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Submitted under seal

The Hon. *****
United States District Judge
District of Maryland
101 West Lombard Street, Chambers 5B
Baltimore, MD 21201

Re: *United States v. John Doe*, Crim. No. XXXXXXXX

Dear Judge ***:

Recent events have certainly highlighted an undeniable reality that we too often choose to ignore: being poor in America is, to say the least, challenging. This is true when a poor person is merely trying to get by in life, it is true when a poor person is called upon to react to a natural disaster, and, as in this case, it is true when a poor person is attempting to manage his mental illness. Complicating the challenge is that poverty renders a person reliant upon various bureaucracies that are generally incapable of providing individualized service. And too often the poor person is without an advocate in dealing with the bureaucracies upon which he or she must rely. This certainly helps to explain how John Doe, a young and talented poor person dealing with mental illness, finds himself before the Court.

On September xx, Mr. Doe is scheduled to re-appear before Your Honor for sentencing. At the Court's invitation and to assist the Court in its exercise of sentencing discretion pursuant to 18 U.S.C. § 3553(a), I am writing to:

- Demonstrate the clarity with which Mr. Doe's mental health treatment records as well as various records arising from his contacts with the criminal justice system establish a clear link between his criminality and his mental illness, a condition that state agencies have abjectly failed to properly address;
- Provide a professional opinion as to Mr. Doe's current mental and emotional condition; and

- Propose a specific sentence intended to both punish Mr. Doe and provide him with effectively monitored treatment and counseling designed to minimize his risk of recidivism.

A. Mr. Doe's mental health treatment records as well as various records arising from his contacts with the criminal justice system demonstrate with remarkable clarity the link between his criminality and his mental illness, a condition that state agencies have abjectly failed to properly address.

Submitted with this letter is what I believe to be the universe of available treatment records documenting Mr. Doe's history of mental illness. Also submitted are various documents detailing judicial involvement with Mr. Doe's mental illness. Finally, also available to the Court is a chronology, included as Exhibit B to this letter, which synthesizes all of the described records in order to effectively paint the relevant picture.

The records are dramatic for their clarity. In that regard, they certainly establish the wisdom of Your Honor's earlier observation, shared at the abbreviated sentencing hearing that took place on June 14:

"This is exactly the kind of thing that the Supreme Court, I suspect, only in a small way, those Justices could have contemplated. But this is precisely what Booker is all about, the ability of the judge to, as you put it, Mr. Stiller, to move from a two-dimensional existence to a three-dimensional existence."

[Ex. H (federal sentencing transcript at 52-53)].

In early 2002, Mr. Doe was eighteen year's old and experiencing two things: (1) serial arrests involving conduct as serious as his participation in an inner-city shootout; and (2) behavior so odd that his mother, herself a recovering addict, assumed that he had ingested some tainted controlled substances.

While three separate criminal cases, each arising from a four month period in 2002, remained pending, Mr. Doe's mother decided that her son's increasingly erratic behavior might be something more than drug-related. Accordingly, she began to pursue mental health treatment for Mr. Doe. Her lack of resources and her son's symptoms made the task more difficult. Eventually, however, Mr. Doe was seen at the **** Clinic where he came under the care of Dr. Smith, a person-of-color with whom the otherwise paranoid Mr. Doe felt comfortable. Having at that time been arrest free for several months, Mr. Doe began taking Zyprexa (an anti-psychotic medication often used in the treatment of schizophrenia) and attending regular therapy sessions. His mother noticed the difference:

"I seen a complete change. It was amazing. My kid was back from the kid that was running the streets and being involved with the drug lifestyle . . . [H]e had changed . . . He was a better kid. I

was amazed . . . He had changed to the child that I knew a little short period of time before he ran the streets.”

[Ex. H (transcript of federal sentencing at 13-15)].

As of December, 2003, Mr. Doe, nearing his twentieth birthday, remained medicated and under Dr. Smith’s care. He also appeared before Judge xxxx for sentencing pursuant to his having pleaded guilty in two of the cases arising from his four-month crime spree in 2002. With all relevant circumstances and Dr. Smith before her, Judge xxx imposed an entirely suspended sentence, committing Mr. Doe for outpatient treatment, through probation, at the ***** facility. As Your Honor gleaned from a telephone conversation with Judge xxxx, “She really had plans for Mr. Doe. That’s clear.” [Ex. H (federal sentencing transcript at 54)].

