilkes sponsoring Mr. Cunningham's trips to Las Vegas, Hawaii and Palm Springs;
- the involvement of ADCS employee Joel Combs in the scheme, including arranging prostitutes and providing payment for dinners with Mr. Cunningham. Both Mr. Combs and the prostitutes would later testify at Mr. Wilkes' trial;
- Mr. Wilkes paying for meals at the Capital Grille in Washington, D.C.;
- alleged overcharging by ADCS in connection with equipment contracts;
- an ADCS-sponsored Idaho junket for Mr. Cunningham; and
- details on specific earmark requests.

In addition to providing his recollection of events, Mr. Wade instructed his counsel to create timelines, compile collections of key documents, and prepare analyses of financial transactions, in order to provide additional evidence and powerful corroboration of his memory of Mr. Wilkes's crimes.

Mr. Wade provided nearly a full day of testimony, including cross examination, at the trial of Brent Wilkes on October 12, 2007. To prepare for his testimony, Mr. Wade participated in six and one half hours of trial preparation in California on August 28, 2007, seven hours of preparation on August 29, 2007, telephonic preparation from Washington, D.C. for two hours on September 30, 2007, five hours of preparation in California on October 7, 2007, and two full days of final preparation in California on October 10-11, 2007. Following the trial, which concluded with a guilty verdict on 13 counts, the jury forewoman indicated to a reporter for the

San Diego Union Tribune the importance of Mr. Wade's testimony, along with the testimony of Joel Combs. See Greg Moran, Jury Finds Wilkes Guilty, San Diego Union-Trib., Nov. 6, 2007, at A1. The Government later cited Mr. Wade's testimony as support for its request for a prolonged sentence for Mr. Wilkes. See Gov't Sent. Mem. at 4-5 n.2, United States v. Wilkes, No. 07-cr-00330 (S.D. Cal. Feb. 14, 2008). Following the trial, Mr. Wade provided an extensive declaration for the Government, outlining the improper profits obtained by Mr. Wilkes in connection with hardware sales to the government, as well as false statements made by Mr. Wilkes during the course of his criminal trial. The Government relied on this declaration for support in its sentencing memorandum for Mr. Wilkes. Id. at 9.

***Thomas Kontogiannis.*** Mr. Kontogiannis was an international financier and developer, who paid at least \$600,000 in bribes and facilitated \$1 million in additional bribes to Congressman Cunningham. Although he did not know Mr. Kontogiannis personally, Mr. Wade was aware of his role as a corrupt associate of Mr. Cunningham, and Mr. Wade provided information regarding that relationship to federal prosecutors.

During the July 14, 2005 proffer session, counsel for Mr. Wade informed prosecutors of a relationship between Messrs. Cunningham and Kontogiannis. Mr. Wade provided additional information concerning Mr. Kontogiannis during meetings with the government in July and August 2005, including that Mr. Kontogiannis had approached Mr. Cunningham regarding assistance with a pardon on a conviction, that he had purchased a boat from Mr. Cunningham, the Kelly C, for hundreds of thousands of dollars, and that he was approached by Mr. Wilkes to "recharacterize" a \$500,000 payment into a loan. During a two-day meeting with U.S. Attorneys in San Diego on January 9 and 10, 2007, Mr. Wade described Mr. Cunningham having pressured Mr. Wilkes to give Mr. Kontogiannis \$500,000, and explained that Mr. Cunningham and Mr. Kontogiannis were not happy with Mr. Wilkes wanting to re-characterize the payment.

On February 9, 2007, Mr. Kontogiannis pleaded guilty to engaging in a monetary transaction with Mr. Cunningham involving property from an unlawful activity. Central to the scheme described in the plea were the purchase of the Kelly C at an inflated value and the arranging of a \$500,000 mortgage for Mr. Cunningham. In addition, Mr. Kontogiannis' associate and relative, John Thomas Michael, who assisted in the effort to conceal the nature of the payments to Mr. Cunningham, and subsequently lied to a grand jury about the relevant events, eventually entered a guilty plea as well.

The benefits to the government of Mr. Wade's cooperation have extended beyond the convictions of Messrs. Cunningham, Wilkes, and Kontogiannis. He has also provided cooperation to the government relating to the following individuals, each of whom has pleaded guilty in federal court:

- a former Executive Director of the CIA (Kyle "Dusty" Foggo), the Agency's third highest ranking official, who corruptly assisted in awarding CIA contracts to Mr. Wilkes's company, ADCS;
- a former Department of Defense employee and also a former MZM employee (Robert Fromm), who pleaded guilty to violating the lifetime post-employment ban; and,
- a former MZM employee (Richard Berglund), who pleaded guilty to making unlawful contributions to a congressional campaign.

