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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 SOUTHERN DIVISION – Santa Ana

19 UNITED STATES OF AMERICA,
20
21 Plaintiff,
22
23 v.
24
25 ANDREW HOANG DO,
26
27 Defendant.

Case No. 8:24 SA–cr-00126-JVS

**DEFENDANT ANDREW DO’S
POSITION RE: SENTENCING;
DECLARATION OF ELIOT F.
KRIEGER**

Sentencing Date: June 9, 2025
Sentencing Time: 10:00 a.m.

1 Defendant Andrew Do, by and through his attorneys of record Paul S. Meyer and
2 Eliot Krieger, hereby files a memorandum setting forth his position regarding sentencing,
3 and the Declaration of Eliot Krieger, which contains Andrew Do's personal statement,
4 attached as Exhibit A, statements of family members, friends, and colleagues attached
5 hereto as Exhibits B-F, and documents showing the Rhiannon Do's work with Warner
6 Wellness attached hereto as Exhibits G-M.

7
8 Respectfully submitted,

9 Dated: May 19, 2025

/s/

PAUL S. MEYER
ELIOT KRIEGER
Attorneys for Defendant

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SENTENCING MEMORANDUM

I. INTRODUCTION

Defendant ANDREW HOANG DO (“Andrew Do”) submits this Memorandum to assist the Court at sentencing and to add to some of the information already presented to the Court in the Presentence Report. Andrew Do has no objection to the facts as presented in the Presentence Report, although they leave out many key facts that he can elucidate here. Moreover, for the reasons outlined below, Andrew Do will urge the Court to sentence him to a sentence of 33 months.

II. CONTEXT AND BACKGROUND

Andrew Do is a 61-year-old first-time offender, former member of the Orange County Board of Supervisors, first elected in 2015, who voluntarily resigned in 2024. He appears for sentencing after pleading guilty to a one count information for conspiracy to commit bribery concerning programs receiving federal funds (18 U.S.C. 371). He affirms his statement to the Court upon entry of his plea expressing shame, deep sorrow and his apology to his community, colleagues, his family and to this Court.

In a written plea agreement, the parties agree to a base offense level of 14 pursuant to USSG § 2C1.1; a 2-level increase for more than one bribe pursuant to USSG § 2C1.1(b)(1); a 14-level increase for bribe value over \$550,000 but not more than \$1,500,000 pursuant to USSG §§ 2C1.1(b)(2), 2B1.1(b)(1)(H) and a 4-level increase for elected official pursuant to USSG § 2C1.1(b)(3). (PSR ¶ 3)

Probation recommends a sentence of 48 months, finding that a variance is appropriate. Probation believes that “[t]he recommended sentence considers the nature and circumstances of the offense. It is sufficient, but not greater than necessary, to reflect the seriousness of the offense, protect the public, provide just punishment, promote respect for the law, provide necessary treatment, avoid sentencing disparities, and afford adequate deterrence to criminal conduct.” (PSR Recommendation Letter at 5) Probation notes that “Do is a first-time offender and as such, any sentence imposed in this matter

1 will represent a significant period of custody.” *Id.* In recommending a variance, Probation
2 further notes that “[t]he seriousness of the offense. . . is balanced against Do’s overall
3 background and characteristic, which include an otherwise lifelong productive life,
4 including years of significant public service.” *Id.*

5 While the PSR calculation is correct and consistent with the plea agreement,
6 Andrew Do will demonstrate that the post-*Booker* discretion is best exercised by a further
7 variance based on significant factors discussed below. Andrew Do also urges the Court to
8 consider that the Sentencing Guidelines overstate the level based on the facts of this case
9 in that the facts are more consistent with the guidelines for gratuities under § 2C1.2 and
10 thus a variance from the Guidelines should be granted.

11 In all, after consideration of all factors, we submit that a sentence to a level 20 and
12 a sentence of 33 months is appropriate in this case.

13 The gravamen of this case is that Andrew Do violated the law by allowing his
14 daughters to receive benefits after the COVID funds were awarded to the county. Andrew
15 Do received no actual payment to himself—all significant funds were provided to his
16 daughter Rhiannon Do—Andrew Do was willfully blinded to the violations by the desire
17 to see benefit to his adult daughter, and his belief that his daughter was providing
18 worthwhile services to those who provided the benefits to her. He now recognizes how
19 completely wrong he was in this catastrophic self-delusion. He has watched the complete
20 destruction of his career, reputation, his life and that of his family. He apologized to his
21 family, his community and former colleagues and to this Court. In short, Andrew Do’s
22 life has been destroyed by his own acts. Since he signed his plea agreement, he
23 voluntarily resigned his position, had his state bar license suspended, stopped working,
24 and is engaged in volunteer work, still trying to benefit the community. Andrew Do does
25 not deny and fully accepts his criminal culpability and should be punished with a
26 sentence that is sufficient but not greater than necessary to serve the goals of sentencing.
27

