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September 11, 2008

RECEIVED IN THE CHAMBERS OF
JOSEPH H. RODRIGUEZ, U.S.D.J.
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VIA HAND DELIVERY

Honorable Joseph H. Rodriguez
Senior United States District Judge
Camden Federal Building & U.S. Courthouse
401 Market Street
Camden, NJ 08101

SEP 11 2008

Re: United States v. Daniel M. Daidone
Crim. No. 01-587 (JHR)

Dear Judge Rodriguez:

Please accept this letter brief in lieu of a more formal submission summarizing the United States' request for an upward departure to be imposed on Daniel M. Daidone (hereafter "defendant") in this case, in light of the advisory Sentencing Guidelines regime established by the Supreme Court in United States v. Booker, 543 U.S. 220 (2005), and the Third Circuit's subsequent decisions.

On June 9, 2008, upon the petition of the United States Probation Office, this Court issued a summons regarding the defendant's violation of his supervised release conditions. On June 17, 2008, the defendant entered a plea of guilty to violation number 3 which charged him with failing to report his contact with convicted felons during the period of February 2007 to May 2008. The defendant is scheduled to be sentenced on September 16, 2008.

The defendant's systematic violation of his supervised release conditions and his association with an ongoing criminal enterprise warrant an upward departure from the advisory guidelines range. Under the facts and circumstances in this case, such an upward departure will yield a reasonable sentence. As the Third Circuit has recognized, "[t]he dust has settled, post-Booker, and it is now well understood that an appellate court reviews a sentence for

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reasonableness with regard to the factors set forth in 18 U.S.C. § 3553(a)." United States v. Bungar, 478 F.3d 540, 542 (3d Cir. 2007), citing United States v. Booker, 543 U.S. 220, 261-62, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), and United States v. Cooper, 437 F.3d 324, 326 (3d Cir. 2006). Moreover, the Third Circuit has held that there is "no reason why that standard should not also apply to a sentence imposed upon revocation of supervised release" United States v. Bungar, 478 F.3d at 542 (footnote omitted).

In imposing a reasonable sentence, the court must rationally and meaningfully consider the various factors under § 3553(a). The Court must first consider "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). The defendant's long-standing association with La Cosa Nostra ("LCN") is essential to a proper analysis of the government's motion for an upward departure. As stated in United States v. Pungitore, 910 F.2d 1084, 1098 (3d Cir. 1990), a prosecution involving the Philadelphia LCN Family:

A crime family is a highly structured criminal enterprise with a well defined chain-of-command. At the apex of the family's hierarchy is the "Boss," who carries sole authority to approve murders and induct new members into the family... A "Consigliere" and "Underboss" comprise the next tier in the family's organizational hierarchy... The Consigliere functions as an advisor to the Boss and assists in the settlement of disputes among members, while the Underboss oversees the family's illegal endeavors when the Boss is unavailable and conveys orders to members. Under the Consigliere and Underboss are the "capos" or "captains," who control "crews" or "regimes" of "soldiers," otherwise known as "made men." The soldiers, in turn, sponsor various "associates," who are best described as criminal colleagues of the family who, for various reasons, have not been formally initiated into its ranks... A primary incentive for joining the family is that the soldier then commands considerable respect from non-Mafia criminals, as his illegal endeavors are backed by "the strength of the Mafia," that is, its well-founded reputation for achieving its objectives through violent means... Indeed, its members recognize it as "a second government"... The soldier also becomes privy to the family's "political" and "union" connections... becoming a ranking member of the family means the

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"difference of being in the major leagues and minor leagues as far as gangsters are concerned...."

Similarly, as noted in United States v. Eufrazio, 935 F.2d 553, 559 (3d Cir. 1991), which also involved the Philadelphia LCN Family:

The function of soldiers and associates, and of the mob generally, was to make money by illegal means. More specifically, the enterprise's diverse purposes were "to control, manage, finance, supervise, participate in and set policy concerning the making of money through illegal means."

