

1 STEPHANIE S. CHRISTENSEN
 Acting United States Attorney
 2 SCOTT M. GARRINGER
 Assistant United States Attorney
 3 Chief, Criminal Division
 RUTH C. PINKEL (Cal. Bar No. 164470)
 4 Assistant United States Attorney
 Public Corruption and Civil Rights Section
 5 MICHAEL J. MORSE (Cal. Bar No. 291763)
 JUAN M. RODRIGUEZ (Cal. Bar No. 313284)
 6 Assistant United States Attorneys
 General Crimes Section
 7 1500/1100/1200 United States Courthouse
 312 North Spring Street
 8 Los Angeles, California 90012
 Telephone: (213) 894-6077/7367/0304
 9 Facsimile: (213) 894-7631
 E-mail: ruth.pinkel@usdoj.gov
 10 michael.morse@usdoj.gov
 11 juan.rodriquez@usdoj.gov

12 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
 16 Plaintiff,
 17 v.
 18 FELIX CISNEROS, JR.,
 19 Defendant.

No. CR 21-51(A)-RGK

GOVERNMENT'S SENTENCING POSITION;
 EXHIBITS

Sentencing Date: September 19,
 2022
 Time: 10:00 a.m.
 Location: Courtroom of the
 Honorable R. Gary
 Klausner

22 Plaintiff United States of America, by and through its counsel
 23 of record, the Acting United States Attorney for the Central District
 24 of California and Assistant United States Attorneys Ruth C. Pinkel,
 25 Michael J. Morse, and Juan M. Rodriguez, hereby files its sentencing
 26 position for defendant Felix Cisneros, Jr.

27 This Sentencing Position is based upon the attached memorandum
 28 of points and authorities, the exhibits attached hereto, the files

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After a five-day trial, a federal jury found Defendant FELIX CISNEROS, JR. ("defendant") guilty of Conspiracy to Commit Bribery of a Public Official, in violation of 18 U.S.C. § 371; Bribery of a Public Official, in violation of 18 U.S.C. § 201(b)(2)(A) and (C); twenty-six counts of Money Laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and two counts of Subscribing to a False Tax Return, in violation of in violation of 26 U.S.C. § 7206(1). As proven at trial, defendant conspired with others to bribe a public official, himself, and instructed a coconspirator, E.S., to funnel bribe checks payable directly to the third-party financial institutions holding defendant's credit card and loan debts, and to defendant's wife, in order to conceal the check bribe proceeds. He then intentionally omitted income from the bribe proceeds from his 2015 and 2016 tax returns. (The unreported income figure does not include cash bribe payments of at least \$40,000.)

The United States Probation and Pretrial Services Office ("USPPSO") calculated a total offense level of 32 and a criminal history category of I, resulting in a Sentencing Guidelines range of 121-151 months' imprisonment and one to three years' supervised release. (Dkt. 115, Pretrial Sentence Report ("PSR") ¶¶ 43-81, 87.) The government agrees with the USPPSO's calculations. Although defendant's conduct was egregious, and his history of corrupt acts was long, the government believes that the Guidelines appropriately account for defendant's conduct. Accordingly, the government respectfully requests that the Court sentence defendant to a within

1 Guidelines sentence of 145 months' imprisonment, three years'
2 supervised release, a \$3,000 special assessment, and a \$35,000 fine.

3 The Court has already entered a Money Judgment of Forfeiture in
4 the amount of \$133,000, which becomes final as to defendant at the
5 time of sentencing and is part of the sentence. (Dkt. 118.)

6 **II. FACTUAL BACKGROUND**

7 Defendant is a former Special Agent of the Department of
8 Homeland Security ("DHS"), Immigration and Customs Enforcement-
9 Homeland Security Investigations ("HSI"). (PSR ¶ 11.) As a special
10 agent, defendant had access to, among other things, restricted law
11 enforcement databases and information. (Id. ¶ 15.) Beginning in
12 September 2015 and continuing through at least March 2017, defendant
13 abused his federal employment for his own personal profit. More
14 specifically, defendant conspired with E.S., an attorney engaged in
15 criminal conduct and associated with a criminal organization, and
16 J.B., to commit bribery of a public official. In exchange for cash,
17 checks, private jet flights, hotel stays, meals, and other items of
18 value, defendant provided various services and official acts for E.S.
19 (Id. ¶¶ 19-22.) For example, defendant regularly looked up
20 information in confidential law enforcement databases for E.S. That
21 information ranged from determining whether individuals were under
22 investigation to altering law enforcement records. (Id. ¶ 22.) In
23 another instance, defendant tried to assist a foreign National, and
24 client of E.S., with gaining entry into the United States. (Id.
25 ¶¶ 22-23.)

