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ATTORNEYS FOR Defendant,
TERRENCE JOHN COX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiffs,

v.

TERRENCE JOHN COX,

Defendants.

Case No: **1:22-cr-00214-NODJ-BAM**

**SENTENCING MEMORANDUM AND
FORMAL OBJECTIONS TO
PRESENTENCE INVESTIGATION
REPORT**

Date: December 15, 2025
Time: 10:00 am
Judge: NODJ

Defendant, TERRENCE JOHN COX, by and through his counsel, MARK W. COLEMAN of LAW OFFICE OF MARK W. COLEMAN, hereby submits the following as his Sentencing Memorandum and Formal Objections to Presentence Investigation Report.

In the five sections that follow, the defense provides the Court with information necessary to impose a sentence that is "sufficient, but not greater than necessary" under 18 U.S.C. section 3553(a). First, we summarize Mr. Cox's personal and professional background to give context to the circumstances that led to the underlying conduct. Second, we address the financial transactions at issue organized by each alleged victim in order to show that the underlying conduct was undertaken to sustain community-based ventures, that no party suffered actual economic loss, and that multiple parties have affirmed that they are not victims. Third, we

1 set forth specific objections to the "Presentence Investigation Report" referencing factual errors,
2 loss calculations and victim designations. Fourth, we address the section 3553(a) factors ---
3 including Mr. Cox's history, his caregiving responsibilities, the impact incarceration would have
4 on innocent third parties, and his continued work serving vulnerable communities---all to explain
5 why a downward variance to a probationary sentence is warranted. Fifth, we have provided our
6 suggested guidelines calculation and a sentencing analysis using the Judiciary Sentencing
7 Information online tool ("JSIN").
8

9 **I.**

10 **PERSONAL AND PROFESSIONAL BACKGROUND**

11 Terrence John ("TJ") Cox grew up in a family that emphasized responsibility, fairness,
12 and service to others. His father, an engineering professor, and his mother, an Equal Employment
13 Opportunity officer, showed him, through their work and how they treated people, the
14 importance of hard work, perseverance, and helping those around you. When his father was
15 killed in a car accident while TJ was still in high school, he was forced to grow up quickly,
16 supporting himself through college and earning a degree in chemical engineering. He then spent
17 ten years in engineering and construction management across the United States, Africa, and the
18 Middle East, gaining a deep appreciation for the challenges facing different communities and
19 countries across the globe.
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21 In 1992, Mr. Cox and Kathleen Murphy married and moved to San Francisco, where she
22 began her pediatric residency. Three years later, they relocated to Dallas for Dr. Murphy's
23 pediatric intensive care fellowship. As they started their family, Mr. Cox shifted his career path,
24 earning an MBA and moving into more flexible work so he could manage the home front while
25 Dr. Murphy's schedule centered on the hospital. It was a practical adjustment that supported both
26 their family's needs and the shared direction they envisioned for their future.
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1 In 2000, Mr. Cox and Dr. Murphy, relocated their family to Fresno out of a shared
2 conviction that their skills were most needed in the Central Valley. Today, their greatest pride is
3 their four children, each of whom has followed a path grounded in service, compassion and
4 community. Daughter, Molly (28), recently completed a Master of Public Administration
5 program at Syracuse University after several years working with "Soccer Without Borders,"
6 where she helped refugee and newcomer youth acclimate to life in the United States. Son Joseph
7 (26) is pursuing a master's in education, inspired by his experience substitute teaching primary-
8 grade autistic students. Son Thomas (23) is a Midshipman at the United States Naval Academy
9 and will be commissioned as a Naval Officer this coming May. Their youngest, son Jack (21), is
10 a fourth-year architecture student with a passion for net-zero and sustainable design.
11

12 As Scott Miller, owner of Gazebo Gardens and President of the Fresno Chamber of
13 Commerce observed, "I have never encountered a more loving, supportive, and grounded
14 family." Ms. Deborah Nettell, former principal of Our Lady of Victory School, has stated that
15 "Mr. and Mrs. Cox instilled in their children faith, service, integrity, responsibility and moral
16 character." It was this combination of personal hardship, family values and a commitment to
17 community that shaped not only who Mr. Cox is as a father and husband but also shaped the
18 professional choices he made and his community-focused work across the Central Valley.
19

20 Mr. Cox's professional life has been devoted to economic development in underserved
21 areas. In 2009, while volunteering with Habitat for Humanity, he became aware of the New
22 Markets Tax Credit program to spur private investment in distressed communities. Realizing
23 that the Central Valley lacked an organization dedicated to advocating for its eligibility under the
24 program, he created Central Valley NMTC Fund (CVNMTC). Over the next nine years through
25 CVNMTC, he raised and deployed more than 125 million dollars in direct, below-market
26 financing for organizations serving low-income communities.
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1 During this time, Mr. Cox also became involved with additional community focused
2 ventures, including a community sports foundation, senior housing facilities, and an almond
3 processing business. These enterprises operated in distressed areas and employed local workers
4 who relied on the stability of these operations. As several of these ventures faced urgent cash
5 flow problems, Mr. Cox created fake accounts and began moving funds between related entities
6 in an effort to keep facilities open, avoid layoffs, and prevent the collapse of community serving
7 projects. These were illegal attempts to sustain valuable organizations not to enrich himself.

8
9 Illegal activities were identified, acknowledged by partners, and corrected internally long
10 before the FBI investigation or federal charges. Various partners, including Terrence Frazier
11 (Granite Park), Joe Rossi (California Custom Processing), and Oliver Baines (CVNMTC), affirm
12 that they do not consider themselves or their organizations victims and assert that they have not
13 suffered any loss. Their continued support reflects the reality that Mr. Cox's underlying conduct
14 consisted of efforts to keep community enterprises operational during periods of financial
15 distress and not to profit personally. Mr. Cox worked to stabilize their organizations, and any
16 irregularities were resolved cooperatively and transparently among partners, lenders, and
17 investors.