Andrew Do, the United States and the County of Orange, also agree, by plea agreement (and for the County of Orange by Letter Agreement of the District Attorney-Public Administrator “fully incorporating all terms and conditions set forth in the plea agreement with the USAO [United States Attorneys Office]”), that the restitution is between \$550,000 and \$730,500, and that the USAO will recommend that when the Tustin house is sold, that the amount received be credited against the amount of restitution ordered. Plea Agreement at 7 (at ¶ 5(e) and ¶ 9) and Letter of District Attorney-Public Administrator (attached as an exhibit to the plea agreement). In reliance on the agreement, that house has been voluntarily forfeited in advance by Andrew Do, and the government can confirm that federal forfeiture proceedings are underway. There have been no new facts since the signing of the agreement to change those numbers. In addition, Andrew Do agreed and had no objection to the government providing notice of forfeiture on various accounts and properties (PSR ¶ 7), as Andrew Do had no right to those items anyway. Andrew Do agreed not to object to the forfeiture of these items that he is not related to.

III. OBJECTIONS TO THE PSR

Andrew Do has no objections to the facts stated in the PSR, although its calculation of the Guidelines are correct, believes that the Guidelines do not include significant factors in mitigation, and overstate the offense level. In fact, as detailed below, we submit that the Guidelines per USSG § 2C1.2 more accurately reflect the offenses in this case.

IV. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE CONDUCT

The statement of facts stated in the PSR are accurate as far as they go but do present an incomplete picture of what occurred and who Andrew Do is as a person and his actual role in the offense.

Andrew Do was a Supervisor for the Orange County Board of Supervisors (BOS), and he had that position from 2015 through 2024. (PSR 11) The BOS is responsible for a

1 multi-billion-dollar budget, which included more than \$10,000 in federal funds. (PSR 12)

2 In March 2020, Congress passed the Coronavirus Aid, Relief and Economic
3 Security Act (CARES Act). (PSR 13) In June 2020, BOS authorized \$5 million in
4 CARES Act funding for a Nutrition Gap Program. Each BOS member was allocated \$1
5 million to enter into emergency contracts. (PSR 15) In June 2020, Peter Pham
6 incorporated the Viet American Society (VAS) and at that time the BOS, of which
7 Andrew Do was a member, gave a contract to VAS. The initial contract approved by
8 BOS (not just Andrew Do) was entered into between VAS and the County at the end of
9 2020. (PSR 16) Subsequent allocations of funds were made by the County to VAS
10 pursuant to contracts and amendments to contracts approved by BOS (not just Andrew
11 Do). Andrew Do was not a signatory, nor party to any of these contracts or amendments
12 between the County and VAS. We ask the Court to note that although at the time the
13 initial contracts were entered into, Andrew Do had no benefit; it was later that his
14 daughter Rhiannon was hired by VAS resulting in an implied benefit to Do. According to
15 bank records obtained by the government, apparently VAS later used allocated funds
16 received by it from the County to pay Andrew Do's daughter Rhiannon her salary for her
17 work. (PSR 20)

18 While it is true that "VAS and two of VAS's vendors [made payments] to [Andrew
19 Do's] daughters" (Plea Agreement at 12), the Court should note that the money all went
20 to his daughters and not to him. Andrew Do admits that he benefited – solely through
21 payments to his two daughters. The only amount paid to Andrew Do (through his
22 daughter) was a payment of the property taxes in the family home that was made by his
23 daughter (who was living in the home at that time) in 2022 and the payment of a 60th
24 birthday present (which was paid by the credit card referenced in plea agreement page
25 17). In fact, Rhiannon never paid rent to her parents when she lived at home and was
26 working—so her payment of a few thousand for property taxes was not remarkable. There
27 is no allegation that there was an actual quid pro quo agreement between Andrew Do and

Peter Pham or VAS, but instead it was an “implicit agreement,” *id.*, which is what constituted public corruption in violation of federal law.

