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10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JOSEPH SULLIVAN,

18 Defendant.

Case No. 3:20-cr-00337-WHO

DEFENDANT JOSEPH SULLIVAN'S
 SENTENCING MEMORANDUM

Date: May 4, 2023

Time: 1:30 p.m.

Crtrm: 2, 17th floor

Hon. William H. Orrick

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1 **INTRODUCTION**

2 Joe Sullivan has lived an exemplary life marked by hard work, integrity, and a
3 commitment to doing the right thing. The eldest of seven children, his parents’ strong work ethic,
4 patriotism, and deep faith instilled lasting values in Mr. Sullivan and his siblings. Due to the
5 family’s financial struggles, Mr. Sullivan started working while in the eighth grade and paid a
6 large share of his own college and law school expenses.

7 Guided by his parents’ example, he also embarked early on what has been a lifetime
8 journey of public service. That journey began after law school, when Mr. Sullivan joined the
9 U.S. Department of Justice, where he ultimately became an inaugural member of the DOJ’s first
10 unit focused on prosecuting cybercrime. That work became Mr. Sullivan’s professional passion.
11 Ultimately persuaded that he could help people even more effectively as a member of the
12 technology industry, Mr. Sullivan left the DOJ in 2002 to begin a long career of innovative and
13 principled leadership in the private sector while volunteering to support organizations assisting
14 children and serving underrepresented groups. Even now, after the trial, his commitment to
15 bettering society is evident by his work volunteering as the CEO of a nonprofit providing
16 humanitarian aid to the people of Ukraine.

17 The values that have guided Mr. Sullivan’s life have earned him the universal respect of
18 his professional colleagues, family, and friends. The conduct for which the jury convicted Mr.
19 Sullivan—confined to a brief period, unlikely ever to be repeated, and resulting in no
20 demonstrated harm to the individuals whose data was compromised—should be viewed in the
21 larger context of that otherwise truly exemplary life. Considering the totality of the
22 circumstances, and consistent with the recommendation of the Presentence Report (PSR), a
23 probationary sentence with appropriate conditions would be sufficient, but not greater than
24 necessary, to achieve the goals articulated in 18 U.S.C. § 3553.

25 **FACTUAL BACKGROUND**

26 **I. Mr. Sullivan’s History**

27 A sentencing court’s task is “to consider every convicted person as an individual and

1 every case as a unique study in the human failings that sometimes mitigate, sometimes magnify,
 2 the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). For that
 3 reason, “[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the
 4 possession of the fullest information possible concerning the defendant’s life and
 5 characteristics.” *Pepper v. United States*, 562 U.S. 476, 480 (2011) (brackets in original)
 6 (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)).

7 **A. Upbringing and Education**

8 Mr. Sullivan, the oldest of seven children, was born in 1968 in Rutland, Vermont to
 9 Cornelius and Winona Sullivan. Mr. Sullivan’s father is a professional artist. He intended to join
 10 the Navy after high school until his parents discouraged him from doing so after the plane flown
 11 by his only and older brother John, a Navy fighter pilot, crashed in the Mediterranean Sea.
 12 (Declaration of David H. Angeli in Support of Defendant’s Sentencing Memorandum (“Angeli
 13 Decl.”),¹ Ex. 16 (Letter from Cornelius Sullivan).) The only cufflinks Mr. Sullivan has ever worn
 14 are those that belonged to his Uncle John. Mr. Sullivan’s mother, who worked for the Central
 15 Intelligence Agency as a Russia specialist before starting a family, was an award-winning poet, a
 16 published author of mystery stories, a high school teacher, and a professor of writing at several
 17 colleges. (*Id.*) She died in 2004 from non-smoking lung cancer.

18 The Sullivans raised their family in a 1,500 square-foot three-bedroom house in
 19 Massachusetts. Mr. Sullivan’s lifelong commitment to the Catholic Church is rooted in his

20 ¹ The defense has submitted over 185 letters written by individuals in support of Mr.
 21 Sullivan (including a letter submitted on behalf of 60 cybersecurity professionals and another
 22 letter submitted by more than 40 current and former CISOs and CSOs). One hundred seventy-
 23 five of the letters were considered in the preparation of the PSR and have been forwarded to the
 24 Court by the Probation Office. These letters are cited herein as “Letters of Support,” and are
 25 organized by category based on the context in which the letter writer knows Mr. Sullivan: (A)
 26 Family; (B) Friends and Faith Leaders; (C) Not-for-Profit Organizations; (D) Colleagues from
 27 the United States Attorney’s Office; (E) Colleagues from eBay; (F) Colleagues from Facebook;
 (G) Colleagues from Uber; (H) Colleagues from Cloudflare; and (I) Cybersecurity Industry
 Colleagues. Letters within each category are arranged alphabetically according to the writers’
 last names.

Additional letters submitted after the preparation of the PSR are attached as exhibits to
 the Declaration of David Angeli.

1 family's deep faith and involvement in their local parish, where his mother taught religious
2 education classes and his father served as a eucharistic minister. As an eighth grader attending a
3 nearby parochial school, Mr. Sullivan began working at the parish three days a week, cleaning
4 and doing maintenance and yard work. (*Id.*) By the time he was in high school, Mr. Sullivan was
5 working at least ten hours a week at the church, overseeing maintenance, organizing masses,
6 coordinating weddings and funerals, and working at church-related events. (Angeli Decl., Ex. 16
7 (Letter from Cornelius Sullivan).)

8 Working at his church was just one of many jobs Mr. Sullivan held during his childhood.
9 (Letters of Support, Ex. A at 21 (John Sullivan); Angeli Decl., Ex. 16 (Letter from Cornelius
10 Sullivan).) His family, though rich in art, culture, and faith, faced significant financial
11 challenges. Mr. Sullivan often found himself using the money he earned from odd jobs to
12 purchase his own clothing and shoes.

13 When Mr. Sullivan was in middle school, he was mugged near a park where he often
14 played basketball. After Mr. Sullivan identified the perpetrator, a high school student, the police
15 arrested the student and Mr. Sullivan provided testimony at the resulting juvenile court hearing.
16 This incident shaped Mr. Sullivan's deeply held belief that those who harm others should be held
17 accountable for their actions, and was instrumental in Mr. Sullivan's desire to become a lawyer.
18 (Angeli Decl., Ex. 16 (Letter from Cornelius Sullivan).)

19 Mr. Sullivan graduated high school in 1986 and earned a partial scholarship to attend
20 Providence College, a Dominican institution located in Rhode Island. Mr. Sullivan's
21 grandmother paid for his room and board. Mr. Sullivan paid his remaining expenses by holding
22 down multiple jobs, working through the school's work-study program all four years and at a
23 restaurant for the last three years. Following in his mother's footsteps, Mr. Sullivan studied
24 Russian at Providence and earned a Bachelor of Arts in Political Science.

25 During his junior year at Providence, Mr. Sullivan again learned the importance of
26 standing up for what is right, even in the face of difficult personal consequences. He and other
27 students witnessed the assault of a fellow student who was beaten so severely that he had to be

1 hospitalized. In the ensuing investigation, Mr. Sullivan and other witnesses identified the two
2 perpetrators. Facing social pressure and even physical threats from the perpetrators, the other
3 witnesses recanted their earlier testimony, leaving Mr. Sullivan as the sole witness who stood by
4 his earlier statements at the college's disciplinary hearing. (Letters of Support, Ex. B at 13
5 (Father James Quigley).) The college expelled one of the perpetrators and placed the other on
6 probation—a just result, but one that cost Mr. Sullivan many of his previously close friendships.

7 Having been raised in a patriotic family that instilled in him a commitment to public
8 service, Mr. Sullivan next enrolled in law school at the University of Miami, with the goal of
9 becoming a government lawyer. He worked his way through law school, paying his own tuition
10 and expenses and taking out student loans to cover the balance. (Angeli Decl., Ex. 16 (Letter
11 from Cornelius Sullivan).) In addition to his grueling work and school schedule, Mr. Sullivan
12 found time to serve the Miami community, volunteering as guardian ad litem representing foster
13 children and working with FEMA rescue efforts in the wake of Hurricane Andrew in 1992.
14 (Letters of Support, Exhibit B at 13 (Father James Quigley); *id.* at 21 (Kirk Wagar).)

15 **B. DOJ Service**

16 Mr. Sullivan spent the summer between his second and third years of law school
17 volunteer interning with the Department of Justice's Miami office, where he focused on
18 immigration matters. He worked at a restaurant in the evenings to cover his living expenses. That
19 experience led to a one-year DOJ clerkship after graduation. Following a brief stint in private
20 practice in Miami, Mr. Sullivan moved to San Francisco, rejoining the DOJ as an associate
21 counsel supporting the Immigration and Naturalization Service.

22 In 1997, Mr. Sullivan became an Assistant United States Attorney in the District of
23 Nevada, focusing on prosecuting white-collar crime. Soon after, he became that district's
24 Computer and Telecommunications Crime Coordinator, working with other federal agencies to
25 investigate and prosecute some of the first cybercrime cases. At the end of 1999, Mr. Sullivan
26 returned to the Bay Area for good, joining the U.S. Attorney's Office in the Northern District of
27 California, where he became one of the first federal prosecutors in the country working full time

1 on high-tech crime cases. (Letters of Support, Ex. D at 5 (Robert Rodriguez).) In 2000, he was a
2 founding member of the DOJ’s first Computer Hacking and Intellectual Property (“CHIP”) unit.
3 Even then, Mr. Sullivan was a staunch advocate for consumer privacy—balancing law
4 enforcement’s need for information about individual consumers against those consumers’
5 legitimate privacy rights. (Letters of Support, Ex. D at 1 (Scott Frewing).) Because of the
6 pioneering work of that group, each of the 94 United States Attorneys’ Offices now has at least
7 one CHIP coordinator and twenty-five offices have CHIP units.

8 **C. Work in the Private Sector**

9 In 2002, former Assistant United States Attorney Rob Chesnut, then eBay’s Senior Vice
10 President of Global Trust and Safety, persuaded Mr. Sullivan to join eBay to work on enhancing
11 e-commerce trust and safety. “You have two rewarding but very different paths,” Mr. Chesnut
12 told Mr. Sullivan. “You can prosecute one bad actor at a time, or you can try to build solutions
13 that take away many bad actors’ ability to do harm at all.” (Letters of Support, Ex. I at 13.)

14 Swayed by the possibility of making a broader impact in the fight against cybercrime,
15 Mr. Sullivan joined eBay as Senior Director of Trust and Safety. That marked the beginning of a
16 twenty-year private-sector career focused on building robust cybersecurity programs and
17 encouraging the technology industry to foster close partnerships with law enforcement to find
18 and hold accountable those responsible for perpetrating child exploitation, fraud, and other abuse
19 on the internet. In all the years that Mr. Sullivan and Dan Levy, a former colleague of Mr.
20 Sullivan at both eBay and Facebook, worked together, “Mr. Sullivan’s ONLY objective was to
21 help protect people and businesses from harm; he had no personal agenda to inflate with his title
22 nor size of his organization.” (Letters of Support, Ex. F at 35 (Dan Levy (emphasis in original)).)

23 As part of eBay’s Trust and Safety team—the first of its kind—Mr. Sullivan worked
24 closely with global law enforcement and regulatory agencies and led the company’s Fraud
25 Investigations Team. In those early days of the internet, Mr. Sullivan focused “almost
26 exclusively on how best to improve the trust and safety of eBay and PayPal customers”—a
27 responsibility he assumed with “professionalism, dedication, and thoughtfulness.” (Letters of

1 Support, Ex. E at 6 (Larry Friedberg).) Mr. Sullivan shared Mr. Chesnut’s philosophy of
2 engaging with the government, both to investigate potential wrongdoing and to craft reasonable
3 rules that promoted commerce and protected consumers. eBay’s “flexible privacy policy,” under
4 which the company provided broad assistance to law enforcement, was controversial at a time
5 when companies, individuals, and law enforcement were determining the boundaries of personal
6 privacy on the internet.

7 Jack Christin, a former state prosecutor and one of Mr. Sullivan’s eBay colleagues,
8 recalls working “side by side” with Mr. Sullivan during those early years, building relationships
9 and collaborating with law enforcement agencies and regulators. (Letters of Support, Ex. E at 3.)
10 Describing one of those instances, former U.S. Secret Service Agent David Piggott recalls the
11 assistance Mr. Sullivan provided to the Secret Service in a massive undercover investigative
12 operation by dedicating two eBay security specialists to mentor and provide technical assistance
13 to agents working undercover. Noting that Mr. Sullivan’s personal reputation was the motivating
14 factor for the Secret Service’s willingness to partner with the private sector, Mr. Piggott credits
15 the success of the operation to Mr. Sullivan’s support. (Letters of Support, Ex. E at 14.) And that
16 was just one of many cases in which Mr. Sullivan’s eBay team worked with law enforcement to
17 combat cybercrime. Dave Tyson, another former eBay colleague, recalls Mr. Sullivan “help[ing]
18 to increase law enforcement’s understanding and ability to be effective of defense of US business
19 globally” in countries like Romania, Russia, and China, “where legal systems did not yet support
20 a judicial response to these problems.” (Letters of Support, Ex. E at 20.)

21 In 2006, Mr. Sullivan moved to PayPal to lead the company’s North American legal
22 team. That experience deepened Mr. Sullivan’s appreciation and understanding of the emerging
23 threats facing internet-based companies. At PayPal, Mr. Sullivan continued to partner with law
24 enforcement on investigations while also working with the company’s information security team
25 to understand and strengthen PayPal’s technical defenses. During this time, Mr. Sullivan also
26 emerged as a public face for the cybersecurity industry, championing safety measures that
27 thwarted phishing attempts and testifying before the U.S. House Committee on Energy and

1 Commerce about criminal behavior on the internet. While at PayPal, Mr. Sullivan also began to
2 build bridges with the external research community (private individuals who attempt to find
3 vulnerabilities in companies' security systems). As part of that process, he co-authored and
4 helped publish one of the first ever "responsible disclosure" policies, which promised outside
5 security researchers that they would not be referred for criminal prosecution if they reported
6 discovered vulnerabilities and did not harm the company's customers.

7 In 2008, Mr. Sullivan left eBay to join Facebook. After serving briefly in a legal role, he
8 quickly transitioned to overseeing the company's security team. During Mr. Sullivan's tenure as
9 Facebook's Chief Security Officer, the platform grew from just over one hundred million active
10 users to more than 1.4 billion. The company's security team grew as well, from just ten people
11 based in California to over 130 employees worldwide. Under Mr. Sullivan, that team worked
12 hard to make the platform safer for users by protecting them from government surveillance in
13 authoritarian nations, developing tools that allow users to better safeguard their privacy,
14 integrating product features that reduced risk for teens, helping law enforcement agencies to
15 identify and apprehend sexual and financial criminals, preventing terrorists from using Facebook
16 as a communications platform, and guarding users against viruses and denial of service attacks.²
17 As described by his former colleague, Ryan Hoyt, "the investigative work and resources utilized
18 by Facebook [under Mr. Sullivan's leadership] was trailblazing" and included partnering "with
19 federal, state, and municipal law enforcement agencies around the United States and even
20 form[ing] an entire sister team of former law enforcement professionals to help build
21 relationships and serve [Facebook's] casework to law enforcement agencies in jurisdictions all
22 around the world." (Letter of Support, Ex. F at 9.)

23 Former Facebook colleague and General Counsel Colin Stretch recalls those efforts, and
24 particularly Mr. Sullivan's work to prevent child exploitation, scamming, and bullying. Mr.