18
19 In the end, each of the organizations in which Mr. Cox was involved have survived and
20 continue to thrive as a result of his efforts. In contrast, Mr. Cox has experienced devastating
21 personal and financial consequences. He lost his businesses, his savings, and his career in the
22 NMTC industry. After serving as a U.S. Member of Congress, he cannot get a job as a substitute
23 teacher in the State of California. Despite this, he has worked to rebuild his life through what he
24 knows best - public service. In 2023 he stepped in as a volunteer to help a nonprofit (the Latino
25 Equity Advocacy & Policy (LEAP) Institute) that was near insolvency. Now serving as its CFO
26 and Program Manager, LEAP has stabilized financially, expanded to more than 40 employees,
27 secured millions in federal and state grants, and delivered transformative programs for
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1 farmworker families, including clean-energy mobility, job-training, emergency power resources
2 and recreational access.

3 Mr. Cox does not seek to excuse his conduct. He accepts full responsibility. The conduct
4 was fraudulent. He has expressed deep remorse and has taken significant steps to rectify the
5 consequences of his actions. Colleagues, partners, and community leaders uniformly describe
6 him as hardworking, committed to service, and defined by resilience and humility.

7 II.

8 FINANCIAL TRANSACTIONS, ALLEGED VICTIMS AND LOSS

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10 CVNMTC Granite Park Loan Guarantee. Mr. Cox accepts responsibility for falsely
11 signing a resolution that CVNMTC's members had approved a guarantee for the Granite Park (a
12 20-acre baseball/softball/soccer park) loan when that had not occurred. However, the members
13 subsequently reviewed, approved, and ratified the guarantee. The guarantee was disclosed in
14 CVNMTC's audited financial statements and incorporated into the valuation of Mr. Cox's
15 ownership interest during his 2019 buyout. No evidence shows that Mr. Cox personally benefited
16 from the guarantee and the Government itself acknowledged that it could not identify any
17 personal advantage. His actions were directed at supporting a public recreational facility that
18 Fresno's Mayor has described as a "jewel of the Valley." When Granite Park later defaulted,
19 CVNMTC honored the guarantee and assumed the lender's position. The loan was subsequently
20 sold for full value as a fully secured commercial asset to Land Value Management, an unrelated
21 entity that has never claimed it is a victim, has suffered no loss, and remains fully collateralized.
22 Finally, no CVNMTC manager, member, or investor has alleged fraud or harm. To the contrary,
23 CVNMTC's current leadership (Oliver Baines) has expressly stated that CVNMTC does not
24 consider itself a victim and recognizes that the organization greatly benefited from Mr. Cox's
25 work. These facts, full ratification, full disclosure, absence of loss, and absence of victims, make
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clear that the CVNMTC Granite Park loan guarantee cannot support any loss enhancement or adverse inference for sentencing.

Central Valley NMTC Fund, LLC, the organization and its partners, were aware of and ratified the loan guarantee before any charges were filed or the investigation commenced. In 2019, before Mr. Cox went to Congress, he divested his interest in preparation for going to Congress. An appraisal was prepared, which valued his interest in the corporation at \$930,000.00. He received an assignment for an unsecured note for \$800,000 and \$130,000 in cash.

Page 4 of the Central Valley NMTC Fund, LLC, appraisal notes that with Mr. Cox's help the company brought in over \$125,000,000.00 in projects designed to benefit the community:

Project Name	Project Type	Project Cost	NMTC Allocation
West Hills Community College	Sports Facility	\$22,000,000	\$10,500,000
Mendota & Parlier Health Clinics (United Health Centers of San Joaquin Valley)	Healthcare	\$18,000,000	\$9,500,000
Fresno Rescue Mission	Community Facility	\$7,000,000	\$7,000,000
Lighthouse for Children	Childcare & Community Facility	\$16,000,000	\$8,200,000
Sanger & Fowler Health Clinic (United Health Centers of San Joaquin Valley)	Healthcare	\$9,500,000	\$9,500,000
Heritage Theater	Theater	\$28,700,000	\$13,000,000
North Fork Community Power	Renewable Energy	\$7,000,000	\$6,000,000
West Hills Community College - Farm of the Future	Agricultural & Education	\$15,000,000	\$9,500,000
Central Valley Community Sports Foundation - Granite Park*	Community Park & Sports Complex	\$2,000,000	-
TOTAL		\$125,200,000	\$73,200,000

*Note: Central Valley NMTC Fund, LLC provided a loan guarantee for \$1,600,000 for this project

The illustration above clearly reflects the \$1,600,00.00 loan guarantee for Granite Park. This liability was accounted for in their financial statement and factored in Mr. Cox's buyout.

The value of the business was \$5,820,000, with a projected residual cash flow value of \$5,948,273 after Mr. Cox left the business.

It appears, based on the disclosures present in the yearly financial reports, the other members were effectively ratifying Mr. Cox's decisions regarding the money diverted by Cox.

California Custom Processing (CCP) Transactions.

1 In 2018, the members of California Custom Processing (CCP) made a decision to build a
2 new almond processing plant. At the time Mr. Cox had a 50% interest in a limited partnership,
3 CMSS II LP, which owned 7.5 acres in Madera. Joe Rossi owned an adjoining 25 acres. After
4 obtaining lot line adjustments, Cox and Rossi created a new parcel large enough for the new
5 plant, using all of the 7.5 acres owned by CMSS II LP and a portion of Rossi's adjoining
6 property.

7
8 Mr. Rossi and Mr. Cox then held title to this property in a new partnership, CMSS
9 Properties, which was 50% owned by Rossi and 50% owned by CMSS II LP. CMSS Properties
10 then obtained a loan of over \$6.5 million dollars to build a plant according to CCP's
11 specifications which CCP would lease from CMSS Properties. The loan was provided by Fresno
12 First Bank (1st Mortgage) and the SBA (2nd Mortgage). As additional security for the loan both
13 Mr. Cox and Rossi provided personal guarantees.