In the instant case, the plea agreement’s factual basis has Andrew Do agreeing to an “implicit promise,” because there was no explicit agreement between Andrew Do and VAS or anyone associated with VAS. The timing of events confirms that as demonstrated in the timeline below:

Timeline [highlights: yellow=Do, Board actions; grey=daughter-VAS connections; blue=VAS-Pham payments to daughters]

2020

- **March 2020:** The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, is a \$2.2 Trillion economic Stimulus bill passed by the 116th U.S. Congress and signed into law by President Donald Trump on March 27, 2020.
- **May 29, 2020:** Orange County was allocated \$5 Million in CARES funding for food challenges due to COVID. The Board of Supervisors ("BOS") allocated \$5 Million for the NGP (meal gap program) divided equally (\$1M) to each of the five districts.
- **June 29, 2020:** Peter Pham signs Sec of State form for VAS.
- **December 31, 2020:** District 1 \$200,000.00 allocation to VAS for Meal Gap Program for seniors and disabled, expired 2/2/21. All Meal Gap Programs are for delivered food to homes.

2021

- **March 2021:** The American Rescue Plan Act (ARPA Act of 2021), provided \$350 billion in federal funding from the U.S. Office of Treasury for state and local distribution.
- **April 2021:** Staff report April budget adjustments.
- **April 27, 2021:** BOS allocated \$10M in ARPA funds for meal gap programs for seniors-- and allocated \$2,000,000 to each district.
- **May 2021:** VAS entered subcontracts to provide home delivered meals to elderly and disabled residents of District One including a subcontract with Aloha pursuant to which VAS paid Aloha \$100,000 monthly.
- **May 3, 2021:** VAS signs contract for hot meals effective date. \$1,000,000.
- **May 30, 2021:** Peter Pham signs first amendment to contract.

- 1 • **August 3, 2021**: Rhiannon volunteered services to set up mental health
2 clinic.
- 3 **2022**
- 4 • **May 2022**: P Pham and Renee Ramirez sign 3d Amendment VAS.
- 5 • **May 2022**: Rhiannon starts working at WWC, a sub of VAS.
- 6 • **October 14, 2022**: First check from D-Air to Ilene.
- 7 • **November 28, 2022**: Second check to Ilene.
- 8 • **December 2022**: Rhiannon pays parents' property taxes.
- 9 **2023**
- 10 • **January 1, 2023**: VAS entered into subcontract with OCAPICA. VAS was
11 paid \$225,000 as of 11/27/2023.
- 12 • **February 12, 2023**: Check to Ilene.
- 13 • **March 2023**: Rhiannon becomes W2 employee of VAS.
- 14 • **March 2, 2023**: Rhiannon buys a watch as gift for a 60th birthday present for
15 her dad Andrew.
- 16 • **May 23, 2023**: BOS approved NAMI contract. VAS was one of many
17 proposed subcontractors, and the total was up to amount of \$2,490,788.00
18 for 7/1/2023–6/30/2025 (24 months). VAS was paid a total of \$72,904.00 as
19 of 5/30/2024 (which was 10 months into a 24-month subcontract, meaning
20 the \$2m+ amount was never going to be reached and NAMI controlled all
21 aspects of the subcontract, not Supervisor Do).
- 22 • **June 22, 2023**: Offer from Rhiannon to purchase 14732 Candeda Place,
23 Tustin house for \$1,035,000. Down \$368,950.00 provided by Thao Vu
24 (owner of PR restaurant, subcontractor to VAS in all meal programs) in
25 exchange for 3-year service contract, close of escrow in 30 days.
- 26 • **June 23, 2023**: Rhiannon signed OCAPICA subcontract with the wrong
27 Title of President of VAS because she didn't catch OCAPICA's mistake in
drafting the contract. VAS was paid a total of \$212,528.88 as of 5/20/2024
(which was 17 months into a 30-month subcontract, meaning the \$625,000
amount was never going to be reached and OCAPICA contracted all aspects
of the contract, not Andrew Do).
- **December 2, 2023**: Todd Spitzer, DA of OC calls the allegations against
Andrew Do "BS" and tells him to "hang in there."
- **December 4, 2023**: Meeting with OCAPICA where Rhiannon first agree to
be part of the Corrective Action Plan to review all billings prior to submittal
by VAS, or else OCAPICA would cancel the contract. This shows that
OCAPICA had total control over VAS's subcontract, not Andrew Do and
Rhiannon was working hard.

1 The facts as demonstrated by the timeline are important in three respects: 1) there
2 is no allegation, and no facts, that Andrew Do received any benefits apart from what was
3 paid to his daughters. He never sought, nor received, any payments or other benefits for
4 himself; 2) the timing of the events demonstrates that before the crimes shown in this
5 case, there was no wrongdoing or attempted wrongdoing by him in any other time frame,
6 and no wrongdoing or attempted wrongdoing in any other aspect of his duties and 3) the
7 timeline shows the contracts came first, and the payments to Andrew Do's daughters in
8 appreciation for those contracts were significantly later.

