UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| UNITED STATES OF AMERICA<br>v.<br>RICHARD EVANS | No. 21-cr-10093-RGS |

**SENTENCING MEMORANDUM OF THE UNITED STATES**

Richard Evans faces sentencing after being convicted of six felonies for his participation in a multi-year scheme to commit fraud and theft of government funds. Evans committed these crimes while he was a public servant who held a position of trust as a Captain in the Boston Police Department and while he served as the commanding officer of the BPD's Evidence Control Unit. Evans and those under his command engaged in a lengthy fraud scheme by routinely submitting false pay slips so that they could receive money that they were not entitled to receive by getting paid for work that they simply did not do. Evans was no passive participant in this scheme—over *multiple years* and on *hundreds (if not thousands) of occasions*, Evans falsely certified time slips that he knew were false so that he and other BPD officers could get paid overtime at 1.5 times their hourly rate for countless hours when they were not working at all.

The fact that the defendant spent his career as a police officer and has undoubtedly done good things in his life may mitigate, but it certainly does not eliminate, the need for just punishment, promoting respect for the law, and deterrence. For the reasons below and those to be articulated at the sentencing hearing, the defendant should be sentenced to 36 months in custody, 1 year of supervised release, restitution of $154,249.20, a fine of $50,000, and a special assessment of $600.

## I. The Guideline Calculations.

The presentence report ("PSR") calculates the defendant's guideline range as 41-51 months. *See* PSR, ¶ 103. The government's recommended sentence of 36 months is a downward variance even from this range, and it thus may not be material or necessary to litigate why this range should be higher. However, given that the Court must begin by accurately calculating the guideline range, fidelity to the facts requires that the Court appropriately treat the defendant as the leader or organizer he was, which would result in a guideline range of 46-57 months.

Some other points about the guidelines are also worth mentioning because they demonstrate how the government's approach to sentencing has been measured and thoughtful, and not one designed to seek the highest sentence it could. These guideline disputes also highlight the defendant's failure to acknowledge the nature of his crimes or the harm caused by his crimes.

### A. The Specific Offense Levels in the PSR are Conservative and Were Calculated to the Defendant's Benefit.

As a starting point, the PSR calculates the defendant's base offense level as 7 (*see* PSR, ¶ 61), with a specific offense level increase of 10 levels based on a loss of $150,000 to $250,000 (*see* PSR, ¶ 62). In reaching this conclusion, the Probation Office was very conservative in its approach and viewed facts in a light very favorable to the defendant—given its sentencing recommendation, the government does not wish to litigate the loss amount, but the government notes that this loss amount is lower than what the government calculated in its offense conduct, and indeed, artificially low based on the defendant getting a pass for years of theft and fraud where the economic loss caused by the conspiracy is not possible to calculate with certainty.

At trial, the evidence—which included both voluminous data (years and years of overtime slips, payment data, and alarm records) and summary records—showed that the loss attributable to this overtime scheme exceeded $420,000. *See* PSR, ¶ 47. In short, *during the period of the charged conspiracy*, over $420,000 was paid out in overtime pay to police officers who claimed to be working at the evidence warehouse *during the time the evidence warehouse was closed*. Each of those highlighted sections warrant a brief mention.

*First*, as the evidence at trial showed and as the PSR notes, "based on alarm records alone, the overtime theft and fraud by Evans and his coconspirators exceeded $420,000." PSR, ¶ 48. Despite that acknowledgement, the PSR only holds Evans responsible for a loss of $150,000 to $250,000. Probation has taken the view that Evans should only be accountable for the loss during the time when he was Captain of the ECU and only when the building was closed. Under conspiracy law principles, the government could easily have pushed for a loss exceeding $250,000. The evidence at trial showed that the overtime fraud scheme perpetrated by Evans and his subordinates was institutionalized and became a near-daily occurrence once Evans was in charge.[1] There were also countless instances where many officers left early, although the Evidence Warehouse remained

[1] It is striking that Evans is still intent on blaming his predecessor, Captain Dowd, for this scheme—a claim the jury's quick verdict suggests the jury did not find remotely compelling. If the Court wishes to hear from the government on this issue, the government can address things further at the hearing, but the evidence clearly showed at trial that: Evans and Dowd never overlapped at the ECU and Evans did not learn this fraudulent scheme from Dowd; Evans knew how to properly fill out overtime slips before he got to the ECU and his fraudulent billing practices began when he took over the ECU; and even if some members in the ECU started overbilling during Dowd's tenure, it was nowhere near as widespread or institutionalized a practice as it became during the tenure of Evans, which is why the records show a dramatic shift in patterns of behavior and *near-daily fraud for years* once Evans was in charge.