14 Late in the loan process, the bank required a cash deposit of over \$500,000 to close the
15 loan. Mr. Cox contributed \$400,000 in order to close the transaction. These funds were obtained
16 by an early withdrawal from his wife's pension fund which resulted in early withdrawal taxes and
17 penalties.

18 After completion, CCP took possession of the new plant under its lease which provided
19 for a monthly lease payment that covered the payments on the first and second mortgages, and an
20 additional amount payable as net rent to CMSS Properties. However, after one payment to
21 CMSS Properties, CCP was only able to pay the first and second mortgage and stopped paying
22 any rent to CMSS Properties.
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1 3. Rent. During the term of this Lease, Tenant agrees to pay rent to Landlord on or
2 before the first day of each month, in advance, without demand, to and at the address of Landlord
as set forth herein. The rent payable by Tenant under this Lease is limited to and calculated as
3 follows:

4 a. Debt service payable to Fresno First Bank in connection with its loan(s)
in the aggregate principal amount of \$3,784,000.00, as the same may be refinanced from time to
time; and

5 b. Debt service payable to Cen Cal Finance Group and the U.S. Small
6 Business Administration in connection with the 504 Loan in the aggregate principal amount of
\$3,060,000.00; and

7 c. Debt service payable to Joe Rossi & TJ Cox from CMSS Properties in
connection with the land purchase of \$1,000,000.00; and

8
9 Subsequently, Joe Rossi transferred his 50% interest in CMSS Properties to Mr. Cox in
10 exchange for a note payable of \$1,000,000. However, CCP continued with its practice of only
11 paying the first and second mortgage and not paying the full lease payment to CMSS Properties.

12 As a result, CMSS Properties was unable to pay its payments on the \$1,000,000 loan to
13 Joe Rossi. Rather than go through foreclosure, CMSS Properties quitclaimed the property to
14 Rossi.

15
16 Now, Mr. Cox, CMSS Properties and CMSS II LP no longer have the property or their
17 original 7.5 acres, resulting in a loss of their cash equity of \$400,000 and the value created of
18 over \$1,000,000, according to a 2018 appraisal.

19 The illegal transactions to which Mr. Cox has pled guilty were conducted during a period
20 of acute financial crisis at CCP and were used to meet essential operating expenses such as
21 payroll, utilities, vendor obligations and emergency repairs. Some loan proceeds were used to
22 cover Mr. Cox's personal obligations because CCP could not pay his agreed upon annual salary
23 of \$180,000. Every loan was repaid in full, with interest, either by CCP or by Mr. Cox
24 personally.

25
26 Internal communications from CCP's operating manager and from its CFO document the
27 company's continuous financial distress, including payroll shortages, overdue utilities, unpaid
28 vendors and insufficient operating cash. In response to these recurring emergencies, CCP's

managers, particularly operating manager Grant Willits, repeatedly asked Mr. Cox to secure bridge loans or use his personal credit to keep the company afloat.

Internal CCP communications paint a stark picture of constant financial instability:

- May 31, 2018: *"Cash is in trouble... We are not going to make payroll tomorrow unless we get another loan of \$50k."*

- May 25, 2018: *"Cash is really tight... Vendors are not accepting payment plans... Landlord is owed \$70k."*

- August 20, 2018: *"PG&E Almond MUST be paid \$13k by tomorrow... PG&E Aviation MUST be paid \$55k by tomorrow... payroll... still short \$30k."*

In one illustrative email, operating manager Grant Willits wrote:

"Do you have any Mafia connections that can quickly get me 250 to 500k so we can get through this rough patch? Like immediately"

In response, Mr. Cox secured a \$500,000 loan from ML Street Properties, guaranteed personally and obtained solely because of his relationship with the lender. When CCP could not repay the loan in March 2020, CCP's CFO again turned to Mr. Cox:

"We will not be able to make this payment until June... Do you know of a bridge loan for \$500k?"

In response, Mr. Cox diverted money from NMTC and solicited investments admitted to in the plea agreement.

CCP's partners and management became aware of these transactions and repeatedly ratified the company's financing structure. Year-end financial statements circulated by CFO Leighton Allen identified the loans, their repayment status, and the offsetting obligations between CCP and Mr. Cox. CCP has not made a claim for loss or fraud.

Mr. Cox absorbed substantial financial losses to protect CCP. When CCP vacated its original facility and was left with more than \$100,000 in unpaid rent, repair obligations, and restoration costs, it was Mr. Cox who personally paid those debts to shield the company. Upon his departure from CCP, he forgave more than \$300,000 in rent owed to his wholly owned entity, CMSS Properties, LLC; relinquished over \$500,000 in earned but unpaid salary; surrendered

equity in CCP worth nearly \$1,000,000; and forfeited more than \$400,000 in land-related cash equity along with approximately \$1,000,000 in value generated in the new plant. In addition, even after exiting the company, Mr. Cox continued to shoulder personal guarantees on more than \$6,500,000 in CCP loans. These are the actions of someone trying to support a business, not exploiting one.

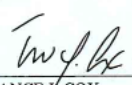
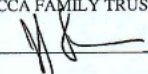
Yes, Mr. Cox created false accounts, diverted money, and made unauthorized guarantees, but he did not do so for personal gain.

Below is a mutual release executed by CCP and Mr. Cox. There was also a release signed wherein they agreed to pay Mr. Cox \$250,000, evidencing Mr. Cox's claim.