Those plans went very awry. Seeing where, when and why the plans went awry is very simple. More than a month after the imposition of Judge xxxx’s sentence, Mr. Doe was seen for the first time at the ***** facility. Prior to his arrival at that facility, Dr. Smith had written a referral letter wherein he described Mr. Doe as having been initially diagnosed as a schizophrenic but then, later, as suffering from a form of psychosis. Dr. Smith also described Mr. Doe’s pharmacological treatment. Notwithstanding this advance insight into Mr. Doe’s psychiatric illness, the ***** facility assigned Ms. Brown, a licensed clinical social worker, to perform Mr. Doe’s intake. Despite Mr. Doe’s history with Dr. Smith and despite Mr. Doe’s statements to Ms. Brown – “I need help and I need my medicine” – the licensed clinical social worker rejected the psychiatrist’s diagnosis and treatment plan. Instead, the licensed clinical social worker determined that Mr. Doe suffered from nothing more than “depression” and had no need for “meds at this time.”

Barely more than two weeks later, Mr. Doe’s female companion was calling his mother to complain of Mr. Doe’s erratic behavior and, as we know from this case, there stood 20-year old John Doe – psychotic, unmedicated, wearing a leather coat over a mink “hoodie,” carrying a relic of a handgun – on a Pennsylvania Avenue street corner.

B. After having been continuously incarcerated for well more than a year, Mr. Doe presently suffers from schizophrenia in remission.

On September 13, 2005, James R. Black, M.D., visited Mr. Doe at “Supermax.” In advance of the visit, Dr. Black, a psychiatrist, had reviewed all records that are presently before the Court. Following his assessment of Mr. Doe, Dr. Black described Mr. Doe’s condition as schizophrenia in remission.¹ The doctor noted Mr. Doe’s desire for improved mental health as well as his history of auditory hallucinations and “ideas of reference” (inserting one’s self into a

¹ Immediately after his session with Mr. Doe, Dr. Black traveled to the West Coast. Thus, he has not prepared a written report. He will, however, be available telephonically should the Court wish to speak with him.

fiction).² Ideas of reference are, according to Dr. Black, characteristic of schizophrenia. The psychiatrist also observed evidence of Mr. Doe's current and continuing paranoia.

Asked why he diagnoses schizophrenia whereas Dr. Smith's work with Mr. Doe in 2003 ultimately resulted in a diagnosis of, in significant part, substance-induced psychosis, Dr. Black explained that it can be difficult to differentiate between the two disorders based only on clinical examination. This is especially true given that drug use significant enough to induce psychosis can also act to exacerbate the symptoms of the organic disorder of schizophrenia. In a perfect world (i.e., one other than "Supermax"), Dr. Black would like to perform an MRI of Mr. Doe's brain for the purpose of exploring frontal lobe atrophy (suggestive of schizophrenia) and/or evidence of intracranial bleeds (suggestive of organic brain injury from substance abuse).

Asked why Mr. Doe, unmedicated and untreated during his extended time in jail, has not shown himself to be obviously psychotic, Dr. Black noted Mr. Doe's on-going paranoia and the fact that schizophrenia is a disease that ebbs and flows. Any number of factors can contribute to remission of schizophrenia. In Mr. Doe's situation, those factors might include that he is presumably drug-free and also that the structure of jail can, under a "three hots and a cot" theory, often create an environment less stressful than a person's ordinary existence.

Ultimately, Dr. Black describes Mr. Doe as a person who "should not be [medication] free." What Mr. Doe needs, according to the doctor, is "low level meds and an eye kept on him." The Zyprexa that Mr. Doe previously took and recalls having liked may have been stronger than necessary. Dr. Black also notes the pending availability of "depo drugs." This emerging manner of medicating psychoses requires a single injection per month. Dr. Black suggests the sensibility of "depo drugs" for persons subject to court supervision: the offender either shows up once a month to receive his injection or the offender is subject to arrest.

C. The Court has available to it a "three-dimensional" sentence that can all at once punish Mr. Doe, treat him, and effectively monitor him.

Consciously or otherwise, the Court has already defined, in simple and effective terms, the application of Section 3553(a) to Mr. Doe's case. As Your Honor stated on June 14: we need to "mak[e] sure that people like Mr. Doe get the treatment, the counseling, and the therapy that they need in addition to the punishment that will raise the greatest possibility that he won't be a recidivist." [Ex. H (federal sentencing transcript at 53)]. In so many words, there is a need to punish Mr. Doe but also, for his sake and the benefit of the community, a need to help Mr. Doe.

