

1 BLAIR C. PEREZ
Attorney for the United States
2 Acting Under Authority Conferred by 28 U.S.C. § 515
MARK W. PLETCHER, Colorado State Bar No. 034615
3 PHILLIP L.B. HALPERN, CASB 133370
HELEN H. HONG, CASB 235635
4 BILLY JOE MCLAIN, CASB 290682
Assistant U.S. Attorneys
5 880 Front Street, Room 6293
San Diego, CA 92101
6 Tel: (619) 546-9714
Email: mark.pletcher@usdoj.gov
7

8 Attorneys for the United States of America

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

Case No. 14-CR-0388-001-MMA

12 v.

Memorandum of the United States
In Support of Sentencing

13
14
15 JOSE SUSUMO AZANO
16 MATSURA,

Date: October 27, 2017
Time: 2:00 p.m.

17 Defendant.
18

19
20 **INTRODUCTION**

21 “It is fundamental to the definition of our national political community that foreign
22 citizens do not have a constitutional right to participate in, and thus may be excluded from,
23 activities of democratic self-government.” *Bluman v. Fed. Election Comm’n*, 800 F. Supp.
24 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012). Since at least 1938, Congress has
25 passed laws designed to preserve self-governance by prohibiting foreign influence in
26 American elections. *Viereck v. United States*, 318 U.S. 236, 241 (1943). Indeed,
27 “distinguishing citizens from non-citizens in this context is . . . part of a common
28

1 international understanding of the meaning of sovereignty and shared concern about
2 foreign influence over elections.” *Bluman*, 800 F. Supp. 2d at 292.

3 Motivated by ego and greed, Jose Susumo Azano Matsura (“Azano”), leading a host
4 of conspirators, laundered nearly \$600,000 in illegal foreign national campaign
5 contributions into the 2012 election for San Diego’s Mayor. Every penny was Azano’s,
6 but not a single penny was contributed in his name. Through an increasingly sophisticated
7 array of illegal means – straw donor contributions (repaid using an envelope full of Azano’s
8 cash); illegal independent expenditure contributions (through Azano’s airplane holding
9 company, AirSam); corporate straw donor contributions via Marc Chase’s stable of
10 companies; and the concealed in-kind contributions of Ravi Singh’s internet-based
11 consulting services (laundered through Singh’s software development company) – Azano
12 and his conspirators funneled Azano’s illegal foreign money into the mayoral race with the
13 single goal of electing Azano a mayor, any mayor, who would do his bidding.

14 Not a single dollar was reported to election commissions. No voters would know
15 who had funded Bonnie Dumanis or Bob Filner or the San Diego County Democratic Party
16 or the Democratic Congressional Campaign Committee in 2012.

17 In return for his money, Azano sought to buy political influence. He wanted support
18 for his vision of “Miami West”—a San Diego waterfront development project with a yacht
19 marina, a branded five-star hotel, and luxury bayside condominiums, a development
20 project that promised Azano hundreds of millions in profit. Azano also demanded access,
21 like the ability to summon influential political figures to his home on a moment’s notice or
22 to obtain letters of reference to secure his son’s admission to the University of San Diego.

23 According to testimony at trial, Azano’s illegal money, in fact, made the difference
24 in electing Bob Filner as Mayor of San Diego. Ex. 1. Within weeks after the election, with
25 the Mayor squarely in his pocket, Azano met in London with renowned Middle East-based
26 master developers to refine his lucrative plans for “Miami West.” A month after the
27 election, Azano invited the developers to fly halfway around the globe to meet with him
28 and Mayor Filner about the Miami West project, and just four days after Filner’s

1 inauguration, that meeting occurred, catered by Nobu, at Azano’s Coronado mansion. In
2 an unexpected turn of events, however, derailing even this, the best laid of illegal schemes,
3 Filner ignominiously resigned six months later amid allegations of sexual misconduct.

4 After a protracted trial, including testimony from dozens of witnesses, the
5 consideration of more than a thousand documents, and hours of closing arguments, the jury
6 convicted Azano of conspiring to willfully violate federal election laws and knowingly
7 falsifying campaign finance records in order to impede a federal investigation. Indeed, the
8 jury convicted Azano of each of the 36 campaign finance fraud-related counts he faced.¹

9 The jury’s resounding verdicts serve as stark condemnation of Azano’s willful
10 efforts to undermine the fundamental principles of American representative democracy.
11 Despite overwhelming evidence to the contrary, at trial Azano argued that he gave no
12 money to any campaign. His array of excuses, bluffs, and explanations was dizzying.
13 Azano has expressed zero remorse. He has accepted no responsibility.

14 The sentence imposed in this case must reflect the gravity of Azano’s offenses,
15 including proportionately his leadership role in the conspiracy. It must justly punish. It
16 must, as well, promote respect for the laws and fundamental institutions of America, while
17 deterring Azano and others from secretly funding future campaigns.

18 If our representative democracy matters, the integrity of the electoral system matters.
19 The Court’s sentence in this case will determine how much.

20 **SENTENCING RECOMMENDATION**

21 The United States respectfully recommends that the Court impose upon Susumo
22 Azano a period of incarceration of 72 months, a fine of \$560,955.00, a three-year period
23 of supervised release, and a \$3700 special assessment.

24 As described below, after application of the United States Sentencing Guidelines,
25 including specific offense enhancements in Section 2, and applicable departures in Section
26

27 ¹ In a subsequent trial, a jury convicted Azano of illegally possessing a semi-
28 automatic 9mm Sig Sauer handgun with a laser scope, the last remaining count with
which he was charged.

1 3, defendant’s properly calculated Adjusted Offense Level is 34. According to the United
2 States Probation Office, defendant has zero criminal history points, resulting in Criminal
3 History Category I. That results in an advisory sentencing range of 151-188 months.

4 Upon consideration of the additional sentencing factors in Section 5 and the statutory
5 sentencing components set forth in 18 U.S.C. § 3553(a), the United States recommends a
6 more than 50% reduction from the advisory Guidelines sentence, resulting in a
7 “recommended sentence” of 72-months’ incarceration. The sentence will account for the
8 aggravated nature and circumstances of the offense and Azano’s role as the conspiracy’s
9 leader, consider the history and characteristics of this defendant, promote respect for the
10 law and the institutions of the United States, afford adequate specific and general
11 deterrence, provide just punishment, and avoid unwarranted sentencing disparities.