open until the last officer left. The defendant has not been held responsible for any of that loss. Further, having institutionalized this pattern of fraud with all the Sergeants and Patrol Officers at ECU between 2012 and 2016, there is a colorable argument that Evans should also bear some accountability for when these same Sergeants and Patrol Officers continued their fraud once Evans left the ECU.

*Second*, and far more importantly given the evidence at trial, Evans is significantly benefiting by only being held responsible for $150,000-$250,000 in loss because this loss calculation, which was based on alarm records, does *not* hold him responsible for any loss during the years during which Evans and members of the ECU participated in the "split shift" scheme. The PSR acknowledges that alarm records show that the "theft and fraud by Evans and his coconspirators exceeded $420,000," but goes on to state:

> Notably, that *calculation significantly understates the amount of the theft or fraud* because of the "split shift" scheme that was put in place during the early years of Evans. Under the split shift scheme, because some officers worked the first half from 4 to 6 p.m. and others worked from 6 p.m. to 8 p.m. (and they all then falsely claimed that they worked from 4 to 8 p.m.), *the alarm records do not reveal the scope of the fraud because the split shift allowed ECU officers to make it appear as if someone was present the entire shift*. Because one or more officers worked the later "split" and closed the building at or near 8 p.m., the alarm records show the building as only being closed at 8 p.m. and are insufficient to show when officers left early or showed up late but still falsely claimed 4 hours of actual hours worked. Thus, *for the multiple years when testimony incontrovertibly showed that officers were splitting shifts, the chart above does not capture the loss because the alarm records would show the building was closed at or near 8 p.m., even though the evidence makes clear that approximately half the time during those shifts was being falsely certified* and falsely claimed for payment.

PSR, ¶ 48 (emphasis added). Based on the testimony of Joseph Nee and other evidence at trial, Evans and those in the ECU employed this "split shift" scheme for *years*, and "regularly" employed this practice in 2012, 2013, and 2014. *See* Nee Testimony, Day 3 Tr. at 108:6-17; 112:21-113:23. *See also* PSR, ¶ 37 (quoting trial testimony from Nee, where

he was asked, "From 2012 to approximately 2016, when Captain Evans was in charge, was there ever a time you remember consistently doing four-hour shifts?" Answer: "No.").

The split shift practice that began in 2012 did not stop until some point in 2015, when a new computer system meant that the officers could not easily split their shifts because some of them had difficulty picking up the new system, which resulted in everyone just working together for a few hours before going home and all falsely billing for four hours every day. *Id.* at 114:5-115:24.

What this means is that for *multiple years* starting in 2012, even though there is incontrovertible evidence that officers were splitting shifts and then falsely certifying slips so that they could get paid for hundreds of hours not actually worked, there is no loss being attributable to Evans because the split shift scheme prevented the alarm records from revealing the specifics of the fraud. Evans is essentially getting a "free pass" as to the loss amount for *approximately three out of the four years he led the ECU* because the alarm records cannot identify exactly when people went home after doing half a shift.

Given all the above, the loss calculation of $150,000 to $250,000 necessarily understates the loss attributable to Evans. Strikingly, Evans objects to even this loss calculation, claiming in his objections that "this is a significant overstatement of the amount of loss" and further suggesting that "there is no personal, financial, social, psychological, or medical impact to the Boston Police Department." PSR, p. 37. Such arguments border on the frivolous given the evidence at trial and demonstrate the defendant's continued failure to accept responsibility and his continued failure to acknowledge the financial and systemic harm caused by his actions.

