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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 *Plaintiff,*

13 v.

14 JEFFREY FORTENBERRY,

15 *Defendant.*
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18

Case No. 2:21-cr-491-SB

Hon. Stanley Blumenfeld, Jr.

**JEFFREY FORTENBERRY'S
SENTENCING MEMORANDUM**

Sentencing: June 28, 2022, 8:00 a.m.

I.

Introduction

Jeffrey Fortenberry is a committed father of five and devoted husband who served the public with distinction on the City Council of Lincoln, Nebraska, and then in the United States House of Representatives over a combined quarter-century. He has earned respect, admiration, and meaningful relationships with friends and colleagues from a wide range of viewpoints and backgrounds. Together with his wife, Celeste, Mr. Fortenberry raised five exceptional daughters, giving them the love and support they needed despite the constant demands of his public service. The attached letters from friends and family members reveal a life characterized by dignity, compassion, and service to others.

The conviction in this case devastatingly impacted Mr. Fortenberry’s life. Once a revered public servant, Mr. Fortenberry resigned from Congress. Stripped of the rights to vote and possess a firearm, Mr. Fortenberry cannot even participate in our democracy. The federal pension that he relied on for retirement is now in jeopardy.

The United States Sentencing Guidelines do not call for imprisonment in this case, and imprisonment is unwarranted. The advisory Guidelines sentencing range is 0 to 6 months, and, as shown below from the Sentencing Commission’s rich data set, United States District Courts rarely impose custody in cases like this one.

Moreover, the painful collateral consequences of this conviction have already achieved any deterrence that this prosecution could achieve. There is no danger to the public. Mr. Fortenberry has led an extraordinary and rigorously law-abiding life over his sixty-one years. He will continue to do good for others. In these circumstances, imprisonment would be punishment “greater than necessary.” 18 U.S.C. § 3553(a).

II.

Jeffrey Fortenberry

“Jeff takes life very seriously, always searching to make the right decision along his journey.” Exhibit 7, William C Smith, Jr. (stepfather), Letter. In Mr. Fortenberry’s case,

1 this comes from his innate generosity, his upbringing and faith, and likely also from
2 formative experiences of conflict and loss during his childhood.

3 **A. Early Childhood**

4 Mr. Fortenberry was born and raised in Baton Rouge, Louisiana, to a working-class
5 family. His father was an insurance salesman. His mother worked as an agricultural
6 cooperative extension agent for the State of Louisiana.

7 Childhood presented Mr. Fortenberry with some advantages and some disadvantages.
8 Mr. Fortenberry was blessed with health, two parents who loved him, and strong bonds with
9 his sister and grandparents. Although the family was not rich, it had enough money to
10 satisfy its basic needs. But sadly, much of childhood was painful for Mr. Fortenberry. Two
11 experiences of this time shaped him forever.

12 First, there was the experience of seeing his parents quarrel, grow apart, and divorce.
13 These events unfolded in front of Jeff's and his sister's eyes before they reached their teen
14 years. He pleaded with his parents to stay together, and, to this day, he grieves their
15 separation. Leaving the family home, he and his sister moved to a small apartment where
16 they shared a room. Mr. Fortenberry's mother worked hard to provide for them, driving
17 many miles to work each day.

18 Second, this initial trauma was compounded when Mr. Fortenberry's father died in a
19 car accident when Mr. Fortenberry was twelve years old. Mr. Fortenberry still remembers
20 seeing his mother's face hanging in shock at the news. Mr. Fortenberry longed for the times
21 when his parents were together and both alive.

22 As he entered early adolescence, fighting and drugs were prevalent at his middle
23 school. Mr. Fortenberry was assaulted and ostracized. He transferred to a new school
24 that provided greater stability when he reached eighth grade. Among other feelings,
25 Mr. Fortenberry reflects on his teenage years and questions whether he was an adequate
26 older brother to his sister.

27 Mr. Fortenberry's stepfather and uncles tried to pitch in to fill the void left by his
28 father's death, and they observed him succeed even though he was hurting inside. As

1 Mr. Fortenberry's stepfather writes, he "was an excellent student in high school. He
2 participated in sports, debate team, and 4-H activities, and won several national awards."
3 Exhibit 7, William Smith Letter. At the 4-H national conference, Mr. Fortenberry's uncle
4 remembers, he "won top prize for judging chickens" and "was offered a job by Kentucky
5 Fried Chicken Colonel Sanders!" Exhibit 37, Joseph Lamendola, M.D., Letter. Young Mr.
6 Fortenberry did begin working around this age, albeit at the grocery store and veterinarian's
7 office, rather than KFC.

8 Mr. Fortenberry's sister and his cousins describe him in childhood using words much
9 like those used to describe the adult Jeffrey Fortenberry: "kind," with a "love of family."
10 Exhibit 25, Elizabeth Fortenberry Daly Letter. Elizabeth says Jeffrey "is an inspiration to
11 [her] and [she has] always looked up to him." *Id.* Jeffrey's second cousin, Anne Taylor,
12 shares more good insights on young Jeffrey's old soul:

13 As a child, I remember Jeff as a kind, sensitive, and compassionate child.
14 Children remember how they are treated by others. As a young adult, I
15 remember Jeff as a conscientious, studious, inquisitive and considerate young
16 adult. He would periodically come over to visit my parents to learn more about
his family history on his Dad's side.