Mr. Wade also disclosed illegal campaign contributions to the government during his debriefing sessions and took full responsibility for the improper reimbursements. Mr. Wade cooperated with the Federal Election Commission's investigation into illegal campaign contributions after voluntarily disclosing his own involvement. The FEC recognized Mr. Wade's cooperation in the settlement papers by noting that he had:

[C]ooperated with the Commission in taking complete responsibility for, and resolving [his] liability for violations of the Act, as well as the liability of former employees who acted as conduits for the reimbursed contributions. Mr. Wade voluntarily disclosed his violations to the U.S. Department of Justice, provided timely information to the U.S. Department of Justice, and cooperated with the Commission in resolving this matter.

Finally, Mr. Wade assisted the government in connection with inquiries relating to the activities of at least five other Members of Congress, numerous executive branch employees and several private contractors. Mr. Wade provided substantial assistance to the government in connection with its efforts to determine whether other Members of Congress were engaged in corruption similar to that of Mr. Cunningham. He has discussed potentially-corrupt political contributions, fundraising activities and other congressional activities with prosecutors on at least six occasions between September 2005 and May 2006.

Two of the Members of Congress about whom Mr. Wade was questioned by federal investigators and provided information have been described in the press as under corruption-related investigation by the government. Three others have come under scrutiny for their receipt of straw contribution funds provided by MZM employees, and, in one instance, for the possible receipt of undisclosed gifts of food and wine. While none of these individuals has, as of yet, been charged with a crime, Mr. Wade's cooperation made it possible for the government to reach conclusions about the role of various Members of Congress in connection with MZM political fundraising.

In short, Mr. Wade's efforts have been instrumental to a wide range of criminal and civil investigations into corrupt activities by public officials and private contractors, and have led directly or indirectly to seven criminal convictions and guilty pleas, as well as assessments of millions of dollars in civil and criminal fines, restitution, and forfeitures. Mr. Wade's decision to accept responsibility and to reveal his own illegal conduct to the authorities with extraordinary frankness and detail has been instrumental in the fight against public corruption. He deserves significant recognition for this substantial assistance.

**E. Making Amends Through Charitable Work**

Mr. Wade has long been involved in various charitable efforts, especially religious organizations and efforts to help veterans and children. For example, his former wife, Rev. Colleen Swingle-Titus, manages a youth program at her church, the Crozet Baptist Church. Mr. Wade made it possible for youth to participate in the church's mission program. (Rev. Colleen Swingle-Titus letter.) Mr. Wade was also a member of the board of the Duke Ellington School for the Arts in Washington, D.C. There he worked to coordinate organizational fundraising events and donated funds for the purchase of new musical instruments. At Stuart Hall School, where his daughter Morgan attended school, he helped improve the multimedia center by donating computer equipment and expertise.

In the last year, Mr. Wade has increased his focus on charitable work by working in a full time capacity as a volunteer at the Ecclesiastical Lawyers Guild ("ELG"), a non-profit organization, with a particular focus on the less fortunate in Baltimore. ELG assists donors of assets such as artwork, rugs, and automobiles, in making charitable use of those items through auction or sale by contributing the sale proceeds to charitable organizations. Mr. Wade has helped to identify donors as well as recipient organizations, coordinate IRS and recognition letters, and perform other office tasks to facilitate the donation process.

Mr. Wade has also been working with the Southeast White House community center, an organization that provides youth mentoring programs in the Anacostia area of Washington, D.C. A colleague with whom Mr. Wade has volunteered at the Southeast White House writes that "Mitch has become such an asset to the community through his service . . ." (Michael Foster letter.) He has assisted with the permitting process for renovating a multi-use community building and has helped develop a fundraising strategy to implement the renovations, as well as

contributing financially toward those efforts. (Scott Dimock, Marilyn Dimock, and Vickie Scheer Foster letters.)

Building on his long time charitable efforts to support veterans and wounded servicemen at the Walter Reed Army Medical Center, (e.g., Anastasios Christian and Jenny Lau letters), Mr. Wade also provides financial support to the Intrepid Fallen Heroes Fund, which assists wounded members of the Armed Forces and their families. Finally, in his own family, Mr. Wade has worked to instill in his children the value of giving back. He and his wife began a Christmas tradition of making charitable contributions in his children's names, such as purchasing livestock for families in third world countries. (Zach Wade letter.) These traditions and charitable efforts have made an impression on his children. (See Zach Wade and Morgan Wade letters.)

In sum, whether it is "with an inner city program or a global ministry or a local child care center," Mr. Wade's volunteer efforts bring value to the communities of Washington, D.C. and Baltimore. (Stan Holmes letter.) Mr. Wade is committed to continue working on behalf of charities in the coming days and years.

