

1 Thomas W. McNamara (SBN 127280)
tmcnamara@mcnamarallp.com
2 Logan D. Smith (SBN 212041)
lsmith@mcnamarallp.com
3 MCNAMARA SMITH LLP
655 West Broadway, Suite 1680
4 San Diego, California 92101
Telephone: (619) 269-0400
5 Facsimile: (619) 269-0401

6 *Attorneys for Margaret E. Hunter*

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DUNCAN D. HUNTER (1);
MARGARET E. HUNTER (2)

15 Defendants.
16

Case No. 3:18-cr-03677-W

**DEFENDANT MARGARET E.
HUNTER'S SENTENCING
MEMORANDUM**

Judge: Hon. Thomas J. Whelan
Ctrm.: 3C
Date: August 24, 2020
Time: 9:00 a.m.

17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Margaret Hunter stands before the Court having pleaded guilty and accepted
3 complete responsibility for her actions and their consequences. She is deeply sorry
4 and is prepared to accept whatever punishment the Court deems appropriate. On
5 her behalf, we respectfully request the Court sentence her to eight months of home
6 confinement as a condition of probation. It is our understanding that the
7 Government is also recommending a sentence of eight months of home
8 confinement as a condition of probation.

9 This sentence would fall within the advisory Guidelines range, as agreed by
10 both parties, and would be consistent with the objectives of 18 U.S.C. § 3553. It
11 would also be generally consistent with United States Probation's sentencing
12 recommendation, once a reduction is made to account for the scope and extent of
13 Ms. Hunter's cooperation, which Probation did not take into account. Ms. Hunter
14 fully appreciates that she is not the victim here. The campaign committee, and its
15 donors, are the victims. But the jointly recommended sentence takes into account
16 the conduct involved as well as mitigating factors, including family circumstances
17 and her cooperation.

18 Ms. Hunter readily acknowledges that violations of federal election laws,
19 including her own, are serious crimes. However, her conduct since the spring of
20 2017 in responding to adversity is reflective of her growth and revelatory of
21 character. The twin blows she has suffered – criminal charges coupled with the
22 breakdown of her marriage – could have consumed Ms. Hunter's focus, but they
23 did not. Instead, since the investigation began in 2017, Ms. Hunter has continually
24 prioritized her three children, who were caught in the middle of the turbulence that
25 she and her husband created. Her children were old enough to understand the
26 charges against their parents; they were far too young to handle seeing their parents
27 both face the prospect of prison, while at the same time watching their parents'
28 marriage disintegrate.

1 Ms. Hunter had hoped to spare her children a prolonged public spectacle
2 through a pre-indictment plea. After learning that the Government was
3 investigating her conduct in the spring of 2017, Ms. Hunter promptly informed the
4 Government through counsel that she was guilty and was willing to accept
5 responsibility for her actions. However, with the Government in the midst of
6 investigating her and her husband's conduct, there was no opportunity for her to
7 plead guilty to misusing campaign funds at that time. Her counsel maintained
8 periodic contact with the Government and made clear that Ms. Hunter was willing
9 to enter into a pre-indictment disposition. Ultimately, the Government indicted
10 Ms. Hunter and her husband on August 21, 2018.

11 In response, Ms. Hunter filed no substantive motions, and she entered into a
12 plea agreement, admitting her guilt and agreeing to cooperate on June 13, 2019. In
13 the interim, Ms. Hunter built a cocoon around her children, so they would suffer as
14 little collateral damage as possible from the sins of their parents. While she was
15 unable to reach a pre-indictment plea, her actions, guilty plea, and cooperation with
16 the Government were instrumental in avoiding a very public trial that would
17 undoubtedly have been painful for her family and her children, and she saved the
18 Court and the Government considerable resources by promptly pleading.

19 **II. Consideration of the 18 U.S.C. Section 3553 Factors**

20 **A. The Nature and Circumstances of the Offense**

21 The Court is familiar with the relevant facts. Ms. Hunter pleaded guilty and
22 admitted to an extensive factual predicate, as set forth in subparagraphs 17(a)
23 through 17(z) of her Plea Agreement. ECF No. 34. The Court also has a detailed
24 factual rendering in Ms. Hunter's Presentence Investigation Report ("PSR") and
25 sentenced her husband based on the same underlying conduct on March 17, 2020.
26 Accordingly, we focus on aspects of Ms. Hunter and her character presently not
27 known to the Court. Relevant circumstances of this offense are also detailed more

28 ///

1 fully in the PSR, and other relevant personal information has been filed separately
2 under seal.