12 **FACTUAL BACKGROUND**

13 The Court is well-versed in the evidence presented during this eight-week trial. In
14 convicting Azano, the jury rejected his defense that he did not contribute money to any
15 political campaign, directly or indirectly, in cash or in kind. The jury rejected Azano’s
16 tactics, bluffs, and invitations to misdirection; and it rejected his repeated objections and
17 assertions that this was all someone else’s doing, contrived after the fact to frame him.
18 Appropriately so. As set forth, in part, below, the evidence of Azano’s guilt for conspiring
19 to willfully violate federal election laws and to knowingly falsify campaign finance records
20 in order to impede a federal investigation was overwhelming.

21 As adduced at trial, the jury heard that Azano convened a meeting of his coterie on
22 Christmas Day 2011, summoning Ravneet Singh from Mexico City, specifically to discuss
23 Azano’s support for Bonnie Dumanis in the upcoming mayoral primary. Dumanis
24 participated via teleconference. Dumanis reported from that first conference call that
25 Azano was “helping to raise money from his family and friends,” and that Singh was there
26 to assist as a consultant. GEX 24-1 (reciting “got a call, a conference call, from Ernie
27 Encinas, Susumo Azano and Ravi Singh” and Azano wanted Dumanis to “talk to [Singh]
28 because he is a master of Internet campaign stuff.”). Wolter testified that he solicited straw

1 donors on December 21, 2011 “to help Susu and [h]is Father support the soon to be Mayor
2 Bonnie Dumanis.” GEX 11-1. Marc Chase, likewise, testified that at Azano’s behest, he
3 solicited straw donations from his friends and employees at Symbolic Motors.

4 Dozens of straw donors eventually agreed to cut checks to the Dumanis campaign.
5 *See e.g.*, GEX 4-2 (12/21/11 donation by Abel Garcia); 6-3 (12/28/11 donation by Jose
6 Garcia); 7-4 (12/28/11 donation by Marcel Kasmer); 8-4 (12/28/11 donation by Matthew
7 Guillory); 9-2 (12/28/11 donation by Itzel Durazo); 10-2 (12/28/11 donation by Philippos
8 Mikelatos); 11-2 (12/27/11 donation by Wolter); 12-1 (12/18/11 donation by Brian
9 Duarte); 12-5 (12/28/11 donation by Ruth Long); 12-9 (12/28/11 donation by Monique
10 Navarette); 14-2 (1/2/12 donation by Michael Pedace); 17-23 (12/22/11 donation by Marc
11 Chase); 17-24 (12/22/11 donation by Ruth Chase); 17-25 (12/29/11 donation by Bernie
12 Chase); 45-2 (12/27/11 donation by Betty Hart); 46-1 (12/28/11 donation by Brent
13 Marchioni); 46-5 (1/11/12 donation by Brandon Marchioni); and GEX 20-12 (collecting
14 certified copies of straw donor checks to the Dumanis campaign). Tellingly, everyone in
15 Azano’s orbit donated to the Dumanis campaign, except Azano himself. Each straw donor
16 was then illegally reimbursed using Azano’s money. In finding Azano guilty for his
17 involvement in each of these straw donations, the jury necessarily rejected the
18 manufactured testimony of Azano’s defense witness, Elizabeth Lugo, and her fanciful story
19 about a traveling box of money and pre-printed envelopes.

20 Azano directed Singh to oversee an online blitzkrieg for Dumanis. Singh (through
21 his software development company, eSolutions) ultimately billed Azano’s Mexican
22 company Broadlink approximately \$75,000 for his secret, in-kind internet consulting
23 services. GEX 50-1 (invoice for project “code name Betty Boob” aka Bonnie Dumanis);
24 GEX 50-2 (email reciting “betty boo project for 100k[.] [I]t was originally 75 but Mr Singh
25 explained the need for the additional 25 during his last visit to San Diego and Mr A verbally
26 agreed.”); GEX 50-4 (Azano responding, “No more money, that wasn’t the agmt with
27 Ravi[.] [W]e will only transfer what I told him.”). GEX 13-67 (wire transfer).

1 Contemporaneously, Azano used Airsam to make a straw donation of \$100,000 to a
2 Dumanis PAC, using money directly traceable to Azano’s personal account. GEX 21-13.
3 The uncontroverted evidence at trial was that in addition to his consulting fees of \$75,000,
4 Azano also gave Singh \$100,000 to set up an independent expenditure committee (PAC),
5 which he never did, instead pocketing Azano’s money. GEX 48-2 (“[Azano] was upset
6 about the money he sent you to form a PAC and do the social media. He said since no
7 PAC was formed he wants that money back.”); GEX 56-32j (“Last time he defrauded us.”).
8 Cognizant of the illegality of these transactions, Singh refused to discuss this issue over
9 email, owing to the “legal ramifications” of such a discussion. GEX 48-2.

10 When Dumanis was defeated in the primary, Azano switched his allegiance to Bob
11 Filner, again coordinating straw donations and bringing Singh back to finish the job. At
12 trial, the United States introduced evidence that in September 2012, Azano personally
13 asked Chase to make additional illegal straw political contributions at a conversation
14 around Azano’s kitchen table. As Chase recounted, Azano “asked me to make a
15 contribution. I said how much. He said \$180,000. I asked will I be reimbursed, and he
16 said yes.” RT 8/11/16 [401] at 54:2-5. The jury received corroborating evidence of a
17 \$120,000 check from South Beach Acquisitions to “San Diegans in Support of Bob Filner
18 for Mayor, 2012,” GEX 35-12 at 5, GEX 35-7; a \$30,000 in a check from West Coast
19 Acquisitions to the San Diego County Democratic Party, GEX 17-31, and another \$30,000
20 to the DCCC. Chase testified that he owned the companies that contributed, RT 8/11/16
21 [401] at 4:19-5:3, and that Azano repaid each contribution. Corroborating Chase’s account,
22 the jury received Azano’s reimbursement check and Chase’s internal accounting therefor.