17 Exhibit 60, Anne Taylor Letter; *see also, e.g.*, Exhibit 34, Barbara Hepp Letter ("Jeff has
18 always been a kind, considerate and honest person. This was true when he was a child, this
19 was true when we were adolescents, and is true today. [] As children, we would visit our
20 great grandparents together in Baton Rouge. He took extra care to treat them with respect
21 and dignity."). Mr. Fortenberry's family members were struck by his special care for
22 seniors: "A particular aspect of his kindness is his respect for the elderly; as he often
23 accompanied his grandmother to my late father's [] birthdays, which occurred many times
24 in the late 1990's as my father lived to be 103." Exhibit 42, Harriet Babin Miller Letter.

25 Despite the hardship he endured, both at home and in school, Mr. Fortenberry made
26 lifelong friends during his childhood. Those friends are in a unique position to comment
27 on his character and narrate the arc of his life. Mr. Fortenberry's eighth-grade classmate,
28 Kevin Williams, who has maintained a friendship with him for fifty years, says:

1 There were only 35 students in the eighth-grade class, and many of us formed
2 bonds in that class that have lasted a lifetime. Catholic High School was
3 predominantly white. I was the only African-American student in that eighth-
4 grade class and one of only six African-American students in our senior class
of 144 students when we graduated in 1978.

5 You might well imagine that it could be a very isolating and lonely experience
6 for a 12-year-old black child trying to exist in a primarily white environment
7 in the early 1970s. I was fortunate to find a lasting connection with Jeff who
8 was my best friend in eighth grade and throughout our high school years. I
9 spent many hours at his home and he at mine. I grew up with him and his
10 mother, sister, and stepfather. I was welcomed into his home and felt very
11 much a part of his family. Even at that early age, Jeff was able to see people
12 as they were, to ignore skin color and other attributes that did not matter. He
13 embraced me at a time in this country when it was still unusual for black and
14 white children to mingle effortlessly, particularly in the South. There were
many homes that would not have welcomed me, even more where the most I
could have hoped for would be for my presence in their homes to be tolerated.
Jeff did not see any difference between us, a remarkable feat for a 12-year-old
white child in a country that had just passed the Civil Rights Act less than a
decade earlier. That is who Jeff is and how he has lived his life.

15 Exhibit 63, Kevin Williams Letter.

16 **B. Young Adulthood**

17 At age eighteen, Mr. Fortenberry got an exciting opportunity, particularly for a young
18 American of an Abrahamic faith. He traveled through the International 4-H Youth
19 Exchange for a semester in Egypt. Exhibit 3, Celeste Fortenberry Letter. Mr. Fortenberry
20 has described these travels as a formative event, and it is easy to understand why. “He lived
21 with different families all over the country, learning everything he could about their culture,
22 education, agriculture, and even some of their language.” *Id.*

23 On entering the Sinai Desert, Mr. Fortenberry encountered graffiti on a twisted pile
24 of concrete and rubble, bearing the message below.



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12 These experiences mattered deeply to Mr. Fortenberry. “To this day Jeff maintains
13 friendships with people from and in Egypt, including past and present ambassadors to our
14 country.” *Id.* After his time in the Middle East, Mr. Fortenberry returned to Louisiana and
15 his undergraduate studies at LSU. Reflecting on another example of how Mr. Fortenberry
16 has reached out to support and engage with people from backgrounds different from his
17 own, his mother recalls Thanksgivings at their home from his college years:

18
19 When Jeff was in college he would, what I called, “bring home strays”. These
20 were students, many of them foreign, who had no place to go for Thanksgiving
21 and other holidays. We hosted many people because of his hospitable nature
22 and our [f]amily learned much from those memorable experiences. I told him
he couldn’t save the whole world, and he would say to me, “Maybe not, but I
can save my own little corner, Mom!”

23 Exhibit 8, Joy Smith Letter.

24 Mr. Fortenberry completed his bachelor’s degree in economics. For a time, he
25 pursued graduate study in economics. But Mr. Fortenberry found that his heart was drawn
26 to the study of the higher ideals of humankind—what *should be*—rather than the objective
27 abstractions of differential equations. Mr. Fortenberry ultimately completed his master’s
28 studies in public policy at Georgetown University and yet another master’s degree in

1 theology from Franciscan University of Steubenville in Ohio. Years later, Franciscan
2 University granted Mr. Fortenberry an honorary doctorate degree.

3 At one point, Mr. Fortenberry had considered joining the ministry. He ended up
4 meeting his wife, Celeste, while he was a theology student.

5 **D. A Dedicated Husband and Father**

6 Mr. Fortenberry and his wife Celeste are true soul mates. Celeste sums it up:

7 After nearly 26 years of marriage I am ineffably proud of my husband, and
8 profoundly grateful for the gift that he is. I love him today more than I ever
9 have. Jeff is, and has always been, an extraordinarily good and loving
man

10 *Id.* The Fortenberrys are raising their five extraordinary daughters as a team, striving
11 always to pass on the best of what they know. (Two of them are currently in college, and
12 the youngest, C.F., is still living at home.) During Mr. Fortenberry’s time in office, this
13 was not always easy, as his daughters Claire and Elizabeth explained:

14 The fondest memory I have is checkers. Every evening, my dad would come
15 home from work, kiss my mom and then sit down for a game of checkers with
16 me. This is not a particularly long game, but he would manage to drag it out
17 for as long as possible, just to have that special time with me. When he was
18 elected to congress, our games decreased as he had to spend more time away
19 from home. As a young child this was disheartening, until I realized that he
now had thousands of other families that he was taking care of, and everyone
needed his checkers time. Thinking about that filled me with pride for my dad.

20 Exhibit 1, Elizabeth M. Braman Letter; *see also* Exhibit 5, Claire Fortenberry Letter (“His
21 time in Congress has brought us amazing adventures and privileges that we would not have
22 otherwise had. It also required immense sacrifice from our whole family.”).