In 1984, at the direction of Nicodemo D. Scarfo ("Scarfo, Sr."), then boss of the Philadelphia LCN Family, the defendant was brought into Local 54 of the Hotel Employees and Restaurant Employee International Union ("HEREIU") and was named the office manager of Local 54's Cherry Hill, New Jersey office. In 1986, the defendant was elected to the union's Executive Board. In 1990, the United States filed a civil racketeering complaint in the District of New Jersey, Docket No. 90-5017 (GEB), against various individuals, including the defendant, Scarfo, Sr., Nicodemo S. Scarfo ("Scarfo, Jr.") and Ralph Natale, based on their association with the Philadelphia LCN Family, as well as Local 54 and its benefits plans and severance fund. The complaint alleged that organized crime had infiltrated the union. In or about April, 1991, the Court approved a Consent Decree. Thereafter, the defendant, Scarfo, Sr., Scarfo, Jr., Natale and others were forbidden from any further contact with the union.

Beginning in or about August 1995 and continuing through in or about June 1998, the defendant, acting at the behest of Natale, sought business in the City of Camden for the Philadelphia LCN Family and provided payments, communications, and other services to public officials and government employees in the City of Camden. Those officials included James R. Mathes, the former President of the City Council of Camden and an employee of the Board of Education of Camden, and Milton Milan, the former President of the City Council and Mayor of Camden. On July 8, 2003, following a five-week jury trial, the defendant was convicted along with Mathes on charges of conspiracy, honest services fraud, and related charges. The defendant was sentenced on December 16, 2003, to a term of imprisonment of 33 months, followed by a three-year period of supervised release. The defendant's supervised release commenced on July 3, 2006. One of the conditions of his supervised release required the defendant to "submit a truthful and complete written report within the first five days of

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each month." As described below, during the period between February 2007 and May 2008, the defendant repeatedly violated this condition by failing to inform the United States Probation Office of his ongoing contact with convicted felons. The defendant only admitted his false reports after his name surfaced in an ongoing federal investigation that culminated in the execution of various search and seizure warrants in May 2008.

On or about February 19, 2007, the defendant traveled to Florida for the alleged purpose of visiting a job site on behalf of his employer, CST Soil Solutions ("CST"). The defendant had requested and received permission from his probation officer to travel to Florida for this purpose. While in Florida, the defendant was in the company of Salvatore Pelullo,¹ Salvatore Piccolo,² and an individual believed to be Harold Garber.³ On February 19, 2007, at approximately

¹In March 1999, Pelullo was charged in the Eastern District of Pennsylvania with bank fraud and related offenses. He pleaded guilty in August 1999 to bank fraud and making a false statement in a United States Securities and Exchange Commission (hereafter "SEC") filing. Pelullo was sentenced in December 1999 to 6 months in prison followed by 5 years of supervised release. In July 2002, Pelullo pleaded guilty to wire fraud in the Eastern District of Pennsylvania and was sentenced to 5 years probation. Pelullo's supervised release and probation were terminated in June 2005.

²In 1991, Piccolo was arrested in the Eastern District of Pennsylvania and charged with conspiracy to distribute cocaine and carrying a firearm in relation to a drug trafficking crime. He pleaded guilty and was sentenced to 15 years in prison. Piccolo was released from custody in 2004 and thereafter completed a term of supervised release.