23 Even as Chase made those straw donations, at Azano’s direction, Singh
24 supplemented the support for Filner with his own illegal in-kind consulting services. In
25 mid-October 2012, Singh moved his team into the “war room” in Filner’s campaign offices
26 to handle the social media work. Encinas and Cortes, at Azano’s command, explained the
27 arrangement to Filner’s campaign manager. When the campaign manager asked and re-
28 asked how much it would cost, Singh replied that it was “taken care of.” As covered in

1 painstaking detail at trial, through testimony, emails, invoices, and bank records, Singh,
2 with help from Aaron Ronsheim, Meghan Standefer, Miguel de la Vega, and others at
3 Election Mall, drew up the “game plan” for project Plastic Man, GEX 26-16, discussed it
4 among themselves at length, purchased various Internet blasts, missiles and other
5 armaments, invoiced Azano for their services, and received payments of \$97,000 and
6 \$95,000, respectively, again laundered from Azano’s Mexico-based Broadlink company
7 through eSolutions, Singh’s software development company. GEX 32-4, 32-13P, 32-5.
8 Singh later boasted that his efforts helped achieve a “decisive victory” for Filner.

9 Tying together these illegal contortions, the jury repeatedly heard about Azano’s
10 overarching goals to elect a mayor to “help get the things he needed to get done,” foremost
11 among them, to develop San Diego in his image, as Miami West. RT 8/2/2016 (testimony
12 of Jason Wolter) at 38:22-25; see also RT 8/2/2016 (Testimony of Brian Duarte) at 29:16-
13 24 (“Wolter told me that if Bonnie Dumanis was to be elected that she would help pave the
14 way for Azano to build a high-end resort in and around downtown San Diego somewhere
15 along the waterfront or so and that she would help cut the red tape and push through permits
16 and the correct zoning area, and I’m sure there’s coastal commission issues with buildings
17 downtown that have to be put through the city. So from what Wolter told me, she told
18 Azano she would help expedite that process.”); RT 7/29/16 (Testimony of Diego Duque)
19 at 187:18-188:7 (testifying that Azano’s son had promised to reimburse straw donors to
20 Dumanis campaign, which would support a family project). As one witness summarized,
21 “Azano was interested in having a friend in the mayor’s office.” RT 8/11/16 at 45:23-24.
22 Jason Kiszona, Anthony Bufinsky, Samantha Bowman-Fleurov and others testified
23 consistently about Azano’s vision for “Miami West” and the various steps Azano took to
24 make Miami West a reality, including meeting with Dumanis and Filner, respectively, to
25 introduce them to his vision and secure their support, reviewing the previous waterfront
26 development plans, and engaging the services of a master planner.

27 This testimony aligned with the contemporaneous records, like a visitor’s log
28 reflecting candidate Filner’s first visit to Azano’s home in August 2012 and his December

1 2012 meeting with Kiszonak, Bufinsky, and Azano’s team to discuss the “Miami West”
2 project. *See, e.g.*, GEX 17-26 (logs showing “Marco” and Ernie arriving at Azano’s home
3 on Aug. 17, 2012 for meeting with Filner); GEX 51-6 (email dated Aug. 22, 2012 from
4 Cortes to Azano, attaching the Chula Vista’s Bayfront development master plan); GEX 56-
5 44 (reflecting Filner’s visit to Azano’s home on Dec. 7, 2012); *see also* GEX 24-1 (email
6 reporting that Dumanis received “a call, a conference call, from Ernie Encinas, Susumo
7 Azano and Ravi Singh” to discuss Azano’s support of her campaign).

8 After laundering nearly \$600,000 in illegal foreign national contributions into the
9 San Diego Mayor’s election, he succeeded. Azano pulled it off. Filner won. Striking
10 while the iron was hot, just four days after inauguration, Azano summoned Mayor Filner
11 to his home to call in his favor. Kiszonak, Bufinsky, Encinas, and Cortes attended, as
12 Azano pressed his agenda for Miami West. The rest, however, will never be written. Soon
13 thereafter, Filner became embroiled in scandal and within six months resigned in disgrace.

14 **SENTENCING GUIDELINES CONSIDERATIONS**

15 ***A. The United States Probation Office correctly enhanced Azano’s offense level***
16 ***by four levels for his threats of pecuniary harm under U.S.S.G. § 2C1.8(b)(5).***

17 As a general rule, the party seeking to adjust an offense level must establish by a
18 preponderance of the evidence that the adjustment is merited. *See United States v.*
19 *Gonzalez*, 492 F.3d 1031, 1039 (9th Cir. 2007); *United States v. Charlesworth*, 217 F.3d
20 1155, 1158 (9th Cir. 2000). In the instant case, the Probation Office concluded that
21 Azano’s sentence should be enhanced pursuant to U.S.S.G. § 2C1.8(b)(5) because Azano
22 convinced, *inter alia*, Jason Wolter, to assist in his criminal activity through intimidation
23 and the threat of pecuniary harm. PSR 19. This conclusion is supported abundantly by
24 the trial evidence and further bolstered by a post-trial declaration filed by Mr. Wolter. *See*
25 *Wolter Declaration* [“Wolter Decl.”] (Exh. 2). Such a finding by the Court would be
26 reviewed for clear error. *United States v. Scrivener*, 189 F.3d 944, 949 (9th Cir. 1999)

27 As established at trial, Wolter is a San Diego native who graduated from SDSU.
28 Following graduation, he obtained a real estate license and began working a number of

1 jobs to make ends meet. One of his jobs was as a sales associate at Hermès, a high-end
2 boutique that sells handbags and other luxury items. The Azanos were the top customers
3 at Hermès, and Wolter would engage both Azano and Edward (Susu) Hester in business
4 chatter during their shopping outings that frequently involved the purchase of items worth
5 tens of thousands of dollars. In December 2010, Wolter received a phone call from
6 Azano’s assistant, Elizabeth Lugo, summoning him to the Azano household. Wolter
7 informed Lugo that he would be unable to go to their residence in Coronado until later in
8 the day, after his shift at Hermès ended. Shortly thereafter, Wolter received a call from
9 Susu, who inquired whether he wanted to be a “loser” for the rest of his life or a millionaire.
10 Susu indicated if it was the latter, he should immediately meet with Azano in Coronado.