26 During the most egregious conduct, defendant obtained a parole
27 letter, which is used by law enforcement to admit an otherwise
28 inadmissible alien for a law enforcement need, under false pretenses.

1 Defendant represented to multiple law enforcement personnel,
2 including the then Acting Special Agent in Charge, that defendant was
3 seeking to admit the foreign National because the foreign National
4 was going to assist DHS; defendant listed himself as the agent
5 responsible for the submission. (Id. ¶¶ 25-26, 56.) In addition to
6 the foregoing, in violation of his official duties and at the behest
7 of E.S. and J.B., defendant queried individuals and addresses to
8 determine whether law enforcement had any open investigations or
9 interest in them. (Id. ¶ 22.)

10 In sum, in exchange for things of value, among other things,
11 defendant: (1) attempted to obtain or influence the entry into the
12 United States of foreign nationals; (2) omitted enforcing immigration
13 laws consistent with his duties as an HSI agent; (3) conducted law
14 enforcement database inquiries to provide information to E.S. and his
15 associates to help them avoid law enforcement detection and
16 monitoring. (Id.)

17 Finally, for calendar years 2015 and 2016, defendant failed to
18 report over \$93,000 of the income he received as the "check" bribe
19 payments¹; defendant's under-reporting of income resulted in lowering
20 the taxes reported as due and owing on his Form 1040 individual tax
21 returns. (Id. ¶ 32-34.)

22 **III. THE PRESENTENCE INVESTIGATION REPORT**

23 **Group One:** the PSR Grouped the Bribery and Money Laundering
24 Counts together as Group One. (PSR ¶¶ 55-56.) The PSR calculated a
25 base offense level of 14, pursuant to U.S.S.G. § 2C1.1(a)(1) because
26

27
28 ¹ For purposes of achieving a *very conservative* tax loss calculation, the amount of unreported income does not include the cash bribe payments.

1 defendant was a public official. (PSR ¶¶ 56 a-b.) Five separate
2 specific offense characteristics were then added to defendant's base
3 offense level. First, the PSR calculated a two-level increase,
4 pursuant to U.S.S.G. § 2C1.1(b)(1), because the offense involved more
5 than one bribe. (Id. ¶ 56 d.) Second, an eight-level increase is
6 applied for the value of the bribe payments over \$95,000. (U.S.S.G. §
7 2C1.1(b)(2), § 2B1(b)(1)(E); PSR ¶ 56 c-f.) Third, a four-level
8 increase is added because defendant was a public official in a high-
9 level decision-making authority or sensitive position. (U.S.S.G. §
10 2C1.1(b)(3); PSR ¶ 56 g-j.) Fourth, another two-level increase is
11 added because defendant was a public official who facilitated the
12 obtaining of a document, the parole letter for D.K., relating to
13 legal entry into the U.S. (U.S.S.G. § 2C1.1(b)(3); PSR ¶ 56 k-l.)
14 This results in an offense level of 30 under §§ 2S1.1(a)(1) and
15 2C1.1. Fifth and final, as a result of defendant's § 1956 money
16 laundering convictions, a two-level increase is applied for a total
17 offense level of 32 for Group One. (U.S.S.G. § 2S1.1(b)(2)(B); PSR
18 ¶ 58.) The government concurs with the PSR's calculations for Group
19 One.

20 **Group Two:** the government also concurs with the USPPSO that the
21 tax counts (26 U.S.C. § 7201(1)), Group 2, do not increase the total
22 offense level. (PSR ¶¶ 72-74.) Group 2 has a total offense level of
23 16, which is comprised of a base offense level of 12 for a tax loss
24 more than \$15,000 but less than \$40,000, pursuant to U.S.S.G.
25 §§ 2T1.1(a)(1), 2T4.1(D), and a two-level increase, under
26 § 2T1.1(b)(1), for failure to report over \$10,000 in income from
27 criminal activity. (PSR ¶¶ 65-67, 71.)