**B. The Defendant Was in a Position of Trust.**

The PSR also correctly applies a two-level enhancement for abuse of a position of trust. *See* PSR, ¶ 65. As the PSR succinctly put it in its summary paragraph applying this enhancement, "the defendant was a Captain in the Boston Police Department, a position of both public and private trust, and he used this position to facilitate the commission of the instant offense." *Id.*

The evidence at trial made clear that this scheme could not have succeeded without the commanding officer being part of the scheme, and Evans used his position as the supervisor of the ECU to play a critical role in this scheme. Not only did he personally benefit from this theft and fraud, he personally signed off on thousands of pay slips over years where he knew officers were seeking pay for hours they did not work. Every day of trial involved testimony from witnesses who shows different ways in which Evans abused his position to commit or get away with committing this theft and fraud. Lower ranking officers testified that they could not have gotten away with the scheme if Evans was not in on it. Ed Callahan, the Bureau Chief, testified that he trusted Evans and delegated various levels of authority to him, especially because the Command Staff of the BPD worked at Police Headquarters and away from the Evidence Warehouse. More precisely, when he approved the thousands of hours of overtime for the purge program, he was relying on the signature of Evans signing off on those slips indicating that the work was being done. *See, e.g.*, Callahan Testimony, Day 2 Tr. at 167:10-12 ("I relied on each division head's signature [in this case, Evans]. That would indicate to me that the work had been performed.").

And of course, a critical part of this scheme—and some of the most damaging evidence about the knowledge, intent, and state of mind of the defendant—was Evans

deliberately misleading the Command Staff at the BPD about the purge program while he was simultaneously allowing (and joining) those who worked the purge program to engage in a massive overbilling and fraud scheme. The Court may recall two or three especially troubling examples of this dynamic that were highlighted for the jury.

> As shown in one example highlighted at trial, on June 24, 2015, Evans emailed his Bureau Chief, Ed Callahan, describing how "labor intensive" the purge process was becoming due to the new computer system, how "everything is taking twice or three times the usual time to process evidence," how "purge will be slowing dramatically because of this," and "because this system is more labor intensive across the board, I am requesting increased personnel be assigned to this unit." (Trial Ex. 40). The same day that Evans claimed to his supervisor how labor intensive and slow the process was and how more personnel were needed, the alarm records showed that the Warehouse was closed and alarmed by 5:49 p.m., and the payroll records showed that Evans and four officers under his command submitted overtime slips certifying that they worked from 4 to 8 p.m. and their "Actual Hours Worked" were 4 hours.

PSR, ¶ 42.

Again failing to accept responsibility for his role in the crime, the defendant challenges this enhancement, *see* PSR Objection #7, claiming that "there was no abuse of public or private trust," his position did not involve "professional or managerial discretion," and "no evidence indicating there was any effort to interfere with the detection of the offense." These statements all but ignore the evidence in this case, minimize the defendant's role and culpability in this scheme, and ask the court to disregard the defendant's breach of the public trust. Both as a guideline matter and as an 18 U.S.C. § 3553(a) sentencing factor, the defendant's abuse of his position of trust is a notable factor in this case.

### C. Evans Should Be Given a 4-Level Leadership Enhancement

Lastly, the government believes that the defendant should be given a 4-level enhancement for his role in the offense under USSG § 3B1.1. Notably, this was how the

Probation Office calculated the guidelines in the draft PSR, which the government agreed with. Based on the defendant's various objections, the Probation Office has now changed to only giving Evans a 3-level enhancement for being a "manager or supervisor" but not a "leader or organizer." (This change was first included in the PSR circulated last week, which is why the PSR does not list a formal objection from the government.) Given the change, the government objects and asks the Court to treat Evans as the leader he was—the facts of this case strongly call for a 4-level enhancement for role in the offense.

Evans was a Captain—the highest civil service rank in the BPD—and the Commanding Officer of the ECU for approximately 4 years. Labels do not control the analysis, but recognizing this title and role is important given the evidence at trial about BPD being a "paramilitary" structure. The junior officers needed Evans for the scheme to continue, and the evidence strongly suggests that if their leader had ever asked them to stop, there would have been no pushback from lower-level officers trained to follow the commands of their superior officers. The testimony of Captain Wayne Lanchester, who was brought in to clean up the issues at the ECU, provides a stark contrast because it shows how *years of overtime fraud and theft* stopped instantly when the leader and commanding officer of the ECU began doing things the right way.

> Q. Was there any pushback on that?
> A. No.
> Q. Did officers ever come up to you and say, "Captain, what do you mean this is how we're going to do it," or whatever else, anything like that?
> A. No.
> ...
> Q. Did anyone ever come up to you and say, "Captain, people have been leaving early. We think that's okay. We should be allowed to leave early." Did anyone ever say that to you?
> A. No.