3 **B. The History and Characteristics of Margaret Hunter**

4 1. Ms. Hunter fled communism, immigrated to the United States,
5 and adjusted to life in the United States as a child.

6 Ms. Hunter was born in Poland, the eldest of two sisters. She grew up in a
7 small Polish town in relative poverty. In 1986, her parents decided to undertake a
8 risky escape from communist Poland. The family escaped to Italy via Yugoslavia
9 and then lived in a refugee camp for several months. Ms. Hunter's family was able
10 to immigrate to the United States and ultimately settled in San Diego.

11 In the United States, Ms. Hunter's family struggled financially. PSR ¶¶ 75-
12 80. Although she spoke no English when she immigrated, Ms. Hunter generally
13 adapted well. PSR ¶¶ 101-102.

14 2. Ms. Hunter met and married Duncan Hunter and raised three
15 young children as a military spouse.

16 Ms. Hunter met Duncan D. Hunter ("Mr. Hunter") in 1992 when she was a
17 17-year old high school senior at Crawford High School, volunteering in the office
18 of Mr. Hunter's father, Congressman Duncan L. Hunter. PSR ¶ 83, ¶ 144. Mr.
19 Hunter was a year behind Ms. Hunter in school at another local high school. The
20 two dated for the next six years. On July 11, 1998, at the age of 23, Ms. Hunter
21 married Mr. Hunter. PSR ¶ 17. Over the next few years, she worked some for her
22 father-in-law, on such jobs as providing constituent services focused on
23 immigration-related cases.

24 During this time, the Hunters moved in with Mr. Hunter's parents, while Mr.
25 Hunter was still finishing college and simultaneously working. While Ms. Hunter
26 attended some courses in community college, she never obtained a degree,
27 especially as she focused on being a mother to her young children. PSR ¶¶ 101-
28 102. Her first child, her son, was born in 2000. PSR ¶ 83. Just one year later,

1 after September 11, 2001, her husband came home one day and informed Ms.
2 Hunter that he had quit his job and signed up to join the Marines and fight for his
3 country. There was no discussion of this decision beforehand with Ms. Hunter.
4 While she was supportive of her husband and admired his courage, the unilateral
5 nature of the decision caused tremendous stress for her. PSR ¶ 84.

6 Over the next five years, Mr. Hunter served three tours in the Marines in
7 Iraq and Afghanistan, while Ms. Hunter was raising two children under four years
8 old. In 2003, her second child, a daughter, was born. PSR ¶ 83. Like military
9 spouses often do during times of war, she struggled with raising young children
10 without her spouse there. Their finances were always stretched. She was often
11 overwhelmed and constantly worried about her husband's safety. Her concern for
12 his safety was exacerbated by the fact that there were very few ways to
13 communicate with her husband overseas, and media coverage of the conflict
14 repeatedly focused on the deaths of servicemen and servicewomen, to the point
15 where Ms. Hunter did not even want to turn on the television.

16 Ms. Hunter was grateful in 2006 when Mr. Hunter returned home. In 2007,
17 after Mr. Hunter transitioned from active duty in the Marines to the reserves, the
18 Hunter family moved to Boise, Idaho, where Mr. Hunter worked with his uncle to
19 help with a new residential real-estate development business. For Ms. Hunter,
20 their time in Idaho was the happiest and most stable time in her life. She gave
21 birth to their third child, another daughter, in 2006. PSR ¶¶ 83-84. This period of
22 momentary calm was short-lived, however.

23 In 2007, Ms. Hunter's father-in-law unexpectedly decided that he was not
24 running for Congress after serving fourteen terms spanning three decades. Her
25 father-in-law called his son to ask Mr. Hunter if he wanted to run for the open seat
26 for California's 52nd congressional district,¹ while her father-in-law would instead

27 _____
28 ¹ Starting in 2012, Mr. Hunter's district was renumbered as the 50th congressional
district, based on redistricting.