11 Wolter did. At this meeting, Azano proposed that Wolter work with him identifying
12 real estate investment opportunities. Azano agreed to pay Wolter a base salary of \$7,000
13 per month and a 5% commission on all properties that he purchased for Azano. Based
14 upon the prospect of working on major real estate projects, Wolter quit his other jobs and
15 began working full-time out of Azano’s Coronado residence. Wolter Decl. at 1.

16 In February 2011, Wolter completed his first acquisition for Azano, an
17 approximately \$3 million condominium unit located in the Trump Hollywood Towers – a
18 41-story, luxury oceanfront glass tower featuring 240 feet of pristine beachfront property
19 and spectacular views of the ocean, intra-coastal waterway, and city. Wolter split the
20 \$140,000 commission with his business partner and friend, Brian Duarte, who became the
21 real estate broker on Azano’s subsequent purchases.

22 As a result of his salary and commissions, Wolter moved into an upscale
23 condominium and enjoyed the benefits of his improved economic fortune. At this time,
24 Azano began assigning Wolter collateral duties. In addition to investigating real estate,
25 Azano expected Wolter to “look after” Susu – especially when Azano was out of town.
26 Eventually, Azano expected Wolter to act as his personal assistant and a general family
27 “servant” – who would do whatever needed doing, including diverse activities such as
28 shopping at the 7-11 to pick up bottled water or frequenting nightclubs where Susu would

1 spend tens of thousands of dollars. Eventually, Wolter was treated as the Azano's
2 houseman who was to be present almost 24-7 at Azano's beck and call. Wolter Decl. at 1.

3 It is against this backdrop that Azano convinced Wolter not only to make an illegal
4 \$500 conduit campaign contribution to Bonnie Dumanis, but to work with Susu to recruit
5 others to do so. At this time, Wolter had never made a political contribution and would not
6 have donated in a San Diego mayoral primary or requested that his friends do so. Yet, it
7 was clear to Wolter that this was not an optional request. He (and Susu) were expected to
8 not only donate, but to recruit others to donate. If he refused this request, Wolter believed
9 Azano would have gone into a tirade (as he did frequently) and Wolter would have been
10 looking for a new job. Stated simply, the only reason that Wolter became engaged in
11 Azano's illegal conduit contribution scheme was because of Azano's threat of severe and
12 immediate pecuniary harm. End of story. Wolter Decl. at 1-2.

13 The economic coercion Azano employed when recruiting Wolter to his illegal
14 scheme is further highlighted by an examination of the status of the other conspirators.
15 Indeed, it is not a coincidence that every person recruited to make illegal campaign
16 donations was one of Azano's business associates. To an individual, these persons (with
17 the exception of Ernie Encinas) had no interest in making the campaign donations. Azano's
18 handpicked conspirators had never previously donated to any politician and, more
19 importantly, would not have made the donation but for their dependence on Azano's
20 economic patronage. Significantly, these individuals had nothing to gain from the illegal
21 act – other than the fact that Azano would continue to employ or do business with them.

22 For example, Brian Duarte's (while not an economic captive in the same sense as
23 Wolter) real estate brokerage business was heavily dependent on Azano's largesse. Azano
24 was Duarte's single largest and most important client. At the time Duarte was asked to
25 make these contributions on Azano's behalf, it was extremely important to Duarte's
26 economic well-being that he not upset the Azano appplecart. Duarte realized that hundreds
27 of thousands of dollars in commissions were at stake.

28

1 As with Wolter, “but for” Azano’s business leverage, Duarte would never have
2 agreed to make the illegal campaign contributions. Similar to Wolter, Duarte had no
3 independent reason to make this donation. He gained nothing from it, other, of course,
4 than the ability to continue handling Azano’s business. On the other hand, the threat of
5 losing his largest and most lucrative client caused Duarte to disregard his better judgment
6 and serve as a “straw donor” for Azano.

7 Marc Chase found himself in a similar situation. Chase, the proprietor of La Jolla-
8 based Symbolic Motors, sold extremely high-end luxury cars to a well-heeled clientele.
9 Despite a long history of selling such vehicles (and other high end luxury items), Chase
10 experienced severe financial difficulty in the 2009-10 timeframe. Fortunately, by 2011,
11 his business started to improve. One of the reason for this improvement was Azano, who
12 spent millions of dollars at Symbolic and soon became Chase’s best client.

13 At this time, Chase and Azano also became “fast” friends – seeing each other often.
14 Yet, this was an asymmetric friendship. Without question, they attended social events
15 together, including nightclubs, Las Vegas gambling sprees, expensive dinners and high-
16 end car shows like the Pebble Beach Concours d’Elegance. Azano even brought Chase on
17 business trips to Mexico City, London and Paris. Despite this, Azano also made it clear
18 where Chase stood: Azano was the “emperor,” and Chase was just another loyal follower,
19 who was expected to be at Azano’s beck and call.

20 Chase accepted this arrangement due to Azano’s financial largesse. Chase admits
21 that Azano practically saved Symbolic by buying more than \$10 million in new cars in the
22 course of a couple of years. In fact, Azano was not just a customer, but a financier. In
23 2012, Azano lent \$3 million to Symbolic at a 10% annual interest rate. This loan not only
24 underscores the power imbalance between Chase and Azano, it exemplifies Azano’s
25 pattern of using his financial leverage to disguise and hide shady financial transactions. As
26 Chase testified at trial, Azano never accepted interest payments on this \$3 million loan.
27 Rather, Azano directed Chase to use the interest owed to pay not only vehicle expenses,
28 but also to pay a slew of his personal and business expenses.

1 It is with this background that in late 2011, Chase found himself summoned to
2 Azano's home and instructed to help Azano make \$10,000 in illegal campaign donations
3 to Bonnie Dumanis's mayoral campaign. Azano told Chase he would give him the money
4 and that Chase just needed to find as many donors as possible. A few moments later,
5 Elizabeth Lugo handed Chase \$10,000 in cash. According to Chase, he never would have
6 made these illegal contributions except for the relationship he had with Azano. Underlying
7 the economic coercion that motivated his crime, except for the far distant past, Chase never
8 donated to any political campaign except when encouraged to do so by Azano. In fact, as
9 Chase testified, he never even voted until the 2012 presidential election.

10 In September 2012, Azano again summoned Chase to his home in Coronado. On
11 this occasion, Azano told Chase that he would have to make \$180,000 in contributions to
12 some political candidates. Azano made it clear that Chase would again be reimbursed.