Given the circumstances of this case and the need to comply with all applicable statutes, the Court's goals can best be served by treating Mr. Doe's time in custody to date as an informal term of imprisonment and imposing a sentence of five years probation with conditions including

² Dr. Black's report of Mr. Doe's "ideas of reference" is consistent with observations of Mr. Doe's mother wherein she recalled her son essentially describing himself as a character on the HBO series "The Wire." [Ex. 8 (federal sentencing transcript at 6-7)].

community confinement, home confinement, and carefully monitored treatment plans intended to address his mental health and substance abuse issues.

1. Imprisonment.

In proposing that Mr. Doe's term of imprisonment be limited to his time spent in custody to date (approximately 16 months), I envision that the Government, and perhaps the Court as well, may view that amount of time as insufficient. As understandable as such a perception might be, the circumstances of this case render it a reasonable sanction. More importantly, limiting Mr. Doe's term of imprisonment to the time he has already served is necessary to maximize the Court's ability to treat, monitor, and, if necessary, punish Mr. Doe.

a. *The circumstances of this case render a 16-month period of incarceration a reasonable sanction.*

To determine the degree of punishment (*i.e.*, incarceration) appropriate in this case, several factors should be considered. First, Mr. Doe comes before the Court on the basis of offense conduct for which he, rather uniquely, is neither fully blameworthy nor fully blameless. The system perceived his need for help, the system bungled its attempt at addressing that need, and, not surprisingly, Mr. Doe again proved his need for help. Second, Mr. Doe is, as the Court has already observed, a young man who "has never served a sentence of incarceration." Prior to his present period of incarceration, he had never served more than "two or three days" in jail. [Ex. H (federal sentencing transcript at 28)]. Third, Mr. Doe has, as of this date served approximately 16 months in jail as a result of his having possessed the handgun that is the subject matter of this federal case. All 16 of those months have been spent at a variety of local facilities, none of which offer any of the educational, vocational, or recreational programming that engage and occupy an inmate such that time passes more quickly. Thus, the 16 months already served by Mr. Doe have been 16 long and hard months.³

b. *Limiting Mr. Doe's term of imprisonment to the time he has already served is necessary to maximize the Court's ability to treat, monitor, and, if necessary, punish Mr. Doe.*

By statute, a person convicted of a single count and sentenced to a term of imprisonment cannot be placed on probation. 18 U.S.C. § 3561(a)(3)(explaining that a defendant cannot be placed on probation if "the defendant is sentenced at the same time to a term of imprisonment").⁴

³ A federal pretrial detainee in the District of Maryland might validly compare himself to the proverbial red-headed stepchild in that he can serve an extended period of time experiencing all of the hardships of jail without any of the theoretical benefits of jail (*i.e.*, GED classes, vocational training, etc.).

⁴ Because a single sentence cannot include both a term of imprisonment and a period of probation, the sentence being proposed here must necessarily be a sentence of

The offender can only be placed on supervised release. This distinction is significant because, in two ways, probation provides a court with greater authority over the offender than does supervised release:

- First, a term of probation can be as long as five years; a period of supervised release cannot be longer than three years when, as in this case, the defendant stands convicted of a Class C felony. Compare 18 U.S.C. § 3561(c)(1)(probation in a felony case must be at least one year but not more than five years) with 18 U.S.C. § 3583(b)(2)(supervised release for a Class C or D felony cannot be more than three years) and 18 U.S.C. § 3559(a)(an offense punishable by up to 10 years constitutes a Class C felony).
- Second, an offender who violates federal probation can, upon a finding of the violation, be sentenced exactly as he could have been originally sentenced; an offender who serves a term of imprisonment and later violates a three-year term of federal supervised release can, upon a finding of the violation, be sentenced to no more than a three-year term of imprisonment. Compare 18 U.S.C. § 3565(a)(2) with 18 U.S.C. § 3583(e)(3).

Applied to this case, the various statutes mean that:

- If the Court formally sentences Mr. Doe to any term (i.e., anything between one day and the 10-year statutory maximum) of imprisonment, Mr. Doe's community supervision cannot be longer than three years and, while on supervision, Mr. Doe would have only three years of "back-up time" hanging over his head.
- If the Court treats the time Mr. Doe has served in jail as an informal period of incarceration, then the Court can sentence Mr. Doe to probation meaning that he could be subject to five years of community supervision and that, while on supervision, Mr. Doe would have up to ten years of "back up time" hanging over his head.

In sum, a 16-month period of incarceration for a young and not entirely blameworthy man who has never before served more than a few days in jail can, on its own, be viewed as a reasonable punishment but, as here, when that limited period of confinement is necessary to the implementation of an effective sentencing scheme, the reasonableness of that jail term becomes increasingly clear.

2. Probation.

probation. The 16-month period of incarceration that Mr. Doe has already endured cannot be a formal part of Mr. Doe's sentence.