23 It would’ve been easy for him to use fatigue or busyness as an excuse to be
24 absent from my childhood, but he didn’t. He would always try to show up to
25 the choir or band concert, and go to my plays and my cheer competitions.
26 When he couldn’t he would make it up by inviting me to join him at his events.
27 Even while he was paying attention to constituents, he would make sure to pay
attention to me, too. He taught me how to behave in social settings, preparing
me for success later on in interviews and events I later attended without him.

28 Exhibit 4, Christine Fortenberry Letter.

1 Mr. Fortenberry's third daughter, Kathryn, required even more from him. She was
2 born with a severe heart defect that required multiple medical interventions. During
3 Kathryn's second open-heart surgery, which occurred when she was four years old, a



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14 surgeon nicked her aortic valve. Because of that nick, Kathryn developed congestive heart
15 failure before she was six years old and needed three more open heart surgeries. Exhibit 3,
16 Celeste Fortenberry Letter. Since then, Kathryn has required near-constant medical
17 attention. She was bedridden for much of high school. She has nearly died several times.
18 Kathryn has undergone fifteen surgeries, including five open heart surgeries. Exhibit 6,
19 Kathryn Fortenberry Letter.¹ She is at an elevated risk for stroke, particularly around the
20 time she has surgery, because then she has to stop taking blood thinners. She has had two
21 strokes in the last year. Exhibit 3, Celeste Fortenberry Letter.

22 Kathryn's medical expenses have been a constant source of stress, above and beyond
23 the typical financial burdens of raising five children. The second of Kathryn's strokes last
24 year required ten days in Georgetown's stroke unit. As Mrs. Fortenberry notes, "we are

25
26 ¹ One of Kathryn's invasive surgeries was scheduled for June 6, 2018, only two days
27 after Dr. Ayoub called Mr. Fortenberry at the FBI's direction to inform him of the illegal
28 campaign contributions he had received two years earlier, and the day before
Mr. Fortenberry called Jessica Furst, his campaign finance lawyer, to tell her about the call.

1 still paying for that.” *Id.* But Mr. and Mrs. Fortenberry have mostly shouldered the burden
2 alone. As Kathryn notes in her letter, “I have never been told and I likely will never know
3 how great of a financial burden I am because of my medical issues. I will also never truly
4 know the depth of worry that consumes my parents.” Exhibit 6, Kathryn Fortenberry Letter.
5 Mr. Fortenberry responded to Kathryn’s complex health condition with the same vigor and
6 intensity he applied to matters of national security. He “buried himself in research”
7 regarding Kathryn’s condition and strove to ensure that Kathryn would have a “long and
8 healthy and ‘normal’ life.” *Id.* Kathryn explains: “he took the lead in exploring education
9 options with my school so that I could continue my education in spite of my disabilities.”
10 As a result, Kathryn was able to graduate on time, and even qualify for the honors program
11 at the University of Nebraska. *Id.*

12 **E. Public Service**

13 Mr. Fortenberry felt called to run for Lincoln City Council, where he served from
14 1997 to 2001. Mr. Fortenberry recalls fondly his time on the City Council, describing it as
15 a great place where government functions at its most fundamental level to serve the basic
16 needs of the population. But by 2001, Mr. Fortenberry needed to focus on his children’s
17 needs, particularly Kathryn’s,² bringing his service on the City Council to an end.

18 In 2004, Mr. Fortenberry was elected to represent Nebraska’s First Congressional
19 District in the United States House of Representatives. Mr. Fortenberry went on to be re-
20 elected eight times afterward, each time by a comfortable margin. Mr. Fortenberry ran for
21 office because he wanted to bring integrity and dignity to Congress. Mrs. Fortenberry
22 remembers that “Jeff often says that government’s role is to create the preconditions for
23 human flourishing. Societal order should be founded in an understanding of and respect for
24 the dignity of each and every human person.” Exhibit 3, Celeste Fortenberry Letter. This
25 philosophy guided Fortenberry’s work in Congress. As Fortenberry’s chief of staff
26 described at trial, Fortenberry strove to be not merely a politician but a statesman, and he

27 ² Kathryn was born August 2000, toward the end of Mr. Fortenberry’s final term.
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1 demanded excellence from himself and his staff. Many times, Fortenberry and his team
2 achieved it, pursuing the inclusion of “locally-sourced food in federally-funded school
3 lunches; food security initiatives; sustainable agriculture policy, including Farm of the
4 Future; conservation initiatives; diplomacy; clean energy; [and] nuclear nonproliferation.”
5 Exhibit 3, Celeste Fortenberry Letter; Exhibit 57, Hon. Chris Stewart Letter (describing
6 collaboration with Fortenberry through the International Conservation Caucus).

7 Part of what made Fortenberry special as a Representative—all the more so for the
8 bitter polarization of American politics that has occurred over the span of his time in
9 office—was his ability to work with colleagues with divergent viewpoints and backgrounds.
10 His friend, Louis Benedetto Jr., writes: “Unlike many politicians, Jeff did not use a
11 confrontational style when working with his colleagues on both sides of the aisle In
12 an era where ugliness and backstabbing is a way of life in Washington, D.C., Jeff
13 Fortenberry was a statesman who worked hard, compromised when necessary, and finally
14 got something done.” Exhibit 16, Louis Benedetto Jr. Letter. As the Court may recall,
15 Mr. Fortenberry worked closely with Anna Eshoo, a Democratic member of Congress from
16 California, to build bipartisan support for a resolution declaring the persecution of
17 Christians and other minorities in the Middle East by ISIS a genocide. *See also* Exhibit 26,
18 Hon. Anna Eshoo Letter. Representative Eshoo notes that this was only the third such
19 resolution in the House. *Id.* Mr. Fortenberry was a powerful ally to the people of the Middle
20 East who were threatened by ISIS. “He was always a man of his word and professional in
21 every way.” *Id.* Ms. Eshoo knows Fortenberry “to be a deeply devoted husband and father,
22 a man dedicated to service to others, a person who possesses humility and integrity, and a
23 person who is devoid of arrogance.” *Id.* These are especially impressive qualities for
24 someone who has accomplished so much.