### **III. THE PURPOSES OF SENTENCING AND THE OTHER CONSIDERATIONS OF 18 U.S.C. § 3553(a)**

We respectfully submit that the factors and purposes of sentencing set forth in 18 U.S.C. § 3553(a) support the imposition of a substantially below-Guidelines sentence in this case. In addition to the details set forth above regarding the nature and circumstances of the offense and Mr. Wade's history and characteristics, Mr. Wade requests that this Court take into account the sentences imposed in related cases, in which the defendants were more culpable than Mr. Wade and failed to take responsibility for their actions or did so only after realizing their convictions were inevitable.

Moreover, any sentence approaching the Guidelines range in this case would result in “unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” including defendants in other public corruption cases and defendants who have provided substantial cooperation with government investigations. 18 U.S.C. § 3553(a)(6). Finally, a substantially below-Guidelines sentence for Mr. Wade will be “sufficient, but not greater than necessary” to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a). Such a sentence would reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, and afford adequate deterrence to criminal conduct as well as protect the public from further crimes committed by Mr. Wade. *Id.* §§ 3553(a)(2)(A)-(C).

**A. A Sentence Within Mr. Wade’s Guidelines Range Would be Unjustly Severe Compared to the Sentences Imposed in Related Cases**

The imposition of the Guidelines term of imprisonment of 108-135 months would result in an unjustly severe sentence when compared to the sentences received by defendants in related cases. If Mr. Wade were sentenced within this range, he would be punished more severely than Messrs. Cunningham and Kontogiannis and almost on par with Mr. Wilkes, despite significant differences between Mr. Wade’s conduct and the conduct of these other individuals.

Mr. Wade does not dispute that he broke the law: he gave in to Mr. Cunningham’s demands for improper payments and permitted himself to be drawn into the corruption that surrounded him. But, Mr. Wade accepted responsibility for his conduct and began cooperating with the government early in its investigation. While others were vehemently denying wrongdoing, Mr. Wade was providing invaluable assistance to the government—information that the government could not have otherwise discovered and which led directly to convictions—and owning up to his misdeeds. While others were continuing to commit fraud or dissipating

illegally obtained funds, Mr. Wade was agreeing to a \$1 million civil fine and expending approximately \$2 million in legal fees and costs in support of his efforts to cooperate with the government.

Even setting aside his acceptance of responsibility and cooperation, Mr. Wade is less culpable than the other participants in the scheme. Unlike the other participants, Mr. Wade did not disregard an oath of office, did not initiate the crime, and did not leak classified information. Compared to the other participants, Mr. Wade's involvement took place over a shorter period of time. Mr. Wade did not obstruct justice, did not offer perjured testimony, did not deny wrongdoing, did not breach his plea agreement, and had no prior criminal record. In particular:

- Mr. Cunningham abused the public trust and disregarded his oath of office. Gov't Sent. Mem. at 2, *United States v. Cunningham*, No. 05-cr-2137 (S.D. Cal. Feb. 17, 2006). He demanded and received improper payments not only from Mr. Wade but also from Messrs. Wilkes and Kontogiannis. *Id.* at 4, 7. He was at the center of the conspiracy and made crucial decisions such as who obtained which defense contract, what sum of money would be required for his official actions, and how the payment would be concealed. *Id.* at 25. Mr. Cunningham also obstructed the administration of justice by misleading law enforcement and tampering with witnesses. *Id.* at 26-27. He pleaded guilty following months of public denials of wrongdoing and only after realizing that conviction was inevitable, in large part because it was common knowledge that Mr. Wade was already cooperating with the government. *See id.*; Onell R. Soto, 'Overwhelming case' forced Cunningham to accept deal, San Diego-Union Trib., Nov. 30, 2005, at A1. He was sentenced to 100 months.
- The government has called Mr. Wilkes the most culpable member of the scheme and the architect of the crimes. *See* Gov't Sent. Mem. at 5, *United States v. Wilkes*, No. 07-cr-00330 (S.D. Cal. Feb. 14, 2008). His improper relationship with Mr. Cunningham spanned nearly a decade and predated either's acquaintance with Mr. Wade. *See id.* at 5. His gifts to Mr. Cunningham extended beyond material luxuries to include arranging and paying for prostitutes. *Id.* at 4-5. Mr. Wilkes also maintained a separate improper relationship with Mr. Foggo, the third highest ranking official at the CIA. *Id.* at 13 n.12. After a jury found Mr. Wilkes guilty on 13 counts, the government described him as devoid of any positive character traits, having drained his children's college funds to satisfy his insatiable appetite for luxuries, refusing to accept any responsibility for his conduct, providing hours of perjured testimony, and preventing his ill-gotten gains from being recovered or utilized to pay his publicly appointed counsel. *Id.* at 10-20. After trial, Mr. Wilkes was sentenced to 144 months.