1 run for President. Without consulting Ms. Hunter, her husband, with the urging of
2 his father, decided that the family would move to San Diego, and he would run for
3 Congress. PSR ¶ 84. Ms. Hunter opposed this decision, because her husband had
4 pledged to her never to have a life in politics. The two had often discussed how
5 difficult it had been on Mr. Hunter and his siblings to have a father working across
6 the country. Having endured the past few years as a military spouse, worrying
7 about her husband's safety during his tours of duty and raising their young
8 children, Ms. Hunter did not want Mr. Hunter to enter a career that would again
9 take him away from his family. She was disappointed that this life-altering
10 decision for their family had been made by her husband, with his father, and
11 without her input.

12 3. Ms. Hunter focused on her children while her husband served in
13 Congress.

14 After Mr. Hunter filed to run for his father's congressional seat, the Hunters
15 returned to San Diego and moved in with her in-laws. Shortly thereafter, Mr.
16 Hunter was recalled to active duty for Operation Enduring Freedom in
17 Afghanistan. While he was in Afghanistan on active duty, Mr. Hunter could not be
18 directly associated with his campaign, and Ms. Hunter filled in as his campaign
19 surrogate. PSR ¶ 84. These circumstances for her were stressful, as Ms. Hunter
20 was now acting as Mr. Hunter's campaign surrogate, while also raising three
21 children ages seven and under and constantly worrying about her husband's safety.

22 In 2008, Mr. Hunter won the primary in June and ultimately his election in
23 November. Her husband started commuting from San Diego to Washington, DC
24 beginning in January 2009, while Ms. Hunter stayed in San Diego to raise their
25 children. PSR ¶ 16. From 2008 onwards, the Hunters tried to balance their cross-
26 country marriage. Most significantly, for Ms. Hunter, it meant that she was again
27 raising her children, regularly alone.

28 ///

1 During Mr. Hunter's tenure in Washington DC, he and Ms. Hunter
2 continued to grow apart. Mr. Hunter was an attentive father when he was able to
3 be in San Diego, but he remained in Washington, DC much of the time. The
4 circumstances left a void in their family unit. PSR ¶ 49.

5 Notwithstanding the new Congressional salary, the Hunters continued to
6 struggle financially. Their debts increased, especially after they purchased a
7 house, with a large monthly mortgage payment, in the summer of 2009. PSR ¶ 23,
8 ¶ 47 & ¶ 114. The Hunters also decided that they wanted their children to be in a
9 small private school, where they would be more sheltered from their father's public
10 life in politics. PSR ¶¶ 47-48.

11 For a myriad of reasons (including decisions that were admittedly
12 irresponsible), the money never seemed to be enough to cover their expenses. The
13 Hunters found themselves in an increasingly deeper financial hole each month, as
14 they routinely spent more than they earned. They missed payments and incurred
15 overdraft and insufficient fund fees by overdrawing their bank accounts. They
16 frequently communicated with one another about how little money they had and
17 worried about how they were going to pay for things. *See generally* PSR ¶¶ 20-28
18 & ¶¶ 113-115.

19 During this time, Ms. Hunter began doing work for her husband's campaign,
20 first as a volunteer, then as an independent contractor, and later as a salaried
21 employee. The Hunters' joint access to campaign funds became a solution for
22 their financial woes. PSR ¶ 22. In or around 2010, both understood and agreed
23 with each other to convert campaign funds for their personal use. PSR ¶ 34. They
24 knew this was illegal. At the time, Ms. Hunter knew that this was wrong, but she
25 justified it to herself for a host of improper reasons.

26 At first, converting campaign funds for personal use started out on a small
27 scale. The Hunters both found ways to take advantage of ambiguities in the law.
28 As time went on, the illegal spending escalated. PSR ¶ 28. Ms. Hunter was able in

1 her mind to justify day-to-day expenses as being “campaign-related,” and she came
2 to use campaign funds for routine purchases like groceries, Costco trips, gas, and
3 family meals. A large number of her expenditures were purchases for her children
4 at places like Olive Garden, Barnes and Noble, and Michaels. PSR ¶¶ 37(c)-
5 37(m). The Hunters also used campaign funds to fund portions of family vacations
6 that they could not otherwise have afforded. PSR ¶ 37(a).