9 It is undisputed that it was May 29, 2020, when Orange County was allocated \$5
10 million in CARES funding and on December 31st when the first \$200,000 was allocated
11 to VAS. The parties also agree that "[a]t the end of 2020, VAS began to enter BOS
12 approved contracts with the County of Orange to provide meals to the elderly and infirm
13 under the Nutrition Gap Program." (Plea Agreement at 14) The actual contract was
14 entered into on or about May 3, 2021 when the County of Orange entered into a Contract
15 No. MA-012-21011525 with Viet American Society for the administration of American
16 Rescue Plan Act (ARPA) of 2021 (H.R. 1319) Nutrition Gap Program Services , a
17 COVID-19 related Nutrition Gap Program whereby the VAS agreed to manage allotted
18 funding from the U.S. Treasury (the Contract). This is the contact that Andrew Do voted
19 to approve with the other members of the Board of Supervisors. While there were
20 "official acts" that the Board of Supervisors took in 2022 and 2023 (Plea agreement
21 at 14), the initial approval took place **before there was any relationship between VAS**
22 **and Andrew Do's daughters**. The later official acts involved approving, with other BOS
23 members, the additional contracts between the County and VAS.

24 Andrew Do's daughter Rhiannon first volunteered her services to set up a mental
25 health clinic on August 3, 2021, and she only started to get paid for working at the
26 Warner Wellness Center ("WWC"), a subsidiary of VAS in May 2022. This was after
27 VAS already signed the BOS approved third amendment to the BOS approved contract

1 between VAS and the County—which was also in May 2022. The first check to Andrew
2 Do’s other daughter was written on October 14, 2022—about a year and a half after the
3 first contract was signed.

4
5 As stated in the plea agreement:

6 Defendant knew that some of the payments to his daughter were
7 partly in appreciation of the contracts awarded by the County.
8 Defendant understood that implied in recommending that the
County award the contracts to VAS, VAS would be indebted to
defendant and would have to compensate defendant in some
manner for the receipt of those contracts.

9 Plea Agreement at 16 (emphasis added). The wording of this factual basis—which was
10 drafted by the Government and agreed to by the County of Orange—demonstrates why
11 the Guidelines for gratuity is more appropriate in this case than the bribery guidelines.

12 It is simply undisputed that the bribes took place **well after that initial contract** in
13 “appreciation” for those contracts (to use the Government’s words). Those payments
14 were as follows:

- 15 ■ \$100,000 for Ilene (home) between November 2022 and March 2023;
- 16 ■ \$381,500 for Rhiannon’s home in July 2023;
- 17 ■ \$14,849 in property taxes paid by Riannon for the family home (12/22);
- 18 ■ \$15,000 in a credit card payment for a gift for Andrew Do’s 60th
19 birthday (3/23).

20 Total \$511,349

21 Some amount of Riannon’s salary is used to bring the total to \$550,000¹. We
22 submit that while Andrew Do openly and rightly pled guilty and took full responsibility
23 for allowing the payments to his daughters (for which he benefited as it helped his
24

25 ¹ All parties agreed that the minimum loss was \$550,000. Although the actual payments
26 made add up to \$511,349, some amount of Riannon’s salary may have been greater than
27 it would have been had VAS not tried to curry favor with Andrew. For the purposes of
this calculation, we will assume that overpayment was approximately \$39,000.

family), and he is guilty of the bribery statute, the kind of bribe is not one where there was any kind of explicit quid pro quo in advance of a public act. Instead, the government and Andrew Do agree that the evidence shows an “implicit agreement”—which while technically falling under a 371 conspiracy to commit a bribe, the facts and the timing of the agreements and payments make it is closer and more akin to a gratuity, as will be discussed below.

Further, there are no allegations and no facts which implicate Andrew Do in any misconduct or attempted misconduct with any other agency or person apart from the payor of benefits to his daughters.

V. SECTION 3553 FACTORS AND SENTENCING RECOMMENDATION

A. OFFENSE CONDUCT

Section 3553(a) lists as a relevant sentencing factor the “nature and circumstances of the offense.” Section 3553(a)(4) requires that the Court consider the Federal Sentencing Guidelines in determining the defendant's sentence but is not bound by them. *United States v. Booker*, 543 U.S. 220 (2005). In this case, the parties agree regarding the application of the Guidelines, but the facts dictate a different sentence. The Court should consider information concerning Andrew Do’s personal history and characteristics, as well as the facts of the crime. 18 U.S.C. § 3553(a)(1).