- Mr. Kontogiannis' sentence reflects a separate mortgage fraud as well as extensive prior criminal convictions. See Gov't Sent. Mem., *United States v. Kontogiannis*, No. 07-cr-423 (S.D. Cal. Nov. 28, 2007). Mr. Kontogiannis paid at least \$600,000 in bribes, facilitated \$1 million in additional bribes to Mr. Cunningham, and orchestrated a separate massive fraudulent mortgage and money laundering scheme worth tens of millions of dollars. Id. at 3. He breached the terms of his plea agreement by continuing to engage in this fraud even after pleading guilty. Id. at 10. At the time of sentencing he had already had two prior bribery-related convictions. Id. at 1.<sup>5</sup> He was sentenced to 97 months.
- Mr. Foggo accepted benefits worth tens of thousands of dollars, including a standing offer for a high-paying job at Mr. Wilkes's company, in exchange for steering CIA contracts to Mr. Wilkes. *Plea Agreement & St. of Facts, United States v. Foggo*, No. 08-cr-0079; (E.D. Va. Sept. 29, 2008). He was accused of providing Mr. Wilkes with classified information. *Superseding Indictment at 7, United States v. Foggo*, No. 07-cr-00329 (S.D. Cal. May 10, 2007). Mr. Foggo did not cooperate and pleaded guilty over a year and a half after the government filed the indictment. *Indictment* (Feb. 13, 2007). Despite this, the government agreed to advocate for a sentence of no more than 37 months of imprisonment. *Plea Agreement at 4, United States v. Foggo*, No. 08-cr-0079 (E.D. Va. Sept. 29, 2008).
- Mr. Michael conspired with Messrs. Kontogiannis and Wilkes to conduct a monetary transaction in criminally derived property, including over \$500,000 of proceeds of bribery. *Superseding Information, United States v. Michael*, No. 07-cr-330 (S.D. Cal. Feb. 4, 2008); *Minute Entry* (S.D. Cal. Feb. 4, 2008). Mr. Michael gave false sworn testimony to a Federal grand jury, see id., and did not plead guilty until one year after the filing of his indictment, see Indictment (Feb. 13, 2007). Mr. Michael received a sentence of five years of probation. See J. (Oct. 9, 2008).

Most of these individuals received sentences below the ranges recommended by their respective Guidelines calculations.<sup>6</sup> An additional participant in the scheme, Joel Combs, was not charged or prosecuted at all. Like Mr. Wade, Mr. Combs testified at Mr. Wilkes's trial, but his testimony took place under an order of immunity to avoid prosecution. Mr. Combs was Mr.

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<sup>5</sup> Mr. Kontogiannis first conviction concerned bribes to a State Department official in connection with extorting money from illegal aliens whom he arranged to bring to the U.S. Id. at 2. His second conviction followed a 123-count indictment alleging a conspiracy to acquire New York City Board of Education contracts worth over \$6 million through illegal means. Press Release, New York City Law Department Office of the Corporation Counsel, Former District 29 Superintendent, Four Other Individuals and Five Corporations Plead Guilty in Scheme to Defraud Southeast Queens School District (Oct. 18, 2002), <http://www.nyc.gov/html/law/downloads/pdf/pr101802.pdf>.

<sup>6</sup> Mr. Cunningham was sentenced to a total of 100 months whereas the Guidelines, according to the Government's Sentencing Memorandum, advised 188-235 months; Mr. Wilkes was sentenced to a total of 144 months whereas the Guidelines advised life; Mr. Kontogiannis was sentenced to 97 months whereas the Guidelines advised 108-135 months.

Wilkes's right-hand man for many years and has admitted to having obstructed the investigation—acknowledging that he lied to Federal agents during initial interviews.<sup>7</sup>

The clear contrast between Mr. Wade's conduct and that of each of these individuals justifies the imposition of a sentence both far below the Guidelines range in this case, and considerably less than the sentences imposed on Messrs. Cunningham, Wilkes, and Kontogiannis.<sup>8</sup> See, e.g., Gall v. United States, 128 S. Ct. 586, 600 (2007) (approving a district court's consideration under § 3553(a) of "the need to avoid unwarranted similarities among other co-conspirators who were not similarly situated."); United States v. Bras, 483 F.3d 103, 114 (D.C. Cir. 2007) (explaining that the imposition of a jail sentence for a non-cooperating defendant, where cooperating defendants received probation, is permissible because "[w]ithout, frankly, the cooperators, . . . other 'individuals would not have come forward [and] the extent of the scheme would not have been known.'") (quoting district court opinion); United States v. Ebbers, 458 F.3d 110, 129 (2d Cir. 2006) (rejecting argument that sentences ranging from five years of imprisonment to three years of probation received by cooperating witnesses with varying degrees of lesser culpability rendered unreasonable the 25-year sentence for CEO who went to trial and refused to accept responsibility).