MEMBERSHIP INTEREST ASSIGNMENT SEPARATE FROM CERTIFICATE
FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Terrance J. Cox ("Assignor") hereby assigns Seventy-Five Hundredths percent (0.75%) of his membership interest in California Custom Processing, LLC, a California limited liability company (the "Company") registered in the name of Terrance J. Cox on the books and records of the Company to the Sedacca Family Trust of 11661 San Vicente Blvd., Los Angeles, California 90049 (the "Assignee") and Assignee hereby accepts such assignment and agrees to keep, perform and fulfill all the terms covenants and conditions of the Operating Agreement for the Company, and if requested to do so, agrees to execute the original signature page of the Operating Agreement or a counterpart signature page thereto.

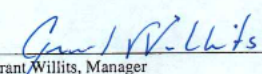
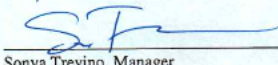
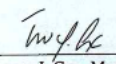
This Assignment is made and entered into this 1 day of January, 2019.

<p>"Assignor"</p> <p style="text-align: center;"></p> <p style="text-align: center;">TERRANCE J. COX</p>	<p>"Assignee"</p> <p style="text-align: center;">SEDACCA FAMILY TRUST</p> <p style="text-align: center;">By  , Trustee</p>
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CONSENT BY MANAGERS

Pursuant to Section 7.1 of the Operating of California Custom Processing, LLC, the undersigned Managers of California Custom Processing, LLC, do hereby consent to the assignment of Seventy-Five Hundredths percent (0.75%) membership interest in California Custom Processing, LLC by the Assignor to the Assignee as mentioned in the foregoing and admits such Assignee as a Substituted Member of California Custom Processing, LLC.

Dated: 1/1/2019, 2019

<p style="text-align: center;"></p> <p style="text-align: center;">Grant Willits, Manager</p>	<p style="text-align: center;"></p> <p style="text-align: center;">Sonya Trevino, Manager</p>
<p style="text-align: center;"></p> <p style="text-align: center;">Terrance J. Cox, Manager</p>	

1 Mark Terry/Biorex. The allegation that Mr. Cox defrauded Mark Terry or Verdure
2 Technologies (now Biorex) is wholly inconsistent with the parties' contract and the undisputed
3 history of their dealings. The \$40,000 at issue was a contractually non-refundable deposit, earned
4 under the 2013 agreement if Verdure failed to secure leverage financing necessary to close the
5 NMTC transaction. Verdure never produced a committed leverage lender at any time from 2013
6 to 2019, making the deposit non-refundable. No misrepresentation induced payment and no
7 contractual obligation was breached.

8 Mr. Terry's conduct for nearly a decade further confirms that no fraud or loss occurred.
9 He never requested return of the deposit, never claimed loss, sent no demand letter, and
10 continued working with Mr. Cox and CVNMTC on additional projects. Courts routinely view
11 such continued cooperation as evidence that the party did not view itself as defrauded.

12 Probation relies on Mr. Terry's recent claim that the lost deposit caused severe financial
13 hardship, yet in 2020 he reported breaking ground on a sixty million (\$60,000,000) dollar
14 renewable natural gas facility, later listed as "operational" in EPA records with Biorex as the
15 project developer. There is no loss. The payment was earned under the contract. The forfeited
16 \$40,000 reflects Verdure's inability to meet its own financing obligations, not fraud by Mr. Cox.
17 There was no misrepresentation, no reliance, no causation and no loss. The allegation cannot
18 support a victim designation or any loss enhancement.

19 Noblat Loan. The loan from Michel Noblat was a voluntary, fully documented personal
20 loan between longtime friends. Nothing in its history suggests deception, loss or criminal intent.
21 In early 2018, Mr. Cox borrowed \$200,000 from Mr. Noblat, who had previously invested with
22 him. In 2019, by mutual agreement, the loan was refinanced into a \$400,000 note from CMSS
23 Properties, LLC. After refinancing, the obligation became CMSS Properties and Mr. Cox's
24 personal debt, not a CCP liability, and he has made every payment since the loan's inception.
25 Following Mr. Noblat's death in 2020, Mr. Cox continued paying his adult children. When the
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1 indictment significantly reduced his income, he contacted the family and negotiated a reduced
2 payment of \$2,000 per month and has never missed a payment under this modified arrangement.
3 He currently devotes nearly 40% of his take-home income from LEAP toward honoring this
4 obligation. The Noblat family has never claimed loss and has never characterized themselves as
5 victims. Their only interest is continued repayment, an interest shared by Mr. Cox. Courts
6 recognize regular repayment as indicators of good-faith intent, not fraud.
7

8 No loss should be attributed to this loan. There has been no actual loss (payments have
9 been made continuously), no intended loss (the parties consistently cooperated) and no victim
10 (the family has never alleged harm). Moreover, incarceration would halt repayment and harm
11 innocent third parties, a factor courts may consider under 18 U.S.C. section 3553(a). In short, the
12 Noblat loan reflects Mr. Cox's integrity and commitment to honor his obligations. The evidence
13 shows consistent payments, transparency, and good faith, not criminal conduct, and strongly
14 supports a sentence that allows Mr. Cox to continue working to fulfill this obligation.

15 Thomas Loan. The long-standing personal loan from Larry and Teresa Thomas reflects a
16 genuine good-faith lending relationship that began in 2009 and continued without dispute for
17 nearly fifteen years. Mr. Cox borrowed \$100,000 at an agreed-upon interest rate of 18 percent,
18 and for more than a decade made regular payments, ultimately paying over \$219,000 in interest,
19 more than twice the original principal. The payment ledger submitted by Mrs. Thomas confirms
20 that between 2017 and 2022 Mr. Cox made 45 payments, missing only a few during periods of
21 financial strain. He maintained open communication with Mr. Thomas about payment timing,
22 demonstrating transparency rather than concealment. Payments continued through June 2022,
23 just weeks before the indictment that abruptly ended his income and ability to pay. After
24 indictment, Mr. Cox was instructed not to contact Mrs. Thomas directly, and the financial and
25 employment consequences of the charges made further payment impossible.
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1 Mr. Cox did not discharge the Thomas loan in bankruptcy because he intends to repay it
2 in full, and his payment history demonstrates that commitment. Courts recognize where
3 restitution is achievable and the victim desires repayment, incarceration may be
4 counterproductive. See, *United States v. Edwards*, 595 F.3d 1004, 1016 (9th Cir. 2010).
5 Imprisonment would eliminate Mr. Cox's ability to earn income and make further payments,
6 directly undermining Mrs. Thomas's stated goal. In sum, the Thomas loan is a private civil debt
7 characterized by transparency, consistent payments, and a clear intent to honor the obligation.
8 The missed payments arose solely from the financial and practical disruptions following
9 indictment, not from fraud. Under section 2B1.1, there is no actual or intended loss, and a
10 noncustodial sentence is the only path that allows Mrs. Thomas to be repaid.
11