28

1 Despite the fact that Group Two does not increase the offense
2 level, it does provide a basis, however, to justify an upper end
3 sentence as the government recommends here. This is so because
4 U.S.S.G. § 3D1.4, Application Note 2 states that grouping “could
5 produce adjustments for the additional counts that are inadequate....
6 [i]f there are several groups and the most serious offense is
7 considerably more serious than all of the others, there will be no
8 increase in the offense level resulting from the additional counts.”
9 That is the case here. Application Note 2 further elaborates that in
10 these situations, “[o]rdinarily, the court will have latitude to
11 impose added punishment by sentencing toward the upper end of the
12 range authorized for the most serious offense.” Consequently,
13 Application Note 2, provides one of many bases to support the
14 government’s higher end sentencing recommendation of 145-months.

15 With respect to defendant’s criminal history, the PSR asserts
16 that defendant’s conduct in the instant offense (Group One -
17 Bribery/Money Laundering) is relevant conduct to defendant’s conduct
18 in his prior federal case, Cisneros I (CR-17-00229-CAS), because it
19 was part of the same course of conduct or common scheme or plan as
20 the offense of conviction, and the offense of conviction is of a
21 character for which USSG §3D1.2(d) would require grouping or multiple
22 counts. U.S.S.G. §1B1.3(a)(2). (PSR ¶¶ 50-54.)

23 The PSR relies upon 1B1.3, Application Note 5 (B)(i) for the
24 proposition that for two or more offenses to constitute part of a
25 common scheme or plan, they must be substantially connected to each
26 other by at least one common factor, such as common victims, common
27 accomplices, common purpose, or similar modus operandi. (Id. ¶ 51.)
28

1 The government disagrees with the USPPSO that the present case
2 is substantially connected to the prior case. As this Court found
3 when denying defendant's motion to dismiss for double jeopardy, the
4 conspiracies covered different time periods, the coconspirators are
5 different, the alleged overt acts are distinct, and the object of
6 each conspiracy were different and constituted violations of
7 different statutes. (Dkt. 77 (Order Denying Motion to Dismiss).) The
8 USPPSO noted that if the Court is not persuaded that this prior case
9 is relevant conduct to the instant offense, defendant would receive
10 two criminal history points and be placed in Criminal history
11 category II, which would result in a Guidelines range of 135 to 168
12 months. (PSR ¶ 85 n 2.)

13 Nonetheless, the government recognizes that a conservative
14 calculation of defendant's criminal history is prudent. Accordingly,
15 the government reluctantly concurs with the PSR's calculation of
16 defendant's criminal history. Consequently, based upon a Criminal
17 History Category I, and a total offense level of 32, the applicable
18 Guidelines range is 121-151 months' imprisonment.

19 The USPPSO notes that defendant has sufficient resources, such
20 as extra cars, and recommends that defendant pay a fine of \$35,000.
21 (PSR ¶¶ 124-125.) The government concurs in this assessment and
22 recommendation.

23 **IV. A SENTENCE OF 145 MONTHS AND THREE YEARS OF SUPERVISED RELEASE**
24 **IS WARRANTED UNDER AN ANALYSIS OF THE 3553(A) FACTORS**

25 The Section 3553(a) factors further support the government's
26 proposed sentence of 145 months in prison. In determining a
27 sufficient sentence, courts must consider the nature and
28 circumstances of the offense, as well as the history and

1 characteristics of the defendant. 18 U.S.C. § 3553(a)(1). Courts
2 must also consider the need for any sentence imposed to adequately
3 punish, deter, and reflect the seriousness of the offense. 18 U.S.C.
4 § 3553(a)(2). It is paramount that a sentence also protects the
5 public. The government submits that a 145-month sentence is
6 sufficient but not greater than necessary to account for the factors
7 set forth in 18 U.S.C. § 3553(a).