**B. Imposing a Sentence Within the Guidelines Range Would Create an "Unwarranted Sentence Disparity"**

Aside from the sentences imposed in related cases, and for a number of circumstances unique to Mr. Wade's case, the imposition of a substantially below-Guidelines sentence for Mr.

<sup>7</sup> See Greg Moran, Wilkes' nephew discloses company's inner workings, San Diego Union-Trib., Oct. 18, 2007, at B1; Greg Moran, Wilkes' nephew describes lavish trips, gifts for Cunningham, San Diego Union-Trib., Oct. 17, 2007, at <http://www.signonsandiego.com/news/politics/cunningham/20071017-1350-bn17wilkes.html>.

<sup>8</sup> As described above, Mr. Wade's improper reimbursement of MZM employees' political contributions, while in some respects distinct from his relationship with Messrs. Cunningham and Wilkes, emanated from his relationship with those individuals. In any event, offenses involving so-called "straw contributions" have been punished with probationary sentences in this district. See, e.g., United States v. Collier, 07-cr-00182-RCL (D.D.C. Feb. 5, 2008) (sentencing defendant who pleaded guilty for improper reimbursement of contributions, and who cooperated with the government investigation, to five years probation); see also Sent. Mem. of David Collier (Jan. 24, 2008) (describing offense).

Wade will “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). Several considerations should be taken into account in assessing an appropriate sentence in this case.

*First*, defendants in other public corruption cases have received sentences significantly below Mr. Wade’s Guidelines range. Lobbyist Jack Abramoff received a reduced federal sentence of four years in prison for masterminding a wide-ranging corruption scheme that involved multiple lawmakers, Capitol Hill aides, and numerous government officials.<sup>9</sup> Former Congressman Robert Ney received a sentence of only 30 months for his role in that scheme, despite refusing to cooperate and pleading guilty to serious crimes of corruption, involving not only Mr. Abramoff but also a foreign businessman. See Gov’t Sent. Mem. at 25, *United States v. Abramoff*, No. 06-cr-001 (D.D.C. Aug. 27, 2008). Mr. Ney was reportedly released after serving 17 months of that sentence.<sup>10</sup> J. Steven Griles, former Deputy Secretary of the Department of the Interior, who pleaded guilty to obstructing a Senate inquiry, received a ten month prison term. Id. at 24.

A scheme involving former Connecticut Governor John Rowland, where no-bid government contracts were orchestrated in return for bribes, led to sentences ranging from 30 months in prison to one year of home confinement. A former co-chief of staff to Governor Rowland and a contractor were both sentenced to 30 months in prison. *Judgments of Ellef and Tomasso*, *United States v. Ellef*, No. 04-cr-00284 (D. Conn. Apr. 27, 2006). Former Governor

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<sup>9</sup> Mr. Abramoff not only bribed numerous public officials himself, but also directed his junior lobbyists to do the same. See Gov’t Sent. Mem., *United States v. Abramoff*, No. 06-cr-001 (D.D.C. Aug. 27, 2008). He encouraged his lobbyists to lobby former employees in knowing violation of a statutory post-employment lobbying ban. He defrauded his clients, Native American Indian tribes, through inflating profits and having a secret kickback arrangement. He padded hours in order to get higher bonuses and create a false impression that client work was being done. In a separate case involving a fraudulent purchase of a casino, the U.S. District Court in the Southern District of Florida sentenced Mr. Abramoff to 45 months of imprisonment. Second Amended J. at 2, *United States v. Abramoff*, No. 05-cr-60204-PCH (S.D. Fla. Sept. 19, 2008). As a result of having two separate convictions, Mr. Abramoff faces a total of approximately six years in prison.

<sup>10</sup> See, e.g., James Nash, Ney freed after serving 17 months for corruption, Dispatch Politics, Aug. 16, 2008, [http://www.dispatchpolitics.com/live/content/local\\_news/stories/2008/08/16/NEYOUT.ART\\_ART\\_08-16-08\\_B4\\_RSB1SV9.html?adsec=politics&sid=101](http://www.dispatchpolitics.com/live/content/local_news/stories/2008/08/16/NEYOUT.ART_ART_08-16-08_B4_RSB1SV9.html?adsec=politics&sid=101).