³Sworn testimony provided by Phillip Leonetti, the underboss of the Philadelphia LCN Family in the 1980s and the nephew of Scarfo, Sr., has revealed the following regarding Garber. Garber was a close associate and attorney for Scarfo, Sr. and Leonetti during the 1970s and 1980s. Garber represented Scarfo, Sr. in a murder trial in Atlantic County, New Jersey in 1980. Prior to the trial, Garber was instrumental in securing Scarfo, Sr.'s release on bail, and later developed ways for Scarfo, Sr. to meet with other LCN members and associates despite pre-trial release conditions that restricted Scarfo, Sr.'s travel to Atlantic County. In the mid-1980s, Garber also represented Scarfo, Sr. in

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5:15 p.m., Scarfo, Sr. called Pelullo. During the conversation, which was recorded by the Federal Bureau of Prisons, Scarfo, Sr. talked to Pelullo, Garber, Piccolo, and the defendant. Despite his knowledge of the criminal records of Scarfo, Sr., Pelullo and Piccolo, the defendant submitted false information to his probation officer when she inquired as to the defendant's contact with known felons.

On April 20, 2007, law enforcement agents conducted a surveillance at 516 Cambridge Avenue, Ventnor, New Jersey, a property owned by Pelullo's wife. At approximately 8:36 a.m., Scarfo, Jr. arrived at the location, followed by the defendant at approximately 8:43 a.m. Also present at the location was an automobile known to be operated by Pelullo. At approximately 9:10 a.m., the defendant and Scarfo, Jr. exited the property and left the area in Scarfo, Jr.'s car. At approximately 11:00 a.m. when the surveillance was terminated, the defendant's car was still present at the location.

In early June 2007, a group of individuals headed by Pelullo and Scarfo, Jr. assumed control of a company named FIRSTPLUS FINANCIAL GROUP, INC. ("FPFG"), a financial services corporation located in Dallas, Texas. Following the takeover, Garber was named the chairman of the new board of directors. On June 14, 2007, at approximately 5:26 p.m., Scarfo, Sr. called Scarfo, Jr. and the two spoke for approximately 11 minutes. Below is a transcript of certain pertinent parts of this conversation (NS = Scarfo, Sr., JR = Scarfo, Jr., UI = unintelligible):

JR: You know Harold's in bad shape.
NS: Really.
JR: Yeah.
NS: What happened?
JR: Ahh he was ahh ... well he's in Texas right now.

proceedings before the New Jersey Division of Gaming Enforcement which resulted in Scarfo, Sr.'s exclusion from casinos in Atlantic City, New Jersey. In 1984, Garber was suspended from the practice of law for one year by the New Jersey Supreme Court as a result of his joint representation of Leonetti and the sole eyewitness to a murder Leonetti committed in 1977. See In the Matter of Harold I. Garber, 95 N.J. 597, 472 A.2d 566 (1984).

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NS: Oh okay. He had a heart attack or something?

JR: No no no he's got ahh he's got a tumor in his lungs and
.....
(UI)

NS: Yeah I know. He smoked and drank all of his life (UI)
I'm surprised he was still living you know, how he
lived.

JR: But I'll tell ya what from ahh your nephew.

NS: Yeah.

JR: Guy really the guy really was instrumental he really
pulled it out this last act.

NS: Yeah.

JR: He really was very instrumental. Very good.

NS: Well he's smart, he's a...

JR: Yeah.

NS: He was a smart lawyer Nick.

JR: Yeah.
(Conversation edited)

JR: You know honest to God we're good six to ten months off
from being able to help everybody.

NS: Yeah okay.

JR: What I mean by that is whether something good happens
today.

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NS: (UI) yeah, alright yeah yeah yeah okay. Alright well
you explain it...

JR: Then then and then then you know you'll get you'll get
explained about it.

NS: Yeah, I wanna know when it's complete.

Based on the investigation conducted to date, it is believed that the above conversation involved Scarfo, Jr. informing Scarfo, Sr. about Garber's role in the takeover of FPPG.