25 ² Mr. Sullivan made numerous news appearances and spoke at many industry conferences
26 to provide insight on the innovative ways in which he and his cybersecurity teams were
27 protecting the public. Some of those, and a link to his appearances, are listed in Exhibit 8
attached to the Declaration of David Angeli.

1 Stretch recalls how Mr. Sullivan was “singularly focused on ensuring that the company
2 understood the human costs of these issues, and that the team working on these challenges was
3 adequately resourced, had the support of senior leadership, and was motivated.” (Letters of
4 Support, Ex. F at 23.) As Mr. Stretch explains, although that work “did not draw headlines,” Mr.
5 Sullivan “made it a priority at the company” and “kept many people safe from wrongdoers who
6 would have otherwise done them harm.” (*Id.*)

7 For example, Mr. Sullivan dedicated a group of Facebook engineers and customer
8 support analysts specifically to promoting child safety. Under Mr. Sullivan’s direction,
9 Facebook, then the internet’s largest photo-sharing website, became one of the first technology
10 companies to implement PhotoDNA—a tool that enabled the company to proactively search its
11 platform for images associated with child exploitation—and a system to detect and report child
12 sexual abuse material at scale. (Letters of Support, Ex. C at 1 (Julie Cordua).) As Julie Cordua,
13 CEO of the anti-human trafficking organization Thorn, recalls, “Facebook was one of only a few
14 companies in the world doing this work” back in 2010. (*Id.*) As a result, the company became the
15 leading source of reports to the National Center for Missing and Exploited Children and worked
16 relentlessly on attribution—identifying the bad actors behind improper or illegal behavior. As
17 Alex Stamos, Facebook’s CSO after Mr. Sullivan, recalls: “The Facebook child safety edifice
18 that Joe helped build was responsible for around 75% of all reports made to the National Center
19 for Missing and Exploited Children in 2021. That’s over 22 million reports of child exploitation.
20 . . . It is not unreasonable to say that Joe and the handful of other executives who tackled this
21 problem in those early days are likely responsible for more global prosecutions of child sexual
22 exploitation than pretty much any other living people.” (Letters of Support, Ex. F at 41.)

23 In one critical proactive case that received global attention in the safety community
24 during Mr. Sullivan’s watch, Facebook’s security team single-handedly identified the man who
25 harassed and exploited Amanda Todd, a Canadian teenager whose suicide in 2012 alerted the
26
27

1 world to the dangers facing children online.³ Mr. Sullivan’s work caused a dynamic shift in the
 2 entire tech industry. As Mr. Hoyt explains, “The safety program Mr. Sullivan created at
 3 Facebook had results—children protected around the world, their abusers arrested and sentenced
 4 to prison—and changed the tech industry. As those of us who worked for Mr. Sullivan went off
 5 to other companies such as Twitter, Microsoft, LinkedIn, Airbnb, and elsewhere, we brought
 6 with us the lessons learned and the skills developed under Mr. Sullivan’s leadership.” (Letters of
 7 Support, Ex. F at 9.)

8 Reflecting his deep commitment to this work, Mr. Sullivan delivered the “State of the
 9 Industry” address each year from 2011 to 2015 at the Dallas Children’s Advocacy Center’s
 10 (DCAC) annual Crimes Against Children Conference, which brings together thousands of
 11 professionals employed by government and nonprofit agencies who work directly with child
 12 victims of crime. As DCAC’s former CEO recalls, during this time, DCAC “had enormous
 13 growth in law enforcement attendance and corporate support. Our attendance grew from 2,500 to
 14 over 5,000 and our corporate sponsors quadrupled. This would not have occurred without Joe
 15 leading the way.” (Letters of Support, Ex. C at 3 (Lynn Davis).) During this time, Mr. Sullivan
 16 also became one of the first members of Thorn’s Tech Task Force—a volunteer group of tech
 17 leaders who discussed ways to increase protections for children online and worked to mobilize
 18 more companies to proactively implement such protections. (Letters of Support, Ex. C at 1 (Julie
 19 Cordua).) In 2011, President Obama invited Mr. Sullivan to the White House to speak as an
 20 expert on combatting online bullying.⁴ And during the last decade, Mr. Sullivan has remained

21 _____
 22 ³ Vanmala Surbramian and Julia Whalen, *Dutch Man Suspected of Tormenting*
 23 *Amanda Todd had 75 Other Victims, Facebook Report Says*, CBC News (Dec. 5, 2014),
[https://www.cbc.ca/news/canada/dutch-man-suspected-of-tormenting-amanda-todd-had-75-](https://www.cbc.ca/news/canada/dutch-man-suspected-of-tormenting-amanda-todd-had-75-other-victims-facebook-report-says-1.2857281)
[other-victims-facebook-report-says-1.2857281.](https://www.cbc.ca/news/canada/dutch-man-suspected-of-tormenting-amanda-todd-had-75-other-victims-facebook-report-says-1.2857281)

24 ⁴ A video of the special “Facebook Live” event held during the March 10, 2011 White
 25 House Conference on Bullying Prevention is available at
 26 <https://www.youtube.com/watch?v=L5v9Hoe1GB0>. During the event, Mr. Sullivan, White
 27 House Domestic Policy Council Director Melody Barnes, White House Deputy Senior Advisor
 Stephanie Cutter, MTV’s Vice President of Public Affairs Jason Rzepka, and author Rosalind
 Wiseman took live questions from the public via the White House Facebook account on bullying
 prevention.

1 steadfastly committed to protecting children online,⁵ while continuing to mentor leaders, like Ms.
 2 Cordua and Ms. Magnis, who are dedicated to preventing child abuse. (Letters of Support, Ex. C
 3 at 1 (Ellen Magnis).)

4 Mr. Sullivan’s work protected other vulnerable Facebook users, as well. For example, in
 5 December 2010, civil unrest began roiling the tiny country of Tunisia, the first of a series of
 6 events that would eventually spread across the region in a mass social revolution known as the
 7 “Arab Spring.” After political activists reported that their Facebook accounts were being deleted,
 8 Mr. Sullivan’s security team investigated and implemented a technical solution that allowed
 9 Tunisians to continue their fight for freedom online and in the streets.⁶ As Alex Stamos remarks,
 10 “Facebook’s crash rollout of encryption was critical in protecting the safety of democracy
 11 activists across Northern Africa.” (Letters of Support, Ex. F at 41.)⁷

12 Mr. Sullivan’s important contributions to the tech industry have extended well beyond
 13 innovations to cybersecurity systems and methods. For example, he has consistently used his
 14 platform as an industry leader to spearhead and support initiatives aimed at increasing diversity
 15
 16

17 ⁵ Mr. Sullivan spoke often to large groups within the industry about protecting children,
 18 including at the RSA conference in 2013 where he discussed cyberbullying:
 19 <https://www.youtube.com/watch?v=YFZA3Q4MinU> (*see*, 17:01-22:45; 29:45-37:15; 41:20-
 20 42:55). As a parent, protecting children from online predators and other harm was personal for
 21 Mr. Sullivan, as he discussed while providing advice about internet safety to parents and teens at
 22 a local high school: <https://www.youtube.com/watch?v=kOh53HoLyv4>.

23 ⁶ *See* Alexis C. Madrigal, *The Inside Story of How Facebook Responded to Tunisian*
 24 *Hacks*, *The Atlantic* (Jan. 23, 2011),
 25 [https://www.theatlantic.com/technology/archive/2011/01/the-inside-story-of-how-facebook-
 26 responded-to-tunisian-hacks/70044/](https://www.theatlantic.com/technology/archive/2011/01/the-inside-story-of-how-facebook-responded-to-tunisian-hacks/70044/).

27 ⁷ In describing some of the groundbreaking work Mr. Sullivan performed over his career
 that improved the safety of users, Mr. Stamos emphasizes that Mr. Sullivan actively worked “to
 protect the privacy of activists during the Arab Spring,” created “a threat intel team that turned
 away dozens of attacks by America’s adversaries,” and implemented “Facebook’s massive bug
 bounty program.” (Letters of Support, Ex. F at 41 (Alex Stamos).) In addition, since leaving
 Facebook, Mr. Sullivan “turned around Uber’s terrible history of assaults both by and against
 drivers” and at Cloudflare “rolled out CSAM [child sexual abuse material] scanning to thousands
 of smaller companies.” (*Id.*)

1 not only within his own security teams, but also within the broader technology industry.⁸ The
 2 powerful impact of that work is described in letters to the Court from people who worked closely
 3 with Mr. Sullivan and benefitted from his commitment to these efforts.

4 As an example of one of his larger contributions to corporate diversity efforts, Mr.
 5 Sullivan helped create and oversaw Facebook’s first corporate “unconscious bias” workshop
 6 (one of the first in the world). He also successfully advocated for the assignment of a dedicated
 7 diversity recruiter to his security team, enabling him to produce empirical evidence that
 8 prioritizing diversity in recruiting efforts improved the pipeline of candidates seeking to work at
 9 Facebook. Jennifer Henley, Vice President, Infrastructure - Technical Program Management at
 10 Facebook, recalls how Mr. Sullivan “took the lead as an ally and an advocate to support
 11 initiatives and work related to bringing more gender parity to the Security field,” including by
 12 sponsoring women’s groups, lobbying within the company for dedicated funding, and building a
 13 culture that was inclusive from recruitment all the way up the corporate ladder. (Letters of
 14 Support, Ex. F at 7.) Under Mr. Sullivan’s leadership, Facebook became one of the founding
 15 sponsors of the Women in CyberSecurity conference, and Mr. Sullivan personally participated in
 16 the Executive Women’s Forum, a group dedicated to supporting senior female leaders in the
 17 security space. (*Id.*) As Ms. Cordua recalls, the work Mr. Sullivan did on these fronts “has led to
 18

19 ⁸ The lack of diversity in the technology sector has been a well-documented problem for
 20 years. *See, e.g.,* Bonnie Marcus, *The Lack Of Diversity in Tech is a Cultural Issue*, Forbes (Aug.
 21 12, 2015), <https://www.forbes.com/sites/bonniemarcus/2015/08/12/the-lack-of-diversity-in-tech-is-a-cultural-issue/>; *Will Silicon Valley Face Up To Its Diversity Problem*, The Economist (June
 22 20, 2020), <https://www.economist.com/business/2020/06/20/will-silicon-valley-face-up-to-its-diversity-problem>; Sam Dean and Johana Bhuiyan, *Why Are Black and Latino People Still Kept
 23 out Of the Tech Industry?*, The L.A. Times (June 24, 2020),
 24 <https://www.latimes.com/business/technology/story/2020-06-24/tech-started-publicly-taking-lack-of-diversity-seriously-in-2014-why-has-so-little-changed-for-black-workers>; Steven
 25 Melendez, *One Reason for the Tech Industry’s Great Resignation: Lack of Diversity*, Fast
 26 Company (Aug. 13, 2021), <https://www.fastcompany.com/90665530/great-resignation-tech-diversity>; *Ten Years on, Why Are There Still So Few Women in Tech?*, The Guardian (Jan. 2,
 27 2020), <https://www.theguardian.com/careers/2020/jan/02/ten-years-on-why-are-there-still-so-few-women-in-tech>; Nick Morrison, *Tackling the Shortage of Women in Tech Means Tackling
 the Shortage of Girls in the Tech Classroom*, Forbes (Sep. 30, 2022),
<https://www.forbes.com/sites/nickmorrison/2022/09/30/tackling-the-shortage-of-women-in-tech-means-tackling-the-shortage-of-girls-in-the-tech-classroom/?sh=467663702b7b>.

1 the advancement and growth of countless women, myself included.” (Letters of Support, Ex. C
2 at 1.)

3 Mr. Sullivan continued that important work when he moved to Uber in 2015. Komal
4 Mangtani, current Head of User Identity Data Infrastructure at Meta and a former security
5 engineering director at Uber, recalls Mr. Sullivan being one of two key sponsors of Uber’s
6 LadyEng group, an employee affinity group dedicated to the advancement of women in
7 engineering. (Letters of Support, Ex. G at 25.) During his time at Uber, Mr. Sullivan made time
8 to guide women engineers to define their career path and encouraged the men on his teams to be
9 better allies, including by supporting the group’s technical and career mentorship program. (*Id.*)

10 He also used his position as Chief Security Officer to promote other types of diversity
11 throughout the company, including by assuming the executive leadership role for Uber’s Black
12 employee resource group, UberHUE. As former Uber employee Nicole Cuellar-Lopez recalls,
13 Mr. Sullivan “understood that diversity of background, thought, and experience would make our
14 organization stronger. He put his own reputation on the line to help me and other ERG leaders
15 get an audience with the CEO and other executives to present our ideas and proposals to
16 strengthen the company by increasing diversity and inclusion.” (Letters of Support, Ex. G at 9.)
17 As Ms. Cuellar-Lopez explains, “To describe Joe as an ‘ally’ would be an understatement. The
18 time he committed to helping us strategically present our ideas, and his humility in shining the
19 spotlight on us rather than himself mean the world to me.” (*Id.*) Kevin Maher similarly recalls
20 Mr. Sullivan going “out of his way to help disadvantaged people of color get access to
21 internships and high-paying jobs at Uber through his work with the ‘Black at Uber’ employee
22 resource group.” (Letters of Support, Ex. G at 18.) At trial, Kandace Cooks, Uber’s former head
23 of Diversity and Inclusion, testified about Mr. Sullivan’s ready willingness to have difficult and
24 emotional conversations about issues surrounding race and diversity and inclusion in the
25 workplace. (Trial Tr. at 2280:25–2281:5.) She explained that as the executive sponsor of
26 UberHue, Mr. Sullivan demonstrated that he “was the executive leader that we could all depend
27 on to do the right thing, even if it was the hard thing.” (*Id.* at 2282:10–11.) Mr. Sullivan was “a

1 very integral part of not only [Ms. Cooks’] success, but others at Uber being able to move
 2 forward, find solutions, and really do things that were seemingly impossible.” (*Id.* at 2282:16–
 3 19.)

4 While at Uber, Mr. Sullivan also sought opportunities to improve the lives of underserved
 5 people at large. For example, Ellen Magnis describes how she connected Mr. Sullivan with a
 6 prison entrepreneurship program that helped formerly incarcerated people find employment upon
 7 release from prison. (Letters of Support, Ex. C at 4.) Susan Chiang describes how she and Mr.
 8 Sullivan worked together on that initiative at Uber, using “aggregated data” to prove that a
 9 person’s nonviolent felony conviction did not render them unsafe to drive for rideshare
 10 companies like Uber. (Letters of Support, Ex. H at 4.) Both Ms. Magnis and Ms. Chiang note
 11 how Mr. Sullivan’s work on this program resulted in several states amending their laws to allow
 12 certain people with nonviolent felony convictions the opportunity to work in sectors like
 13 ridesharing, enabling them to contribute to society and support their families. (Letters of Support,
 14 Ex. C at 4; *id.* Ex. H at 4.)

15 When Mr. Sullivan joined Uber in 2015, the company was widely regarded as a place in
 16 need of substantial cultural change.⁹ Mr. Sullivan was credited with driving many positive
 17 changes there beyond his work on diversity and professionalizing the company’s security and
 18 safety programs. The largest impetus for change at the company during those years, the 2017
 19 “Holder Report,” resulted from Mr. Sullivan introducing former Attorney General Eric Holder to
 20 Uber in 2016. Mr. Sullivan invited Mr. Holder to speak at a company all-hands meeting where
 21 Mr. Sullivan interviewed Mr. Holder about the importance of integrity inside a company.
 22 (Letters of Support, Ex. G at 9 (Nicole Cuellar-Lopez).)