Rowland received one year in prison. See J., United States v. Rowland, No. 04-cr-00367 (D. Conn. Mar. 18, 2005). Lawrence Alibozek, the only coconspirator who had cooperated with the government, received a sentence of one year of home confinement and five years of probation. See Amended J., United States v. Alibozek, No. 03-cr-00063 (D. Conn. Jan. 24, 2007); Gov't Mot. for Downward Departure (Jan. 8, 2007).

**Second**, defendants who have cooperated with the authorities have received sentences of home confinement and probation despite having engaged in serious criminal conduct, including crimes of violence. See, e.g., United States v. Ruff, 535 F.3d 999 (9th Cir. 2008) (upholding a below-Guidelines sentence including one day of imprisonment for health care fraud, embezzlement and money laundering in light of § 3553(a) considerations including cooperation and familial support); United States v. Roque, 536 F. Supp. 2d 987, 990 (E.D. Wis. 2008) (imposing a sentence of five years probation despite a Guidelines range of 87-108 months for cocaine distribution where, among other things, the defendant “provided information about investigations unrelated to this case, met with agents numerous times, both with counsel and alone, for hours, commencing shortly after his arrest in 2005 and continuing for two years.”); United States v. Smith, 2008 WL 4662346, at \*1-2 (E.D.N.Y. Oct. 20, 2008) (sentencing financial crimes defendant facing a guidelines range of imprisonment of 235 to 240 months to five years probation, 500 hours of community service, and a \$100,000 fine in light of his substantial cooperation and having a law-abiding life prior to the offense); Judgments of Foster and Sharkey, United States v. Olis, No. 03-cr-00217 (S.D. Tex. Jan. 9, 2006) (imposing sentences of 15 months and 30 days, respectively, for involvement in conspiracy to commit securities fraud which resulted in a \$20 million loss and a Guidelines sentence of 60 months, where both cooperated in the government’s investigation and prosecution of the CFO who

received 6 years imprisonment);<sup>11</sup> Minute Order, *United States v. Gray*, No. 00-cr-00157-TFH (D.D.C. Dec. 6, 2006) (receiving sentence of time served and five years' probation for cooperation despite facing a Guidelines sentence of 30 years for racketeering charges related to several murders)<sup>12</sup>; Order Granting Dismissal, *United States v. Edelin*, No. 98-cr-00264-RCL (D.D.C. Jan. 15, 2002) (granting government's motion to dismiss all counts against Eric Jones, who faced 35 criminal counts including murder and various drug distribution and conspiracy charges, but who cooperated with prosecutors to establish a case against another gang member).<sup>13</sup>

*Third*, white collar crime defendants who have engaged in serious criminal conduct and, in some instances even gone to trial and been convicted, have still received sentences of home confinement and probation under certain circumstances. In *United States v. Whitehead*, the Ninth Circuit affirmed a sentence of probation, community service and a fine for a defendant whose sentencing guideline range was 41 to 51 months and who was convicted by a jury for illegally selling over \$1 million worth of counterfeit "access cards" that allowed purchasers to unlawfully watch satellite television. 532 F.3d 991, 992 (9th Cir. 2008) (per curiam). In *United States v. Jemal*, a prominent real estate developer, who faced up to 41 months in prison, was sentenced to five years of probation and a \$175,000 fine following his conviction for wire fraud at trial by a jury. Sent. Hearing Tr., *United States v. Jemal*, at 4, 111, 199, No. 05-cr-00359 (D.D.C. Apr. 17, 2007). In *United States v. McQuillan*, a senior executive received a three year probation sentence with six months home detention and 28 days of community confinement after pleading guilty to a two-year conspiracy involving backdating software contracts to permit

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<sup>11</sup> See also Gov't Sent. Mem. (Dec. 20, 2005) (discussing Guidelines range and loss calculations).

<sup>12</sup> See Jim McElhatton, *Witness Against Murder Inc. Gang Gets Freedom*, Washington Times, Nov. 13, 2006, at B1.

<sup>13</sup> See Francis Clines, *Uneasy Death Penalty Trial in Washington*, New York Times, May 23, 2001, at A1.

premature revenue recognition. 2007 U.S. Dist. LEXIS 72717 (S.D.N.Y. Sept. 26, 2007) (describing illegal scheme).<sup>14</sup>

*Fourth*, Mr. Wade's Criminal History of zero also weighs in favor of a downward variance. Because Criminal History Category I applies to defendants with one as well as zero criminal history points, Category I overstates Mr. Wade's criminal history by treating him no differently, for purposes of Guidelines calculation, from defendants with prior criminal records.