25 Mr. Fortenberry was also known in Congress as a scrupulous and law-abiding person.
26 During trial, Representative Eshoo put it well: “He’s an honorable person. . . . He’s faith-
27 filled. He’s honest. . . . [H]e brings integrity to everything that he does.” Dkt. No. 203
28 (03/23/22 TX at 108). Even the government’s witnesses acknowledged this.

1 During his time in office, Mr. Fortenberry reached out to people in need of help
2 regardless of political expedience. The CEO of People’s City Mission, Lincoln’s primary
3 homeless shelter, notes that Mr. Fortenberry “volunteered at the shelter on numerous
4 occasions, provided financial backing, and promoted our cause to the community at large”
5 but he “never promoted his relationship with [the Mission] to the public or looked to score
6 political points from his support.” Exhibit 12, Tom Barber Letter. “Outside this letter to
7 [the Court], few people are aware of his work among the poor in Lincoln.” *Id.*

8 Fortenberry’s sincere belief in God and good has inspired many to lead better lives.
9 This included Sidney Robards Bowden, who writes that Jeff’s example as a man of Catholic
10 faith led him to convert. Exhibit 18, Sidney Robards Bowden Letter. Another person whom
11 Fortenberry’s faith inspired was Alexandra Kendrick, who worked with Fortenberry as a
12 fundraising consultant. She testified in the government’s case at trial, but acknowledged
13 Fortenberry enjoyed a sterling reputation in Congress and is an honest person who lives a
14 devout Catholic life. Kendrick testified further that Fortenberry “absolutely did” help her
15 in her own faith journey.

16 Eileen Cosby, who met Jeff during their studies at Franciscan University writes that
17 Jeff’s “compassion runs deep for his friends,” and he was with her for “every moment” of
18 the priestly ordination of the man she otherwise might have married. Exhibit 23, Eileen
19 Cosby Letter. She will never forget that Jeff “loved us both like a good brother,
20 encourag[ing] us to be strong when it was difficult.” *Id.* Later, Jeff encouraged Ms. Cosby
21 in becoming an advocate for women’s rights in the Philippines, and “opened every door
22 that he could” to assist, asking nothing in return. *Id.* “He knew it was his mission to help
23 those without a voice. The children and mothers in the barrios of the Philippines who were
24 targeted by coercive violations would never be able to thank him, but I do.” *Id.* Former
25 Chief United States Probation Officer Eddie Samson has “never met a more honorable,
26 honest, dedicated and caring man, son, husband, father and committed representative of his
27 constituents, community and country. Exhibit 52, Eddie Samson Letter.

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1 Fulfilling though public service was for Mr. Fortenberry's soul, it also took a
2 significant personal toll. It would not have been possible without the frequent strain of
3 distance from the people Mr. Fortenberry loves most. Over his seventeen years in
4 Congress, balancing the responsibilities of his office with his responsibilities as a husband
5 and father was truly challenging. Mr. Fortenberry made great personal sacrifices to serve
6 his country and has never sought to profit from that work in any way. Indeed, because of
7 his significant family obligations and lack of personal or family wealth, Mr. Fortenberry
8 slept on an air mattress or the couch in his office in Washington, D.C., for years. *See* PSR
9 ¶ 128. Professor Barbara Harrington writes, "I remember being shocked to discover that he
10 was living in his Congressional office for many years because the family couldn't afford to
11 maintain residences in both Nebraska and Washington, DC. Jeff wasn't complaining about
12 this ongoing personal inconvenience. In fact, he shrugged it off as being a small sacrifice
13 beside the great honor of serving in Congress." Exhibit 33, Letter from Barbara Harrington,
14 Ph.D. Clearly Mr. Fortenberry did not serve in Congress for money.

15 Serving in Congress also exposed Mr. Fortenberry and his family to threats and
16 vandalism. On more than one occasion, people who disagreed with Mr. Fortenberry's
17 positions or votes on issues have threatened him and his family. *See* Exhibit 3, Celeste
18 Fortenberry Letter (describing "17 years of lonely and sometimes fearful nights when I've
19 wondered if *that* noise was someone breaking in to carry out one of the multitude threats of
20 rape, violence, and murder leveled against us because of Jeff's work").

21 In their letters, Mrs. Fortenberry and their daughters all describe how the time lost
22 together with Jeff affected them. It was hard, but tolerable because it was part of the
23 family's shared understanding of his role. As the letters describe, it worked for the
24 Fortenberrys only because Mr. Fortenberry still found meaningful ways to cultivate deep
25 relationships with each of them, expressing his love and support. The six women at the
26 center of Mr. Fortenberry's life have therefore supported and admired him for his public
27 work, enabling him to serve at the high level that he did.

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1 **F. The Impact of the Conviction**

2 The devastation of the verdict and the loss of Mr. Fortenberry’s ability to continue to
3 pursue his work of the past seventeen years have been staggering. On March 26, 2022,
4 Mr. Fortenberry formally resigned from Congress, telling his constituents that “[d]ue to the
5 difficulties of my current circumstances, I can no longer effectively serve.” Exhibit 65,
6 March 26, 2022 Resignation Letter. Just like that, Mr. Fortenberry’s career was over.