23 Mr. Sullivan continued this work in earnest after he left Uber and joined Cloudflare. As
 24 Cloudflare’s CEO explains, “Joe believes fundamentally that more diverse teams are stronger
 25

26 ⁹ See, e.g., Dominic Rushe, *Is Uber the Worst Company in Silicon Valley?*, The Guardian
 27 (Nov. 18, 2014), <https://www.theguardian.com/technology/2014/nov/18/uber-worst-company-silicon-valley>.

1 teams. As a result, he worked tirelessly to attract women and racial minority candidates to his
 2 team. Today, the team he built counts half of its members as coming from groups traditionally
 3 underrepresented in the technology industry.” (Letters of Support, Ex. H at 27 (Matthew
 4 Prince).). Cloudflare’s Nicole Ellis echoes those sentiments, describing Mr. Sullivan’s
 5 participation as an executive sponsor of Cloudflare’s employee resource group as “go[ing] above
 6 and beyond performative participation by showing real results in our department’s diversity.”
 7 (Letters of Support, Ex. H at 11.) As a result, Mr. Sullivan’s department at Cloudflare was
 8 “noted as being the most diverse, along with having the highest scores in Employee Satisfaction
 9 during the 2021 Employee Experience Survey.” (*Id.*) When Jacqueline Keith was contemplating
 10 joining Cloudflare, numerous industry leaders “pointed [her] to working with Joe as a leader who
 11 would further my career as a woman in cybersecurity (a highly male-dominated and sometimes
 12 brutal industry).” (Letters of Support, Ex. H at 18 (Jacqueline Keith).) Those recommendations
 13 came “well after news of Joe’s firing from Uber was public knowledge because he continued to
 14 be viewed as an ethical leader who championed the careers of underrepresented groups and gives
 15 employees the ability to try new things and fail in the learning process, all while moving
 16 forward.” (*Id.*) Other Cloudflare employees report similar experiences with Mr. Sullivan,
 17 including Julie Sparks, who notes that Mr. Sullivan was “a core advocate for Afroflare and an
 18 ally for Proudflare,” two of Cloudflare’s ERGs. (Letters of Support, Ex. H at 31.) She describes
 19 how Mr. Sullivan “sets aside time and energy to connect to minority groups, hire them, [and] put
 20 his name behind them,” lending their careers “invaluable” support. (*Id.*; *see also* Letters of
 21 Support, Ex. H at 12 (James Espinosa); *id.* at 15 (Janet Huysse).)

22 **D. Public Service and Mentoring**

23 Mr. Sullivan’s lifelong commitment to public service continued after he joined the
 24 private sector. In 2010, after his Palo Alto community first experienced a “suicide cluster”
 25 among local high school students,¹⁰ Mr. Sullivan became an inaugural executive committee

26 _____
 27 ¹⁰ *See* Jamie Chung, *The Silicon Valley Suicides*, *The Atlantic* (Dec. 2015),
<https://www.theatlantic.com/magazine/archive/2015/12/the-silicon-valley-suicides/413140/>.

1 member of the National Action Alliance for Suicide Prevention, the nation’s public-private
2 partnership for suicide prevention. He later took what he learned in that work to deploy into
3 Facebook direct connections to the suicide and crisis prevention lifeline.

4 In 2012, Mr. Sullivan agreed to serve on the Homeland Security Advisory Council Task
5 Force on CyberSkills, formed by DHS Secretary Janet Napolitano. That group of volunteers
6 identified means by which DHS could “foster the development of a national security workforce
7 capable of meeting current and future cybersecurity challenges” and outlined how DHS could
8 “improve its capability to recruit and retain that sophisticated cybersecurity talent.” The group’s
9 work helped position DHS to make the country “safer, more secure, and more resilient.”¹¹

10 In 2016, President Obama appointed Mr. Sullivan to the President’s nonpartisan
11 Commission on Enhancing National Cybersecurity. In her letter to the Court, Kiersten Todt, the
12 Commission’s Executive Director, recalls that in “literally each call I made” after being asked by
13 the White House to research appropriate individuals from the private sector to serve on the
14 Commission, “every person with whom I spoke recommended Joe to serve and each person
15 commented on his leadership in the space, but importantly, his thoughtfulness,
16 conscientiousness, and discipline in the space.” (Letters of Support, Ex. I at 77.) The twelve
17 members of the Commission were “charged with developing actionable recommendations for
18 securing and growing the digital economy by strengthening cybersecurity in the public and
19 private sectors.”¹² The Commission reviewed past reports, consulted technical and policy
20 experts, held six in-person public hearings, issued an open solicitation for input, and invited the
21 public at large to share facts and views. Ms. Todt recalls that Mr. Sullivan “was consistently one
22 of the most responsive and thoughtful individuals and quickly became the respected voice of
23 industry and technology for the other Commissioners.” (*Id.*)

24 _____
25 ¹¹ Homeland Security Advisory Council, *CyberSkills Task Force Report*, at 2 (Fall 2012)
26 <https://www.dhs.gov/publication/homeland-security-advisory-council-cyberskills-task-force-report>.

27 ¹² Commission on Enhancing National Cybersecurity, *Report on Securing and Growing the Digital Economy* (Dec. 1, 2016), <https://www.nist.gov/cybercommission>.

1 Mr. Sullivan has also served as an adviser for many industry groups and emerging
2 technology companies. For example, in 2011, he joined the board of the National Cyber Security
3 Alliance, a nonprofit public-private partnership focused on helping users stay safer and more
4 secure online. He has also served on the advisory boards for Airbnb and several other Silicon
5 Valley startup companies. (Letters of Support, Ex. I at 88 (Jim Wilson); *id.* at 46 (Ryan Noon).)

6 Despite his many formal duties and commitments, Mr. Sullivan has always taken the time
7 to personally mentor individuals within the cybersecurity industry. He is a longtime member of
8 the Bay Area CSO Council, a volunteer CISO/CSO mentoring organization. (Letters of Support,
9 Exhibit I at 45 (Izak Mutlu).) Cloudflare’s CEO recalls how he “would often get notes from
10 people both inside and outside of Cloudflare who would thank me for how giving Joe was with
11 his time. . . . Joe saw mentorship as critical to making [the industry] more open and inclusive and
12 always volunteered his time toward that end.” (Letters of Support, Ex. H at 27 (Matthew
13 Prince).) In his letter to the Court, former Secret Service Agent David Pigott recounts how Mr.
14 Sullivan inspired him and “countless others.” (Letters of Support, Ex. E at 14.) “Joe has spent the
15 better part of his adult life in service; service to his country and service to the global security
16 community.” (*Id.*)

17 After he lost his position as CSO of Cloudflare last October following the outcome of the
18 trial, Mr. Sullivan threw himself into even more mentoring and volunteering. In January, he
19 became the CEO of Ukraine Friends, a 501(c)(3) organization dedicated to providing
20 humanitarian aid to the people of Ukraine. (Letters of Support, Ex. C at 6 (Ukraine Friends); *id.*
21 at 5 (Teddy Raskin).) This new role was a natural extension of the work Mr. Sullivan did at
22 Cloudflare in the first half of 2022, when the company partnered with the United States
23 government to shore up the cyber-defenses of Ukraine’s government, military, and critical
24 infrastructure companies. As Hanna Shuvalova reports: “Joe’s support has been instrumental in
25 the country’s fight against Russia in the digital space, effectively protecting critical infrastructure
26 and national security interests.” (Angeli Decl., Ex. 15 (Letter from Hanna Shuvalova).)

27 As CEO of Ukraine Friends, Mr. Sullivan is poised to do even more to help the people of

1 Ukraine in a broader capacity. He now oversees all operations for this nonprofit which, among
2 other things, refurbishes and provides ambulances to civil defense and fire departments in
3 Ukraine, delivers tens of thousands of first aid kits to communities throughout the country, and
4 helps resettle people displaced by the war. Mr. Sullivan has also leveraged his unique network
5 across the technology industry to launch a new initiative to deliver laptops to Ukrainian children
6 whose attendance at school has been disrupted by the war. (Letters of Support, Ex. C. at 6
7 (Ukraine Friends); *id.* at 9 (Brett Velicovich).) In just a short time, he has established himself as
8 a compassionate and competent leader and made a significant impact on both the organization
9 and humanitarian aid in Ukraine. The organization’s Board Chair echoes this, noting that the
10 organization would “never be able to help the people of Ukraine in these areas without Joe’s
11 unique expertise, willingness to get his hands dirty on the ground in Ukraine, and network of
12 security-expert friends he has called upon frequently already.” (Letters of Support, Ex. C. at 6
13 (Ukraine Friends).)

14 **E. Family and Faith**

15 The Court has heard much about Mr. Sullivan as a pioneering leader in cybersecurity, but
16 he most cherishes his role as father to his three daughters, Bridget (20), Celia (17), and Audrey
17 (15). At the end of 2020, Mr. Sullivan and his wife of nearly twenty-five years, Suzanne,
18 divorced. (Letters of Support, Ex. A at 29 (Suzanne Sullivan).) Mr. Sullivan was awarded
19 primary custody (70% parenting time) of his daughters, two of whom attend local high schools.
20 The other is a college junior. Mr. Sullivan has been the sole source of income for his family since
21 2002.

22 Despite his professional obligations, Mr. Sullivan is an attentive father dedicated to
23 raising and supporting these three impressive young women. Like many who know Mr. Sullivan
24 and his family, close family friend Gabriel Brenner describes how, despite the pressures of his
25 “crazy job,” Mr. Sullivan always made sure to prioritize his family’s well-being, from
26 enthusiastically supporting his daughters’ athletic endeavors to honoring their dietary choices, to
27 offering them comfort and solace as they navigate a challenging relationship with their mother.

1 (Letters of Support, Ex. B at 1.) Mr. Sullivan’s former Facebook colleague, Colin Stretch, recalls
2 that “Joe cared deeply about his family. . . . Joe seldom drew boundaries, but when he did, it was
3 for one reason, and one reason only: so that he could spend time with his wife and children.”

4 (Letters of Support, Ex. F at 23.)

5 Mr. Sullivan’s daughters confirm his devotion to parenting. His youngest daughter,
6 Audrey, describes the impact Mr. Sullivan’s presence has had on her life: “With my dad, I learn
7 by example, through stories he or his friends tell me, through the things I watch him say and do.
8 Half of what I learn from him, he does not even realize he is teaching or that anyone is watching
9 at all.” (Letters of Support, Ex. A at 11.) Mr. Sullivan’s middle-daughter, Celia, echoes her
10 sister’s sentiments: “He has shown us how to be a good person. He emphasizes the importance of
11 family and that taking care of those you love is the most important thing in life.” She recalls Mr.
12 Sullivan encouraging her to persevere through discomfort and exhaustion by running with her
13 when she started running cross-country: “With him by my side, encouraging me to work my
14 hardest, I saw a lot of improvement.” (Letters of Support, Ex. A at 15.) Bridget, Mr. Sullivan’s
15 oldest daughter, recounts how “from a very young age, my dad impressed upon me the
16 importance of integrity and hard work. My dad never sternly lectured me about these values.
17 Rather, he demonstrates them to me every day in how he lives his life.” (Letters of Support, Ex.
18 A at 13.)

19 Mr. Sullivan also maintains close relationships with his father, his siblings, and their
20 families. They speak together on a group video call once a week, and several of them traveled to
21 San Francisco to attend portions of Mr. Sullivan’s trial. (Letters of Support, Exhibit A at 24
22 (Mary Sullivan); *id.* at 27 (Rachel Sullivan), *id.* at 16 (Chris Sullivan), *id.* at 21 (John Sullivan),
23 *id.* at 23 (Leslie Sullivan).) As the oldest of seven, Mr. Sullivan plays a central role in the care of
24 his extended family. Mr. Sullivan’s youngest sibling, Mary, describes how, “[n]o matter what
25 else was going on in his life, Joe would drop everything and immediately get to work sorting
26 through paperwork, writing letters, or whatever else needed to be done. From distant relatives’
27 confusing last will and testaments to my brother Eddie’s brush with copyright law when he was

1 nineteen, Joe has been a steady voice of reason and support throughout the years.” (Letters of
2 Support, Ex. A at 24; *see also id.* at 18 (Edmund Sullivan).)

3 In the summer of 2022, just weeks before the trial in this case, Mr. Sullivan’s 12-year-old
4 nephew died suddenly from a massive brain hemorrhage. The family was devastated. Mr.
5 Sullivan’s sister relates how Mr. Sullivan “flew to Atlanta right away to be with us. He embraced
6 us with love and support while we struggled to understand our incomprehensible loss. He took
7 care of details with the church for the funeral and made sure that the many relatives were fed and
8 cared for.” (Letters of Support, Ex. A at 3 (Kathleen Dremann).) Mr. Sullivan’s cousin, James
9 McAuley, explains how Mr. Sullivan’s care for his mother and father “has been a shining
10 example to me as I find myself assisting my elderly mother.” (Letters of Support, Ex. A at 6.)

11 The Catholic faith that Mr. Sullivan’s parents instilled in the family has always been
12 central to Mr. Sullivan’s life. Each Sunday, his weekly call with his siblings begins with a
13 prayer. (Letters of Support, Ex. A at 16 (Chris Sullivan).) And he continues his practice of
14 regularly attending Mass that he first began in early childhood. (Letters of Support, Ex. A at 8
15 (Michelle Murray).) He married his former wife at St. Peter’s Church in Vatican City, where he
16 had the extreme good fortune of receiving Pope John Paul II’s personal blessings on his family.
17 (Angeli Decl., Ex. 16 (Letter from Cornelius Sullivan).) Mr. Sullivan and his daughters are
18 parishioners at St. Thomas Aquinas Parish in Palo Alto and attend weekly mass there unless they
19 join his fiancée and her son at services at the Bay Area Christian Church, also in Palo Alto.

20 **II. The Offense Conduct**¹³

21 On November 14, 2016, while serving as Uber’s Chief Security Officer, Mr. Sullivan
22 learned via email of a potential data breach by someone purporting to have “found a major
23 vulnerability in [U]ber” (the “2016 Incident”). Mr. Sullivan immediately began an investigation
24 in accordance with written policies prepared by Uber’s Security and Legal teams—policies
25 which tasked Mr. Sullivan’s Security group with investigating the technical aspects of data

26
27 ¹³ Given the Court’s familiarity with the facts underlying the counts of conviction, only a
summary of the offense conduct is included here.

1 breaches and the Legal department’s “Privacy” attorneys (a group that did not include Mr.
2 Sullivan) with understanding and conducting Uber’s breach-related legal and reporting
3 obligations.

4 Among Mr. Sullivan’s first actions was to notify the highest level of Uber management—
5 Chief Executive Officer Travis Kalanick—of the incident and to seek the assistance of Uber
6 Privacy attorney Craig Clark, a member of Uber’s Legal department responsible for advising Mr.
7 Sullivan’s team and others at Uber about the company’s security-related legal responsibilities.
8 From there, roughly thirty Uber employees from Uber’s Security, Legal, and Communications
9 groups played a variety of roles responding to the 2016 Incident. Those individuals
10 communicated with each other extensively throughout the ensuing investigation.

11 Mr. Sullivan’s Security team meticulously documented the incident and Uber’s response
12 in real time. A key document used for this purpose was the Preacher Central Tracker (PCT). The
13 PCT was updated regularly, sometimes multiple times per day, and documented the Security
14 team’s efforts to investigate the incident, take steps in response, and memorialize meetings and
15 issues that arose throughout. This document was stored on Uber’s systems and made widely
16 available to every member of the response team.