13 Once again, Chase made the contributions only because of his economic and
14 personal relationship with Azano. Due to Azano's entanglement with his business
15 interests, Chase felt he had no choice but to comply with Azano's demands.

16 Abel Garcia was yet another individual who was caught up in Azano's illegal
17 schemes due to Azano's economic leverage. Garcia, a local accountant with an
18 independent practice, was economically dependent upon Azano, his biggest client. Garcia
19 was asked by Azano (through Lugo) to make a \$1,000 illegal conduit contribution to the
20 Dumanis campaign. In a similar refrain, "but for" Azano's business leverage, Garcia
21 would never have agreed to make the illegal contribution. Similar to Wolter, Duarte and
22 Chase, Garcia had no independent reason to make the donation. He gained nothing from
23 it other than the ability to continue handling Azano's business. On the other hand, the
24 threat of losing a lucrative client served as the motivation enough for Garcia to disregard
25 his better judgment and agree to serve as a "straw donor" for Azano.

26 Given these facts, the Probation Office's conclusion that Azano used threats, implicit
27 and explicit, and economic coercion to commit these campaign finance offenses is
28 supported by overwhelming evidence. Azano used his money and power to commit this

1 crime. He has taken every advantage – both legal and illegal – as a result of these attributes;
2 now is the time for him to face the consequences for their misuse. It is only appropriate
3 that his guideline range be increased by four levels as directed by U.S.S.G. § 2C1.8(b)(5).

4 ***B. The United States Probation Office correctly enhanced Azano’s offense level***
5 ***by four levels for his aggravating role under U.S.S.G. § 3B1.1(a).***

6 The United States must prove by a preponderance of the evidence that Azano should
7 receive an aggravating role adjustment. *United States v. Al-Rikabi*, 606 F.3d 11, 14 (1st
8 Cir. 2010); *United States v. Cruz Camacho*, 137 F.3d 1220, 1224 (10th Cir. 1998). Without
9 question, Azano was the leader of this criminal activity that involved five or more
10 participants and was otherwise extensive, and therefore his Guideline range should be
11 enhanced by four levels pursuant to U.S.S.G. § 3B1.1(a). For purposes of §3B1.1(a), the
12 terms “organizer” and “leader” are “broadly interpreted.” *United States v. Guerra*, 113
13 F.3d 809, 820 (8th Cir. 1997). In considering whether a defendant was a “leader” or
14 “organizer,” courts consider “the exercise of decision making authority, the nature of
15 participation in the commission of the offense, the recruitment of accomplices, the claimed
16 right to a larger share of the fruits of the crime, the degree of participation in planning or
17 organizing the offense, the nature and scope of the illegal activity, and the degree of control
18 and authority exercised over others.” *United States v. Lopez*, 328 Fed. Appx. 352, 355 (8th
19 Cir. 2009) (quoting U.S.S.G. § 3B1.1 comment. (n.4)).

20 To count participants, Application Note 1 to §3B1.1 defines a “participant” as “a
21 person who is criminally responsible for the commission of the offense.” Section 3B1.1
22 does not require that a “participant” be convicted, though the defendant, himself, as a
23 criminally responsible person, is a participant under §3B1.1. *United States v. Paccione*,
24 202 F.3d 622, 625 (2d Cir. 2000) (holding, consistent with “the apparent consensus among
25 our sister circuits,” that “a defendant may be included when determining whether there
26 were five or more participants in the criminal activity in question”).

27 When determining whether there are “five or more participants,” the Court must
28 consider all participants, not only those who were subordinate to the defendant. “The text

1 of the guideline and its commentary does not require that five ... participants be
2 subordinate to the defendant; it merely requires that the activity involve five or more
3 participants.” *United States v. Bingham*, 81 F.3d 617, 629 (6th Cir. 1996); see also *United*
4 *States v. Dota*, 33 F.3d 1179, 1189 (9th Cir. 1994) (“Section 3B1.1 does not require that
5 [defendant] knew of or exercised control over all of the participants.”).

6 The independent concept that criminal activity “was otherwise extensive”
7 encompasses more than merely the number of participants because, as Application Note 3
8 to §3B1.1 provides, “in assessing whether an organization is ‘otherwise extensive,’ all
9 persons involved during the course of the entire offense are to be considered.” To assess
10 such activity, most circuits deploy some version of a “totality of the circumstances” test.
11 Under that test, the court may look to all of the circumstances of the criminal activity,
12 “including . . . the width, breadth, scope, complexity, and duration of the scheme.” *United*
13 *States v. Laboy*, 351 F.3d 578, 586 (1st Cir. 2003). Though each circuit uses a slightly
14 different variation, each test is calculated to determine whether an otherwise extensive
15 activity is the “functional equivalent” of an activity involving five or more participants.”
16 *United States v. Carrozzella*, 105 F.3d 796 (2d Cir. 1997). *Accord*, *United States v.*
17 *Anthony*, 280 F.3d 694 (6th Cir. 2002); *United States v. Wilson*, 240 F.3d 39 (D.C. Cir.
18 2001); *United States v. Helbling*, 209 F.3d 226 (3d Cir. 2000).

19 Here, the criminal activity involved five or more participants. Azano, Singh,
20 Encinas, Clancy, Marc Chase, and Edward Hester participated in the criminal conspiracy
21 conduct embodied in Count I. Five of these individuals pled guilty or were convicted by a
22 jury of criminal offenses. Cortes also participated, as did Jason Wolter and dozens of straw
23 donors, each of whom settled their liability with the San Diego Ethics Commission.

24 Undoubtedly, this criminal activity was also “otherwise extensive.” All told, the
25 number of active individuals in the criminal conduct totaled at least forty. The conduct
26 was extensive, totaling nearly \$600,000 in illegal campaign donations, and sophisticated,
27 deploying increasingly complex campaign money laundering techniques, and durable,
28 spanning multiple candidates over a prolonged period.