7 Mrs. Fortenberry describes some of those consequences in her letter to the Court:

8 Jeff lost his job, his reputation, and many friends. He has suffered public
9 slander about his character extending far beyond the counts of his conviction.
10 He has lost the ability to continue to do good and great things for our nation
11 and for the world—the only reason he ever wanted to be in public office. He
12 can no longer vote. He can no longer hunt, a pastime he long enjoyed with
13 friends and his daughters. Jeff’s federal pension will most likely be taken
14 away—the majority of our retirement savings. We have mortgaged our home,
15 and personally borrowed (and spent) extraordinary sums of money to pay
16 legal bills; and bills are still coming in. We have two daughters in college—
they’re wondering if they have to drop out; and another getting married—
she’s already given up on her parents being able to help her pay for her
wedding.

17 Exhibit 3, Celeste Fortenberry Letter. He has probably lost the pension that was the primary
18 source of his retirement. *See* 5 U.S.C. § 8411(l)(2)(B). That prospective loss hurts all the
19 more because Mr. Fortenberry is not only the primary breadwinner for his family, but he
20 will also support his aging mother and stepfather, as well as his sister. *See* PSR ¶ 65.

21 The conviction has already struck Mr. Fortenberry’s sixteen-year-old daughter, C.F.,
22 particularly hard. It is evident she speaks for their family in writing that she “just knew
23 [upon hearing the verdict] that [her] life and [her] family’s life were about to change
24 drastically.” Exhibit 2, C.F. Letter.

25 **III.**

26 **The Offense Conduct**

27 As the Court will recall, this case arose from an investigation into illegal campaign
28 contributions totaling approximately \$30,000 to Mr. Fortenberry’s campaign at a 2016

1 fundraiser. The contributions originated from a foreign national but were funneled to
2 Mr. Fortenberry's campaign through conduits who were U.S. Citizens.

3 Mr. Fortenberry did not know about the illegal campaign contributions at the time
4 they were made. He did not personally profit from them, nor did they materially impact
5 any election. He has not been charged with violating any laws relating to campaign finance.
6 Two years after the 2016 fundraiser, a co-host of the fundraiser, who was then cooperating
7 with the FBI and acting as an informant, conducted two phone calls with Mr. Fortenberry
8 at the FBI's direction. During the second call, at the FBI's direction, the informant
9 mentioned the illegal campaign contributions. This second phone call lasted about ten
10 minutes. Both calls were recorded and transcribed by the FBI.

11 The charges in this case stem from statements Mr. Fortenberry subsequently made
12 to FBI agents and prosecutors in 2019—first, during the FBI's night-time visit to his home
13 in Lincoln secured using a ruse, and then at a follow-up interview in Washington, D.C.

14 The encounter at Mr. Fortenberry's home in Lincoln, Nebraska, occurred on the night
15 of March 23, 2019. In an informal setting in Mr. Fortenberry's living room, then-
16 Congressman Fortenberry was asked a series of questions by FBI Special Agent Todd
17 Carter and an IRS agent. The questions first centered on Mr. Fortenberry's knowledge of
18 In Defense of Christians and its leaders, and then turned to whether his campaign had ever
19 received illegal campaign contributions. During the discussion, Mr. Fortenberry
20 volunteered that he heard comments from the co-host of the fundraiser that gave him
21 concerns, but denied being aware of any illegal contributions to his campaign.
22 Mr. Fortenberry also said all the contributions to his campaign, including those at the 2016
23 fundraiser, were publicly disclosed in his FEC reports.

24 At a follow-up interview in Washington, D.C., in July 2019, then-Congressman
25 Fortenberry provided additional information in an interview that lasted almost two hours.
26 In that interview, Mr. Fortenberry told the agents and prosecutors that he had received a
27 call from the co-host of the fundraiser and that he heard a concerning comment during that
28 call. He indicated that the comment related to Gilbert Chagoury, who he understood to be

1 a foreign national, and that it gave him concern that Mr. Chagoury had somehow
2 contributed to his 2016 campaign. However, Mr. Fortenberry maintained that he was not
3 aware of any illegal contributions to his campaign. In response to questioning by the lead
4 prosecutor in this case, who apparently was relying on a transcript of the 2018 call,
5 Mr. Fortenberry denied that he was told by the FBI informant that the informant was given
6 \$30,000 cash by IDC President Toufic Baaklini to contribute to his campaign.
7 Mr. Fortenberry told the prosecutor that he would have been “horrified” to learn that.

8 In addition to the two voluntary interviews described above, Mr. Fortenberry also
9 cooperated with the government by providing agents with several emails to aid their
10 investigation after his second government interview, and he waived his attorney-client
11 privilege so that the FBI could interview the attorney who advised him on election-law
12 issues and with whom he consulted about his concerns after receiving the informant’s call.

13 After the second interview in July 2019, and long before he knew that the government
14 had targeted him for prosecution, Mr. Fortenberry immediately sought to return the
15 donations from the 2016 fundraiser. The government requested that he not return the
16 money, indicating that doing so would interfere with the investigation, but ultimately
17 suggested that Mr. Fortenberry could donate the money to charity instead.

18 On September 30, 2019, Mr. Fortenberry caused his campaign committee to donate
19 \$10,000 to St. Gianna Women’s Home. On October 28, 2019, he caused his campaign
20 committee to donate \$20,000 to People’s City Mission.

21 IV.

22 Analysis of Guidelines and Statutory Sentencing Factors

23 Both the United States Sentencing Guidelines and the statutory sentencing factors set
24 forth in 18 U.S.C. § 3553(a) strongly support a non-custodial sentence.