Lanchester Testimony, Day 3 Tr., 168:8-169:6.

The application notes to USSG § 3B1.1 are also instructive and support a 4-level leadership enhancement for Evans. Application Note 4, in its list of factors the court should consider, includes factors such as "the exercise of decision-making authority," "the nature of participation in the commission of the offense," "the nature and scope of the illegal activity," and "the degree of control and authority exercised over others." These factors, certainly by a preponderance of the evidence, show that Evans was a leader.

The decision-making authority exercised by Evans was extensive, and by regulation and policy, far greater than other members of the conspiracy who were under his command. No one in the ECU had greater decision-making authority than Evans. Similarly, Evans had a significant degree of control and authority over others. No one in the ECU was close in terms of the degree of control and authority exercised over others.

This "decision-making authority" and "degree of control" that Evans had was not just notable in the abstract—it was integral to numerous parts of the scheme and thus also affected factors such as "nature of participation in the commission of the offense" and "the nature and scope of the illegal activity." For example, the commanding officers had ultimate responsibility over the schedules of the ECU officers. A commanding officer (either Evans or one of his Sergeants) had to stay with the officers every day because they were the only ones who had control over the secured drug vault—a fact elicited by the defense during cross-examination. *See* Callahan Testimony, Day 3 Tr. at 56:8-10 ("Q: [T]he only people who had access to the drug vault were commanders or captains, such as Richie or sergeants, right? A: Yes."). Thus, Evans or one of the Sergeants knew exactly when the vault and building would be closed for the day, and they were thus well-aware of the false pay slips they were signing off on nearly every day. Notably, the importance of the leadership role of the Captain was quite literally written into the protocols designed

to ensure that overtime was being paid properly. The overtime slip (Trial Ex. 8), on the back, literally states, "It is the responsibility of the supervisor authorizing the overtime or the captain's designee, not the officer submitting the overtime slip, to enter the appropriate overtime code." Further, "as the commanding officer, Evans had a nearly daily opportunity to observe and sign off on the overtime practices and payment requests of the ECU officers under his command." PSR, ¶ 28.

Despite all of that, and despite personally knowing that both he and his officers were not working the hours they stated they were working, Evans signed off on thousands of false or fraudulent slips. The line officers were not the leaders of this scheme—Evans and other commanding officers were. *Cf.* USSG § 3B1.1, Note 4 ("There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy."). Lastly, none of the line officers (or even the Sergeants) were going to command staff meetings and misrepresenting to the Command Staff the nature of the fraud in the purge overtime program—Evans was the only one in the leadership position to do that, and he was the only one who did.

Once a 4-level enhancement is applied (as it was in the draft PSR and should be again in the final PSR), the total offense level increases to 23, resulting in a properly-calculated Guideline range of 46-57 months in custody).

## II. The Government's Recommended Sentence is Appropriate and Supported by the 18 U.S.C. § 3553(a) Factors.

The 18 U.S.C. § 3553(a) factors strongly support the government's recommended sentence. Much of the discussion above—especially about the theft of public funds, the defendant's abuse of his position of trust, and his leadership and participation in the charged offenses—touches on various 3553(a) factors such as the "nature and

circumstances of the offense" the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," and the need "to afford adequate deterrence to criminal conduct." The government incorporates its discussion above without repeating those arguments, but a few additional points about the 3553(a) factors mention highlighting.

**A. The Nature and Circumstances of the Offense are Troubling and Call for a Meaningful Sentence.**

At its core, this is a case about Evans (and his co-conspirators) violating the public trust and violating their duties as members of law enforcement to essentially commit theft from the public treasury.

Evans presided over *multiple years* of systemic and widespread fraud. The fact that the defendant held the highest civil service rank in the Boston Police Department and had decades of experience, training, and knowledge only enhances the betrayal of the trust that the public and the BPD put in officers like Evans.

Evans was not just some idle participant in the scheme. He committed years of fraud himself by fraudulently certifying his own slips so he could get paid for countless hours of work he simply did not do. (Again, the government highlights that the loss calculation does not even hold Evans or others to account for approximately three out of the four years when Evans was in the ECU because the "split shift" scheme prevents the alarm records from revealing the full scope and nature of the overtime fraud.)

