

**TANYA S. CHUTKAN, UNITED STATES DISTRICT JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA : **Docket No.: 1:21CR00198-001**
:
vs. : **Disclosure Date: September 7, 2021**
:
Smocks, Troy Anthony : **:**

**RECEIPT AND ACKNOWLEDGMENT OF
PRESENTENCE INVESTIGATION REPORT**

This is to acknowledge that each of the undersigned has received and reviewed the Presentence Investigation Report (PSR) in the above-entitled case. The undersigned further acknowledges:

For the Government

(CHECK APPROPRIATE BOX)

- () There are no material/factual inaccuracies therein.
() There are material/factual inaccuracies in the PSI report as set forth in the attachment herein.

Prosecuting Attorney

Date

For the Defendant

(CHECK APPROPRIATE BOX)

- () There are no material/factual inaccuracies therein.
(☒) There are material/factual inaccuracies in the PSI report as set forth in the attachment.



Defendant **Date** 9/8/21



Defense Counsel **Date** 9/8/21

NOTICE OF OBLIGATION OF THOSE EXECUTING THIS FORM

Pursuant to Rule 32(f)(1), those executing this form shall submit any material inaccuracies or disputes in writing by **September 24, 2021**, to Aidee Gavito fax number **202-791-8449**, by email in Portable Document Format (pdf) to Dcpdb_psi_documents@dcp.uscourts.gov.

Pursuant to Rule 32(f)(2), it shall be the responsibility of the Attorney for the Government and the Defense Counsel to provide each other with a copy of the objections at the same time the objections are submitted to the probation office.

Note: Whether or not this is a sealed case, the probation office never includes information about 18 USC § 3553(e) or USSG § 5K1.1.

The Presentence Investigation Report and this Receipt of Acknowledgment Form are not public documents.

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SENT VIA E-MAIL

Aidee V. Gavito
United States Probation Officer
(202) 565-1351
Aidee_Gavito@dcp.uscourts.gov

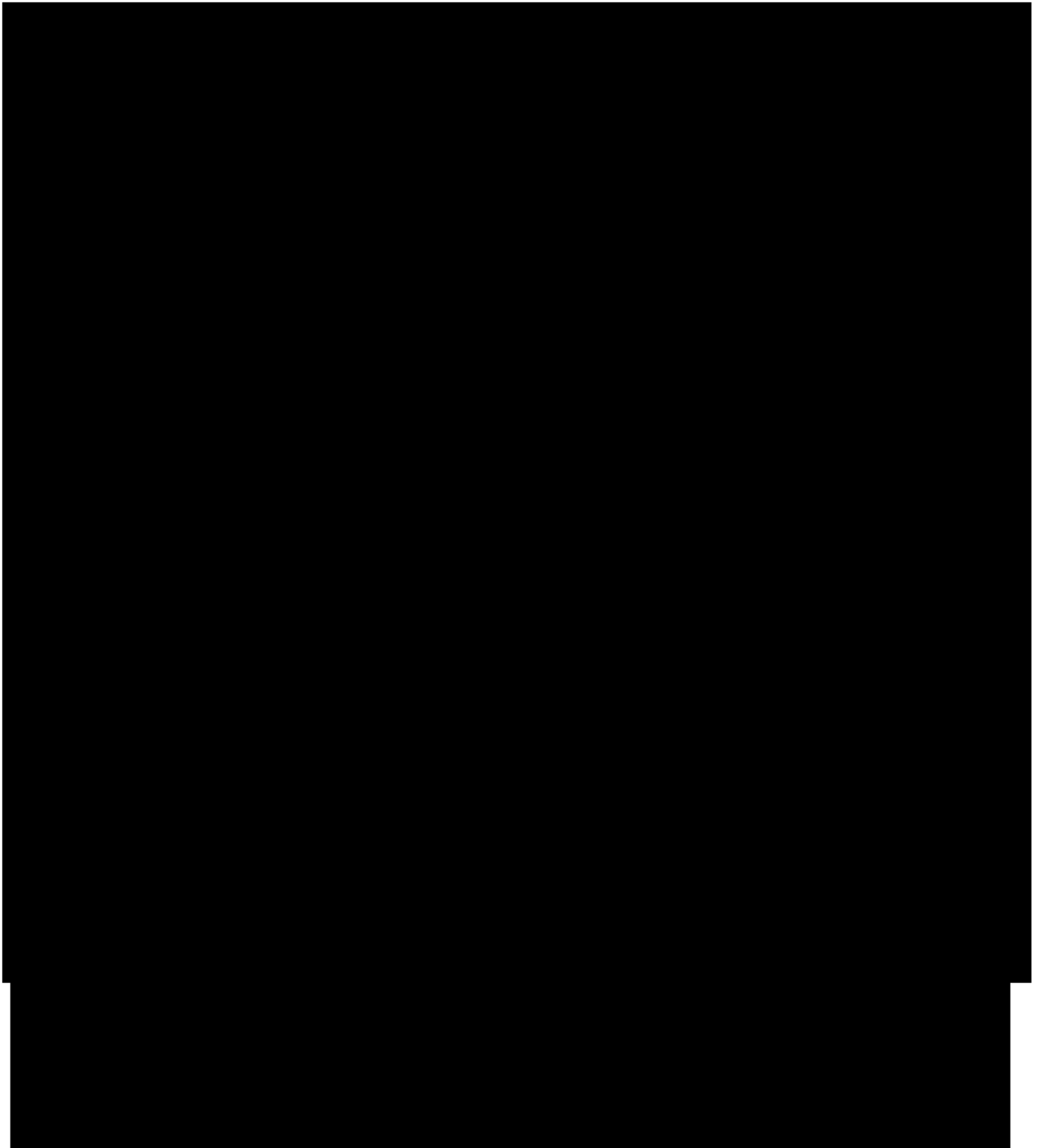
Re: PSR of Troy Anthony Smocks, Case No. 21-CR-00198 (TSC)

Dear Officer Gavito:

Attached please find the Receipt and Acknowledgement of the PSR, as well as the corrections suggested by the defense. Thank you for your work on behalf of Mr. Smocks' case.

Furthermore, it is the defense's opinion that § 2A6.1(b)(6) should apply, as the offense "involved a single instance evidencing little or no deliberation" and therefore the base level should decrease 4 levels. While the government may argue that the statement of facts include an additional instance of a threat, it is the defense's position that Mr. Smocks 1) was required to agree to the statement of facts, including the facts alleged in Count 2, in order to enter into the plea, per insistence of the government; and 2) those facts are not relevant to the facts that are necessary to find the relevant conduct for a finding of guilt to Count 1. The government has agreed to dismiss Count 2. As stated in United States v. Castro-Cervantes, 927 F.2d 1079 (9th Cir. 1990), "A plea bargain is governed by contract principles... Compliance with the terms is expected of both the defendant and the government. . . But for the court to let the defendant plead to certain charges and then penalize on charges that have, by agreement, been dismissed is not only unfair, it violates the spirit if not the letter of the bargain." *Id.* at 1082. *See also* United States v. Harris, 70 F.3d 1001 (8th Cir.1995); United States v. Ashburn, 20 F.3d 1336, 1346 (5th Cir. 1994); Kinder v. United States, 504 U.S. 946, 950 (1992).

Should the court accept this argument, then the Total Offense Level would be 6. Accordingly, his sentencing range would be either a) 1-6 months, if Criminal History II; or b) 2-8 months, if Criminal History III, both of which are in Zone B.



Thank you for your consideration of these matters. Please feel free to contact me at (703)989-0840.

Respectfully,

John L. Machado

John L. Machado

Attorney for Troy Smocks