12 III.

13 OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

14 Paragraphs 16 & 18. The PSR's "Net Diversion Amount" of \$1,060,336.78 should be
15 reduced by one-third (\$353,445.59) for Mr. Cox's one-third ownership interest in CVNMTC, as
16 one-third of any diversions were his property. As a result, the "Net Diversion Amount" should be
17 \$706,891.19.

18 Paragraph 17. As fully explained above, the Terry/Biorem deposit became contractually
19 non-refundable due to the sponsor's failure to obtain leverage financing and was fully earned by
20 CVNMTC. The Terry/Biorem deposit should not be considered a loss and Terry/Biorem is not a
21 victim.
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23 Paragraphs 21 & 22. The record shows that investors received both equity and fixed-rate
24 returns. All investor advances were ratified by CCP's manager and CFO. No investor claims loss
25 and several have submitted supporting letters. All loans referenced in Paragraph 22 were paid in
26 full, either by CCP, by Mr. Cox personally, or through CMSS refinance.
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1 Paragraph 23. The PSR incorrectly implies Mr. Cox diluted partner shares. No partner's
2 share was diluted, only Mr. Cox's shares were adjusted by agreement. Emails demonstrate Mr.
3 Cox informed partners about plant tours and negotiations. Mr. Cox surrendered his 16% interest
4 in CCP, valued at \$960,000, to satisfy obligations and make investors whole. CCP received
5 substantial credits from funds paid to vendors, the surrender of Mr. Cox's equity, and the loss by
6 Mr. Cox of more than \$1,400,000 in personal equity and investment contributions.

7 Paragraphs 22 & 24. As fully explained above, the PSR incorrectly treats the Noblat loan
8 as CCP-related and unpaid. Mr. Cox has made all required payments to date. The Noblat loan
9 should not be considered a loss and the Noblat family are not victims.
10

11 Paragraph 25. The PSR omits Mr. Cox's extensive payment history regarding the Thomas
12 loan. As fully explained above, Mr. Cox did not attempt to discharge this loan in bankruptcy and
13 remains committed to repayment.

14 Paragraphs 26-30. The PSR omits that CVNMTC's full membership ratified the loan
15 guarantee prior to any investigation. This ratification appears in CVNMTC's audited financial
16 statements (2018-2023) and the Novogradac appraisal. The Novogradac appraisal in 2018
17 confirms this position. As more fully explained above, Land Value Management is not a victim.
18 It purchased the Granite Park note at full value. It remains fully secured and does not claim a
19 loss.
20

21 Paragraphs 31-36. These paragraphs should be struck because the matters described do
22 not constitute relevant conduct.

23 Paragraphs 38 & 51. Even though CVNMTC is currently claiming they are not a victim
24 and that they sustained no loss, Defendant has agreed to a guideline's calculation based upon a
25 loss of over \$550,000. The only "loss amount" attributed to Mr. Cox should be the CVNMTC
26 figure of \$706,891.19, as calculated above based on his one-third ownership of CVNMTC. Even
27 then, Mr. Cox's share of the appraised value of CVNMTC was reduced by \$1,000,000,
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1 essentially repaying the amount diverted. This puts the loss in the guideline range of \$500,000 to
2 \$1,500,000 and conforms to the plea agreement range.

3 Paragraph 40. For the reasons stated above, Terry/Biorem should not be considered a
4 victim and should not be entitled to restitution. As stated above, Mr. Cox is committed to
5 repaying his obligation to Teresa Thomas. Although CVVNMTC and CCP could theoretically
6 qualify as victims, neither consider themselves victims nor make no claims for restitution. Land
7 Value Management is not a victim and makes no claim for restitution.

8 Paragraph 112. The plea agreement caps restitution at \$3.5 million but is otherwise silent
9 as to the amount and method for determining the same. For its part, the PSR recommends that
10 the Court order \$140,000 in restitution. However, the Sixth Amendment requires that any
11 restitution amount must be set forth in the indictment and proved to a jury beyond a reasonable
12 doubt by a jury, and Mr. Cox has not expressly waived those requirements. As the Court is well
13 aware, *Apprendi* held that any fact, other than a prior conviction that “increases the penalty for a
14 crime beyond the prescribed statutory maximum” must be included in the indictment and proven
15 to the jury beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). While
16 the U.S. Supreme Court has held that *Apprendi* applies to criminal fines, *Southern Union Co. v.*
17 *United States*, 567 U.S. 343 (2012), it “has yet to hold whether *Apprendi* applies to restitution.”
18 *United States v. Green*, 722 F.3d 1146, 1148 (9th Cir. 2013).