These factors include the limited scope of the benefits received (primarily by his daughters, rather than himself); the absence of any direct request by Andrew Do for benefits to himself and/or his daughters; the timing of the benefits received, far after he had already originally voted with the BOS to approve the initial contract with VAS; as well as the arc of Andrew Do’s career

In mitigation of the sentence, the court may vary from the Federal Sentencing Guidelines for many of the same reasons historically recognized by the courts to warrant downward departures. Moreover, the weight to be given such mitigating evidence

1 “should not follow the old ‘departure’ methodology.” (*United States v. Ranum*, 2005 WL
2 161223 (E.D. Wis. Jan. 19, 2005); *see also*, 18 U.S.C. § 3661 (“no limitation should be
3 placed on the information concerning the background character, and conduct of [the
4 defendant] which a court of the United States may receive and consider for the purpose of
5 imposing an appropriate sentence.”)) The primary directive in Section 3553(a) is for
6 sentencing courts to impose a sufficient sentence, but not greater than necessary, to
7 comply with the purposes set forth in paragraph 2. Section 3553(a)(2) states that such
8 purposes are:

- 9 (a) to reflect the seriousness of the offense, to promote respect for the
10 law, and to provide just punishment for the offense;
- 11 (b) to afford adequate deterrence to criminal conduct;
- 12 (c) to protect the public from further crimes of the defendant; and
- 13 (d) to provide the defendant with needed educational or vocational
14 training, medical care, or other correctional treatment in the most
15 effective manner.

16 In determining the minimally sufficient sentence, § 3553(a) further directs
17 sentencing courts to consider the following factors:

- 18 (a) The nature and circumstances of the offense and the history and
19 characteristics of the defendant (§ 3553(a)(1));
- 20 (b) The kinds of sentences available (§ 3553(a)(3));
- 21 (c) The need to avoid unwarranted sentence disparities among defendants
22 with similar records who have been found guilty of similar conduct
23 (§ 3553(a)(6)); and
- 24 (d) The need to provide restitution to any victims of the offense.
25 (§ 3553(a)(7)).

26 The directives of *Booker* and § 3553(a) make clear that courts may no longer
27 uncritically apply the guidelines. Such an approach would be inconsistent with the

1 holdings of the merits majority in *Booker*, rejecting mandatory guideline sentences based
2 on judicial fact-finding, and the remedial majority in *Booker*, directing courts to consider
3 all of the § 3353(a) factors, many of which the guidelines either reject or ignore. (*United*
4 *States v. Ranum*, 353 F. Supp. 2d 984, 985-86 (E.D. Wis. Jan. 19, 2005) (Adelman, J.))
5 As another district court judge has correctly observed, any approach which automatically
6 gives heavy weight to the guideline range comes perilously close to the mandatory
7 regime found to be constitutionally infirm in *Booker*. (*United States v. Jaber*, 362 F.
8 Supp. 2d 365, 371 (D. Mass. March 16, 2005) (Gertner, J.); see also *United States v.*
9 *Ameline*, 400 F.3d 646, 655-56 (9th Cir. Feb.9, 2005) (advisory guideline range is only
10 one of many factors that a sentencing judge must consider in determining an appropriate
11 individualized sentence), reh’g en banc granted, 401 F.3d 1007 (9th Cir. 2005))

12 Therefore, the guidelines are only one factor and need not be accorded greater
13 weight in determining the sentence, than other statutory factors. In this case, Andrew Do
14 urges this Court to sentence him to a sentence of thirty-three months because of the
15 unique circumstances of his offense, and the history and characteristics of Andrew Do.

16 **1. 3553 Factors For This Court To Consider**

17 The factors which we urge the Court to consider and discuss in detail below
18 include:

- 19 1) In Andrew Do’s guilty plea to conspiracy by implicit agreement, there
20 is no allegation, and no proof, that Andrew Do ever solicited anyone;
21 nor that Andrew Do instigated the conspiracy.
- 22 2) By accepting the benefits to his daughters, and implicitly agreeing to
23 take official action in exchange, he is guilty as he admitted, but the
24 Guidelines this Court should use are the gratuity rather than the
25 bribery Guidelines.
- 26 3) Andrew Do’s early life, legal career and career as an elected official
27 up to the time he agreed by implication to exchange his official acts

1 for benefits provided to his daughters, was one of public service
2 unblemished by personal motivations. Andrew Do had many sincere
3 letters. We do not ask the Court to ignore or lessen the weight of his
4 crime; we simply ask that the arc of his career and the public services
5 that he provided, not be ignored or lessened.

6 4) At no time in his career up to the allegations here, either as a public
7 lawyer or politician, did Andrew Do ever cultivate relationships for
8 his own personal benefit, accept personal benefits of gifts, trips, or the
9 other accoutrements of power seen so often in other cases. Mr. Do's
10 transgression is limited to what is alleged here. That alone is serious
11 and warrants prison. The length of sentence, however, should include
12 consideration of the whole picture.