In addition to himself getting paid for work he did not do, Evans helped approximately a dozen other police officers under his command commit years of fraud by fraudulently certifying their slips so that they could also get paid for work they did not do. This likely resulted in some non-monetary benefits to Evans as well, as it allowed him to

completely shirk his command responsibility and avoid any of the interpersonal issues that may have arisen if he had tried to stop a large criminal conspiracy amongst his officers. Instead, Evans willingly joined the criminal conspiracy and led it for years, helping institutionalize it and then taking a leading role in misleading the Command Staff about the nature of the purge program.

Remarkably, the defendant *still* fails to appreciate the nature and circumstances of the crimes he committed. *See* PSR, Objection #3 (claiming to now recognize that "there is a violation of the requirement of truthfulness in the submission of the voucher showing actual hours worked. The defendant accepts responsibility for the violation of the standards of the Boston Police Department); Defense Sent. Memo. at 5-6 (minimizing the conduct but stating, "Nevertheless, it is readily apparent there was a violation of the requirement of truthfulness in the submission of the vouchers which has been readily acknowledged.").

The Court's sentence should convey what the defendant fails to appreciate even now—this is *not* a case about filling out some paperwork incorrectly or violating some internal BPD policy. This is a case about *years of overtime theft* that allowed *police officers* to *fraudulently obtain money from the public treasury* that they were not entitled to obtain because they *got paid for hundreds and hundreds of hours of work that they did not do*.

### B. The History and Characteristics of the Defendant Support the Government's Recommended Sentence.

The history and characteristics of the defendant also support the government's recommended sentence because the government's recommendation is measured and is based on a careful consideration of both aggravating and mitigating factors.

The government has always recognized the defendant's lengthy and distinguished career in the BPD, and the government has never portrayed the defendant as someone who was always corrupt or always looking to steal from the job. To the contrary, at trial, the government itself highlighted much of the defendant's experience and accomplishments. But the defendant's career must be viewed in context.

The defendant cannot simultaneously take credit for that lengthy career as a police officer while failing to acknowledge the most basic parts of his training and experience—knowing the difference between right and wrong; knowing he needed to fill out his time slips properly; knowing that he should not falsify police forms, and especially not thousands of times; knowing that police officers are public servants, not people entitled to steal from the public treasury.

There is also significant tension between what the defendant wants this Court to believe about himself but what he then argues in his sentencing advocacy to try to minimize his sentencing exposure. This is a defendant who proudly talks about his time at the BPD, but then repeatedly argues that pretty much every officer in the BPD is corrupt because they were all committing fraud and stealing overtime pay like he was. He insists on doing that even when his own experience belies the claim that this is how things have been done by everyone for decades. This is a defendant who claimed at trial that he did not know how to fill out overtime forms properly and did not understand how overtime got paid. Not only did the testimony of other officers lay waste to that claim, but so did the defendant's own pay forms. The government went back through prior years to show the jury how the defendant—*prior to his time in the ECU*—filled out forms properly and honestly reported less than 4 hours when he worked less than 4 hours. The government also showed how *after his time in the ECU*, when he was no longer surrounded by corrupt

officers, he went back to honestly reporting his actual hours worked, instead of just putting in 4 hours of overtime every shift regardless of how little he worked.

This pattern of failing to appreciate the wrongfulness of his conduct, and continuing to highlight his individual strengths while continuing to shirk his individual responsibility, appears to continue through sentencing. He talks with pride about advancing to the rank of Captain and how he worked hard to motivate others under his command, but then claims that he was not a leader when it comes to this conspiracy and claims that "Evans would stay in his own office and rarely socialized or was involved with the rank and file involved with the purge program." Defense Memo. at 5. He talks about how he "tried to positively influence people" throughout his career, but he fails to acknowledge how instead of positively influencing people under his command, he joined them a multi-year pattern of lies and theft. He talks about how "police work in general leads often to cynical unmotivated officers" and the motivational tools he used, but he fails to appreciate that for years, he and his fellow officers misled the BPD into paying them for hundreds and hundreds of hours they simply were not working. He shares how this case has impacted him, but he shows no appreciation for how the case may have impacted the Boston Police Department or the public's view of the BPD. He appreciates the harm caused by his crimes to his own finances, but he does not show even the most basic appreciation for how his crimes impacted BPD finances or the public treasury.