25 A. The Guidelines support a sentence of probation.

26 The Sentencing Guidelines, which are “the starting point for every sentencing
27 calculation in the federal system,” *Peugh v. United States*, 569 U.S. 530, 542 (2013), do not
28 require imprisonment. The probation officer correctly concluded that the offense level in

1 this case is 6, and the applicable advisory custodial range is 0 to 6 months. *See* PSR at ¶
2 40. Neither party objected to that calculation.³

3 Under Guidelines § 5C1.1(b), “a sentence of imprisonment is not required.” And
4 because this case falls within the lowest possible sentencing range, and Zone A of the
5 Sentencing Table, a sentence of probation is appropriate. *See* U.S.S.G. § 5B1.1(a)(1).
6 Indeed, “[i]n some cases, a fine appropriately may be imposed as the sole sanction” for
7 Zone A offenses. U.S.S.G. § 5C1.1, cmt. n.2. For nonviolent first offenders whose offenses
8 fall within either Zone A or B of the sentencing table, a non-custodial sentence is
9 *encouraged*. *See* U.S.S.G. § 5C1.1, cmt. n.4. (“If the defendant is a nonviolent first offender
10 and the applicable guideline range is in Zone A or B of the Sentencing Table, the court
11 should consider imposing a sentence other than a sentence or imprisonment, in accordance
12 with subsection (b) or (c)(3).”). The Commission added application note 4 to § 5C1.1’s
13 commentary in 2018 to reflect the “general appropriateness of imposing a sentence other
14 than imprisonment” for “a first offender who has not been convicted of a crime of violence
15 or an otherwise serious offense.” *See* [https://www.ussc.gov/sites/default](https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/APPENDIX_C_Supplement.pdf)
16 [t/files/pdf/guidelines-manual/2018/APPENDIX_C_Supplement.pdf](https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2018/APPENDIX_C_Supplement.pdf), Amendment 811.

17 Though this, in itself, does not *dictate* a non-custodial sentence, it is an important
18 sign that imprisonment could be “greater than necessary” to satisfy the other, interrelated
19 factors of § 3553(a). Indeed, it would be, as the following discussion shows.

20 **B. Custody is Unnecessary and Inappropriate Under 18 U.S.C. § 3553(a).**

21 Section 3553(a) requires to the Court to consider, among other things, the nature and
22 circumstances of the offense and the history and characteristics of the defendant, 18 U.S.C.
23 § 3553(a)(1), as well as the need for the sentence imposed to accomplish the goals of just
24 punishment, adequate deterrence, and protection of the public, § 3553(a)(2). The Court’s
25 ultimate duty is to ensure that the sentence imposed “is appropriate for the individual
26

27 ³ No objections to those sentencing calculations were filed within the time allowed
28 for doing so under Federal Rule of Criminal Procedure 32(f)(1).

1 defendant in light of the statutory sentencing factors.” *Nelson v. United States*, 555 U.S.
2 350, 351 (2009); *see also Pepper v. United States*, 562 U.S. 476, 487-88 (2011) (quoting
3 *Williams v. New York*, 337 U.S. 241, 247 (1949)).

4 Mr. Fortenberry’s exceptional history and characteristics weigh heavily against a
5 custodial sentence under § 3553(a)(1). As the attached letters and the trial testimony
6 demonstrate, Mr. Fortenberry has impacted many lives for the better through his kindness
7 and commitment to good. Despite this conviction, Mr. Fortenberry has been a law-abiding
8 and productive community member as well as a dutiful son, grandson, father, and husband
9 throughout his sixty-one years. These descriptions continue to apply in light of
10 Mr. Fortenberry’s entire record, even taking into account the jury’s verdict.

11 Further under § 3553(a)(1), the nature and circumstances of the offense, are not so
12 aggravated as to necessitate incarceration. Neither Mr. Fortenberry nor his campaign
13 received a dime because of his charged statements—the true answers to which were, in any
14 event, largely known by the government when it asked Mr. Fortenberry the questions. The
15 government had a recording of the 2018 informant’s call to Fortenberry, and no reason to
16 believe that Fortenberry contemporaneously knew of the illicit nature of the 2016 donations,
17 when the government asked him about the informant’s call in 2019. Mr. Fortenberry
18 voluntarily agreed twice to meet with the government and waived his attorney-client
19 privilege to attempt to assist the government’s investigation into the illegal donations. After
20 a lengthy investigation, there is still no credible evidence that Mr. Fortenberry knowingly
21 received an illegal donation. Mr. Fortenberry disgorged the illegal contributions once he
22 received a clear indication that the contributions had, in fact, occurred in an illegal
23 manner—and well before his indictment. In these circumstances, imprisonment would not
24 promote respect for the law or punish justly, but merely tax the exercise of the constitutional
25 right to a jury trial.

26 ///

27 ///

28 ///

1 The Court must also consider “the need for the sentence imposed . . . to reflect the
2 seriousness of the offense, to promote respect for the law, and to provide just punishment
3 for the offense.” 18 U.S.C. § 3553(a)(2)(A) (emphasis added). Imprisoning
4 Mr. Fortenberry would go far beyond what is necessary to serve these purposes. Nebraska
5 Lieutenant Governor Mike Foley highlighted Mr. Fortenberry’s exceptional service to the
6 state, pointing out in his letter to the Court that “[a] prison sentence would serve no useful
7 purpose as Jeff has already suffered the loss of his position in the US Congress not to
8 mention the damage to his reputation and good name.” Exhibit 29, Letter from Lt.
9 Gov. Foley. And as the Bishop of Lincoln, Reverend James D. Conley, elegantly stated in
10 his letter to the Court, “the burden that would be placed upon his beloved wife Celeste and
11 their five daughters if he should [be] sentenced to prison for any length of time, would be
12 nearly unbearable to shoulder. . . . I cannot bear the thought of the pain that might be caused
13 to the Fortenberry[s], should jail time be demanded.” Exhibit 22, Letter from the Most Rev.
14 James D. Conley.