13 5) Since leaving public life, Andrew Do now spends his time
14 volunteering so as to continue to contribute to the community.

15 **2. The Benefit for Andrew Do was Payments to His Daughters and**
16 **Not to Himself**

17 Andrew Do does not minimize or play down the damage to the community or
18 seriousness of his crime. The background, against which the crime exists, however,
19 includes a longstanding, very productive, ethical and community focused career, a public
20 service career as a Public Defender and District Attorney, and a strong devotion to family
21 and security in light of his life experiences. Unlike so many other corruption cases
22 involving political figures, Andrew Do's case does not include unhealthy relationships
23 with donors or business people or anyone beyond the provider of the COVID benefits to
24 his daughters in this case. There are no trips, payments, or other apparently corrupt
25 relationships involved here. Andrew Do did not solicit or cultivate these types of
26 relationships, and there is no evidence that he solicited the payments here. The thorough
27 investigation of the government confirms all of this. While extremely serious, it is

1 isolated. The agreement was “implicit” and we describe below another perspective of
2 viewing the bribe here. All of this is important because it underscores that what we are
3 dealing with here is a blind spot involving his daughters, and in no way a pattern of
4 corruption.

5 **B. GUIDELINES RANGE IS OVERSTATED**

6 While the calculations made in the PSR are technically correct, and Andrew Do
7 accepts and takes full responsibility for his actions constituting the bribe as agreed to in
8 the Plea Agreement, there is another lens through which these facts can be viewed. While
9 accepting that the bribe did occur, and is serious, the Court may consider that these facts
10 also fit, perhaps more seamlessly, the Guidelines for a gratuity instead of a bribe. As
11 such, if the Court agrees, the sentence for the bribe in this case should be tempered by
12 evaluating the true essence of what happened here. Without any solicitation, and based
13 solely on an “implicit agreement,” the Court may wish to exercise its discretion by
14 sentencing Andrew Do in consideration of these factors.

15 The United States Sentencing Guidelines (USSG) provide a framework for
16 determining the appropriate sentencing range for a defendant based on the offense of
17 conviction and relevant conduct. However, courts have discretion to deviate from the
18 guideline section typically associated with the offense of conviction when the facts of the
19 case align more closely with another guideline. This principle is supported by the
20 advisory nature of the Guidelines following the Supreme Court's decision in *United*
21 *States v. Booker*, which rendered the Guidelines advisory rather than mandatory. Courts
22 are required to calculate the applicable Guidelines range but may consider other factors
23 under 18 U.S.C. § 3553(a) to impose a sentence that better reflects the circumstances of
24 the case. (*People v. Badillo*, 2005 Cal. App. Unpub. LEXIS 3259; *People v. James*, 2005
25 Cal. App. Unpub. LEXIS 2259) The Guidelines themselves recognize that the factual
26 basis of the offense may influence the applicable guideline, and courts are encouraged to
27

consider the specific facts and circumstances of the case when determining the appropriate sentence. (California Trial Handbook (Matthew Bender) § 27A:14 Sentencing strategy of the expert; *GSO Bus. Mgmt., LLC v. Schwartz*, 2017 Cal. Super. LEXIS 8025)

The timing of events in this case – namely that the initial approval and payment of the contracts took place before Andrew Do’s daughter had anything to do with VAS– should dictate that the court follow the Guidelines under **2C1.2 rather than 2C1.1**. Even though Andrew Do accepts responsibly for being part of a conspiracy to commit a bribe, the unique facts of this case dictate that for Andrew Do’s role, a variance to use the more appropriate guidelines section, which is as follows:

2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level:

2C1.2(a)(1)(1) 11, if the defendant was a public official;

Single Gratuity: [Application of Subsection (b)(1).—Related payments that, in essence, constitute a single gratuity (*e.g.*, separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts]

If the value of the gratuity exceeded \$6,500, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

+14 (between \$550,000 and \$1,500,000)

TOTAL: 25

Acceptance of Responsibility -3

First Time Offender -2

LEVEL 20 33 Months

1 Since all the payments were for the single purpose—to reward Andrew “in
2 appreciation” for his advocating for the VAS contracts—they are grouped as a single
3 gratuity. Thirty-three months is appropriate in light of the timing and circumstances
4 surrounding the bribes. However, the Court should also consider Andrew’s history and
5 character in forming the appropriate sentence, which we discuss below.