8 The nature and circumstances of defendant's offenses support a
9 sentence of 145 months' imprisonment. See 18 U.S.C. § 3553(a)(1).
10 There is no question that defendant's crimes were serious, spanned
11 years, and undermined public confidence in government institutions.
12 While working as a trusted federal law enforcement officer with
13 tremendous power, defendant sold his access to confidential law
14 enforcement databases and his ability to influence the entry of
15 foreign nationals into the country.

16 Defendant's history and characteristics further support the
17 requested sentence. Unlike many of the defendants who appear before
18 this Court, defendant came from a stable, loving supportive two-
19 parent home. (PSR ¶¶ 92, 94-97.) Defendant admits his parents
20 instilled in him a "good work ethic." (Id. ¶ 96.) Rather than build
21 upon this strong family foundation and excellent work ethic,
22 defendant turned to a life of crime in a manner that violates the
23 public trust in law enforcement.

24 Defendant's crimes were clearly motivated by greed. Defendant
25 lived far beyond his means, as evidenced by the fact that he still
26 has the seven (7) cars he bought before he was arrested in 2017.
27 (PSR ¶ 119.) Defendant initially had a corrupt agreement with Levon
28

1 Termendzhyan, which was laid bare in his first criminal trial in
2 Cisneros I.

3 Pushed away and cut-off financially by Termendzhyan, defendant
4 then sought money from E.S. in the fall of 2015 because defendant was
5 living far beyond his means and had thousands of dollars of credit
6 card bills every month. E.S. richly rewarded defendant with at least
7 \$40,000 in cash and over \$93,000 in payments directly to credit card
8 companies, mortgage companies, the federal Thrift Savings plan (to
9 re-pay defendant's TSP loan), and to defendant's wife.

10 While the USSPSO has determined defendant has no criminal
11 history, in reality, defendant's long-term history of engaging in two
12 separate conspiracies, over at least five years, to corruptly enrich
13 himself demonstrates defendant's criminal history is understated,
14 thus warranting a 145-month sentence.

15 Defendant's long-term association with Levon Termendzhyan and
16 his family further proves that defendant is deserving of an upper-end
17 Guidelines sentence. Following his release from custody for his
18 prior sentence of one year and one day, defendant continued his long
19 financial association with the family of Levon Termendzhyan, his co-
20 conspirator in Cisneros I. Indeed, Termendzhyan's family became
21 defendant's sole source of employment. By his own admission,
22 defendant was employed by GT Energy Company from his release from
23 custody on Cisneros I to his return to custody at the conclusion of
24 the trial in this case. (PSR ¶ 115.) According to California
25 Secretary of State records, GT Energy is a "Petroleum" business owned
26 by Termendzhyan's brother, and operates at the same address in
27 Commerce used by the Termendzhyans for Noil Energy Group Inc. (Ex. 1
28

1 at 1, 4 (GT Energy public records); Ex. 2 at 1, 2 (Noil Energy public
2 records.)

3 A 145-month Guidelines sentence is sufficient but not greater
4 than necessary to reflect the seriousness of the offenses, promote
5 respect for the law, provide just punishment, afford adequate
6 deterrence, and protect the public.

7 Finally, a sentence at the upper-end of the Guidelines range
8 will also prevent unwarranted sentencing disparities between this
9 defendant and similarly situated defendants. See United States v.
10 Treadwell, 593 F.3d 990, 1011 (9th Cir. 2010), overruled on other
11 grounds by United States v. Miller, 953 F.3d 1095 (9th Cir. 2020)
12 (“Because the Guidelines range was correctly calculated, the district
13 court was entitled to rely on the Guidelines range in determining
14 that there was no ‘unwarranted disparity[.]’”); Gall v. United
15 States, 552 U.S. 38, 54 (2007) (“[A]voidance of unwarranted
16 disparities was clearly considered by the Sentencing Commission when
17 setting the Guidelines ranges.”). Accordingly, the government
18 submits that, on balance, these factors weigh in favor of a sentence
19 at the upper-end of the Guidelines range.

20 **V. CONCLUSION**

21 For the foregoing reasons, the government respectfully requests
22 that the Court sentence defendant to 145 months in prison, followed
23 by 3 years of supervised release, and order that he pay a \$3,000
24 special assessment, and a \$35,000 fine.

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