On or about June 20, 2007, according to corporate filing information, FPPG created a subsidiary named Rutgers Investment Group, Inc. ("Rutgers, Inc."). Shortly thereafter, FPPG entered into a transaction whereby Rutgers, Inc. purchased an entity based in New Jersey named Rutgers LLC.⁴ The investigation conducted thus far has revealed that Pelullo and Scarfo, Jr. controlled Rutgers LLC through two other corporate entities, Seven Hills Management ("Seven Hills") and Learned Associates of North America ("Learned Associates"). In the purchase agreement, in addition to Rutgers LLC, Seven Hills and Learned Associates were listed as parties to the transaction. Under the terms of the purchase agreement, Rutgers, Inc. "purchased the assets" of Rutgers LLC for a cash payment of \$1,825,000 and 500,000 shares of FPPG common stock. A review of bank records related to this transaction, as well as other transactions, has revealed that FPPG transferred several million dollars between June 2007 and May 2008 to corporate entities controlled by Pelullo and Scarfo, Jr., including Rutgers LLC.⁵

⁴According to corporate filing information, Rutgers LLC was registered with the New Jersey Department of State on March 26, 2007. The registered office was located at 1125 Atlantic Avenue, Suite 711, Atlantic City, New Jersey 08401.

⁵In 2002, Scarfo, Jr. pleaded guilty in the District of New Jersey to two counts of operating an illegal gambling business, and was sentenced to 33 months imprisonment and 3 years supervised release. Scarfo was released from custody in April 2005 and began his period of supervised release which terminated on April 4, 2008.

Under the terms of his supervised release that were in

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More significantly, on June 24, 2007, the defendant's car was observed by law enforcement agents at Pelullo's house in Ventnor, New Jersey. Two days later, the defendant contacted his federal probation officer regarding an alleged employment interview with the very same Rutgers, Inc. in Texas. The defendant falsely told his probation officer that he was recruited for the position as a result of his work for another mortgage company while at a halfway house before his supervised release commenced. The defendant withheld from his probation officer the information that Pelullo and Scarfo, Jr. controlled Rutgers, Inc. or any of the other corporate entities described above.

The defendant's probation officer granted permission for the defendant to attend the alleged employment interview in Texas. On or about July 9, 2007, the defendant traveled from Philadelphia to Dallas, with the permission of his probation officer, for the purported purpose of attending the interview with Rutgers, Inc. Law enforcement agents conducted a physical surveillance of the defendant at the Four Seasons Resort and Club (hereafter "Four Seasons") in Irving, Texas, where the defendant stayed during the Rutgers, Inc. interview. Law enforcement agents also obtained information from the Four Seasons that Pelullo had stayed at the Four Seasons for several weeks during the months of May, June, and July 2007. The defendant once again withheld from his probation officer information regarding Pelullo and Scarfo, Jr.'s control of Rutgers, Inc.

On July 23, 2007, the defendant's probation officer asked the defendant about the results of his employment interview with Rutgers, Inc. The defendant stated, in substance and in part, that he was offered the position immediately upon completion of the interview, and that he would be working primarily out of his home selling commercial and industrial mortgages. He also informed his probation officer that he would need to travel periodically to assist Rutgers, Inc. in setting up new offices.

effect at the time of the investigation, Scarfo, Jr. was required to inform his federal probation officer of any financial transaction exceeding \$500 in which he was engaged. Scarfo, Jr. did not inform his probation officer of his control of the corporate entities involved in the above transaction or his receipt of money through Learned Associates.

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On or about August 16, 2007, the defendant requested permission from his probation officer to travel to Rutgers, Inc.'s office located in Wayne, Pennsylvania, on August 17, 2007. Law enforcement agents attempted to conduct a physical surveillance of the area near the defendant's home in Ventnor, New Jersey, as well as 121 North Wayne Avenue in Wayne, Pennsylvania, the address from which Rutgers, Inc. allegedly operated. At approximately 10:16 a.m., on August 17, 2007, a law enforcement agent attempted to follow the defendant from the area near his home to the Atlantic City Expressway. The defendant operated his vehicle in a surveillance-conscious manner and was therefore very difficult to follow. The agent following the defendant terminated the surveillance near an entrance ramp to the Atlantic City Expressway. As of approximately 2:00 p.m., the defendant had not arrived at 121 North Wayne Avenue, Wayne, Pennsylvania. At approximately 5:00 p.m., he telephoned his probation officer to inform her that he (the defendant) had arrived home from his trip to the Rutgers, Inc. office.