6 **C. CONSIDERATION OF ANDREW DO’S CHARACTER**

7 Andrew Do made a serious mistake in his participation in this scheme, but both his
8 life before and after these events demonstrate a good person who devoted his life to
9 public service. This episode of poor judgment stands out as unique in his otherwise
10 commendable life. Moreover, he has already suffered the consequences of these events.
11 Andrew Do’s life has come apart since his arrest. He and his family are almost daily
12 confronted with newspaper articles from his political opponents deriding his character.
13 He now spends most of his time volunteering and trying to continue his work for the
14 community, and focusing beyond the events of this case. He made a horrible mistake by
15 allowing VAS to reward him through his daughters, but it is important when sentencing
16 to understand the whole person.

17 **1. History of Andrew Do**

18 Andrew Do grew up in war torn Vietnam, and recalls “during the Tet Offensive,
19 bullets went through his roof,” and during that time “experienced a lot of funerals as a
20 child.” (PSR ¶ 67) From approximately the age of 12, he resided in various refugee
21 camps. In 1975, his family lived in many places as refugees—from Subic Bay in the
22 Philippines, to Fort Chaffie, Arkansas. (Letter of Andrew Do, (“Andrew’s Letter”)
23 attached as Exhibit A to the Declaration of Eliot Krieger (“Krieger Decl.”)) Andrew Do’s
24 family also lived for a year in a half in Alabama where he was picked on because he was
25 Vietnamese, *id.*, while his parents worked at a cotton mill. *Id.* Ultimately, the family
26 came to reside in an apartment in Garden Grove. (PSR ¶ 68) He did experience violence
27

1 and discrimination because of his Vietnamese background as he had no Vietnamese
2 friends in his high school. (PSR ¶ 69 and Andrew's Letter)

3 In college, Andrew Do got into a fraternity, and got involved in student
4 government. After running into a friend who got into Berkeley Law and was informed
5 that law is only one year more than an MBA, Andrew Do took the LSAT in 1985, less
6 than ten years after he first came to the US. After scoring 89 percentile on the LSAT,
7 Andrew Do went to Hastings Law. *Id.*

8 Andrew Do's first job was as a Deputy Public Defender in Orange County. (*See*
9 Andrew's Letter) While Andrew Do was there, he did approximately 50 court trials and 6
10 jury trials. He then went to private practice, where he was an associate at Baker &
11 Hostetler for three years. He stayed in private practice until he had enough money for a
12 house down payment and money for a honeymoon. Andrew Do went back to the Public
13 Defender's office after Baker where Andrew Do met his wife. *Id.* Ultimately, Andrew Do
14 left the Public Defender's office and joined the Orange County District Attorney's Office
15 – with his last assignment prosecuting sexually violent predators as a member of the
16 D.A.'s Sexual Assault Unit. His skills in the courtroom earned him national recognition
17 from the U.S. Department of Justice, when he was chosen to represent Orange County at
18 the National District Attorney Association Advocacy College at the University of South
19 Carolina.

20 He always had a passion to help people. He had an opportunity to join the bench,
21 but thought he could be more effective as an advocate. He spent several years in the DA's
22 office on the felony panel trying fraud, sexual assault, and many other kinds of cases. *Id.*
23 He did 13 to 14 major trials while in that unit. In 2007, he became Chief of Staff for
24 Supervisor Janet Nguyen and ran for her seat in 2015, which is when he first became a
25 member of the Board of Supervisors. *Id.*

26 While he was on the Board of Supervisors, Andrew Do was dedicated to assisting
27 the people of his district and in Orange County. His lifetime of community involvement

1 includes service as President of the Asian Bar of California and President of the
2 Vietnamese-American Bar Association of Southern California as well as service on the
3 Board of Directors of the Orange County Bar Association.

4 During the COVID crisis, Andrew Do was attacked for his Vietnamese heritage.
5 Regarding the county's COVID prevention efforts, one person, directed his comments to
6 Andrew Do stating "You come to my country, and you act like one of those communist
7 parasite. I ask you to go the f—k back to Vietnam." (from "In Orange County, Anti-
8 Vaccine Activists Attack Top Elected Official for his Vietnamese Heritage." *LAist*.
9 July 30, 2021). This speaker was apparently unaware that Andrew Do and his family had
10 to escape from communist Vietnam after the war. Another speaker said: "You have the
11 audacity to come here and try to turn our country, Andrew Do, into a communist country.
12 Shame on you!" *Id.*

13 As mentioned above, Andrew Do met his wife, the Honorable Cheri Pham in the
14 Public Defender's Office in 1989 and they married in 1991, 34 years ago. They have two
15 daughters—both of which received money from VAS, which is what places Andrew Do
16 before this Court.