As above, Mr. Doe is seeking a five-year term of probation. That is the maximum term allowed by law and is, as above, two years longer than any term of supervised release that the Court could include as a component of a sentence including a formal term of imprisonment. The five-year term of probation that is contemplated will include two specific conditions that will punish Mr. Doe above and beyond the time he has already served in jail: (1) placement in a community corrections facility (*i.e.*, a halfway house) for a period of time (perhaps six months) upon his release from custody, *see* 18 U.S.C. § 3563(b)(11)(stating that a court may, as a condition of probation, require a defendant to reside in community corrections for all or part of the term of probation); followed by, (2) placement on electronically-monitored home detention, *see* 18 U.S.C. § 3563(b)(19)(providing for house arrest as a condition of probation).

Each of these two liberty-depriving conditions not only extends Mr. Doe's punishment and each serves to facilitate his re-integration into the community upon his release from custody.

Beyond these punitive conditions, Mr. Doe envisions other standard rehabilitative conditions that, in his case, should be crafted in ways intended to negate any chance of bureaucratic snafu. For instance, a standard condition of supervision is that the defendant participate in mental health testing and treatment as directed by the probation officer. As Mr. Doe's experience on Judge xxx's probation painfully proves, such a condition is inadequate in that it leaves the details of the treatment program to the bureaucracy. According to two psychiatrists – Dr. Smith and Dr. Black – Mr. Doe suffers from a psychiatric illness so that his conditions of probation should require “psychiatric care and medication as directed by a licensed psychiatrist.”⁵ Similarly, “drug treatment and testing as directed by the probation office” is a routine condition of federal probation. Again, however, that may not be adequate to ensure Mr. Doe's receipt of individualized care. As Dr. Smith indicated during his colloquy with Judge xxx, Mr. Doe requires “dual-diagnosis” treatment given that his substance abuse fuels his mental illness at the same time that his mental illness fuels his substance abuse. Thus, a condition of Mr. Doe's probation might read “dual diagnosis drug treatment and drug testing.” Finally, federal probationers are generally directed to pursue and maintain employment and/or education. In the case of a high school dropout like Mr. Doe, that might involve pursuit of a GED.⁶ As the Court has already noted, however, Mr. Doe suffers from a learning disability. [Ex. H. (federal sentencing transcript at 39-40)]. Thus, to reasonably expect Mr. Doe to succeed in his desire for a GED, the described condition of probation might include a clause noting the need for a form of special education targeted at his learning disability.

⁵ If at any time a psychiatrist determines that psychiatric care is no longer necessary, things can be reconfigured to permit psychological or other counseling care. What we want to avoid, however, is a repeat of the scenario in which a social worker having a contract with a probation office takes it upon herself to overrule a psychiatrist's diagnosis of psychiatric illness.

⁶ The mental health and court records attached as exhibits indicate that Mr. Doe has at various times declared a desire to obtain a GED.

Finally, I also suggest something I have not seen before and would not normally propose. As well-intentioned as the federal probation office is, it is virtually by design a reactive entity. As the Court is well aware, a probationer can skip multiple drug tests before the Court and, even later, counsel for the parties learn of that fact. The stakes in this case are too high for that. If we are to take a chance on Mr. Doe, then we all need for Mr. Doe to succeed. As Mr. Doe's advocate, I want to know sooner rather than later if, for instance, a social worker is assigned to treat his psychiatric illness. Mr. White and the Court, with desires and responsibilities to protect the community, need to know sooner rather than later if Mr. Doe misses as much as a single appointment with a mental health treatment provider. In this regard, I would suggest that, in this special case with this special needs offender, the probation office be required to provide the Court and counsel with regular written reports detailing Mr. Doe's efforts and those of the probation office.

CONCLUSION

Ultimately, Your Honor, Mr. Doe remains a member of our society. He is talented but troubled. And it wouldn't be entirely unfair for someone to suggest that he presents some level of danger to the society of which he is a member. Under the prior "two-dimensional" sentencing regime, we had little choice but to banish him with the too-often unrealistic hope that the Bureau of Prisons might provide some assistance. In that regard, we were regularly postponing problems rather than solving them. Now, under Booker, we as a criminal justice system have a third dimension that presents us the opportunity and the challenge of solving problems. As the Court has already observed, my client is a kid with promise and problems. In a civilized society, someone should attempt to promote the promise and prevent the problems. Thus, my final thought:

If not us, who?

Thank you for your thoughtful consideration of this matter.

Respectfully submitted,

DANIEL W. STILLER

cc: Court file (under seal)
Mr. White, AUSA
Mr. Green, USPO