17 Throughout Uber’s response to the 2016 Incident, Legal’s Craig Clark—in furtherance of
18 his twin duties to provide legal advice to the Security team and to help Legal understand and
19 carry out its reporting obligations—was provided the details about the investigation (indeed, he
20 created the PCT) and was involved in key decisions. Similarly, lead Uber Privacy attorney
21 Candace Kelly, a former longtime AUSA in this District who regularly interacted with law
22 enforcement while at Uber, was informed of the details of the 2016 Incident within 24 hours of
23 its occurrence, as was Rachel Whetstone, the head of Uber’s Communications team.

24 Mr. Clark advised Mr. Sullivan and the rest of the response team that the matter would
25 properly be treated as a “bug bounty”—and not a reportable data breach—if the response team
26 could locate the hackers, get confidence that they had deleted the data and not disseminated it
27 further, and enter into a non-disclosure agreement with the hackers. After an intense, six-week

1 effort, the response team—comprised of industry-leading personnel with vast experience dealing
2 with similar situations—reported to Mr. Sullivan that the two men responsible for the 2016
3 Incident had been located and confronted and that the team believed, based on its forensics work
4 and interviews with the hackers, that the compromised data had been deleted, *i.e.*, that there was
5 no material risk of harm to the drivers whose data was at issue.

6 Mr. Sullivan was aware of a \$100,000 bug bounty payment to the hackers and, with Mr.
7 Kalanick’s knowledge and approval, approved a non-disclosure agreement (NDA)—drafted
8 primarily by Mr. Clark—that was signed by the parties.

9 About a year and a half before the 2016 Incident, in 2015, the FTC had launched an
10 investigation into a separate data breach that occurred at Uber in 2014, before Mr. Sullivan
11 joined the company (the “2014 Incident”). During the investigation, Uber was required to
12 produce documents to the FTC and answer interrogatory-style questions. On November 4, 2016
13 (shortly before the 2016 Incident), Mr. Sullivan sat for a deposition and provided testimony on
14 behalf of Uber regarding, among other things, the remedial security measures Uber had
15 implemented following the 2014 Incident.

16 Mr. Sullivan was not a Privacy lawyer in Uber’s Legal department, had never advised
17 businesses in data breach law or done legal research into that fast-evolving area of the law, had
18 little direct interaction with the FTC during its investigation (apart from the deposition and an
19 earlier presentation), and was not responsible for preparing Uber’s responses to the FTC’s
20 inquiries. He was occasionally consulted about specific issues related to the FTC investigation
21 and was copied on or asked to review certain of Uber’s submissions to the FTC, typically at or
22 near the submission deadline after the drafting process was complete. And he instructed
23 members of his team to provide detailed information to, and meet with, Uber’s in-house and
24 outside attorneys overseeing the FTC matter. The witnesses at trial were unanimous in their
25 testimony that Mr. Sullivan never instructed them to lie to, or withhold information from, the
26 Uber lawyers managing the FTC investigation. Nevertheless, the FTC did not learn of the 2016
27 Incident until approximately one year later when, following Mr. Kalanick’s departure from the

1 company, new management determined that the incident should have been disclosed. At that
 2 same time, Uber also fired Mr. Sullivan and Mr. Clark, a decision that was widely reported in the
 3 national and international media.

4 Mr. Sullivan was subsequently charged with one count of obstructing the FTC’s
 5 investigation, in violation of 18 U.S.C. § 1505, and one count of misprision of a felony, in
 6 violation of 18 U.S.C. § 4. Despite widespread knowledge of the 2016 Incident within Uber, the
 7 government argued that Mr. Sullivan “withheld knowledge of the breach from others within
 8 Uber who were in a position to disclose that information to the FTC.” (ECF No. 1 (Compl.) ¶
 9 43.) The government further contended that Mr. Sullivan concealed the 2016 Incident from the
 10 FTC, which, the government argued, should have been made aware of the incident because the
 11 FTC’s ongoing investigation of the 2014 Incident “focused on data security, data breaches, and
 12 protection of [personal identifying information].” (*Id.* ¶ 13.) The government contended that Mr.
 13 Sullivan “concealed” the 2016 Incident, principally by failing to affirmatively disclose it to
 14 Uber’s Legal department as it worked to respond to the FTC’s investigation into the 2014
 15 Incident. (*See, e.g., id.* ¶¶ 13, 43; ECF No. 71 (Superseding Indictment) ¶ 5.) On October 5,
 16 2022, following a multi-week trial and several days of deliberation, the jury returned a verdict of
 17 guilty on both counts.

18 DISCUSSION

19 I. Legal Framework

20 “The court shall impose a sentence sufficient, but not greater than necessary, to comply
 21 with the purposes set forth in [18 U.S.C. § 3553(a)(2)].” 18 U.S.C. § 3553(a).¹⁴

22 ¹⁴ The factors a sentencing court must consider include:

- 23 1. [T]he nature and circumstances of the offense and the history and
 24 characteristics of the defendant;
- 25 2. the need for the sentence imposed—
 - 26 A. to reflect the seriousness of the offense, to promote
 27 respect for the law, and to provide just punishment
 for the offense;

1 Courts may take a broad view of what to consider in arriving at an appropriate sentence.
 2 The Sentencing Guidelines are only “one factor among the § 3553(a) factors that are to be taken
 3 into account in arriving at an appropriate sentence,” without being given “more or less weight
 4 than any other” of those factors. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (*en*
 5 *banc*); *see also United States v. Sachsenmaier*, 491 F.3d 680, 685 (7th Cir. 2007) (noting that
 6 courts are to consider all the § 3553(a) factors “without any thumb on the scale favoring a
 7 guideline sentence”). “The Guidelines are not only *not mandatory* on sentencing courts; they are
 8 also not to be *presumed* reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009) (*per*
 9 *curiam*) (emphasis in original).

10 In short, a sentencing court’s task is “to consider every convicted person as an individual
 11 and every case as a unique study in the human failings that sometimes mitigate, sometimes
 12 magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113
 13 (1996). As the Supreme Court wrote in *Pepper v. United States*, 562 U.S. 476 (2011):

14 [W]e have emphasized that “[h]ighly relevant—if not essential—to
 15 [the] selection of an appropriate sentence is the possession of the
 16 fullest information possible concerning the defendant’s life and
 characteristics.” Permitting sentencing courts to consider the

-
- 17 B. to afford adequate deterrence to criminal conduct;
 - 18 C. to protect the public from further crimes of the
 19 defendant; and
 - 20 D. to provide the defendant with needed educational or
 21 vocational training, medical care, or other
 22 correctional treatment in the most effective manner;
- 23 3. the kinds of sentences available;
 - 24 4. the kinds of sentences and the sentencing range established [by the
 25 Sentencing Guidelines];
 - 26 5. any pertinent policy statement . . .;
 - 27 6. the need to avoid unwarranted sentencing disparities among
 defendants with similar records who have been found guilty of
 similar conduct; and
 - 7. the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a)(2).

1 widest possible breadth of information about a defendant “ensures
2 that the punishment will suit not merely the offense but the
3 individual defendant.”

4 *Id.* at 488 (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949) and *Wasman v. United*
5 *States*, 468 U.S. 559, 564 (1984)) (second and third brackets in original; internal citation
6 omitted)). Applying those principles in this case, we respectfully urge the Court to follow the
7 recommendation of the PSR and impose a probationary sentence with appropriate conditions.

8 **II. Application to Mr. Sullivan**

9 **A. The nature and circumstances of the offense strongly support a sentence of** 10 **probation.**

11 The Court’s ultimate determination will presumably rely in part on its assessment of the
12 overall wrongfulness of the offense conduct. In that regard, obstruction cases cover a broad
13 spectrum. On one end are cases in which defendants, often motivated by personal financial gain,
14 actively destroy evidence, lie, and encourage others to do the same to conceal their own illegal
15 conduct. On the other end are cases that are far more nuanced, in which the defendant’s
16 motivation is not so obviously nefarious and the conduct at issue is much more attenuated from
17 the underlying proceeding.

18 This case is at the latter end of that spectrum. Numerous witnesses testified that they
19 believed the response team, including Mr. Sullivan, were always acting in good faith. (*See, e.g.*,
20 Trial Tr. 2489:15–2490:5 (Guzman).) Greed or personal gain did not motivate the conduct
21 underlying the conviction. There was no allegation that Mr. Sullivan lied to law enforcement, the
22 FTC, or any other investigating government agency, or that he instructed anyone else to lie. (*Id.*
23 697:5–19, 698:23, 699:20–700:6 (Flynn); *id.* 837:11–838:2, 839:3–9, 839:17–24 (Garbutt); *id.*
24 1068: 13–1070:9 (Fletcher); *id.* 1763:18–1764:21 (Worden); *id.* 2259:14–2260:5 (Greene).) Mr.
25 Sullivan quickly informed the company’s CEO of the incident and kept him apprised of the
26 progress of the investigation. He ensured that the lawyer assigned to his team was fully aware of
27 the details of the situation. He knew that the head of Uber’s Communications team was briefed.
28 No documents were destroyed. To the contrary, Mr. Sullivan ensured that the response to the
29 2016 Incident was carefully documented in the Preacher Central Tracker and elsewhere. And the

1 criminal conduct that was allegedly concealed was *someone else's* conduct—the hackers'—and
2 not Mr. Sullivan's.

3 In other words, notwithstanding the government's protests to the contrary, the case
4 against Mr. Sullivan was fundamentally one of omission: that he “withheld knowledge of the
5 [2016 Incident] from others within Uber who were in a position to disclose that information to
6 the FTC.” (Compl. ¶ 43.)¹⁵ While the parties may disagree as to the legal sufficiency of that case,
7 Mr. Sullivan's conduct falls, at worst, on the benign end of the spectrum of conduct
8 encompassed by the obstruction statutes.

9 **B. Mr. Sullivan's personal history and characteristics strongly support a non-**
10 **custodial sentence.**

11 “Each of us is more than the worst thing we've ever done.” Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (Spiegel & Grau 2014). A sentencing court's inquiry under
12 § 3553(a) often turns on whether the offense for which the defendant is to be sentenced reflects
13 the essence of that person or whether the conduct was an aberrant deviation from an otherwise
14 exemplary life. *See, e.g., United States v. DeRusse*, 859 F.3d 1232, 1237 (10th Cir. 2017)
15 (approving of variance based on “the extent to which the criminal conduct was out of
16 character”); *United States v. Howe*, 543 F.3d 128 (3d Cir. 2008) (variance appropriate based on
17 “isolated mistake” in otherwise long and entirely upstanding life); *United States v. Hadash*, 408
18 F.3d 1080, 1084 (9th Cir. 2005) (downward departure to a probationary sentence reasonable
19 where defendant was a “law abiding citizen who did an incredibly dumb thing”); *United States v.*
20 *Gupta*, 904 F. Supp. 2d 349, 353 (S.D.N.Y. 2012) (granting significant downward variance when
21 the defendant's “personal history and characteristics starkly contrast with the nature and
22

23
24 ¹⁵ As discussed in the Motion for Judgment of Acquittal, the few examples of affirmative
25 conduct the government has cited were not tied to the FTC investigation at all. (ECF No. 242 at
26 15–20.) For example, although much ink has been spilled and court time consumed with
27 discussion of a purportedly false statement in the NDA, there was no evidence that Mr. Sullivan
and Mr. Clark discussed the FTC while drafting the NDA; that Mr. Sullivan (or anyone else)
showed the NDA to anyone at the FTC, to any of Uber's lawyers involved in the FTC
investigation, or to the WilmerHale lawyers investigating the matter in late 2017; or that Mr.
Sullivan urged anyone else to do so.

1 circumstances of his crimes”). There is no question that the conduct for which the jury convicted
2 Mr. Sullivan represents a singular departure from an otherwise exemplary life. Indeed, the PSR
3 writer, as support for the recommendation of a probationary sentence, noted that “[w]hat is
4 apparent to this officer is that the instant offense is an isolated incident in what is otherwise a
5 long and positive career of public service.” (ECF No. 252 (PSR) at 26.)

6 As discussed in Section I above, the PSR and the many letters submitted to this Court
7 attest to Mr. Sullivan’s admirable life, built on a foundation of hard work, integrity, dedication to
8 his family and faith, and a desire to help others. He is renowned professionally not only for his
9 technical innovation, skill, and integrity, but also for his commitment to championing and
10 promoting groups who have been historically underrepresented in the industry. He has devoted
11 his time and expertise to protecting the most vulnerable in society through his work with the
12 Dallas Child Advocacy Center and the National Center for Missing and Exploited Children. And
13 throughout his career, both as an AUSA and as a private partner to law enforcement, he has
14 worked tirelessly to protect consumers and hold accountable those who cause harm to others.

15 Mr. Sullivan’s colleagues have written powerfully regarding his character. A fellow
16 CISO who has known Mr. Sullivan since 2011 describes him as a “highly ethical, competent and
17 effective leader in the security community” who cares “for the security of not just his employer
18 but that of the broader world and all the individuals connecting through the technology we use in
19 our daily lives.” (Letters of Support, Ex. I at 40 (Steve Martino).) One of Mr. Sullivan’s earliest
20 mentors as a CISO agrees wholeheartedly that “There are some people you trust with your life
21 and then there are some people you trust with your life and the lives of your family. Joe is in the
22 latter category.” (Letters of Support, Ex. I at 34 (Patrick Heim).) Another CISO observes that
23 Mr. Sullivan “has been instrumental in shaping a critical industry”: in addition to consistently
24 emphasizing “integrity, honesty, and ethical behavior” when speaking to the security community,
25 Mr. Sullivan has left “each organization far better prepared to defend itself against cybercrime
26 than he found it [and] he has shared everything he learned along the way transparently.” (Letters
27 of Support, Ex. I at 58 (Jerry Perullo).) Yet another describes Mr. Sullivan as a person who

1 “holds himself to the highest standards possible,” whose “integrity has never come into
2 question,” and who “has been a role model for transparency in cybersecurity, for giving back to
3 our community, and for developing his own teams to be the best leaders they can be.” (Letters of
4 Support, Ex. I at 22 (Adam Fletcher).) And yet another, discussing the passion and dedication
5 Mr. Sullivan brought to protecting children from online predators, reflects:

6 We could have done the bare minimum of reporting content to the
7 National Center for Missing and Exploited Children and taking
8 down profiles on the social media platforms, but that was not
9 enough for Mr. Sullivan. There were stories to be told of victims
10 who needed help right away. There were dots that needed to be
connected by skilled investigators so that law enforcement could
have a more complete picture of the complicated webs of fake
accounts and anonymized VPN services that the perpetrators
utilized to engage in their abuse.

11 (Letters of Support, Ex. F at 9 (Ryan Hoyt).) Finally, Mr. Sullivan’s former boss, Travis
12 Kalanick, observes that Mr. Sullivan was an “honest, trusted employee who always acted with
13 integrity . . . always pushing the company to do the right thing.” (Letters of Support, Ex. G
14 at 23.)