15 “[A]fford[ing] adequate deterrence to criminal conduct” under § 3353(a)(2)(B)
16 (emphasis added) is not a ground to impose imprisonment either. Mr. Fortenberry has never
17 previously committed any crime, and it is highly unlikely Mr. Fortenberry would make false
18 statements to federal agents in the future. This conclusion is further reinforced by the fact
19 that Mr. Fortenberry is sixty-one years old, an age at which recidivism rates for non-violent
20 offenders are quite low to begin with. *See* Kim Steven & Billy Easley, U.S. Sentencing
21 Comm’n, *The Effects of Aging on Recidivism Among Federal Offenders* at 3 (2017),
22 available at [https://www.ussc.gov/research/research-reports/effects-aging-recidivism-](https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders)
23 [among-federal-offenders](https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders).

24 Finally, there is no need for a custodial term to effect general deterrence. As noted
25 above, the already severe consequences of this conviction—the loss of Mr. Fortenberry’s
26 seat in Congress, the anxiety and suffering that came with a jury trial and conviction, the
27 anticipated loss of his federal pension, and the significant legal expenses he has had to pay,
28 would be more than sufficient to deter a similarly situated person from committing the

1 offense of conviction. *See United States v. Whitmore*, 35 Fed. App’x 307, 322 (9th Cir.
2 2002) (unpublished) (stating that the destruction of one’s “‘professional capacity’ and
3 ‘ordinary livelihood’ constitute[s] a ‘pretty serious punishment already inflicted and carried
4 out . . . and one that’s likely to be permanent’”).

5 The government may argue that Mr. Fortenberry should be punished more harshly to
6 “send a message” to public officials that lying to the federal government is a serious crime.
7 But a concern for general deterrence cannot make imprisonment “necessary” under
8 § 3553(a) where, as here, every other factor calls for a non-custodial sentence. And even if
9 the Court perceived a need to use the sentence to serve the need for general deterrence,
10 probation would accomplish that at least as well as prison. *Cf. United States v. Edwards*,
11 595 F.3d 1004, 1016 (9th Cir. 2010) (“Section 3553(a) . . . does not require the goal of
12 general deterrence be met through a period of incarceration.”).

13 The next factor is the need for the sentence “to protect the public from further crimes
14 of the defendant.” § 3553(a)(2)(C). This case does not implicate a need to protect the
15 public, particularly in light of Mr. Fortenberry’s exceptionally strong and long-term record
16 of good conduct outside the scope of the events at issue in this prosecution.⁴

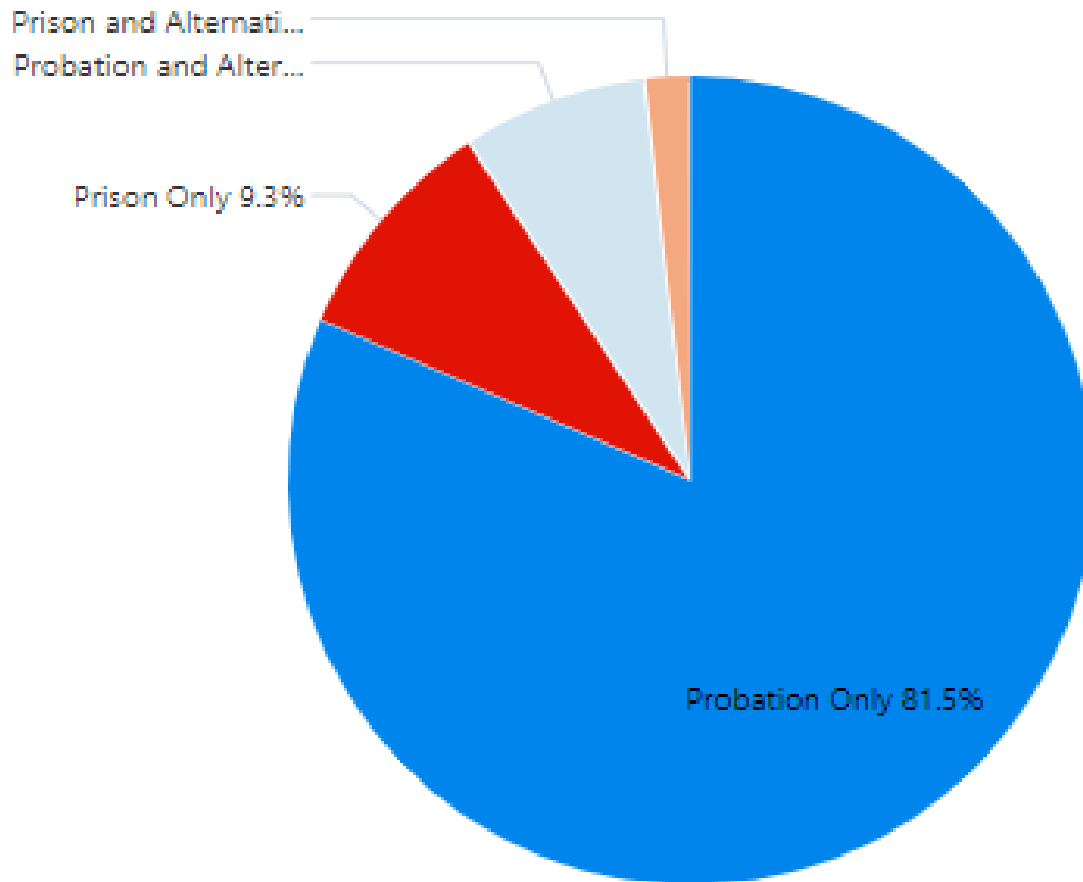
17 Finally, a non-custodial sentence is also necessary to avoid “unwarranted sentence
18 disparities among defendants with similar records who have been found guilty of similar
19 conduct.” 18 U.S.C. § 3553(a)(6). According to the Sentencing Commission’s Interactive
20 Data Analyzer, available at <https://ida.usc.gov/analytics/saw.dll?Dashboard>, probation is
21 by far the most common sentence type in sentencings involving features similar to the
22 features of this case. As reflected in the chart below generated by the Interactive Data
23 Analyzer, nationwide, over the past three fiscal years—2019, 2020, and 2021—fifty-four
24 United States-citizen defendants over age sixty were reported to the Commission to have