19 On October 14, 2025, the U.S. Supreme Court heard oral argument in *Ellingburg v.*
20 *United States*, 24-482. In *Ellingburg*, the issue presented was whether restitution under the
21 MVRA is a criminal penalty for purposes of the *Ex Post Facto* clause. The defendant in
22 *Ellingburg* had an order of restitution imposed on him under the VWPA, the prior statute
23 governing orders of restitution, which carried a 20-year limitations period on collections. *See*
24 *United States v. Ellingburg*, 113 F.4th 839, 840-41 (8th Cir. 2024) (per curiam). During the
25 defendant’s imprisonment, the 20-year collection period ran, and so he believed the remaining
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balance was no longer collectible. *Id.* at 841. Also during his incarceration, the MVRA was passed, which removed the 20-year collection cap. *Id.*

On petition for *certiorari* to the Supreme Court, the Government agreed with the petitioner that restitution was a criminal penalty. Accordingly, the Supreme Court appointed *amicus* to argue that restitution is not a criminal penalty. But as *amicus* argued in its brief, if restitution is a criminal penalty, then the Sixth Amendment applies to it such that, per *Apprendi*, the amount of restitution is an element of the offense and therefore would have to be charged in the indictment and either admitted by the defendant or found by a jury beyond a reasonable doubt. According to *amicus* in *Ellingburg*,

the “Sixth Amendment reserves to juries the determination of any fact, other than the fact of a prior conviction, that increases a criminal defendant’s maximum potential sentence.” *S. Union Co. v. United States*, 567 U.S. 343, 346 (2012). The Court has applied that rule “to criminal fines,” and thus juries must “find beyond a reasonable doubt facts that determine [a] fine’s maximum amount.” *Id.* at 346, 350. ***If MVRA restitution were also deemed criminal punishment, the same rule would presumably apply.*** And because the MVRA requires judges to find by a preponderance of the evidence facts that increase the maximum amount of restitution, 18 U.S.C. § 3664(e), ***MVRA restitution would violate the Sixth Amendment were it criminal punishment***—a serious problem with the government’s position in this case that it brushes off in a footnote (Br. 26 & 27 n.3). *See Hester v. United States*, 586 U.S. 1104, 1105-07 (2019) (Gorsuch, J., dissenting from the denial of certiorari).

Br. of *Amicus Curiae* ISO Judgment Below, *Ellingburg v. United States*, No. 24-482, Aug. 22, 2025, at 30-31 (emphasis added).¹

“[O]nce we recognize restitution as being a ‘criminal penalty’ the proverbial *Apprendi* dominoes begin to fall. . . . [I]t dictates a conclusion that the district court’s order imposing a restitution amount violates the Sixth Amendment’s jury guarantee because . . . [the] amount was based upon facts not admitted to by [the defendant] or found by a jury beyond a reasonable doubt.” *United States v. Carruth*, 418 F.3d 900, 906 (8th Cir. 2005) (Bye, J., dissenting). As the

¹ Available at 20250822142119142_Brief of court-appointed amicus ISO of judgment below.pdf

Government now agrees that restitution is criminal in nature, no restitution amount may be imposed as the amount was neither alleged in the indictment nor admitted by Mr. Cox in his plea agreement.

IV.

18 U.S.C. § 3553(a) FACTORS

The following factors under 18 U.S.C. § 3553(a), many of which were not fully addressed in the Presentence Report, support a downward variance to a probationary sentence.

As the Supreme Court held in *United States v. Booker* and *United States v. Fanfan*, the Guidelines are advisory, and the Court must impose a sentence “sufficient, but not greater than necessary” to achieve the purposes of sentencing. A holistic evaluation of the statutory factors demonstrates that imprisonment would be greater than necessary and would inflict substantial, irreversible harm on innocent third parties and the community Mr. Cox continues to serve.

(A) The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The conduct underlying this case occurred during periods of severe financial distress in several community-serving ventures. The evidence overwhelmingly shows that Mr. Cox moved funds not to enrich himself, but to keep organizations, including sports facilities, almond processing operations, and community development project, afloat during exigent circumstances.

Equally important, these issues were identified, addressed, and corrected internally before any FBI investigation or federal charges.

The partners who worked most closely with Mr. Cox - Terrence Frazier (Granite Park), Joe Rossi (CCP), and Oliver Baines (CVNMTC) - have all stated that they were not victims of Mr. Cox in any respect. To the contrary, they credit him with contributing significantly to their organizations’ success. Each confirms that they suffered no financial loss, that Mr. Cox acted in

1 good faith, and that any financial questions or irregularities were addressed cooperatively,
2 transparently, and fully resolved long before the government became involved.

3 Mr. Cox's history and character reflect a sustained, substantive commitment to improving
4 the lives of people in his community. For more than two decades, he has focused his professional
5 efforts on economic development and public service in the Central Valley. Through the Central
6 Valley NMTC Fund, he secured and deployed over \$125 million in below-market financing for
7 medical clinics, senior facilities, food-access programs, social-service providers, clean-energy
8 projects, and affordable housing - investments that continue to benefit tens of thousands of
9 residents in low-income communities. The clinics he helped finance alone now provide more
10 than 100,000 medical appointments each year. His involvement in establishing Granite Park,
11 Gateway Ice Center, youth sports programs, and job-creating industrial facilities further
12 underscores his dedication to expanding opportunities in underserved areas.

13
14 During his time in Congress, Mr. Cox continued prioritizing meaningful, community-
15 centered outcomes. He was known for his accessibility, strong constituent services, and
16 bipartisan work to protect federal employees during government shutdowns. He authored the
17 Wounded Warrior Access Act, helped craft the Farm Workforce Modernization Act, and secured
18 more than \$200 million to repair the Friant-Kern Canal, initiatives that continue to benefit
19 veterans, farmworkers, and families across the Valley.

20
21 Together, these accomplishments reflect a life devoted to public service and expanding
22 opportunities in low-income and underserved communities. They stand in sharp contrast to any
23 suggestion of personal gain and instead demonstrate a consistent pattern of integrity, community
24 investment, and service to others.

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1 **(B) The Need for the Sentence Imposed**

2 Mr. Cox's acceptance of responsibility has been complete. He has suffered severe
3 personal, financial, and reputational consequences. He lost businesses, savings, retirement
4 accounts, and his congressional career. He will remain a convicted felon for life.