1 Of this criminal activity that involved five or more participants and was otherwise
2 extensive, Azano was the unquestioned leader. It was Azano's money funding the illegal
3 campaign contributions. It was Azano's mansion where the meetings occurred. Azano
4 catered Nobu to host Bonnie Dumanis and Bob Filner. It was Azano who orchestrated the
5 Christmas Day meeting in 2011 and Azano who directed Edward Hester, Jason Wolter,
6 and Marc Chase to solicit straw donors on his behalf. Azano alone recruited the consulting
7 services of Campaign Guru Ravi Singh. Azano led and organized this effort because to
8 him went the spoils of any success. Miami West was his vision, and Azano alone was the
9 architect of making that vision become reality. Azano was the ultimate decision maker and
10 nothing happened, and no one acted without his approval. As in all things, he exercised
11 completed control and authority over others. It was his way or the highway.

12 Each of the factors in Application Note 4 leads to the same conclusion: Azano was
13 the leader of this criminal activity, and accordingly, Azano's guideline range is
14 appropriately increased by four levels for his aggravating role and increased culpability.

15 **CRIMINAL FINE**

16 The Court shall impose a fine in all cases, except if the defendant establishes that he
17 is unable to pay and not likely to become able to pay. U.S.S.G. § 5E1.2(a). In this case,
18 given defendant's substantial net worth, a fine is mandated. The United States concurs in
19 the Probation Office's recommendation of a fine in the amount of \$560,955.00

20 **RECOMMENDATION**

21 Imposing a sentence of 72-months' incarceration and a substantial fine would be
22 sufficient but not greater than necessary to preserve the integrity of our electoral system.
23 Any lesser sentence undermines what many have sacrificed too much to build.

24 The nature and circumstances of these offenses are aggravated. As explained above,
25 the crimes struck at the core of American democracy and the principles of self-governance.
26 The United States is unaware of a comparable election fraud case, where sophisticated
27 conspirators acted over time to install a friendly politician. The amount of illegal foreign
28 money laundered into the election was substantial. The means employed to do so were

1 varied and sophisticated and calculated to conceal the true nature and source of the illegal
2 donations; always, though, it was Azano's money. The conspiracy involved dozens of
3 participants, witting and unwitting, from the unquestioned leaders, Azano, to managers, to
4 straw donors, to consultants and political operatives, to master planners, to financial
5 advisers, to social media professionals, among others, all drawn together to steal an election
6 in an effort to ensure Azano's vision of Miami West had a shot at reality. Along the way,
7 the conspirators decimated the modern campaign finance system, implemented to ensure
8 fair elections for Americans, free from corrupt foreign influence. Only the recommended
9 sentence can appropriately redress the nature and circumstances of this offense and begin
10 to restore the public's confidence in fair and transparent elections.

11 Azano's personal history and characteristics aggravate his crimes. At the time of his
12 offenses, Azano had been an apparently successful businessman, though the exact contours
13 of his business acumen remain vague. He certainly had a lot of money. *But see United*
14 *States v. Miell*, 744 F. Supp. 2d 904, 955 (N.D. Iowa 2010) ("A crime of fraud by one who
15 already has more than enough -- and who cannot argue that he suffered a deprived or
16 abusive childhood or the compulsion of an expensive addiction -- is simply a crime of
17 greed. A crime of fraud by one who is otherwise successful, apparently by legitimate
18 means, is ... particularly disturbing."), *aff'd*, 661 F.3d 995 (8th Cir. 2011).

19 As the trial amply demonstrated, Azano fundamentally believed the rules – the
20 traffic laws, the campaign finance laws, the gun possession laws, and whatever else stood
21 in his way – did not apply to him by virtue of his wealth and station. Freed from the
22 constraint of following the rules, as every one of his associates and employees testified,
23 Azano was an uncompromising capricious tyrant. It was his way or the highway, enforced
24 by the power bestowed by the money he paid in salary or promised as part of the next deal.
25 He demonstrated a total lack of respect for others. Jason Kiszonak, Anthony Bufinsky,
26 Brian Duarte, and others testified uniformly as to Azano's history and characteristics in
27 this regard in his business dealings. They, as well as Jason Wolter and others shed light on
28 his tyrannical relationship with his family, household staff, and employees.

1 That Azano was subsequently convicted of the illegal possession of a 9mm semi-
2 automatic handgun with a laser scope reinforces the conclusion that his history and
3 characteristics taken together do nothing to mitigate his culpability.

4 Azano will undoubtedly seek a variance based on his fall from the heights of social
5 status and financial privilege, the downsizing of his business, the collateral consequences
6 of his imprisonment, and a host of other such outcomes. Congress, through the Guidelines,
7 however, has pointedly addressed and rejected factors both individually and cumulatively
8 in the form of “I’ve been punished enough” from privileged white collar criminals who
9 bemoan the collateral consequences of a Guideline sentence, while implicitly dooming the
10 less privileged and less fortunate to suffer greater punishments. 28 U.S.C. § 994(d) (“The
11 Commission shall assure that the guidelines and policy statements are entirely neutral as to
12 . . . socioeconomic status of offenders.”); U.S.S.G. § 5H1.2 (vocational skills and education
13 not ordinarily relevant); U.S.S.G. § 5H1.5 (employment record not ordinarily relevant);
14 U.S.S.G. § 5H1.6 (family ties and responsibilities not ordinarily relevant); U.S.S.G.
15 §5H1.10 (socioeconomic status of defendant not relevant).

16 The federal courts have repeatedly agreed. *United States v. Morgan*, 635 Fed. Appx.
17 423 (10th Cir. 2015) (reversing defendant’s probationary sentence for bribery and agreeing
18 “with the reasoning of the Sixth, Seventh, and Eleventh Circuits [that b]y considering
19 publicity, loss of law license, and deterioration of physical and financial health as
20 punishment, the court impermissibly focused on the collateral consequences [and favored
21 criminals] with privileged backgrounds”); *United States v. Musgrave*, 761 F.3d 602, 608–
22 09 (6th Cir. 2014) (“Impermissible considerations permeated the district court’s
23 justification for Musgrave’s sentence. In imposing a sentence of one day with credit for the
24 day of processing, the district court relied heavily on the fact that Musgrave had already
25 ‘been punished extraordinarily’ by four years of legal proceedings, legal fees, the likely
26 loss of his CPA license, and felony convictions that would follow him for the rest of his
27 life.”); *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013) (vacating sentence
28 of white collar criminal, stating, “The Sentencing Guidelines authorize no special

1 sentencing discounts on account of economic or social status . . . unavailable to defendants
2 of lesser means”); *United States v. Peppel*, 707 F.3d 627, 636 (6th Cir. 2013) (holding
3 district court inappropriately considered collateral consequences for white collar
4 defendant, noting longstanding precedent that to do so “would tend to support shorter
5 sentences in cases with defendants from privileged backgrounds, who might have more to
6 lose along these lines”); *United States v. Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012) (“[I]t is
7 impermissible for a court to impose a lighter sentence on white-collar defendants than on
8 blue-collar defendants because it reasons that white collar offenders suffer greater
9 reputational harm or have more to lose by conviction.”).