25 _____
26 ⁴ Under § 3553(a)(2)(D), “provid[ing] the defendant with needed educational or
27 vocational training, medical care, or other correctional treatment in the most effective
28 manner,” can never be a reason for imprisonment. *See Tapia v. United States*, 564 U.S. 319,
327 (2011); 18 U.S.C. § 3582(a). In any case, that factor also weighs against prison.

1 been sentenced pursuant to Guidelines § 2B1.1 in Zone A, with criminal-history category
2 I, who had at least a bachelor's degree. Of those, no less than 81.5% received probation
3 only. Only about 9.3% received a traditional custodial sentence.

4
5 **Sentence Type for Federal Offenders**

6 Fiscal Year 2019,2020,2021



25 The figure includes the 54 cases reported to the Commission. Cases missing information necessary to complete the analysis were excluded from this figure.

26 Alternatives include all cases in which offenders received conditions of confinement as described in USSC §5C1.1.

27 **FILTER:**

28 Fiscal Year: 2019,2020,2021; Circuit: All; State: All; District: All; Race: All; Gender: All; Age: Over 60; Citizenship: U.S. Citizen; Education: College graduate or more; Crime Type: All; Guideline: §2B1.1; Drug Type: All; Sentencing Zone: A; Criminal History: I; Career Offender Status: All

1 Surely Mr. Fortenberry—a dedicated public servant, a loving and committed husband
2 and father, and a non-violent first offender—does not deserve to be part of the small
3 minority of defendants sentenced to custody despite the fact that he falls within the lowest
4 possible sentencing range known under the Guidelines. To single Mr. Fortenberry out for
5 prison because he is a public figure would be to treat him *less favorably* than others as a
6 result of his extraordinary life achievements. In this case, probation would better promote
7 respect for the law than imprisonment would.

8 **C. The Court Should Not Impose a Fine.**

9 For several reasons, a fine is not warranted. First, the conviction was not for a
10 financial crime. The charged conduct did not benefit Mr. Fortenberry financially. As noted
11 above, he caused his campaign to disgorge the tainted campaign funds long before the
12 indictment.

13 Second, the collateral consequences of the conviction alone already inflict severe
14 economic harm on Mr. Fortenberry and his family. *Cf.* U.S.S.G. § 5E1.2(d)(5) (calling for
15 considering collateral consequences of conviction in determining a fine). As a result of the
16 conviction itself, Mr. Fortenberry stands to lose his valuable pension benefits. *See* PSR ¶
17 128. His future career prospects are also limited by his status as a felon.

18 Third, several members of Mr. Fortenberry’s family will be depending on him for
19 economic support. Mr. Fortenberry has a daughter still in high school, who is expected to
20 attend college within the next two years. Another daughter, Christine, is currently enrolled
21 in college at the undergraduate level. And a third, Kathryn, is soon to begin her graduate
22 university studies. In addition, Mr. Fortenberry’s economic resources will continue to be
23 needed to pay for Kathryn’s past and future expected medical treatment. And
24 Mr. Fortenberry will be financially supporting his aging mother and stepfather, as well as
25 his sister. *See* PSR ¶¶ 64–66; *cf.* U.S.S.G. § 5E1.2(d)(3) (calling for considering the burden
26 of a fine “on the defendant and his dependents”), § 5E1.2(e) (“If the defendant establishes
27 that . . . imposition of a fine would unduly burden the defendant’s dependents, the court
28

1 may . . . waive the fine.”). For these reasons, a fine would be excessively punitive against
2 Mr. Fortenberry.

3 There is yet another good reason not to fine Mr. Fortenberry—fines are not the norm
4 for sentencings like this one. *See* 18 U.S.C. § 3553(a)(6) (need to avoid unwarranted
5 disparities). To see this, consider the 566 cases reported to the Sentencing Commission
6 from fiscal years 2019, 2020, and 2021 involving United States-citizen defendants in
7 criminal history category I over age sixty with at least a bachelor’s degree who were
8 sentenced pursuant to Guidelines § 2B1.1. *See* Interactive Data Analyzer,
9 <https://ida.ussc.gov/analytics/saw.dll?Dashboard>. It is important to note that this data set
10 includes *all offense levels* and *Zones* of the Sentencing Table, because the Interactive Data
11 Analyzer does not appear to allow filtering fine-related data by offense level or Zone. From
12 this set of hundreds of cases, most of which likely had a significantly higher offense level
13 than this case does, a fine was imposed only 28.6% of the time. No fine was imposed at all
14 in the vast majority consisting of the remaining 71.4%. *See id.* In this Zone A sentencing
15 at total offense level 6, therefore, a fine is not warranted. PSR at p. 4.

16 **V.**

17 **Conclusion**

18 For the foregoing reasons, Mr. Fortenberry respectfully requests that he be sentenced
19 to one year of probation without a fine.

20
21 Respectfully submitted,

22 Dated: June 14, 2022

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