5 He has to live with the fact that his family, all doing well, have suffered extreme
6 embarrassment by this conviction.

7 Incarceration is not necessary to achieve deterrence or respect for the law. Courts
8 consistently recognize that individuals like Mr. Cox, first-time offenders, non-violent, deeply
9 remorseful, and already devastated by collateral consequences, pose an extremely low risk of
10 reoffending.

11 Nothing in Mr. Cox's history suggests he poses a danger to the public. His decades of
12 service and professional achievements demonstrate the opposite.

13 **(C) The Kinds of Sentences Available and Guideline Considerations**

14 The Court has broad authority to impose probation, home detention, community service,
15 or other non-custodial options. Under Booker, these are fully appropriate where the § 3553(a)
16 factors support them, as they do here.

17 A probationary sentence aligns with national outcomes in comparable first-time, non-
18 violent financial-offense cases involving no personal gain and limited or disputed loss.

19 Mr. Cox remains committed to fulfilling all restitution and personal financial obligations.
20 Incarceration would eliminate his ability to earn income and repay those who seek repayment,
21 including families such as the Thomas and Noblat children. A non-custodial sentence maximizes
22 restitution rather than foreclosing it.

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(D) Impact on Innocent Third Parties

1. Impact on LEAP Institute and the Community

The Latino Equity Advocacy & Policy (LEAP) Institute is a small nonprofit serving farmworker and underserved rural communities. When Mr. Cox began assisting LEAP in 2023, the organization was effectively collapsing. As Executive Director and Mayor Reynaldo Leon explain, LEAP faced a negative bank balance, more than \$30,000 in delinquent payroll taxes, frozen grant reimbursements, stop-work orders, and imminent bankruptcy. With no resources to hire professional staff, Mr. Cox initially volunteered his time and became the only person capable of stabilizing the organization.

Since then, Mr. Cox has served as LEAP's de facto CFO, HR director, program manager, compliance officer, and grant administrator. He rebuilt the organization's financial and administrative systems, restored grant compliance, and preserved millions in existing funding. Under his leadership, LEAP has secured over \$3 million in new grants, expanded its service area, implemented employee health benefits, and grown to a staff of roughly 40 - many of whom are individuals with employment barriers.

LEAP leadership unanimously states that Mr. Cox is irreplaceable. His combination of financial, administrative, grant-management, and program-development expertise is unique, and LEAP lacks the budget to hire a qualified replacement - particularly in rural Huron, California. Without him, LEAP would likely return to the crisis he resolved, jeopardizing the livelihoods of 40 employees, millions in state and federal grants, and essential services to vulnerable populations.

Federal courts recognize that incarceration may be unwarranted where it would inflict disproportionate harm on innocent third parties. Those concerns apply squarely here: incarcerating Mr. Cox would cripple LEAP's operations, undermine public grant investments,

1 and harm the very communities the organization exists to serve. It would also impede his ability
2 to continue repaying outstanding financial obligations.

3 **2. Impact on Mr. Cox's 93-Year-Old Mother**

4 Mr. Cox is the sole caregiver and only regularly present child for his 93-year-old mother,
5 who suffers from advanced dementia. Her emotional stability depends on weekly visits with her
6 son, who is her one remaining link to family and familiarity.

7 Three years ago, when it became clear his mother was not receiving adequate care in
8 Reno, Mr. Cox moved her to Fresno so that he could take responsibility for her well-being. Since
9 then, he has been the only child consistently involved in her daily life; his two brothers, who
10 remain in Nevada, have not visited her once since her relocation.

11 Although Mrs. deCastro-Davis resides in an assisted-living facility, her emotional
12 stability depends entirely on her weekly visits with her son. Every Sunday, Mr. Cox brings her to
13 Mass and then to his home, an anchoring routine that she still recognizes despite her cognitive
14 decline. As his daughter Molly writes, these visits are "the highlight of her week" and the only
15 time she is surrounded by people she knows and trusts.

16 If Mr. Cox were incarcerated, there is no family member in California capable of filling
17 this role. Given her advanced dementia, she would not understand his absence; she would simply
18 experience confusion, abandonment, and the permanent loss of the one person she still
19 recognizes. For a woman of her age and condition, that harm would be immediate, profound, and
20 irreversible.

21 Federal courts have repeatedly emphasized that sentencing must consider the impact on
22 innocent, vulnerable third parties, particularly elderly or medically fragile dependents.

23 That is precisely the case here. Mrs. deCastro-Davis relies on Mr. Cox for the only
24 meaningful familial connection she has left. Incarceration would sever that bond completely. A
25 non-custodial sentence is the only outcome that avoids devastating and permanent harm to an
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elderly woman who depends on her son for emotional stability, companionship, and dignified care.

V.

GUIDELINES CALCULATION

Based on the plea agreement and the foregoing, we calculate Mr. Cox's sentencing guidelines as follows:

7	Base offense
+14	Loss of (\$500-1.5mil)
<u>+2</u>	Abuse of position of trust
23	
-3	Acceptance of Responsibility
<u>-2</u>	Criminal History – Zero Points
18	27-33 months

Part F (Factors That May Warrant a Sentence Outside of the Advisory Guideline System)

A. Noncustodial Sentences are Warranted for Zero Point Offenders

As the PSR correctly indicates, pursuant to USSG § 4C1.1, Mr. Cox is eligible for the two-level downward adjustment for being a Zero Point Offender. While the Commission recently removed all departure considerations from the Guidelines (save for USSG §5K1.1), USSG App. C, Amend. 836, when it first promulgated USSG § 4C1.1 on November 1, 2023, it had also promulgated a companion downward departures at USSG §5C1.1, comment. (n.10(B)), which this Court may and should still consider as a ground for variance. Moreover, the PSR calculated Mr. Cox's Guidelines range using the 2024 version of the Guidelines Manual, which contained this companion departure provision. PSR at 13, ¶ 48.