To the extent there is a lot of good in the defendant's past, that mitigates, but does not eliminate, the need for just punishment, promoting respect for the law, and affording adequate deterrence. The government's sentencing recommendation of 36 months in custody, a *downward variance* from a Guideline range that already understates the nature of the harm, appropriate balances the mitigating circumstances in this case.

**C. The Need to Promote Respect for the Law and Promote Deterrence.**

The need to promote respect for the law and afford adequate deterrence are especially important factors for this Court to consider in a case sentencing a high-ranking police officer for a years-long conspiracy by himself and officers under his command to commit theft and fraud.

A violation of the laws against theft and fraud may strongly suggest that even an average citizen who has helped steal hundreds of thousands of dollars from his employer should be given a meaningful sentence of incarceration. That is especially true when the defendant is not some average citizen but a police officer who has sworn to uphold the law; the employer is not some private company but the police department of our largest city; and the harm is not limited to a private entity but the money being stolen is taxpayer funds. A just punishment is needed to promote respect for the law, and the need for punishment is further highlighted by the defendant's leadership role in the conspiracy, his abuse of the public trust, his lack of contrition and failure to appreciate the wrongfulness of his conduct, and the pervasive nature of the theft and fraud.

The government submits that the Court should focus more on general deterrence, not specific deterrence, in this case. Given the defendant's age and his removal from the Boston Police Department, the government does not believe that this defendant is likely to reoffend, at least in terms of committing this crime again. But even if he does not reoffend, he must be appropriately sentenced for the crimes he did commit, and a message must be sent to other officers who may be inclined to steal overtime pay.

Notably, the need for adequate punishment, the need to promote respect for the law, and the need to afford adequate deterrence are all highlighted because of how pervasive the fraud was. Contrary to what Evans tried to claim at trial, the fact that so

many at the Boston Police Department were engaging in overtime fraud is not a *defense* to the crime—it is an *aggravating factor* that highlights the need for general deterrence. The argument that the Boston Police Department has a culture of overbilling overtime—even if accepted at face value—only heightens the need to appropriately deter others. The Court's sentence should help disabuse officers of the notion that stealing overtime pay is part and parcel of being a police officer. The Court's sentence should also disabuse Evans of the notion that this is a case about simply filling out some internal police forms inappropriately—this is a case about corruption, lies, and theft.

Further, the government notes that the very structure of the Boston Police Department makes it very difficult for any individual officer to stand up and say the practice of lying or overbilling is wrong. As the evidence showed, the BPD had numerous policies and directives from the Commissioner that were insufficient to prevent or deter this crime. And as the testimony revealed, any line officer trying to stand up and challenge this practice would risk transfer or retaliation. *See* Nee Testimony, Day 3 Tr., 124:17-20 ("Q: Why did you not speak up? A: I was afraid of getting, you know, launched to a different district or transferred out of that unit."). It has taken an outside investigation to shine a spotlight on this behavior that, when exposed to sunlight, does not withstand even a modicum of independent scrutiny. Common sense dictates that a public servant cannot, day after day, falsify police forms so that he can work for 2 hours, bill for 4 hours, and because he gets paid 1.5 times for overtime, get paid for 6 hours. Day after day, week after week, month after month, and year after year, Evans literally and figuratively signed off on that practice.

The Court should take this opportunity to send a message to the defendant (provide just punishment), to others in the Boston Police Department (promote general

deterrence), and to the public at large (promote respect for the law) that lying on police forms and stealing hundreds of thousands of taxpayer dollars is not acceptable and will be appropriately punished. The defendant's request for a non-incarcerative sentence would make a mockery of the law, not promote respect for the law, and would not adequately deter others from committing the conduct that was unearthed in this case. The government's measured and carefully-crafted recommendation of 36 months in custody, which is still below guidelines, is the appropriate sentence in this case.

**D. The Need to Avoid Unwarranted Sentencing Disparities.**

The government's sentencing recommendation is also designed to avoid unwarranted sentencing disparities. The addendum to the defendant's sentencing memorandum cherry-picks certain examples of police officers who have been sentenced for similar misconduct, but it is the government's recommendation, not the defense's recommendation, that avoids unwarranted sentencing disparities.