7 4. In 2017, Ms. Hunter promptly accepted responsibility and
8 admitted her guilt after the Government began its investigation.

9 In 2016, the *San Diego Union Tribune* published a series of articles
10 uncovering questionable spending on personal items by the Hunter Campaign
11 Committee. This was followed by an FEC complaint by a nonprofit watchdog
12 organization named Citizens for Responsible Ethics in Washington and a
13 subsequent Congressional investigation. PSR ¶¶ 29-30. The Hunters paid back
14 approximately \$60,000 after conducting an internal audit in 2016. PSR ¶31.
15 Paying back this sum of money required the Hunters to sell their house and move
16 back in again with Mr. Hunter’s parents in 2016. PSR ¶ 23.

17 In February 2017, the Government executed search warrants on the Hunters’
18 home, among other places. As a result, the Hunters knew that there was now a
19 criminal investigation into their conduct. Shortly thereafter, in the spring of 2017,
20 Ms. Hunter reached out through her attorneys directly to the Government and
21 informed the Assistant US Attorneys investigating her case that she wanted to
22 enter into a plea agreement admitting that she had improperly converted campaign
23 funds for personal use. At that time in 2017, the Government’s investigation was
24 ongoing, and it was not in a position to reach a pre-indictment resolution.
25 Ultimately, in August 2018, the Government indicted its conspiracy case against
26 the Hunters. As described below, Ms. Hunter entered into a plea agreement as
27 soon as possible, which was in June of 2019.

28 ///

1 5. Ms. Hunter cooperated with the Government and agreed to
2 testify.

3 Ms. Hunter has remained silent during the Government's investigation and
4 criminal case. She also filed no substantive motions contesting the charges. PSR
5 ¶ 147. At the same time, she made known to the prosecution through counsel that
6 she wished to accept responsibility and resolve the charges whenever it was
7 appropriate and without a trial.

8 The first opportunity for Ms. Hunter to enter into a plea bargain to one count
9 of conspiracy presented itself in spring 2019. Over an extended period of time, the
10 parties negotiated the terms of the Plea Agreement, which contained a fulsome
11 factual predicate outlining dozens of overt acts in a conspiracy committed by Ms.
12 Hunter and her husband. See ¶¶ 17(a)-(z) of the Plea Agreement. In the factual
13 predicate, Ms. Hunter confirmed as true many of the specific factual allegations in
14 the Government's Indictment and provided additional details about her conspiracy
15 with her husband. At the time, her husband was still publicly contesting the
16 charges.

17 The Plea Agreement contained a cooperation obligation requiring that Ms.
18 Hunter provide substantial assistance to the Government and agree to testify at any
19 trial. See Plea Agreement § XIII(3). The circumstances of Ms. Hunter's
20 cooperation were extraordinary and unusual. When she agreed to cooperate and
21 provide truthful information, Ms. Hunter was (and presently is) married to Mr.
22 Hunter. She was also still living with him at the time. The Hunters, and their three
23 children, were residing in Mr. Hunter's parents' house. Her decision to plead
24 guilty and cooperate while still living under the same roof as her husband and his
25 parents further ostracized her. Despite the awkwardness of these circumstances,
26 she continued to remain at her in-laws' home for an additional two months after
27 her guilty plea, when she was finally able to move out with her daughters at the

28 ///

1 end of the summer (just before her son was starting college as a freshman and her
2 daughters were starting school) and thereby separate from her husband.

3 Additionally, between August and November of 2019, Ms. Hunter continued
4 her cooperation, meeting with the Government on eight separate occasions for
5 more than thirty hours in total, as the Government prepared for a January 2020 trial
6 against Mr. Hunter. In December 2019, Mr. Hunter entered his guilty plea
7 admitting to his participation in a conspiracy with Ms. Hunter. Mr. Hunter's guilty
8 plea was undoubtedly motivated, at least in part, by the reality that his wife and co-
9 conspirator had entered a guilty plea and admitted to their conspiracy in a very
10 detailed factual basis in her plea agreement.