As an analogy for a variance, pursuant to Application Note 10(B) of USSG §5C1.1, "A departure, including a departure *to a sentence other than a sentence of imprisonment*, may be appropriate if the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range overstates the gravity of the offense because the offense of conviction *is not a crime of violence or an otherwise serious*

1 *offense*. See 28 U.S.C. § 994(j).” (Emphasis added). In turn, 28 U.S.C. § 944(j) provides that
 2 “The Commission shall insure that the guidelines reflect the general appropriateness of imposing
 3 a sentence other than imprisonment in cases in which the defendant is a first offender who has
 4 not been convicted of a crime of violence or an otherwise serious offense, and the general
 5 appropriateness of imposing a term of imprisonment on a person convicted of a crime of
 6 violence that results in serious bodily injury.” As Mr. Cox qualifies for the adjustment under
 7 §4C1.1, the advisory range clearly overstates the seriousness of the offense as discussed in the
 8 next section, and he was not otherwise convicted “of a crime of violence that result[ed] in serious
 9 bodily injury,” this Court may and should consider a variance down to a non-custodial sentence
 10 consistent with the intent of both Congress and the Commission.
 11

12 *B. The Vast Majority Similarly Situated Offenders Receive Downward Variances*

13 The PSR does not identify any grounds that warrant a sentence outside the advisory
 14 Guideline range. Based on the above Guidelines calculation, the advisory sentencing range is 51
 15 to 63 months. The PSR recommends a bottom-of-the-range sentence of 51 months. Such a
 16 sentence would constitute an unwarranted sentencing disparity as the vast majority of individuals
 17 with the exact same Guidelines calculation receive sentences well below 51 months.
 18

19 In 2023, the Federal Judicial Center in conjunction with the U.S. Sentencing Commission
 20 launched the Judiciary Sentencing Information (sic) online tool (“JSIN”).² JSIN “provides five
 21 years of cumulative data for people who were convicted of a similar or the same crime, have a
 22 similar criminal history, and have been convicted of an offense that falls under the same
 23 sentencing guideline.”³ Dozens of district courts across the United States have begun routinely
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25
 26 ² Administrative Office of the U.S. Courts *Judiciary Studies Use of Online Tool in*
Presentence Reports, last updated on Apr. 28, 2023,
 27 [https://www.uscourts.gov/news/2023/01/25/judiciary-studies-use-online-tool-presentence-](https://www.uscourts.gov/news/2023/01/25/judiciary-studies-use-online-tool-presentence-reports)
 reports.

28 ³ *Id.*

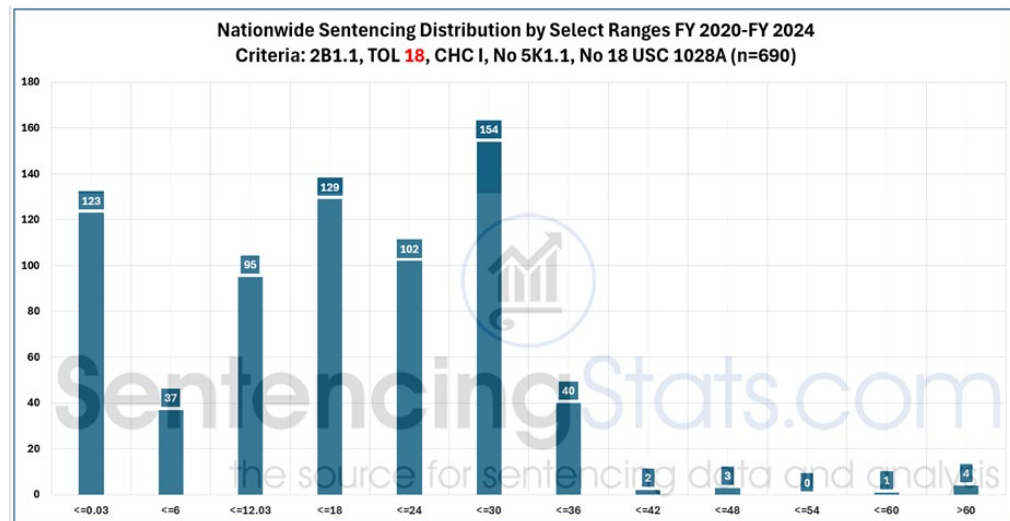
incorporating the results of JSIN runs into PSRs for consideration by courts at sentencing, including those within the Ninth Circuit.⁴

Accordingly, the PSR should note in Part F that to avoid unwarranted sentencing disparity, the Court should impose a substantial downward variance.

Per JSIN, "[d]uring the last five fiscal years (FY2020-2024), there were 690 defendants whose primary guideline was §2B1.1, with a Final Offense Level of 18 and a Criminal History Category of I, after excluding defendants who received a §5K1.1 substantial assistance departure. . . . [T]he average sentence imposed was 18 month(s) and the median sentence imposed was 18 month(s)."

A review of the sentencing data for the 690 defendants JSIN identified, 488 (70.7%) received a sentence below 27 months, i.e., below the minimum of the advisory range of 27 to 33 months. The average sentence for those receiving a below-range sentence was just 11.8 months.

Below is a histogram illustrating the distribution of the 690 defendants JSIN identified. As indicated, 123 (17.8%) received a sentence of no greater than a single day. In other words, more than one out of every six similarly situated defendants received a sentence of no greater than a single day.



⁴ *Id.* (reporting that the Eastern and Western Districts of Washington are participating in a two-year pilot study utilizing JSIN in PSRs).

VI.

CONCLUSION

Given the circumstances of this case, and taking into consideration Mr. Cox's life of service, he believes a sentence of probation with up to a year of home confinement would meet the purposes of 3553 factors.

Dated: December 1, 2025.

Respectfully Submitted,

LAW OFFICE OF MARK W. COLEMAN

/s/ Mark W. Coleman

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