**C. A Sentence Not Imposing Incarceration Is Sufficient to Provide Just Punishment and Promote Respect for the Law**

A sentence not requiring incarceration is a just penalty in this case because Mr. Wade's punishment does not begin or end with sentencing. Mr. Wade has been subjected to significant punishment as a result of the Government's investigation and his plea. Among the consequences that Mr. Wade has suffered as a result of his conduct are the "loss of family, loss of respect from community, loss of reputation, loss of vocation, loss of livelihood, and loss of rights." (Letter from Mitchell Wade to the Hon. Judge Urbina.) His career has been permanently derailed and the reputation he built during his military service and in the years that followed has been irreparably damaged. He is unlikely to ever again hold a position of trust within a company and will certainly never obtain a security clearance. He has paid a \$1 million civil fine to the Federal Election Commission and faces significant additional penalties as a result of his conviction. His marriage has crumbled.

The steep civil and personal penalties Mr. Wade has incurred and the damage done to his reputation are legitimate considerations in fashioning a criminal sentence. Another federal court

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<sup>14</sup> See also Ruff, 535 F.3d at 1001 (affirming one year half-way house sentence for defendant who pleaded guilty to stealing \$650,000 from his employer); United States v. Coughlin, 2008 WL 313099, at \*7 (W.D. Ark. Feb. 1, 2008) (sentencing former Wal-Mart executive who pleaded guilty to five felony counts of wire fraud and one felony count of filing false tax returns to 5 years of probation, including 27 months of home detention). In addition, in United States v. Sorin, the defendant, who pleaded guilty to conspiracy to commit fraud and agreed to a Guideline range of 135-168 months based on a loss calculation of more than \$50 million dollars, was sentenced to a year and a day. See J. at 2, United States v. Sorin, No. 06-cr-723 (E.D.N.Y. May 15, 2007); Sent. Tr. at 9 (May 10, 2007).

recently imposed a sentence of five years probation under similar circumstances, reasoning in part that the defendant, “already has paid a heavy price for his offense. He has lost his job, is forever barred from the securities industry, was fined \$1 million by the Philadelphia Stock Exchange, and has a \$2.1 million restitution obligation. In addition, Defendant was divorced and as a result, lost daily contact with two of his children.” United States v. DiAmbrosio, 2008 WL 732031, at \*3 (E.D.Pa. Mar. 13, 2008); see also United States v. Anderson, 267 Fed. Appx. 847, 850 (11th Cir.) (upholding below-Guidelines probationary sentence in light of reputational damage and exposure to civil liability).

**D. A Sentence Not Imposing Imprisonment Will Provide Adequate Deterrence**

A sentence not involving incarceration will provide adequate deterrence and protection of the public from future criminal conduct. 18 U.S.C. § 3553(a)(2). Indeed, given Mr. Wade’s substantial and unusually valuable cooperation with the government, anything other than a substantially-reduced sentence will discourage others from cooperating in the future and will have a negative effect on the investigation and prosecution of complex white collar crimes. As to general deterrence, Mr. Wade serves as an example for anyone who considers taking the risk associated with public corruption. He is now a felon. He has forfeited his career and incurred enormous monetary penalties. He has lost his professional reputation and marriage. Even a sentence of probation would place substantial restrictions on his freedom and liberty. As a number of courts have recognized, for would-be white collar criminals, “the probability of being apprehended and incarcerated is a powerful deterrent in of itself, because the disutility of being in prison at all and the stigma and loss of earning power may depend relatively little on the length of imprisonment.” United States v. Yeaman, 248 F.3d 223, 238 (3d Cir. 2001) (Nygaard, J. dissenting) (citation omitted); see also Smith, 2008 WL 4662346, at \*2 (stating that probation

provides adequate general deterrence as it sends a message that “any involvement [in] financial crimes will result in criminal prosecution and a heavy fine.”).

Nor is a sentence involving incarceration necessary to deter Mr. Wade from engaging in future criminal conduct or to protect the public from future criminal acts. Mr. Wade is 45 years old and has no prior criminal history. He poses no risk of committing further crimes. He now devotes his time to charitable good works, is actively involved in his church, and is trying to be a good father. He has complied with all Pretrial Services requirements imposed on him, including weekly check-ins, and can be relied upon to adhere to the terms of a probationary sentence. Mr. Wade’s efforts to restore his good name “lend[] strong support to the conclusion that imprisonment [is] not necessary to deter [him] from engaging in future criminal conduct or to protect the public from his future criminal acts.” Gall, 128 S. Ct. at 602; see also DiAmbrosio, 2008 WL 732031, at \*4 (“afford[ing] substantial weight” to the defendant’s “post-offense rehabilitation,” and describing his ability to remain crime-free since the misconduct as “a manifestation of his self-rehabilitation”). A non-incarcerative sentence will provide sufficient specific deterrence to criminal conduct. See, e.g., Gall, 128 S.Ct. at 595 (recognizing the substantial restriction of freedom inherent in a term of probation); Smith, 2008 WL 4662346, at \*2 (stating that a sentence of probation for a defendant facing a guideline range of imprisonment of 235 to 240 months provides adequate specific deterrence “in light of the defendant’s law abiding background and age”).