11 Ms. Hunter's decision to plead guilty and agree to truthfully cooperate was
12 the right thing to do. But it was not an easy thing to do, for it put Ms. Hunter at
13 odds with the person with whom she had shared her entire adult life (and his
14 family). She met and fell in love with her husband as a teenager and sustained
15 their marriage for more than 20 years and through many turbulent times. She
16 supported him through three deployments and six terms in Congress, and they had
17 three children together. Under these circumstances, the decision to plead and
18 cooperate was excruciating. This undeniable fact – and the recognition of the
19 value of the fulsome factual basis set out in Ms. Hunter's plea agreement – form
20 the basis for the Government's decision to join Ms. Hunter's request for a sentence
21 of eight months of home confinement as a condition of probation.

22 **C. The Need to Reflect the Seriousness of the Offense, Just**
23 **Punishment, Deterrence, and Protection of the Public**

24 On Ms. Hunter's behalf, we respectfully submit that a sentence with eight
25 months of home detention as a condition of probation is an appropriate sentence
26 that reflects the seriousness of the offense, promotes respect for the law, acts as a
27 deterrent, and does not expose the public to future criminal conduct by the
28 defendant. The Government agrees that after accounting for her cooperation, a

1 sentence at the low end of Zone B would be appropriate and is making the same
2 recommendation of eight months of home confinement as a condition of probation.
3 The United States Probation Officer similarly recommended a sentence at the low
4 end of the parties' adjusted offense level of 11, but deviated by recommending a
5 split sentence of four months home confinement and four months incarceration;
6 however, U.S. Probation's analysis did not account for cooperation.

7 A just punishment that is sufficient but not greater than necessary can be
8 achieved with the recommended probationary sentence. Ms. Hunter has no prior
9 convictions or contacts with law enforcement. She has the strong support of her
10 sister, her mother, and her children, who are everything to her. She has a very low
11 risk of reoffending in the future, as determined by the US Probation office. *See*
12 PSR ¶ 145. Her risk of recidivism is especially low, given her behavior during the
13 prolonged investigation and her prompt acceptance of responsibility. Moreover,
14 she has had time to think about her conduct and consider the consequences of
15 actions. She is at no risk of committing this specific crime ever again, as she will
16 not find herself in a similar situation. PSR ¶ 145. Ms. Hunter presents no danger
17 to the public. Thus, individual and general deterrence will be achieved through the
18 requested sentence within a probationary range, which falls within the guidelines
19 calculation agreed to by the parties. *Compare United States v. Hon*, 1989 U.S.
20 Dist. LEXIS 5987, at *3-5 (S.D.N.Y. May 31, 1989) ("Under the special
21 circumstances of this case, a term of imprisonment would serve none of the stated
22 purposes of sentencing. [The defendant] is the mother of a young child, she has no
23 prior criminal involvement, no record of drug or alcohol abuse, and a close-knit
24 extended family. She has freely acknowledged her guilt and immediately after
25 apprehension she sought to cooperate with the government, an effort frustrated by
26 her husband's unwillingness to reach a similar accommodation. She poses no
27 threat to the public and will be justly punished, sufficiently deterred, and

28 ///

1 adequately rehabilitated by a thirty six-month term of probation, a \$6,000 fine, and
2 a \$200 mandatory assessment.”).

3 To the extent that the Court is concerned about general deterrence, this case
4 has already had a profound deterrent effect on the conduct of members of
5 Congress, their spouses, and their campaign staffs, given the high-profile nature of
6 the charges and the public humiliation that both Ms. Hunter and her husband have
7 endured over the past few years. As Chief Judge John A. Jarvey of the District
8 Court for Southern District of Iowa commented regarding the deterrent effect of
9 his probationary sentence in a high-profile campaign election fraud case,
10 “[N]obody watching this litigation would want a part of the next prosecution for a
11 similar offense.” *United States v. Benton*, Case No. 4:15-cr-00103, ECF No. 690 at
12 22:11-12 (S.D. Iowa 2016). Moreover, as discussed below, taking into account
13 Ms. Hunter’s cooperation under these circumstances would surely encourage early
14 cooperation by defendants or targets facing similar Government investigations.