15 Those who know Mr. Sullivan in other contexts also speak about “his unflinching resolve
16 in the face of challenging problems and his dedication to helping others.” (Letters of Support,
17 Ex. A at 16 (Chris Sullivan).) Mr. Sullivan’s sister-in-law describes how he is “a model to so
18 many” in the Sullivan family, inspiring them with his “dedication, love, and support” for his
19 daughters. (Letters of Support, Ex. A at 10 (Alice Sullivan).) One of Mr. Sullivan’s brothers,
20 who has “looked up to Joe my entire life,” describes how Mr. Sullivan sent him “money each
21 month to help cover room and board so that I could make it through” college. (Letters of
22 Support, Ex. A at 13 (Chris Sullivan).) Mr. Sullivan’s youngest sister also relates how Mr.
23 Sullivan “closed the gap” between her financial aid and her college tuition and “paid for
24 everything that my financial aid didn’t cover,” enabling her to pursue her dream of teaching art
25 and “bringing art into the lives of underprivileged children.” (Letters of Support, Ex. A at 24
26 (Letter from Mary Sullivan).) Another of Mr. Sullivan’s sisters, Kathleen Dremann, describes
27 how she recently learned that Mr. Sullivan “had helped pay for college for [their siblings]. He

1 has been quietly taking care of those around him without announcing his good deeds to the
 2 world.” (Letters of Support, Ex. A at 3.) She also relates how after she graduated from college
 3 with no place to live and no job, Mr. Sullivan welcomed her into the studio apartment he shared
 4 with his fiancée while she “worked it out.” (*Id.*) Those are personal examples of what Ms.
 5 Dremann describes as Mr. Sullivan’s everyday acts “of impacting the world on a small scale”:

6 My brother is a man who understands the value of small
 7 kindnesses that may go unnoticed by many. He is the type to slip a
 8 waiter some extra money and apologize if the people he is with are
 9 unkind. He will bring attention to injustices by cracking a joke and
 making the person feel seen and understood. He contributes greatly
 to the world and those around him. He does so quietly and without
 expectation of repayment or favors in return.

10 (*Id.*)

11 **C. A probationary sentence will provide adequate specific and general
 12 deterrence.**

13 Section 3553(a)(2) requires the Court to account for other purposes of sentencing,
 14 including “the need for the sentence imposed . . . to afford adequate deterrence to criminal
 15 conduct.” In Mr. Sullivan’s case, imprisonment is not necessary to deter him from engaging in
 16 future criminal conduct or to deter others from doing so; a sentence of probation, as
 17 recommended by the PSR, would be sufficient to serve both deterrent purposes of sentencing.

18 **1. Specific Deterrence**

19 Mr. Sullivan is extremely unlikely to engage in future criminal conduct.¹⁶ Throughout his
 20 letter to the Court, Mr. Sullivan thoughtfully and candidly grapples with the consequences of his
 21 actions and demonstrates his awareness that his conduct “hurt others and served as a bad
 22 example.” (Angeli Decl., Ex. 1 (Letter from Joe Sullivan).) Most importantly, Mr. Sullivan not

23 ¹⁶ It is both reasonable and appropriate for the Court to consider Mr. Sullivan’s history
 24 and age (54) when determining his likelihood of recidivism. Defendants over the age of 40 at the
 25 time of sentencing exhibit substantially lower rates of recidivism in comparison to younger
 26 defendants. *See* U.S. Sentencing Comm’n, *Measuring Recidivism: The Criminal History*
 27 *Computation of The Federal Sentencing Guidelines*, at 28 (2004); *see also* U.S. Sentencing
 Comm’n, *The Effects of Aging on Recidivism Among Federal Offenders*, at 10 (2017). Based on
 Mr. Sullivan’s history of respecting the law, his age, lack of criminal history, and the strong
 support of his friends and family, his likelihood of recidivism is as close to zero as an individual
 can be.

1 only assures the Court that the conduct in this case “won’t happen again on his watch,” but has
2 taken action to help ensure that others avoid making the same mistakes. (*Id.*)

3 The United States Supreme Court has recognized that a defendant’s likelihood to engage
4 in future criminal conduct is a central factor that courts must assess when imposing a sentence.
5 See *Pepper*, 562 U.S. at 492 (citing 18 U.S.C. § 3553(a)(2)(B)–(C)); see also *Gall v. United*
6 *States*, 552 U.S. 38, 59 (2007) (“imprisonment was not necessary to deter [the defendant] from
7 engaging in future criminal conduct or to protect the public from his future criminal acts”).
8 Courts have approved downward variances based on a defendant’s low risk of recidivism. See,
9 e.g., *United States v. Campbell*, 762 Fed. App’x 877, 879 (11th Cir. 2019) (noting that the
10 District Court’s “44-month downward variance reflected the court’s consideration of [the
11 defendant’s] characteristics, including his age, low risk of recidivism, and family relationship
12 and of the seriousness of his criminal history”); *United States v. Monetti*, 705 Fed. App’x 865,
13 869 (11th Cir. 2017) (noting that District Court granted a downward variance based, in part, on
14 defendant’s low risk of recidivism).

15 2. General Deterrence

16 “Section 3553(a) . . . does not require the goal of general deterrence be met through a
17 period of incarceration.” *United States v. Edwards*, 595 F.3d 1004, 1016 (9th Cir. 2010); see also
18 *Gall*, 552 U.S. at 59 (recognizing that in determining an appropriate sentence, “[s]ection
19 3553(a)(3) directs the judge to consider sentences other than imprisonment”). The pertinent
20 legislative history of § 3553(a) reflects Congress’ view that “it may very often be that release on
21 probation under conditions designed to fit the particular situation will adequately satisfy any
22 appropriate deterrent or punitive purpose.” *Edwards*, 595 F.3d at 1016 n.9 (quoting S. Rep. No.
23 98-225 at 92). Probation is a weighty sanction that imposes on an offender “several standard
24 conditions that substantially restrict their liberty.” *Gall*, 552 U.S. at 48. Imposing special
25 conditions restricts a defendant’s liberty even further.

26 While § 3553(a) requires courts to consider general deterrence as one of the goals of
27 sentencing, judges are often placed in the difficult position of having to wonder whether any

1 particular case or any specific sentence will *in fact* act as a general deterrent. Mr. Sullivan’s is
2 the rare case where we have *direct evidence* of the impact his prosecution has had on the
3 cybersecurity industry—the precise audience the government sought to influence from the very
4 beginning of this case. Regardless of how the government may now choose to frame its general
5 deterrence goals to support its sentencing recommendation, it has been very explicit, from the
6 time it announced the charges against Mr. Sullivan until it publicized the jury’s verdict, that it
7 sought to send a message to technology companies and security professionals that the
8 government expects them to “step forward and provide us evidence of an intrusion”¹⁷ and to
9 “alert customers and appropriate authorities when . . . data is stolen by hackers.”¹⁸ In other
10 words, throughout this prosecution, the government’s consistent message has been that the
11 industry must report data intrusions when they happen, and that there will be consequences for
12 its failure to do so.

13 That message has clearly been received. Mr. Sullivan’s very public firing and his
14 subsequent indictment and conviction garnered widespread media attention and caused the
15 industry immediately to sit up and take notice. As Asana’s Head of Security, Sean Cassidy,
16 explains, “This is a landmark case already, and has already changed the course of cybersecurity
17 programs at many companies for the better. CSOs across the country are clarifying our roles and
18 responsibilities and making sure we do the right thing in every circumstance.” (Letters of
19 Support, Ex. I at 11(emphasis added).) As one information security consultant writes, “The jury
20 has spoken, the precedent has been set, and the reverberations are now being felt throughout the
21 security industry.” (Letters of Support, Exhibit F at 2 (Paul Cochrane).) PayPal’s first CISO,
22 Michael Barrett, similarly notes that Mr. Sullivan’s conviction has “generated significant

23
24 ¹⁷ United States Attorney’s Office, Press Conference at 6:50–6:58 (Aug. 20, 2020),
available at https://www.youtube.com/watch?v=QEPRm2E_PUw.

25
26 ¹⁸ United States Attorney’s Office, *Former Chief Security Officer of Uber Convicted of*
27 *Federal Charges for Covering Up Data Breach Involving Millions of Uber User Records* (Oct. 5,
2022), <http://www.justice.gov/usao-ndca/pr/former-chief-security-officer-uber-convicted-federal-charges-covering-data-breach>.

1 shockwaves within the cybersecurity community.” (Letters of Support, Exhibit I at 6.) As Alex
2 Stamos, former CSO for Facebook and Yahoo, puts it in his letter, “It is not an understatement to
3 say that Joe’s conviction has shaken the small community of security executives. It is the top
4 topic of conversation at industry events and in CISO Slack channels. It is a constant source of
5 stress among directors and VPs who are considering making the jump into the role.” (Letters of
6 Support, Exhibit F at 42.) As over 50 current and former CISOs explain in their letter to the
7 Court:

8 Joe’s case has had a huge impact on the cybersecurity community.
9 It has been the subject of frequent executive team conversations
10 and panel discussions at industry seminars, and a significant driver
11 of efforts to change policies and practices to err on the side of
12 disclosure, even when the legal requirement to do so remains
13 unsettled. Based on what we have observed, further processes will
14 likely be implemented throughout the industry to better articulate
15 CISOs’ responsibilities and to build a culture of shared
16 accountability.

17 (Letters of Support, Ex. I at 26 (Group Letter 1).) And Rob Chesnut, a former federal prosecutor
18 and past Senior Vice President of Global Trust and Safety for eBay, provides perhaps the best
19 summary of the impact this case has already had on the cybersecurity community:

20 [S]ome might believe that a jail sentence is important here to send
21 a message to others in the cyber security field. I disagree. I have
22 spoken at several cyber security events attended by well over 100
23 top security professionals in the last 3 months about this case, and
24 have heard directly from many of the professionals. The fact that a
25 criminal case was brought against Joe, and that he was convicted,
26 has shaken many within the industry who understand that cyber
27 events are a way of life in this field. Some security executives
expressed deep concern over taking any C level security position at
a top company, and questioned whether they needed to get their
own independent outside counsel to advise them on breaches. . . .
In a positive development, I have been told that Joe’s case has
spurred a focus on establishing better internal communication
protocols to directly involve general counsel, executive teams and
boards around breaches, and clarifying roles and decision making
authority about reporting. One security officer recently told me that
he would report a breach even if his company explicitly decided
not to do it, all because of this case. If prosecutors were hoping to
get the security industry’s attention with this prosecution, they
have already succeeded.

(Letters of Support, Ex. I at 14.)

1 Indeed, as explained in the many letters submitted in support of Mr. Sullivan, not only is
 2 a custodial sentence unnecessary to deter wrongful conduct—it would create the real risk of
 3 undesirable *negative* consequences by *over-detering* socially worthy conduct. *See generally* 18
 4 U.S.C. § 3553(a) (court may not impose a sentence “greater than necessary” to accomplish goals
 5 of sentencing). That is particularly true with respect to the misprision charge. Absent any federal
 6 statutory or regulatory guidance for dealing with various security incidents, security
 7 professionals are left to worry that common incident response practices could be construed later
 8 by an aggressive prosecutor as “affirmative acts of concealment” giving rise to a misprision
 9 charge and potential term of imprisonment.¹⁹ As noted in the commentary following Mr.
 10 Sullivan’s conviction, these concerns are not merely theoretical:

11 **Ransom Payments:** Victims of computer intrusions often choose
 12 to pay a ransom to the hackers for a variety of valid reasons,
 13 including to protect their business and their customers. Often, a
 14 company pays ransom, in part, to prevent the hackers from
 15 publishing sensitive data online, including the personal information
 16 of its customers. Outside the context of sanctioned groups, the
 17 government has thus far never seriously considered making ransom
 18 payments illegal.²⁰ Yet, post-Sullivan, it is not hard to imagine that
 a ransom payment in exchange for an explicit or implicit promise
 not to disclose the existence of the incident could be considered
 affirmative concealment of the incident. Indeed, the Justice
 Department’s press release cited as aggravating factors that
 “Sullivan orchestrated [the payment] despite knowing that the
 hackers were hacking and extorting other companies as well as
 Uber” and “despite the fact that the hackers had refused to provide

19 ¹⁹ For example, “[p]ractices such as paying a ‘ransom’ to ensure the safety of customer
 20 data, agreeing to treat a researcher submission as a ‘bug bounty’ (even in the face of bad
 21 behavior or even extortionate demands), and viewing incidents resolved through a bug bounty
 22 program as different from data breaches that resulted in the public dissemination of
 organizational or customer data were relatively common, and often viewed as necessary to
 protect customers and their data.” (Letters of Support, Ex. I at 26 (Group Letter 1).)

23 ²⁰ While the U.S. government “does not encourage” paying ransom to criminal actors, its
 24 official guidance for CISOs explicitly recognizes that the question of “whether to pay a ransom
 25 is a serious decision, requiring the evaluation of all options to protect shareholders, employees,
 26 and customers.” U.S. Dept. of Justice *et al.*, “How to Protect Your Networks from
 27 Ransomware,” at 5, <https://www.justice.gov/criminal-ccips/file/872771/download> (last accessed
 Jan. 6, 2023). And as Mr. Stamos points out in his letter to the Court, “The Executive Assistant
 Director of CISA believes that only a quarter of ransomware attacks are reported. This is not an
 illogical choice, as it is extremely rare for law enforcement to be helpful during a breach, and by
 the time one happens paying the ransom is almost always the best decision for a company’s
 customers and other stakeholders.” (Letters of Support, Ex. F at 42.)

1 their true names.” Of course, those same factors are present with
nearly every ransom payment.

2 **Vulnerability Disclosure Programs:** Many companies have
3 vulnerability disclosure, or bug bounty, programs that offer
4 monetary rewards to ethical, or “white hat,” hackers who discover
5 and report vulnerabilities that could allow a company to be hacked.
6 The Justice Department’s misprision charge against Sullivan was
7 based largely on a \$100,000 payment to the hackers that he
8 orchestrated through Uber’s bug bounty program in exchange for
9 the hackers signing an NDA promising not to reveal the incident.
10 *But companies frequently use NDAs as part of their bug bounty
programs as they understandably do not want to publicize the fact
that they were or even could be hacked or the vulnerabilities that
allowed such hacking to occur.* To be sure, the government also
11 faulted Sullivan for having the hackers falsely state that they did
12 not exfiltrate sensitive customer information. But it is not clear that
13 a false statement was necessary for the misprision charge. After all,
14 misprision only requires an “affirmative act of concealment,” not a
15 false or misleading statement, and NDAs, by definition, conceal.

16 Kellen Dwyer, *The Fallout from the First Trial of a Corporate Executive for ‘Covering Up’ a
17 Data Breach*, Lawfare (Oct. 19, 2022), [https://www.lawfareblog.com/fallout-first-trial-corporate-
18 executive-covering-data-breach](https://www.lawfareblog.com/fallout-first-trial-corporate-executive-covering-data-breach) (emphasis added).²¹

19 Letter after letter from distinguished and experienced current and former Chief Security
20 Officers (“CSOs”) and Chief Information Security Officers (“CISOs”) have articulated these
21 fears. Kiersten Todt, Chief of Staff at the federal Cybersecurity and Infrastructure Security
22 Agency, reports in her letter to the Court that “[a]fter Joe’s verdict came through, I had several
23 CISOs and CIOs of global companies—names you know well—reach out to me and say Joe’s
24 verdict will make it impossible to recruit smart people into the roles of CISOs and CSOs if
25 imprisonment is on the table—and will set the industry back.” (Letters of Support, Ex. I at 77.)
26 As former CISO Patrick Heim explains in his letter, “[t]he news of [Mr. Sullivan’s] conviction
27 has shocked the community of security leaders and dominates every recent discussion I have

28 ²¹ Indeed, the government argued that the NDA itself (not just the “did not take or store”
29 language) was an act of concealment that supported the misprision charge. (Trial Tr. 2749:10–13
30 (“[The NDA] purchased silence to make sure that Brandon Glover and Vasile Mereacre never
31 went out and told anyone else what had happened because that would be tremendously
32 embarrassing for the company”); *id.* 2608:20–23 (describing “Uber making a deal with the
33 hackers to shut up and not talk about it in exchange for Uber not having them prosecuted and not
34 referring them to the FBI” as the “concealment of a crime” justifying conviction for misprision).)