On August 20, 2007, law enforcement agents who were conducting a physical surveillance observed the defendant's automobile parked in front of Scarfo, Jr.'s residence in Brigantine, New Jersey.

On October 15, 2007, the defendant informed his probation officer that he (the defendant) needed to travel to the site of the former Philadelphia Naval Shipyard for an assignment related to his employment with CST. At approximately 9:40 a.m., law enforcement agents conducted a physical surveillance at the Penrose Diner in South Philadelphia. The agents observed the defendant and Pelullo exit the diner and meet with an individual identified as Anthony Persiano.⁶ After speaking with Persiano for several minutes near his automobile, the defendant, Pelullo, and Persiano entered the diner.

On October 23, 2007, law enforcement agents conducted a physical surveillance at Ventura's Restaurant in Voorhees, New Jersey.

⁶In January 1993, Persiano was charged in Philadelphia, Pennsylvania, with murder, conspiracy, firearms violations, and related offenses. In November 1994, Persiano was convicted of first-degree murder, conspiracy, and possessing an instrument of crime. He was sentenced to life imprisonment. In 2003, following the grant of a new trial, Persiano was permitted to enter a guilty plea to a reduced charge of third-degree murder and conspiracy, and was sentenced to a term of imprisonment of 10 to 20 years. He was subsequently released and is currently on parole.

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The agents observed the defendant meeting with Pelullo and Scarfo, Jr., as well as other individuals, over a period of several hours.

On October 25, 2007, law enforcement agents conducted a physical surveillance at Steak 38 Restaurant in Brigantine, New Jersey. The agents observed the defendant meeting with Pelullo, Scarfo, Jr., and Persiano, as well as other individuals, over a period of several hours.

In early December 2007, the defendant requested permission from his probation officer to travel to Rutgers, Inc.'s office located in Irving, Texas. The defendant was granted permission and traveled to Texas on or about December 26, 2007. Law enforcement agents conducted physical surveillance during the defendant's visit to Texas and observed him at FPPG's office in Irving, Texas, along with Pelullo.

On January 1, 2008, the defendant's probation officer conducted a home visit with the defendant. Not surprisingly, the defendant withheld the repeated violations described above from his probation officer. In addition, the defendant stated that he was planning to file a request for early termination of his supervised release. In furtherance of that request, which was ultimately filed in February 2008, the defendant executed an affidavit which was submitted to this Court through counsel. In the affidavit, the defendant audaciously stated that he had "diligently and vigorously complied with every rule and regulation of supervised release." Simply put, the defendant's bold request, in the context of his repeated violations, speaks volumes about his contempt for the authority of this Court and the responsibilities of the Probation Department.

Despite his pending request to terminate his supervised release, the defendant continued to have contact with convicted felons. For example, on February 12, 2008, the defendant again met with Pelullo and Persiano at 516 Cambridge Avenue in Ventnor. Also, on April 5, 2008, the defendant attended a dinner to celebrate the end of Scarfo, Jr.'s supervised release. In addition to Scarfo, Jr., Pelullo, Persiano, and Piccolo attended the dinner along with the defendant. Finally, on or about May 3, 2008, the defendant attended a birthday party for Pelullo. Those in attendance included the defendant, Scarfo, Jr., Persiano, and Piccolo.

Based on the foregoing, the government respectfully requests that the Court grant an upward departure from the otherwise applicable Guidelines range and sentence the defendant to a term of 24

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months imprisonment.

Thank you for your consideration.

Respectfully submitted,

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Christine M. Rennie, USPO
(Via facsimile)