**E. Mr. Wade’s Family Circumstances Warrant Consideration at Sentencing**

Mr. Wade is a caring father with a close relationship with his five children, three of whom are young adults, and two daughters who are six and four years old. His continued ability to guide and care for them is valued by his children and should be considered at sentencing. Though Mr. Wade’s older children are in college or recently graduated, they write that “he’s

been an attentive father,” (Morgan Wade letter), “he has constantly been apart (sic) of my life . . .” (Zach Wade letter) and that “[t]he advice he shares with me is something that I could never be without.” (Matthew Wade letter.) Despite being divorced from his first wife, he has supported the ministries of the church where she works and been an active parent to their children together. She writes that he has remained a “devoted” and “emotionally connected” father who has “parented very well” with her. (Rev. Collin Swingle-Titus letter.) He is likewise devoted to his younger daughters. His sister, their aunt, remembers Mr. Wade showing them “how to catch crabs, how to fly kites and make mirrors out of seashells.” (Valerie Wade letter.) Mr. Wade is involved in activities at their school. (Gare Smith letter.) Mr. Wade’s “significance . . . on their lives,” *id.*, should be considered in determining his sentence, and the impact his sentence will have on his children.<sup>15</sup>

**F. Mr. Wade’s Efforts to Participate in Charitable Works and His Ability to Use His Business Expertise to Assist Members of Our Community Warrant Consideration**

Finally, Mr. Wade’s ability to put his expertise to better use in the community rather than in prison warrants consideration. 18 U.S.C. § 3553(a)(3) (directing sentencing courts to consider “the kinds of sentences available”); *see also*, Coughlin, 2008 WL 313099, at \*7 (stating that the expertise of a former COO of Wal-Mart guilty of fraud “is better put to use [through community service] than wasted in the physical deterioration of unnecessary imprisonment.”). Mr. Wade was a law-abiding and successful businessman and government servant prior to meeting Messrs. Cunningham and Wilkes. In recent years he has been putting his expertise to use in the community through charitable work. He has helped develop a community center in the

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<sup>15</sup> *See United States v. Anderson*, 267 Fed. Appx. 847, 850 (11th Cir.) (affirming 6-month home detention in a fraud case in part because defendant “supports college-age children, lost his high-paying job” and “faces an uphill battle to regain his professional credibility.”); *United States v. Chambers*, 885 F. Supp. 12, 15 (D.D.C. 1995) (“That children need supportive and loving parents to avoid the perils of life is without question. While these family circumstances do not decrease the Defendant’s culpability for her crime, they nevertheless play a role in the Court’s consideration on sentencing.”).

Anacostia area of Washington, D.C. and expanded the mission of ELG, a charity that provides assistance to the less fortunate in Baltimore.

Mr. Wade has offered to provide valuable training to government agents concerning the identification and deterrence of defense contracting fraud. Such training would teach government agents how to identify the methods and tactics used by defense contractors and others to disguise violations of Federal acquisition regulations and other requirements. That Mr. Wade's knowledge is better put to use in the community warrants consideration during the determination of his sentence.

#### **IV. CONCLUSION**

Mr. Wade respectfully asks this Court to take into account his years of dedicated military and government service, his cooperation with the authorities, his commitment to community service, and the losses already suffered, and to sentence him accordingly to no more than one year of home detention, a fine of \$250,000, five years probation, and substantial community service. We ask the Court for compassion and leniency for someone who over the past three years has "remained steadfast in his commitment to accept responsibility" and worked hard "to try to make amends for his actions and to rebuild his life in a way that will be a benefit to his family and to others." (Letter from Fr. Charles H. Nalls.) Mr. Wade has been making amends to his family by focusing on being a good father to his five children. He has been making amends to his community through charitable work. He has been making amends to his country by accepting responsibility for his conduct, pleading guilty, and through his extraordinary cooperation with the authorities. Leniency from this Court will allow Mr. Wade to fulfill his commitment to leading an honest and productive life that is a benefit to his family, community, and country.

Dated: November 26, 2008

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

We hereby certify that on November 26, 2008, a copy of the foregoing Sentencing Memorandum of Mitchell J. Wade was served on the government by the ECF filing system, and to Probation Officer Renée Moses-Gregory by e-mail at: Renee\_Moses-Gregory@dcp.uscourts.gov.

/s/ Howard M. Shapiro /s/ Ronald C. Machen