1 participated in.” (Letters of Support, Ex. I at 34.) John Watters, the retired President and CEO of
 2 Mandiant²² observes that “CISOs around the world are already looking at retiring early, changing
 3 professions, or simply leaving their roles for fear that a poor decision could result in jail time. . . .
 4 If the result of poor judgment translates into a loss of one’s job, that’s the way it is. If it results in
 5 the loss of one’s freedom, that’s an entirely different outcome—one that will result in a mass
 6 migration out of CISO jobs, putting our country at heightened risk to the nation-state and
 7 criminal actors that attack our society every day.” (Letters of Support, Ex. I at 82; *id.* at 11 (Sean
 8 Cassidy) (“To sentence an executive like Joe to prison would be to make every cybersecurity
 9 professional’s job harder, because it raises the stakes drastically); *id.* at 40 (Steve Martino) (“An
 10 overly punitive sentence would only create an environment that inhibits collaboration across
 11 operational disciplines and slows the development of the role of security in organizations.”) And
 12 as SINET Chairman and former U.S. Secret Service Agent Robert Rodriguez explains, even for
 13 those executives who remain in their positions, overdeterrence could lead companies to adopt a
 14 security posture focused more on “CYA” than on protecting their organizations and customers,
 15 with security leaders outsourcing or avoiding the riskiest work to avoid even the possibility of
 16 personal civil or criminal liability. (Letters of Support, Ex. D at 5.)

17 The job of CSO or CISO is “an often-thankless position that bears wide oversight and
 18 responsibility, carrying the burden of corporate Cyber risk with near impossible odds of defense;
 19 a few dozen security people on average pitted against literally millions of digital attacks and
 20 threats during any given month.” (Letters of Support, Ex. I at 1 (Fares Alraie).) CISOs often
 21 “operate in the context of a larger organization where they provide input and advice into decision
 22 making processes they do not control,” (Letters of Support, Ex. I at 24 (Jim Goddard)), and the
 23 position “often requires nuanced judgment calls in a largely unregulated environment.” (Letters
 24 of Support, Ex. I at 26 (Group Letter 1).) Worse yet, when things do go wrong, companies often
 25 blame CISOs and CSOs for larger organizational failures:

26 _____
 27 ²² Mandiant was retained by Uber in 2017 to conduct a technical review of the 2016
 Incident.

1 When a security incident does occur, [CISOs] are often instantly
 2 blamed for not preventing the exact scenario they had warned the
 3 business about and are the first to be fired after a breach. The time
 4 between security incidents can be spent begging for resources and
 attempting to protect the business from itself as ambitious
 executives take on more and more risk. It is no wonder that a
 public company CISO often lasts less than two years.

5 (Letters of Support, Exhibit F at 41 (Alex Stamos) at 42.) *See also* (Letters of Support, Ex. I at
 6 34 (Patrick Heim)) (“CISOs are already resigned to the fact that they may be fired, abandoned, or
 7 scapegoated by their employers.”) This dynamic has led to the wry observation by many that the
 8 acronym “CSO” in fact stands for “Chief Scapegoat Officer” in the event of a cybersecurity
 9 incident. (Letters of Support, Ex. I at 79 (Julie Tsai).) Take an already difficult and under-
 10 resourced position, and layer on top of it not only the risk of unemployment, civil (or even
 11 criminal) liability, but also the risk of imprisonment, and the result becomes clear: A sentence of
 12 incarceration for Mr. Sullivan is not only unnecessary to deter future *illegal* conduct by security
 13 officers, but may well also convince many talented individuals to abandon the profession or
 14 choose never to enter it and put themselves in such a risky position to begin with.

15 **D. A period of incarceration is not necessary to achieve just punishment and
 ensure respect for the law.**

16 A period of incarceration is unnecessary to ensure just punishment for the counts of
 17 conviction; Mr. Sullivan has suffered, and will continue to suffer, significant consequences
 18 because of this case. As described during the trial and in the letters of support and other materials
 19 submitted to the Court, Mr. Sullivan was a well-compensated, respected leader in his field,
 20 working closely with government agencies and entities in the private sector at the highest levels,
 21 and serving on advisory boards of startup entities, and even on a Presidential commission. His
 22 very public firing from Uber in 2017, and the following five years of investigations and
 23 litigation, exacted a substantial toll on Mr. Sullivan and his family. Because of his conviction,
 24 Mr. Sullivan’s most recent employer had no choice but to let him go from his position as Chief
 25 Security Officer and Mr. Sullivan is unlikely ever again to find work that requires a security
 26 clearance or to work closely with government agencies—work that has been his passion for the
 27 past 25 years and in which he has excelled. The stigma and consequences of being a convicted

1 felon, particularly considering the intense media scrutiny that has followed this case, will always
2 remain with Mr. Sullivan. Those consequences, combined with the loss of liberty that would
3 come with the conditions of probation, are just punishment for the conduct at issue in this case.

4 The United States Supreme Court has recognized that, while custodial sentences are
5 “qualitatively more severe than probationary sentences of equivalent terms,” a probationary
6 sentence “substantially restricts” a defendant’s liberty. *Gall*, 552 U.S. at 48. For example,
7 “probationers may not leave the judicial district, move, or change jobs without notifying, and in
8 some cases receiving permission from their probation officer or the court. They must report
9 regularly to their probation officer [and] permit unannounced visits to their homes,” among other
10 standard conditions of probation. *Id.* “Most probationers are also subject to individual ‘special
11 conditions’ imposed by the Court.” *Id.*

12 A period of incarceration is also unnecessary to ensure respect for the law. Mr. Sullivan’s
13 54 law-abiding years and his long career dedicated to working for and with law enforcement are
14 a testament to his respect for the law. The attached letters demonstrate that Mr. Sullivan was and
15 remains a vocal advocate of bringing law enforcement and the tech industry together to protect
16 consumers and vulnerable individuals. Indeed, Mr. Sullivan’s entire career has demonstrated his
17 respect for the law.²³ For defendants like Mr. Sullivan, who show exemplary character outside of
18 the conduct for which they have been convicted and who enjoy the support of friends, family,
19 colleagues, and community leaders, a sentence outside the Guidelines is appropriate. *See United*
20 *States v. Whitehead*, 532 F.3d 991 (9th Cir. 2008) (upholding sentence of probation for creating
21 counterfeit access device despite Guidelines range of 41–51 months where defendant was
22 remorseful, employed, supported his daughter, and did not pose a threat to the community).

23
24 ²³ Attached to the PSR are letters of support from numerous current and past law
25 enforcement officers, government employees, and political appointees, including from the
26 Department of Justice, Federal Bureau of Investigation, Secret Service, Department of Homeland
27 Security, Cybersecurity and Infrastructure Security Agency, United States Army, Delta Force,
An Garda Siochana (Ireland’s National Police service), Australian Federal Police, Italian police,
NATO Cybersecurity Center of Excellence, the former United States Ambassador to Singapore,
and the Massachusetts Attorney General’s Office.

1 A sentence of probation with appropriate conditions would be adequate, but not greater
 2 than necessary, punishment to promote respect for the law, reflect the seriousness of the offense,
 3 and afford adequate deterrence.²⁴

4 **E. The Advisory Sentencing Guidelines**

5 **1. The Advisory Guidelines, particularly § 2J1.2, have limited use in this**
 6 **case.**

7 As noted above, the Guidelines are “not to be *presumed* reasonable,” *Nelson*, 555 U.S. at
 8 352 (emphasis in original), and represent only “one factor among the § 3553(a) factors that are to
 9 be taken into account in arriving at an appropriate sentence,” *Carty*, 520 F.3d at 991. “[C]ourts
 10 may vary [from Guidelines ranges] based solely on policy considerations, including
 11 disagreements with the Guidelines.” *Kimbrough v. United States*, 552 U.S. 85, 101 (2007)
 12 (alterations in original) (quoting Brief for United States). The Supreme Court has made clear that
 13 such variances are particularly appropriate when the applicable “Guidelines do not exemplify the
 14 [Sentencing] Commission’s exercise of its characteristic institutional role.” *Id.* at 109.
 15 Specifically, Guidelines that are not the product of “empirical data and national experience”
 16 deserve significantly less deference, and courts may vary from such Guidelines “even in a mine-
 17 run case.” *Id.* at 109–10.

18 Of note here, the Sarbanes-Oxley Act of 2002 required that the Commission review and
 19 enact specific amendments to the Guidelines within 180 days of the law’s enactment. Pub. L.
 20 107–204, § 805, 116 Stat 745, 802 (2002). The Commission enacted these amendments on an
 21 emergency basis in January 2003, in what one commissioner called a “rushed” process. “Hearing
 22 on Amendments in Response to Sarbanes-Oxley, March 25, 2003,” *Federal Sentencing Reporter*
 23 Vol. 15, No. 4, *The Sarbanes-Oxley Act and Federal Economic Crime Sentencing* (April 2003),

24 ²⁴ Mr. Sullivan has no objection to the community service requirement proposed in the
 25 PSR. As the many letters of support attest, Mr. Sullivan has demonstrated a life-long
 26 commitment to helping others in his community—whether it be helping his community recover
 27 from the devastation of Hurricane Andrew or assisting formerly incarcerated people secure jobs
 upon their release from prison. He recognizes that others have not always enjoyed the advantages
 or the assistance he has received along the way and stands ready to continue to contribute to
 society in ways he is well positioned to provide.

1 at 296. The amendments included two major changes to the guideline for obstruction of justice
 2 offenses, § 2J1.2. As then-Commission Vice Chair Greer explained, Sarbanes-Oxley:

3 direct[ed] the Commission to amend section 2J1.2 “as appropriate”
 4 to ensure that the base offense level is adequate to deter and
 5 punish, and further, that the specific offense characteristics in that
 6 guideline adequately address *cases where either a large quantity
 7 of, or especially valuable, evidentiary material was destroyed,
 altered, or fabricated*. Section 1104(b)(4) of the Act contains a
 similar expression that the obstruction of justice guideline should
 adequately punish cases involving the *destruction or fabrication
 of documents or other physical evidence*.

8 Steer, John, “The Sentencing Commission’s Implementation of Sarbanes-Oxley,” Federal
 9 Sentencing Reporter Vol. 15, No. 4, The Sarbanes-Oxley Act and Federal Economic Crime
 10 Sentencing (April 2003), at 267 (emphasis added). It was “*these directives*, of apparent Enron-
 11 derivation,” (not any empirical study of whether the historical sentences for obstruction of justice
 12 adequately served the purposes articulated in 18 U.S.C. § 3553) that “motivated the Commission
 13 to increase the base offense level in section 2J1.2 from 12 to 14.” *Id.* (emphasis added).²⁵
 14 Applying the principles outlined in *Kimbrough* and *Gall*, the obstruction of justice guidelines
 15 deserve significantly less deference from the Court than other guidelines might and are not
 16 particularly useful in determining culpability in an obstruction case such as this, where the
 17 conduct at issue is vastly different from the Enron scandal that prompted the enhancement to
 18 § 2J1.2. Whatever weight the Court chooses to afford the Guidelines calculation, Mr. Sullivan’s
 19 position on that calculation is set forth below.

20 2. Uncontested Guidelines Calculations

21 Mr. Sullivan agrees with the base offense level as calculated by the Probation Office and
 22 the government. The guideline for a violation of 18 U.S.C. § 1505 is § 2J1.2, which specifies a
 23 base offense level of 14. U.S.S.G. § 2J1.2(a) & Appendix A (Statutory Index). Mr. Sullivan also
 24

25 ²⁵ The Department of Justice’s explicit recommendation to increase the § 2J1.2 base
 26 offense level from 12 to 14 no doubt played a role in this decision as well. *See Letter of*
 27 *Department of Justice to U.S. Sentencing Commission Regarding Post-Sarbanes-Oxley*
Guidelines Amendments, October 1, 2002, Federal Sentencing Reporter Vol. 15, No. 4, The
 Sarbanes-Oxley Act and Federal Economic Crime Sentencing (April 2003), at 272.

1 agrees that the two counts of conviction involve the same harm and thus should be grouped
2 together into a single group.²⁶

3 **3. The Court should not apply § 2J1.2(2)'s enhancement for "substantial**
4 **interference with the administration of justice."**

5 Guidelines section 2J1.2(b)(2) provides for a three-level enhancement for obstruction of
6 justice where "the offense resulted in substantial interference with the administration of justice."
7 Both the government and the PSR urge the application of that section. But Application Note 1 to
8 § 2J1.2 makes clear that this term "includes a premature or improper *termination* of a *felony*
9 investigation; an indictment, verdict, or any judicial determination based upon perjury, false
10 testimony, or other false evidence; or the unnecessary expenditure of substantial governmental or
11 court resources." U.S.S.G. § 2J1.2 cmt. n.1 (emphasis added). The government cites *none* of
12 these factors in support of its argument for this enhancement, instead asserting that Mr.
13 Sullivan's offense conduct: (1) "caused the improper and premature termination²⁷ of the *FTC's*
14 [administrative] investigation and a settlement with the FTC based on false evidence"; and (2)
15 prevented criminal proceedings from being *initiated* against the hackers. These, the government
16 asserts, are sufficient to trigger the § 2J1.2(b)(2) enhancement. The Court should reject this
17 enhancement.

18 In support of its argument that it may establish "substantial interference" with factors
19 other than those listed in Application Note 1, the government relies heavily on *United States v.*

20 _____
21 ²⁶ The government and the PSR group the counts together pursuant to § 3D1.2(c) on
22 grounds that Misprision of a Felony is treated as a specific offense characteristic (for "substantial
23 interference with the administration of justice" pursuant to § 2J1.2(b)(2)) in the calculation for
24 Obstruction of Justice. Even if, as Mr. Sullivan advocates, the Court concludes that the
25 § 2J1.2(b) enhancement does not apply, the counts of conviction should nevertheless be grouped
26 pursuant to § 3D1.2(b), as they represent counts that "involve the same victim and two or more
27 acts or transactions connected by a common criminal objective or constituting part of a common
scheme or plan."

²⁷ As a factual matter, the FTC did not in fact enter a Final Order terminating the
agency's investigation into Uber until *after* the disclosure of the 2016 incident in late 2017. And
the testimony at trial established that Uber's new management delayed informing the FTC about
the existence of the 2016 Incident for *months* after Mr. Sullivan discussed it with internal
investigators in August 2017.

1 *Amer*, 110 F.3d 873 (2d Cir. 1997). Even assuming the government is correct that the
 2 Application Note 1 factors are not exhaustive,²⁸ the government reads far too much into *Amer*,
 3 which explicitly notes that “other acts” trigger this enhancement only if they are “similarly or
 4 even more disruptive of the administration of justice” as the enumerated factors. *Amer*, 110 F.3d
 5 at 885; *see also United States v. McSherry*, 226 F.3d 153, 158 (2d Cir. 2000). That is not the case
 6 here.

7 **a. The enhancement does not apply to the premature termination**
 8 **of an agency’s administrative investigation.**

9 As to the government’s argument that Mr. Sullivan caused the improper and premature
 10 termination of the FTC’s investigation, the explicit limitation in Application Note 1 to *felony*
 11 proceedings would appear to rule out obstructive conduct that caused the “premature or improper
 12 termination” of even a criminal *misdemeanor* investigation, and it is difficult to see how a purely
 13 administrative FTC investigation could be considered more serious than an investigation into a
 14 criminal misdemeanor.