- The defense mentions Boston Police officers like Finch, Nee, Smalls, and Baxter, who were sentenced to Probation or home confinement. Those are not *similarly situated* defendants, which is the key point of comparison. All of those BPD officers accepted early responsibility for their actions. Notably, they signed cooperation agreements with the government. Most went further and took the difficult step of testifying against a fellow officer in either this or another trial. They were also not the commanding officers of the ECU. Nor did they compound their own overtime fraud by helping so many others commit overtime fraud. Nor did they mislead the Command Staff of the BPD to help coverup and further their unit's overtime fraud.

- Officer Diana Lopez was mentioned by the defense and was sentenced to six months in custody. She is a notable point of comparison, but in support of the government's recommendation. Unlike Evans, she was a line officer and not a commanding officer. Unlike Evans, she pled guilty and entered into a cooperation agreement with the government and testified at trial. Unlike Evans, she was not a leader or organizer. Unlike Evans, she did not sign off on the false slips of others or help mislead commanding officers about this scheme. And she received *six months in custody*. A three-year sentence for Captain Evans, given the significant differences between the two and the significantly greater role played by him, is appropriate.
- The Mass. State Police troops listed in the defense addendum are similarly inapposite. All the listed officers pled guilty early, and many of them expressed an interest in cooperating with the government to help investigate or prosecute others; they did not help lead a similar overbilling scheme in the Mass. State Police, nor did they refuse to accept responsibility for their crimes or help mislead the command staff about them.

Notably, the defense fails to mention the two most similarly situated police officers in the recent past, and the ones whose sentences the government did consider when making its recommendation in this case. Earlier this year, Mass. State Police Lieutenant Daniel Griffin and Sergeant William Robertson were convicted by a jury of a similar overtime fraud scheme where they were similarly charged with multiple counts of theft concerning program receiving federal funds, conspiracy to commit the same, and wire fraud. *See United States v. Griffin and Robertson*, 20-cr-10319-MRG. The scheme involved the Traffic Programs Section of the State Police, and troopers engaged in a

lengthy scheme where they would only work for a few hours (on traffic programs such as sobriety checkpoints) but would then falsify their overtime pay records so that they could get paid for hundreds of hours of overtime that they did not work. The scheme, in many material respects, was similar to the scheme undertaken by Evans and his BPD co-conspirators. Griffin and Robertson were the only two officers who refused to accept responsibility and went to trial. Like Evans, Griffin was the commanding officer of the unit engaging in this lengthy overtime theft and fraud. On April 26, 2024, Griffin was sentenced to *60 months in custody*. *Id.* at Dkt. No. 233. On April 30, 2024, Robertson was sentenced to *36 months in custody*. *Id.* at Dkt. No. 240.

Given the comparative leadership role of Evans and Griffin, and given other similarities in the case, the government strongly considered recommending a similar 60-month sentence for Evans. Upon careful reflection, and giving Evans every benefit of the doubt, the government is instead recommending a 36-month sentence for Evans, similar to the sentence received by Robertson. Anything less would lead to unwarranted sentencing disparities and be unfair, especially given the similarity in conduct, and given the more aggravating role (and certainly the greater leadership role) played by Evans. Anything less than 36-months would also be insufficient to further the purposes of sentencing as outlined in § 3553(a), as discussed above.

**E. The Need for Restitution and a Fine.**

Lastly, the government notes the need for restitution and a fine. The Probation Office has calculated the restitution as $154,249.20, and that should be payable immediately. Separately, to further deterrence, this Court should also impose a fine. The defendant has an ability to pay, as evidenced by the net worth analysis listed in the PSR, which lists no liabilities and assets of over $2.75 million. PSR, ¶ 100. The government

asks the court to impose a fine of $50,000. The defendant has indicated that he may wish to challenge restitution. To the extent the Court orders a lower restitution amount for some reason, the government intends to seek a higher comparative fine.

**CONCLUSION**

For the reasons above and those to be advanced at the sentencing hearing, the Court should sentence the defendant to 36 months in custody, 1 year of supervised release, restitution of $154,249.20, a fine of $50,000, and a special assessment of $600.

The government does not oppose self-surrender to the Bureau of Prisons.

Respectfully submitted,

JOSHUA S. LEVY
Acting United States Attorney

By: /s/ Kunal Pasricha

KUNAL PASRICHA
Assistant United States Attorney
District of Massachusetts

**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

By: /s/ Kunal Pasricha

KUNAL PASRICHA
Assistant United States Attorney
District of Massachusetts