10 Indeed, regularly this Court sees drug couriers with no money, no education, and
11 limited opportunity, bringing drugs once across the border. In this district, those couriers
12 most often face a guideline range of 108-135 months. Under the best circumstances, with
13 a guilty plea, fast-track disposition, and full disclosure during a safety-valve debrief, these
14 couriers qualify for “minor role” and merit a guideline range of 46-57 months. Sometimes
15 courts in this district will vary downward from that range, but often they won’t.

16 To be sure, election crimes and drug crimes are different. But what is comparable
17 is the duration, breadth, and (perceived) necessity underlying the criminal conduct. Azano
18 was not desperate, he was not in dire straits. Azano is wealthy, educated, with nearly
19 unlimited legitimate business opportunity. But he chose crime. Not because he needed the
20 money to feed a newborn child or because he lost his job, but because of greed and ego.
21 Unlike the usual drug courier, Azano did not engage in one-off criminal conduct. He
22 masterminded a multifaceted election-fraud conspiracy that involved numerous people and
23 continued for months and months, as part of which, the conspirators concealed and
24 disguised the nature, location, source, ownership, and control of the criminal proceeds in
25 order to evade reporting requirements and obstruct federal investigators. *Compare, United*
26 *States v. Contreras-Amezquita*, 15CR1144, (S.D.C.A., Oct. 12, 2017). Instead of being the
27 subject of economic coercion, Azano used economic coercion to force and intimidate
28 others into joining in his criminal activity, and unlike the routine drug courier, Azano did

1 not plead guilty, accept responsibility or work to remedy his crimes. For his crimes,
2 Azano's guideline range is 155-188 months, not 46-57 months. When comparing Azano
3 to the criminal defendants that this court and other courts in this district sentence to multi-
4 year terms of incarceration on a regular basis, fundamental fairness and the equal
5 administration of justice demand a sentence of at least 72 months' imprisonment.

6 A 72-month sentence in this case will also serve as much needed general deterrence
7 to others contemplating like crimes in any local, state or federal election, and consequently
8 promote respect for America's laws and its electoral system. *See United States v. Morgan*,
9 635 F. App'x 423, 450 (10th Cir. 2015) (emphasizing "[d]eterrence is a crucial factor in
10 sentencing decisions for economic and public corruption crimes"). General deterrence, of
11 course, weighs the heaviest in favor of imposing a stringent sentence of imprisonment
12 where, as here, the crimes of conviction each have an element of elevated intent.
13 Conversely, a departure below the recommended sentence under these circumstances will
14 further encourage foreign and domestic operatives to engage in corrupt campaign money
15 laundering and election fraud schemes, after weighing the low risk of detection and the
16 likelihood of a lenient sentence if they are caught. *Id.* at 450 ("General deterrence comes
17 from a probability of conviction and significant consequences").

18 Consideration of deterrence in this way is required under 18 U.S.C. § 3553. So
19 sound the warning loud and clear, particularly to the leaders of such schemes: "The United
20 States will not turn a blind eye to those who seek to destroy its foundational institutions
21 one illegal foreign dollar at a time. American elections are not for sale. If convicted of
22 fouling America's elections with corrupt foreign influence, you will be justly punished."

23 The recommended sentence also avoids unwarranted sentencing disparities. As the
24 Court's canvass of the previous cases made no doubt clear, no reported case approximates
25 the aggravated nature and circumstances of these crimes, or Azano's role therein, and thus,
26 the recommended sentence cannot effect an unwarranted disparity in punishment.² The

27
28 ² Azano cannot claim parity with Singh or Marc Chase. Singh, though an
important conspirator, played no role in the illegal straw donations aspect of this

1 closest election law analogs involve far fewer dollars, over a more limited time period.
2 Most involve elections where the illegal contributions did not sway the outcome. Most
3 involve illegal domestic contributions, not those by a foreign national. In almost all of
4 those cases, the defendant pled guilty and accepted responsibility. Here, by contrast, the
5 conduct was extensive, totaling nearly \$600,000 in illegal foreign campaign donations, and
6 sophisticated, deploying increasingly complex campaign money laundering techniques,
7 and durable, spanning multiple candidates over a prolonged period. Azano, for his part,
8 was the undisputed leader of the criminal activity. Here, as well, the crime succeeded --
9 with Azano's illegal aid, Filner won -- and from it, Azano potentially stood to gain millions
10 if the Miami West development projects he envisioned matured to reality. These
11 differences mandate a sentence more stringent than any previously reported. To impose
12 otherwise would impermissibly cause, not avoid, unwarranted sentencing disparities

13 For these reasons, the recommended sentence of 72 month's incarceration is
14 sufficient but not greater than necessary to effect the ends of justice. Only such a sentence
15 resoundingly answers how much free and fair American elections matter.

16 **IMMEDIATE REMAND**

17 Azano should be immediately remanded into custody. Azano cannot establish that
18 his appeal "raises a substantial question of law or fact likely to result in (i) reversal, (ii) an
19 order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv)
20 a reduced sentence to a term of imprisonment less than the total of the time already served

21 _____
22 conspiracy, and ultimately, he was hired gun for Azano, doing as he was instructed.
23 Beyond the payday for his services, Singh had nothing to gain for his involvement. The
24 Court found, in addition, that Singh should not receive any enhancement for his role in
25 the offense, and that the amount of the contributions (over \$250,000) was overstated in
26 attributing the entirety of that amount to Singh. Azano, by contrast, was the
27 unquestioned leader of all the criminal conduct, who contributed every penny of the
28 illegal campaign contributions. Azano, who choreographed each aspect of the scheme,
to be sure, stood to gain everything when the scheme proved successful.