15 *Amer* only bolsters this point. The offense conduct deemed by the court in *Amer* to be
 16 “similarly or even more disruptive of the administration of justice” than, for example, causing
 17 the premature or improper termination of a felony investigation was the defendant *abducting his*
 18 *own children and fleeing the country* in violation of the International Parental Kidnapping Act.
 19 Indeed, the overwhelming majority of cases to extend § 2J1.2(b)(2) beyond the enumerated
 20 factors (citing *Amer*) have featured similarly egregious facts.²⁹ While it is easy to recognize how
 21 preventing the lawful determination of child custody through international kidnapping could be
 22 just as disruptive to the administration of justice as wrongfully terminating a felony investigation
 23 or committing perjury in such a way that leads to a wrongful verdict, the same cannot be said of
 24 conduct that delayed the ultimate resolution of a purely administrative agency investigation into

25 ²⁸ *See United States v. Goodrich*, 919 F.2d 1365, 1369 (9th Cir. 1990) (commenting on
 26 the absence of any of these enumerated factors). *But see* U.S.S.G. § 1B1.1, comment (n.2) (“The
 term ‘includes’ is not exhaustive.”).

27 ²⁹ None of them, it is worth noting, are from the Ninth Circuit.

1 data security practices. And while the government suggests that § 2J1.2(b)(2) applies by analogy
 2 to conduct that prematurely or improperly terminates an *agency proceeding* by virtue of Mr.
 3 Sullivan’s conviction under 18 U.S.C. § 1505, the defense is aware of no case in which a court
 4 has extended the reach of § 2J1.2(b)(2) so far.

5 **b. The enhancement does not apply to conduct that interferes**
 6 **with the *initiation* (as opposed to premature termination) of a**
 7 **criminal investigation.**

8 In the alternative, the government contends that § 2J1.2(b)(2) is triggered by virtue of Mr.
 9 Sullivan’s conviction for misprision of a felony, pointing to the allegation that Mr. Sullivan
 10 “covered up a crime” by “paying the hackers \$100,000 in exchange for their silence” and that his
 11 “goal” was to keep the FBI from learning about the hack. But even if the government had
 12 established that Mr. Sullivan’s actions prevented the FBI from *learning of* the hackers’ activities,
 13 that would not be enough to trigger the application of § 2J1.2(b)(2). Application Note 1 makes
 14 clear that the enhancement applies to conduct that causes the “premature or improper *termination*
 15 of a felony investigation,” rather than conduct that delays or interferes with the *initiation* of an
 16 investigation in the first place.

17 The government again cites *Amer*—an out-of-circuit case decided 26 years ago—for the
 18 proposition that even where a defendant’s conduct does not interfere with an ongoing
 19 proceeding, a defendant who “prevent[s] proper legal proceedings from occurring” in the first
 20 place triggers the enhancement as well. But the Ninth Circuit has been clear that “[i]n
 21 interpreting the Sentencing Guidelines, ‘[t]he plain meaning of unambiguous language in a
 22 guideline provision controls.’” *United States v. Calderon Espinosa*, 569 F.3d 1005, 1007 (9th
 23 Cir. 2009) (quoting *United States v. Valenzuela*, 495 F.3d 1127, 1133 (9th Cir. 2007).) The plain
 24 meaning of the word “termination” forecloses the government’s argument; something obviously
 25 cannot be “terminated” before it even exists.

26 Moreover, *Amer* itself is readily distinguishable from the facts here. As noted above, the
 27 defendant in *Amer* engaged in illegal “self-help,” preventing the (foreseeable and inevitable)
 legal proceedings that would have determined custody of his children from occurring by

1 kidnapping them and taking them to Egypt. This was the conduct that prompted the district court
2 to comment that Mr. Amer had “deemed himself the judge, and then he made the decision . . .
3 and act[ed] in the form of a vigilante, if you will, [taking] matters into his own hands,” and
4 which the Second Circuit ruled was “similar or even more disruptive of the administration of
5 justice” as the factors listed in Application Note 1. *Amer*, 110 F.3d at 885. The same cannot be
6 said when the *victim* of an offense (or its employees) acts to conceal the fact that it has been
7 victimized, even if that conduct also amounts to misprision of a felony. The government’s
8 position improperly conflates “the more serious forms of obstruction,” U.S.S.G. § 2J1.2, cmt.
9 (Background), with the heartland variety already captured by the base offense level for the
10 offense.

11 **4. The sentencing guidelines counsel a downward departure under §**
12 **5K2.20.**

13 Courts have long recognized that the aberrant nature of a defendant’s criminal conduct
14 can justify a downward departure from the relevant Guidelines. *See United States v. Working*,
15 224 F.3d 1093, 1099 (9th Cir. 2000); *United States v. Fairless*, 975 F.2d 664, 669 (9th Cir. 1992)
16 (“A single act of aberrant behavior is a mitigating circumstance not taken into consideration by
17 the Guidelines which warrants departure.”) When it promulgated the Guidelines, the Sentencing
18 Commission recognized that it was unable to fashion guidelines that could apply to every
19 offense. In particular, the Commission acknowledged that in fashioning the Guidelines, it did not
20 deal with “single acts of aberrant behavior that still may justify probation at high offense levels
21 through departures.” U.S.S.G., Ch. 1, pt. A, § 4(d). As a result, “the Guidelines recognize that the
22 first offense may constitute a single act of truly aberrant behavior justifying a downward
23 departure.” *United States v. Dickey*, 924 F.2d 836, 838 (9th Cir. 1991); *see also United States v.*
24 *Takai*, 941 F.2d 738, 741 (9th Cir. 1991) (affirming trial court’s downward departure to permit
25 probation for two first offenders who plead guilty to charges of bribery and conspiracy to bribe a
26 federal agent because, among other things, the defendants’ conduct were “single acts of aberrant
27 behavior”).

1 “Aberrant conduct is conduct that represents a ‘short-lived departure from an otherwise
 2 law-abiding life.’” *Working*, 224 F.3d at 1099 (quoting *United States v. Colace*, 126 F.3d 1229,
 3 1231 (1997)). “Aberrant behavior is best assessed ‘in the context of the defendant’s day-to-day
 4 life’ rather than solely ‘with reference to the particular crime committed.’” *Working*, 224 F.3d at
 5 1101 (citations omitted). When considering whether a defendant’s behavior falls within the
 6 “spectrum of aberrant behavior,” the Court may consider “a convergence of factors,” *Fairless*,
 7 975 F.2d at 667, including:

8 (1) the singular nature of the criminal act, (2) spontaneity and lack
 9 of planning, (3) the defendant’s criminal record, (4) psychological
 10 disorders the defendant was suffering from, (5) extreme pressure
 11 under which the defendant was operating, including the pressure of
 losing his job, (6) letters from friends and family expressing shock
 at the defendant’s behavior, and (7) the defendant’s motivations for
 committing the crime.

12 *Colace*, 126 F.3d at 1231 n.2. None of these factors standing alone is dispositive; the court must
 13 review the totality of the circumstances when making findings of aberrancy. *Working*, 224 F.3d
 14 at 1100–01 (citing cases).

15 The totality of the circumstances makes clear that the offense conduct constituted a
 16 singular departure from an otherwise law-abiding—indeed, law enforcing—life. The was the
 17 conclusion of the Probation Office as well. (PSR at 26 (“What is apparent to this officer is that
 18 the instant offense is an isolated incident in what is otherwise a long and positive career of public
 19 service.”).) Section 5K2.20 permits the Court to depart downward “in an exceptional case” if the
 20 defendant’s conduct was a single criminal occurrence that “(1) was committed without
 21 significant planning; (2) was of limited duration; and (3) represents a marked deviation by the
 22 defendant from an otherwise law-abiding life.” U.S.S.G. § 5K2.20(b). A downward departure
 23 from the Sentencing Guidelines under § 5K2.20 is appropriate here. *United States v. Smith*, 387
 24 F.3d 826, 833 (9th Cir. 2004) (District Court erred when it refused defendant’s request for
 25 downward departure on the ground that the crime for which defendant was convicted was
 26 aberrant behavior; the evidence, including many letters for failing to find defendant’s conduct
 27 extraordinary under U.S.S.G. § 5K2.20); *Fairless*, 975 F.2d 664 (affirming downward departure

1 of five offense levels on the ground that the armed bank robbery for which defendant was
2 convicted was a “single act of aberrant behavior” considering the “convergence” of the factors
3 listed in *Colace*).

4 **5. The Court should apply the recently promulgated prospective**
5 **amendments to the Sentencing Guidelines.**

6 On April 5, 2023, after a notice-and-comment period and public hearing, the Sentencing
7 Commission formally promulgated a series of proposed amendments to the Sentencing
8 Guidelines which are scheduled to take effect on November 1, 2023.³⁰ Two of these proposed
9 amendments deserve scrutiny and further support a noncustodial sentence for Mr. Sullivan.

10 As the Court is aware, the Guidelines assign points to prior convictions, which are then
11 converted into a Criminal History Category. Criminal History Category I, the lowest category,
12 lumps together offenders with zero criminal history points and those with one criminal history
13 point. As the Sentencing Commission explains in its synopsis of the new amendments:

14 Recidivism data analyzed by the Commission suggest that
15 **offenders with zero criminal history points (“zero-point”**
16 **offenders) have considerably lower recidivism rates than other**
17 **offenders**, including lower recidivism rates than the offenders in
18 Criminal History Category I with one criminal history point.
19 Among other findings, the report concluded that “zero-point”
20 offenders were less likely to be rearrested than “one point”
21 offenders (26.8% compared to 42.3%), the largest variation of any
22 comparison of offenders within the same Criminal History
23 Category. In addition, 28 U.S.C. § 994(j) directs that alternatives to
24 incarceration are generally appropriate for first offenders not
25 convicted of a violent or otherwise serious offense.

26 ³⁰ These prospective amendments to the Guidelines are available at
27 [https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-
amendments/20230405_prelim-RF.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf).

1 Proposed Amendment: Criminal History (Preliminary) at 2–3, United States Sentencing
 2 Commission (April 5, 2023)³¹ (emphasis added) (citing U.S. SENT’G COMM’N, RECIDIVISM OF
 3 FEDERAL OFFENDERS RELEASED IN 2010 (2021)³²).

4 As a result of these findings, the Commission promulgated: (1) a new Chapter Four
 5 Guideline departure, § 4C1.1, which provides a decrease of two offense levels for certain “zero-
 6 point” offenders; and (2) amendments to the Commentary to § 5C1.1 providing that an additional
 7 downward departure—including a departure to a non-custodial sentence—may be appropriate
 8 where a defendant receives an adjustment under (new) § 4C1.1 and the defendant’s resulting
 9 Guidelines range “overstates the gravity of the offense because it is not a crime of violence or an
 10 otherwise serious offense.” *Id.* at 3. These amendments are likely to take effect on November 1,
 11 2023—less than six months from Mr. Sullivan’s scheduled sentencing. Both proposed
 12 amendments apply to Mr. Sullivan and further warrant a downward variance to a noncustodial
 13 sentence. They should be considered now.

14 **a. The Court should decrease the offense level by 2 levels**
 15 **pursuant to prospective § 4C1.1.**

16 Prospective § 4C1.1 provides that the Court should “decrease the offense level
 17 determined under Chapters Two and Three by 2 levels” where all the following criteria are met:

- 18 (1) the defendant did not receive any criminal history points from
 Chapter Four, Part A;
- 19 (2) the defendant did not receive an adjustment under § 3A1.4
 (Terrorism);
- 20 (3) the defendant did not use violence or credible threats of
 21 violence in connection with the offense;
- 22 (4) the offense did not result in death or serious bodily injury;
- 23 (5) the instant offense of conviction is not a sex offense;

24 _____
 25 ³¹ Available at [https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-
 26 friendly-amendments/20230405_prelim-RF.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf).

27 ³² Available at [https://www.ussc.gov/research/research-reports/recidivism-federal-
 offenders-released-2010](https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010).

1 (6) the defendant did not personally cause substantial financial
hardship;

2 (7) the defendant did not possess, receive, purchase, transport,
3 transfer, sell, or otherwise dispose of a firearm or other dangerous
4 weapon (or induce another participant to do so) in connection with
5 the offense;

6 (8) the instant offense of conviction is not covered by § 2H1.1
(Offenses Involving Individual Rights);

7 (9) the defendant did not receive an adjustment under § 3A1.1
(Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious
8 Human Rights Offense); and

9 (10) the defendant did not receive an adjustment under § 3B1.1
(Aggravating Role) and was not engaged in a continuing criminal
10 enterprise, as defined in 21 U.S.C. § 848.

11 U.S.S.G § 4C1.1(a) (proposed April 5, 2023). Mr. Sullivan meets each of the listed criteria, and
12 this Guideline would unquestionably apply were Mr. Sullivan scheduled to be sentenced in just
13 six months. Numerous courts—including the Ninth Circuit—have made clear that sentencing
14 courts may apply promulgated Guidelines amendments even before formal adoption of the
15 proposed amendment. *See, e.g., United States v. Rojas-Pedroza*, 716 F.3d 1253, 1271 (9th Cir.
16 2013); *United States v. Ruiz-Apolonio*, 657 F.3d 907, 917 (9th Cir. 2011). And, of course, that
17 makes eminent sense—denying Mr. Sullivan the benefit of an amendment that would clearly
18 apply if he were sentenced six months from now would result in an arbitrary but potentially
19 material difference in his sentence. Moreover, the Commission has indicated that it is actively
20 considering giving *retroactive* effect to new § 4C1.1, which could *require* the Court to revisit
21 Mr. Sullivan’s sentence if it does not apply the amendment today. *See* Issue for Comment:
22 Retroactivity, United States Sentencing Commission (April 5, 2023).³³

23 **b. The Court may apply a downward departure under the
24 proposed amendments to § 5C1.1 because the applicable
25 guidelines overstate the gravity of the offense.**

26 The amendments also propose the following ground for downward departure:

27 A departure, including a departure to a sentence other than a
sentence of imprisonment, may be appropriate if the defendant

³³ Available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-IFC.pdf.

1 received an adjustment under § 4C1.1 (Adjustment for Certain
 2 Zero-Point Offenders) and the defendant's applicable guideline
 3 range overstates the gravity of the offense because the offense of
 4 conviction is not a crime of violence or an otherwise serious
 5 offense. *See* 28 U.S.C. § 994(j).

6 U.S.S.G. § 5C1.1, cmt. 4(B) (proposed April 5, 2023). This amendment is aimed squarely at
 7 ensuring that courts consider noncustodial sentences for people in Mr. Sullivan's precise
 8 situation. As noted above, the Commission concluded that "zero-point" offenders were less
 9 likely to be rearrested than "one point" offenders (26.8% compared to 42.3%)—the largest
 10 variation of any comparison of offenders within the same Criminal History Category. *See* U.S.
 11 SENT'G COMM'N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021). In addition,
 12 28 U.S.C. § 994(j) directs the Commission to ensure that the Guidelines reflect the general
 13 appropriateness of imposing a sentence other than imprisonment in cases in which the defendant
 14 is a first-time offender who has not been convicted of a crime of violence or an otherwise serious
 15 offense. The Commission proposed this amendment pursuant to that statutory directive.³⁴

16 For the reasons set forth throughout this memorandum, the Guideline range proposed in
 17 the PSR overstates the severity of the counts of conviction. These circumstances would warrant a
 18 downward departure to a noncustodial sentence under (new) § 5C1.1, and accordingly the Court
 19 should grant a downward variance to give effect to this prospective guideline.