15 **D. The Need to Provide Needed Educational and Vocational**
16 **Training or Medical Care**

17 Ms. Hunter has been trying to find a job and is also seeking to go back to
18 school and obtain a college degree.² She has recently attempted to secure
19 employment, but the uncertainty of her present circumstances and her role as the
20 primary caregiver for her two daughters have complicated these efforts. A
21 sentence in the probationary range would facilitate her ability to work and go back
22 and obtain a college degree. Ms. Hunter would ultimately like to get a job in
23 education, although she understands the reality that her felony conviction will

24 ///

25 ///

26 _____
27 ² Ms. Hunter intends to pursue her college degree as soon as possible if she has
28 sufficient resources after she obtains a job and/or formally secures financial
support after the dissolution of her marriage.

1 make this more difficult for her to accomplish.³ Other relevant information has
2 been provided under seal.

3 **E. The Kinds of Sentences Available, the Sentencing Range, and**
4 **Policy Statements, and Avoidance of Sentencing Disparities**

5 Section 3553(a) “does not command courts to send the strongest message
6 possible; it commands them to impose a sentence that is ‘sufficient, *but not greater*
7 *than necessary*’ in the circumstances of each case.” *United States v. Warner*, 792
8 F.3d 847, 860 (7th Cir. 2015) (emphasis in original). The court has significant
9 discretion and a variety of tools available to fashion a fair and just sentence, and in
10 fact, Section 3553(a)(3) requires the Court to consider “the kinds of sentences
11 available.” Those options go well beyond a sentence of incarceration with the
12 Bureau of Prisons.

13 Here, the Court has significant discretion to determine the appropriate
14 sentence for Ms. Hunter. The parties have jointly recommended a guidelines
15 calculation of 11, which falls within Zone B. The Government has agreed to
16 recommend the low end of a Level 11 guideline offense. PSR ¶ 132.

17 Under § 5C1.1(c) of the Guidelines, the term for a sentence within Zone B
18 can be satisfied by (1) a sentence of imprisonment; (2) a sentence of at least one
19 month imprisonment and a term of supervised release that includes community
20 confinement, or home detention; or (3) a sentence of probation that includes
21 intermittent confinement, community confinement, or home detention. Here,
22 option 3, a sentence of probation with a period of extended home confinement is
23 jointly recommended by the parties. The Guidelines state that the Court “should
24 consider imposing a sentence other than a sentence of imprisonment, in accordance

25
26 ³ See generally Devah Pager, *The Mark of a Criminal Record*, AMERICAN
27 JOURNAL OF SOCIOLOGY (Mar. 2003, vol. 108, no. 5) at 955-60, available at:
28 https://scholar.harvard.edu/files/pager/files/pager_ajs.pdf (last visited Aug. 13,
2020) (concluding that “a criminal record indeed presents a major barrier to
employment” based on study suggesting that applicants with criminal records are
only one-half to one-third as likely as non-offenders to be considered by
employers).

1 with subsection (c)(3),” where the defendant is a first-time non-violent offender, as
2 is the case here. U.S.S.G. § 5C1.1 cmt. n. 4.

3 The recommended sentence of extended home confinement and probation
4 takes into account the individual facts and circumstances of this case. Notably, it
5 will reward cooperation under the extremely trying circumstances of this case.
6 Though it is less severe than custody, “home confinement and supervised release
7 substantially restrict the liberty of a defendant,” and such “non-custodial
8 components” can help to render a reasonable and just sentence under the facts of a
9 particular case. *See, e.g., United States v. Munoz-Nava*, 524 F.3d 1137, 1149 (10th
10 Cir. 2008).

11 1. The Court may consider the complicated family circumstances.

12 The Court is permitted to consider family circumstances, whether they are
13 present to an unusual degree or not. As discussed above, Ms. Hunter has been the
14 primary caregiver for her children for the past 19 years. During this case’s
15 investigation, after indictment, and through her plea, Ms. Hunter’s chief concern
16 has been sheltering her children as much as possible from the harm caused by her
17 and her husband. Her need to provide stability for her daughters, especially with
18 her husband now facing 11 months’ incarceration, favors home confinement as
19 opposed to a custodial sentence. *See, e.g., United States v. Whitehead*, 532 F.3d
20 991 (9th Cir. 2008) (fact that defendant’s daughter depended on him proper
21 consideration in supporting probationary sentence on a Guidelines range of 41-51
22 months for theft of \$1 million in counterfeit access cards).