Chase is not similarly situated at all. He participated at Azano's direction. The
testimony at trial was that Chase doesn't even vote. Chase accepted responsibility, pled
guilty, cooperated with the investigation and testified at length at trial.

1 plus the expected duration of the appeal process.” 18 U.S.C. § 3143(b)(1)(B). “[P]roperly
2 interpreted, ‘substantial’ defines the level of merit required in the question presented, and
3 ‘likely to result in reversal or an order for a new trial’ defines the type of question that must
4 be presented.” *United States v. Handy*, 761 F.2d 1279, 1280 (9th Cir. 1985).³

5 On this issue, Azano bears the burden of proof. *United States v. Montoya*, 908 F.2d
6 450, 451 (9th Cir. 1990) (denying motion for bail pending appeal because defendant failed
7 to show that his appeal would likely result in reversal). Just as this Court determined with
8 respect to Ravneet Singh, Azano cannot demonstrate that his appeal will raise “a substantial
9 question of law for fact likely to result in” reversal or an order for a new trial. Azano, like
10 Singh, has heavily litigated almost aspect of this case. None of his arguments is novel.
11 Nor has the Court struggled to resolve any of his various contentions.⁴ Under these
12 circumstances Azano should be immediately remanded into custody.

13 _____
14 ³ Prongs (iii) and (iv) can be dispensed with quickly. A term of probation would
15 be unprecedented in this case. *See, e.g., Morgan*, 635 Fed. Appx.at 439-450 (reversing
16 defendant’s probationary for bribery and agreeing “with the reasoning of the Sixth,
17 Seventh, and Eleventh Circuits [that b]y considering publicity, loss of law license, and
18 deterioration of physical and financial health as punishment, the court impermissibly
19 focused on the collateral consequences [and favored criminals] with privileged
20 backgrounds”). Prong (iv) does not apply because Azano has not yet served time and
21 the expected duration of a Ninth Circuit appeal will not exceed Azano’s sentence.

22 ⁴ As a general matter, a defendant should be detained immediately following a felony
23 conviction unless the defendant establishes by clear and convincing evidence that he is not
24 likely to flee or pose a danger to the community. 18 U.S.C. § 3143(b)(1)(A). As the
25 evidence at trial made clear, Azano is a vastly wealthy Mexican national with family,
26 property, and business interests throughout Mexico. Azano also has political connections
27 in Mexico and has paid hundreds of thousands of dollars to elect Mexican politicians.
28 Azano is, moreover, a member of the greater international community. He has traveled
throughout the world, doing business in South America, the Middle East, and elsewhere.
After Azano is sentenced to federal prison in the United States, given his ties to Mexico
and throughout the international community, it is likely that he will simply enter Mexico
and walk (or drive his latest roadster) beyond the reach of U.S. federal authorities. Given
his vast resources, Azano’s spouse or children can come a go between Mexico and the
United States, visiting Azano as they please. Under these circumstances, Azano cannot
establish by clear and convincing evidence that he will not flee.

CONCLUSION

1 This Court should impose upon Jose Susumo Azano Matsura a below-Guidelines
2 sentence, including a period of incarceration of 72 months, a \$560,955.00 fine, a three-year
3 period of supervised release, and a mandatory special assessment of \$3,700.
4

5
6 DATED: October 20, 2017

Respectfully submitted,

7 BLAIR C. PEREZ
8 Attorney for the United States
Acting Under 28 U.S.C. § 515

9
10 /s/ Mark W. Pletcher
11 MARK W. PLETCHER
12 PHILIP L.B. HALPERN
HELEN H. HONG
BILLY JOE MCLAIN
Assistant U.S. Attorneys
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 14-CR-0388-001-MMA

Certificate of Service

v.

JOSE SUSUMO AZANO
MATSURA,

Defendant.

IT IS HEREBY CERTIFIED THAT:

I, Mark W. Pletcher, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893. I am not a party to the above-entitled action.

I have caused service of this SENTENCING MEMORANDUM by electronically filing it with the U.S. District Court for the Southern District of California using its ECF System, which electronically notifies the parties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 2017.

/s/ Mark W. Pletcher
Assistant U.S. Attorney



BOB FILNER
MAYOR OF SAN DIEGO

EM-CLANCY-000099

VICTOR N. PIPPINS, Jr.
California Bar No.
Higgs, Fletcher & Mack
410 West A Street, Suite 2600
San Diego, California 92101
Tel: (619) 236-1551
Fax: (619) 696-1410

Email: PippinsV@higgsllaw.com

Attorneys for Jason Wolter

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE SUSUMO AZANO MATSURA (1),

Defendant.

Crim. Case No.: 14CR0388-MMA

**DECLARATION OF JASON
WOLTER**

I, Jason Wolter, hereby declare and state:

1. In early 2011, I began working for Jose Susumo Azano Matsura. Mr. Azano agreed to pay me \$7,000 per month, plus a 5% commission on all properties that I purchased on Mr. Azano's behalf.

2. Although I was originally hired to help identify real estate investment opportunities, Mr. Azano made it clear that I was also responsible for doing any other required task. These tasks included going to the convenience store to buy bottled water, jetting around the world on family vacations, and accompanying Susu to nightclubs. Eventually, my position evolved into being, essentially, a loyal servant.

3. As an employer, Mr. Azano was extremely demanding and became enraged when something that I did for him was not to his liking. At these and other times, Mr. Azano made it crystal clear that if I did not do something that was requested, I would have

1 to find another job. I understood that I had absolutely no choice but to do anything he
2 asked, or I'd be fired.

3 4. When I was originally asked to assist him in soliciting donations for Bonnie
4 Dumanis, I didn't give it much thought. It was just part of my job; another task I was
5 expected to do for Mr. Azano. As with other such tasks, I recognized that I had no choice
6 but to do obtain the donations if I wanted to keep my job. Saying "no" to Mr. Azano was
7 not an option.

8 5. Eventually, all the strain of working for Mr. Azano became too stressful. I
9 got fed up with Azano trying to control my behavior with money and treating me in a
10 demeaning fashion. I resigned in early 2014.

11 DATED: October 24, 2016

12
13 
14 _____
15 JASON WOLTER

16
17
18
19
20
21
22
23
24
25
26
27
28