20 **F. Section 3553(a)(6) supports a downward variance from the Guidelines to**
 21 **avoid unwarranted sentencing disparities.**

22 Avoidance of "unwarranted disparity" among similarly situated defendants convicted of
 23 similar conduct also favors a non-custodial sentence here. According to the Sentencing
 24 Commission's statistical report for FY 2021, nearly half (42.1%) of those convicted of
 25 obstruction of justice type offenses (categorized as "Administration of Justice" offenses) during

26 ³⁴ In proposing this departure, the Commission was cognizant that it would likely
 27 primarily affect defendants like Mr. Sullivan, whose resulting Guideline range would otherwise
 fall in Zone D. Indeed, the Commission noted that of the 3,024 offenders in fiscal year 2021 who
 would have been eligible for the departure, about a quarter (23.8%) were in Zones A and B,
 17.1% were in Zone C, and almost 60 percent (59.2%) were in Zone D. Clearly, the proposed
 amendments are aimed at encouraging courts to impose alternatives to imprisonment by
 imposing downward departures for the 60% of first-time Zone D offenders.

1 FY 2021 in the Ninth Circuit received a sentence that contained no prison time.³⁵ In fact, courts
 2 in the Ninth Circuit provided a non-prison sentence 70.6% of the time for U.S. citizens who were
 3 eligible for a non-prison sentence.³⁶ More locally, probationary sentences were imposed in both
 4 Northern District of California convictions for Administration of Justice offenses in FY 2021
 5 (one following trial and one following a guilty plea).³⁷

6 The median sentence for all seventy-six “Administration of Justice” cases sentenced in
 7 the Ninth Circuit in FY 2021—including cases involving conduct far more serious than Mr.
 8 Sullivan’s (e.g., threatening witnesses and destroying documents)—was six months’
 9 confinement, far below the advisory Guidelines range in this case.³⁸

10 Courts have routinely sentenced defendants convicted of obstruction of justice or
 11 misprision charges to probation or other non-custodial sentences, even when such a sentence was
 12 far below the advisory Guidelines range. Three recent examples are particularly salient here:

13 **Neeraj Jindal:** In December 2022, Mr. Jindal, a former executive in the health care
 14 industry, was sentenced to three years’ probation and a \$10,000 fine after a jury found him guilty
 15 of obstructing an FTC investigation. *United States v. Jindal*, Case No. 4:20-CR-00358 (E.D.
 16 Tex.). Mr. Jindal is the same age as Mr. Sullivan, with no health maladies, no criminal history,

17 ³⁵ *Statistical Information Packet, Fiscal Year 2021, Ninth Circuit*, United States
 18 Sentencing Commission at p. 8, available at
 19 [https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)
 20 [statistics/state-district-circuit/2021/9c21.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)). Although this data applies to all administration of
 21 justice offenses, and not just those to which §2J1.2 of the Guidelines applies; this overbreadth
 22 addresses conduct that is both less severe and dramatically more severe than the offense conduct
 23 at issue here.

24 ³⁶ *Statistical Information Packet, Fiscal Year 2021, Ninth Circuit*, United States
 25 Sentencing Commission at p. 10 (available at
 26 [https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)
 27 [statistics/state-district-circuit/2021/9c21.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)).

28 ³⁷ *Statistical Information Packet, Fiscal Year 2021, Northern District of California*,
 29 United States Sentencing Commission at p. 9 (available at
 30 [https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/can21.pdf)
 31 [statistics/state-district-circuit/2021/can21.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/can21.pdf)).

32 ³⁸ *Statistical Information Packet, Fiscal Year 2021, Ninth Circuit*, United States
 33 Sentencing Commission at p. 11 (available at
 34 [https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)
 35 [statistics/state-district-circuit/2021/9c21.pdf](https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2021/9c21.pdf)).

1 and a history of commitment to his family and community. Just as is the case here, Mr. Jindal’s
 2 offense involved no loss and no identifiable victim, and the related corporate entities, like Uber,
 3 entered into a consent decree with the FTC. (Angeli Decl., Ex. 5 (Jindal Sentencing Tr.) at
 4 14:13–24; 59:25–60:2.) Mr. Jindal’s case featured several aggravating factors absent here,
 5 including the fact that Mr. Jindal directly lied to the FTC multiple times (including in direct
 6 testimony to the agency) as well as and his involvement in the underlying offensive conduct that
 7 was the subject of the FTC’s investigation. (*Id.* at 7:10–22; 41:8–42:8; 50:6–12; 63:16–25.) Mr.
 8 Jindal’s Guidelines range was identical to that calculated by the PSR for Mr. Sullivan: a base
 9 level of 14 points under § 2J1.2 with a three-level enhancement pursuant to § 2J1.2(2) for
 10 “substantial interference with the administration of justice.”³⁹ Despite these aggravating factors,
 11 the court imposed a non-custodial sentence, concluding that it satisfied 18 U.S.C. § 3553 under
 12 the circumstances.

13 **Charles W. Johnston:** Mr. Johnston, an attorney, received a non-custodial sentence of
 14 12 months’ probation and a \$50,000 fine in July 2022 following his conviction at trial on one
 15 count of obstruction of justice in violation of 18 U.S.C. § 1505. *United States v. Johnston*, 1:18-
 16 cr-00127-JPW (M.D. Pa). Mr. Johnston was counsel to a labor union pension plan that was under
 17 investigation for potential financial mismanagement and fraud. Although Mr. Johnston was not
 18 involved in the underlying wrongdoing, the government alleged that he exploited his position of
 19 trust and legal training to obstruct the government investigation—which he had been pretending
 20 to cooperate with—to protect his own reputation and avoid embarrassment. A judge found Mr.
 21 Johnston guilty of lying to the government pension fund investigators and failing to provide a
 22 complete subpoena response. He faced an advisory Guidelines range of 21 to 27 months’

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 24 ³⁹ Unlike Mr. Sullivan, Mr. Jindal gave false testimony and deliberately concealed and
 25 withheld documentary evidence that was solely in his possession from the FTC. *See* U.S.S.G.
 26 § 2J1.2 cmt. n.1 (“Substantial interference with the administration of justice” defined to include
 27 “an indictment, verdict, or any judicial determination based upon perjury, false testimony, or
 other false evidence”); *United States v. Norris*, 217 F.3d 262, 274 (5th Cir. 2000) (“where a
 defendant actively conceals important evidence of which [he or] she is the only source, a court
 may infer that the defendant’s interference with the administration of justice was substantial”)
 (quoting *United States v. Tackett*, 193 F.3d 880, 887 (6th Cir. 1999)).

1 imprisonment, with the government recommending a term of 15 months' imprisonment. Like
 2 Mr. Sullivan, Mr. Johnston was a lawyer, was not involved in the underlying criminal conduct,
 3 and lacked any financial motivation. *United States v. Johnston*, 1:18-cr-00127-JPW (M.D. Pa),
 4 ECF Nos. 102, 106, 108.

5 **Bliss Worrell:** Another attorney, Ms. Worrell, similarly received a probationary sentence
 6 after pleading guilty to misprision of a felony. *United States v. Worrell*, 4:15-cr-00486-HEA
 7 (E.D. Mo.). Ms. Worrell abused her position as an assistant district attorney to help cover up a
 8 crime committed by a law enforcement officer who had assaulted a robbery suspect. Rather than
 9 reporting the officer's misconduct, Ms. Worrell filed false charges against the suspect for
 10 resisting arrest to explain the suspect's injuries and hide the officer's misconduct. Despite the
 11 deliberate abuse of her position, which threatened to deprive the falsely charged individual of his
 12 liberty, Ms. Worrell was sentenced to 18 months' probation, including 140 hours of community
 13 service. *United States v. Worrell*, 4:15-cr-00486 (E.D. Mo.), ECF Nos. 4, 32.

14 Other individuals—even those who participated in the underlying criminal conduct they
 15 tried to cover up—have received sentences that included alternatives to imprisonment. Notable
 16 examples include:

- 17 • Sharlie Colombe, who learned of her co-defendant's fraudulent scheme to use
 18 victim's signed, blank checks for personal instead of business purposes, pleaded
 19 guilty to misprision of a felony and was sentenced to 3 years' probation and
 20 \$10,000 restitution. Ms. Colombe did not report the fraudulent scheme and
 instead participated in it by helping to cash checks. *United States v. Colombe*,
 3:18-cr-30015-RAL (D.S.D.), ECF Nos. 84, 85, 109.
- 21 • A medical doctor, Dr. Vidal Sheen, who obstructed an FBI investigation into
 22 whether he falsely billed Medicare for face-to-face visits when he was out of
 town, received a sentence of 2 years' probation, a fine of \$45,000, and restitution
 23 of \$142,000 after pleading guilty to falsification of records in violation of 18
 U.S.C. § 1519. Dr. Sheen had been facing a Guidelines range of 10–16 months.
United States v. Sheen, 4:18-cr-00607-AGF (E.D. Mo.), ECF Nos. 27, 28, 33.
- 24 • Wilfredo Sanio, a broker, was sentenced to two years' probation and ordered to
 25 pay \$147,000 restitution after pleading guilty to misprision. Mr. Sanio learned of
 26 his co-defendants' fraudulent scheme involving leased equipment and took no
 steps to stop or report the fraudulent conduct or even withdraw from participation.
 27 Instead, Mr. Sanio catalogued equipment for use in creating false invoices and
 continued to accept commissions from his co-defendants' scheme, thus personally
 profiting from the underlying illegal conduct. *United States v. Sanio*, 1:16-cr-
 00033-RJA-JJM (W.D.N.Y.), ECF Nos. 84, 87, 89.

- 1 • Pharmacy-owner, Rodney Dalton Logan, was sentenced to 12 months' probation, including six months' home confinement, and a \$2.5 million fine after pleading guilty to obstruction of a federal audit in violation of 18 U.S.C. § 1516. Mr. Logan had improperly billed Medicare for medications compounded using bulk powders and submitted false paperwork in response to a Medicare audit, representing that he had instead used crushed pills. Mr. Logan faced a Guidelines range of 12–18 months. *United States v. Logan*, 3:16-cr-212-VEH-JEO (N.D. Ala.), ECF Nos. 29, 35, 37.
- 2 • A registered nurse, Marla Owuama, was sentenced to one day in custody (time served) and 1 year of supervised release with special condition of 6 months' home confinement, as well as ordered to pay restitution after pleading guilty to one count of misprision. Her Guidelines range was 12–18 months. Ms. Owuama knew that her husband's medical practice was billing Medicare and Medicaid for services that were either not performed, not medically necessary, or not overseen by a doctor, and that another entity was paid for recruiting patients. Ms. Owuama not only failed to report this fraudulent conduct, but also personally profited from it. *United States v. Owuama*, 4:14-cr-00040 (S.D. Tex.), ECF Nos. 75, 116, 135.

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10 In contrast, cases in which courts impose prison sentences typically involve significant involvement by the defendant in the underlying wrongdoing and extensive efforts—far beyond what even the government claims here—to impede the governmental proceeding. For instance, a former general counsel of a company, Joshua Gayl, misled witnesses and victims of his company's mail and wire fraud, paid potential trial witnesses to influence their testimony, and lied in response to a criminal trial subpoena. *United States v. Gayl*, 1:16-cr-00154-NLH (D.N.J.). Mr. Gayl pleaded guilty to obstruction of justice in violation of 18 U.S.C. § 1503. Because of the seriousness of his deliberate and repeated attempts to influence the outcome of a criminal trial, he was sentenced to 12 months and a day in prison, three years' supervised release, and a \$5,000 fine. *Id.*, ECF Nos. 5, 10, 11. Likewise, Ian Norris, a CEO of a company involved in a price-fixing scheme, covered up the price-fixing conspiracy by destroying documents, tampering with witnesses, making false statements, and recruiting more than a dozen subordinates and co-conspirators to participate in the cover-up. *United States v. Norris*, 2:03-cr-00632-ER (E.D. Pa.). Following trial, a jury found him guilty of conspiring to commit witness-tampering offenses. Despite the extensive misconduct, he received a sentence of 18 months' imprisonment and 3 years of supervised release. *Id.*, ECF Nos. 205, 206, 211.

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26 Additional comparators for the Court's consideration are provided in Table 1 (Obstruction Cases) and Table 2 (Misprision Cases), which are included as Exhibit 2 and 3 to the

1 Angeli Declaration.

2 **G. Incarceration would cause substantial harm to Mr. Sullivan’s family.**

3 Where, as here, a defendant’s incarceration will cause a “substantial, direct, and specific
4 loss of essential caretaking,” U.S.S.G. § 5H1.6 cmt. 1(B), the Court may consider a downward
5 departure that will address the loss of caretaking support to the defendant’s family. “A district
6 court may also rely on the existence of family ties and responsibilities in varying downward
7 [under 18 U.S.C. § 3553] on a defendant’s sentence.” *United States v. Martinez*, No. CR 09-3078
8 JB, 2011 WL 6828055, at *4 (D.N.M. Dec. 19, 2011). “If the nature of the offense and the
9 character of the defendant tend to show that no end other than punishment will be served by the
10 term of imprisonment set by the guidelines, if there is no threat to the community, and if society
11 will ultimately benefit by allowing the defendant to care for his family, a departure may be
12 proper.” *United States v. Norton*, 218 F. Supp. 2d 1014, 1020 (E.D. Wis. 2002). These factors all
13 exist and warrant a downward departure.

14 Mr. Sullivan is a devoted father and the primary caretaker for three daughters who
15 depend upon him financially and emotionally.⁴⁰ Mr. Sullivan’s two youngest daughters, both
16 students at local high schools, have written to the Court about the central role Mr. Sullivan plays
17 in their lives. In her letter, Celia Sullivan describes how she and Audrey “have always looked up
18 to, admired, and aspired” to be like their father. Celia goes on to write: “My dad is the most
19 important figure in my life. His unconditional love and the stability that he provides me has been
20 what has gotten me through this time. I honestly don’t know what I would do without him.”
21 (Letters of Support, Exhibit A at 15.) In her letter, Audrey Sullivan describes for the Court her
22 deep attachment to her father: “There are some people who we care about but we can still
23 survive when they are not around. And there are others who we need by our side or it feels like
24 the world will end. That’s my dad for me. (Letters of Support, Ex. A at 11.) Bridget Sullivan
25 echoes these sentiments when she writes to the Court that her “dad’s support and guidance have

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27 ⁴⁰ The current custodial agreement between Mr. Sullivan and his ex-wife grants Mr. Sullivan 70% custody of his minor children, Celia and Audrey.

1 been essential to my well-being in every aspect of my life.” (Letters of Support, Ex. A at 13.) As
2 their letters to the Court make clear, Mr. Sullivan occupies an irreplaceable place in his
3 daughters’ lives.

4 Family and friends also recognize Mr. Sullivan’s essential role in the upbringing of his
5 daughters. Letters from his family make clear that Mr. Sullivan’s extended family rely on him
6 incalculably. Mr. Sullivan’s “warmth, love, and unconditional love” has not only buoyed his
7 daughters but provided strength for his entire family in times of grief. (Letters of Support, Ex. A
8 at 16 (Chris Sullivan); *id.* at 24 (Mary Sullivan).) As the letters from his family discuss, Mr.
9 Sullivan is a “pillar of support” for those in his community and the person around whom “the
10 hopes and dreams of everyone in his family are built.” (Letters of Support, Ex. A at 31 (Benny
11 and Aholibah David).)

CONCLUSION

1 For the foregoing reasons, Mr. Sullivan requests that the Court impose a sentence of
2 probation.
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4 DATED: April 27, 2023.

s/ David H. Angeli _____

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