23 2. There will be no unwarranted disparities with similarly-situated
24 defendants.

25 Section 3553(a)(6) also directs courts to consider the need to avoid
26 unwarranted sentence disparities among defendants with similar records found
27 guilty of similar conduct. Only “unwarranted” disparities should be avoided,
28 however, not differences resulting from mitigating factors, such as those identified

1 in the Probation Department's recommendation or the additional mitigating facts
2 involved in this case. *See, e.g., Warner*, 792 F.3d at 862. Comparison should not
3 be based purely on the amount of custodial time; non-custodial sentencing
4 components such as home confinement and other supervised release conditions
5 must be considered in assessing the reasonableness of a sentence. *Munoz-Nava*,
6 524 F.3d at 1149.

7 No disparity would result from a sentence of extended home confinement
8 based on the unusual circumstances here. This result is consistent with Congress's
9 directive that the Sentencing Commission provide for special treatment of
10 cooperators.⁴ Sentencing Ms. Hunter to an extended period of home confinement
11 as opposed to incarceration would encourage future defendants to cooperate with
12 the Government, even where cooperation will be difficult and come at great
13 personal expense.

14 **III. CONCLUSION**

15 Margaret Hunter stands before the Court humbled, contrite, and ashamed.
16 She is a 44-year old mother of three with no prior exposure to the criminal justice
17 system. She accepts responsibility and admits her terrible judgment and conduct.

18 _____
19 ⁴ 28 U.S.C. § 994(n) directs the Sentencing Commission to "assure that the
20 guidelines reflect the general appropriateness of imposing a lower sentence than
21 would otherwise be imposed, including a sentence that is lower than that
22 established by statute as a minimum sentence, to take into account a defendant's
substantial assistance in the investigation or prosecution of another person who has
committed an offense." Accordingly, the Sentencing Commission has explained:

23 The guidelines and the relevant statutes have long recognized that
24 defendants who provide substantial assistance are differently situated than
25 other defendants and should be considered for a sentence below a guideline
26 or statutory minimum even when defendants who are otherwise similar (but
27 did not provide substantial assistance) are subject to a guideline or statutory
minimum.

28 USSG, app C., vol. III, amend. 759, at 420 (Nov. 2011) (Reasons for Amendment).

1 She is fearful of the ramifications of her actions, most especially the continuing
2 impact on her children. She is worried about the uncertainty of her new life with a
3 criminal conviction, but she is prepared to try to start a new chapter. As has been
4 the case throughout her entire adult life, Ms. Hunter's priority during this new
5 chapter will remain her children. She intends to try and set a better example by
6 working to obtain a college degree and securing a job.

7 For the foregoing reasons, we respectfully ask that the Court impose a
8 sentence of probation to be served with the condition of eight months of home
9 confinement.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 17, 2020

MCNAMARA SMITH LLP

By: /s/ Logan D. Smith
Logan D. Smith
Email: lsmith@mcnamarallp.com
*Attorneys for Defendant Margaret E.
Hunter*

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2020, the foregoing document was electronically transmitted to the Clerk's Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

VIA CM/ECF

Emily W. Allen
W. Mark Conover
Phillip L.B. Halpern
Assistant U.S. Attorneys
U.S. Attorney's Office
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101
Tel.: 619-546-9738
Emily.Allen@usdoj.gov;
Mark.Conover@usdoj.gov;
Phillip.Halpern@usdoj.gov
Attorneys for United States of America

VIA CM/ECF

Paul J. Pfingst
Higgs, Fletcher and Mack LLP
401 West A Street, Suite 2600
San Diego, CA 92101
Tel.: 619-236-1551
Fax: 619-696-1410
pfingst@higgslaw.com
*Attorneys for Defendant Duncan D.
Hunter*

VIA CM/ECF

Devin J. Burstein
Warren & Burstein
501 West Broadway, Suite 240
San Diego, CA 92101
Tel.: 619-234-4433
db@wabulaw.com
*Attorneys for Defendant Duncan D.
Hunter*

/s/ Logan D. Smith
Logan D. Smith
Attorneys for Defendant Margaret E. Hunter