17 Prior to this incident, Andrew Do's life was devoted to public service. He had a
18 catastrophic lapse of judgment when he failed to stop payments to his daughters, and
19 because VAS was helping his family, he failed to see the red flags of these illegal acts.
20 Other than the few years he had in private practice—to help save for a down payment and
21 a honeymoon—Andrew Do has always elected to do the right thing instead of the thing
22 that would give him more money.

23 During his time as Supervisor, Andrew Do almost single-handedly helped the
24 homeless and their situation. Andrew Do helped to create the Courtyard Transitional
25 Center, in Santa Ana which provided food, shelter and services for the homeless in Santa
26 Ana Civil Center. "One Man's Experiences at the Courtyard Transitional Center," (*Voice*
27 *of OC*, Oct 14, 2016, and Updated Dec. 8, 2020) When it opened, Andrew Do slept with

1 the homeless at the shelter to experience their plight. *Id.* When Andrew Do left, he noted
2 that it was too cold there. As Voice of OC points out “It is still a work in progress, but
3 can be one of the best projects to help the homeless population in and out of the Civic
4 Center. This was made possible by Orange County Supervisor Andrew Do. . .” *Id.*

5 The letters written for Andrew Do are genuine and heartfelt. Bill Taormina, CEO
6 of Clean City, Inc., has known Andrew Do for years and found him “professional, honest.
7 Hard-working, focused to his community”. (Letter of Taormina, attached to the
8 Declaration of Eliot Krieger, Exhibit B). Mr. Taormina talks about how Andrew Do
9 worked “closely with United States . . . District Federal Judge David O. Carter, . . . [and]
10 worked alongside the private section to create sustainable solutions for Homelessness in
11 Orange County.” *Id.* Mr. Taormina worked with Andrew Do “to create hundreds of
12 dignified housing units and shelters for those underserved individuals that formerly lived
13 on our streets.” *Id.*

14 Edwin Welbourn, a distinguished criminal defense attorney, states that
15 “[r]eflecting on my 25 years of professional and personal relationship with Andrew, I can
16 say without hesitation that Andrew is a great man who has always given back to the
17 community and puts others before himself and his family.” (Letter of Edwin Welbourn,
18 attached as Exhibit C to the Krieger Decl.) Mr. Welbourn states that he is “aware of and
19 understands the allegations and crimes to which he has pleaded guilty. These crimes do
20 not change my opinion of Andrew or diminish the countless good deals that he has
21 contributed to Orange County.” *Id.* Mr. Welbourn believes that “my friend made an error
22 in judgment and has accepted responsibility for actions.” *Id.*

23 Linda Rogers has known Andrew Do for 15 years and she notes that “[d]uring
24 COVID, despite the charges he is here for today, my observation was he worked
25 tirelessly to bring vaccines to people as soon as they were available, including people
26 who did not speak English, were in nursing homes, and who otherwise could not
27 advocate for themselves.” (Letter of Linda Rogers, attached to the Krieger Decl. at

1 Exhibit D) She “respectfully request[s] that Andrew be given the minimum possible
2 sentence. I am confident that this would be a fair and just outcome given the
3 circumstances.” *Id.* She notes that Andrew “as accepted the consequences of his
4 decision.” *Id.*

5 Marry Lue Schaeffer notes that she has been friends with Andrew for over 45
6 years. (*See* Exhibit E to the Krieger Decl.) For Ms. Schaeffer, who has a son who was
7 diagnosed with Schizophrenia, this educated Andrew Do on mental health issues and
8 when Andrew Do “was elected to the Orange County Board of Supervisors, he was
9 determined and worked hard to better understand our mental health care system.” *Id.*
10 “Andrew worked tirelessly to bring about reform and develop[] a mental health system
11 that provides multifaceted treatment with access to data across the different care
12 programs.” *Id.* “Without his efforts, I do not know where Orange County’s mental health
13 care would be right now.” *Id.*

14 As demonstrated by the many of the letters that are presented for sentencing,
15 Andrew Do has truly touched these people’s lives and demonstrate the qualities of
16 Andrew Do. The crimes here are an aberration—a large aberration—in an otherwise
17 productive, honest career carried out with integrity. As Bruce Heyman has stated:

18 I’m aware of what Andrew has pled guilty to but
19 understand that that lapse of judgement must have been a
20 unique event. The Andrew that I’ve come to know has
21 been extremely thoughtful, fair and moral. He approaches
22 each task with fairness, empathy, and a genuine desire to
23 make a positive difference. His interactions with students,
colleagues, and community members are characterized by
respect and professionalism.

24 (Letter of Bruce Heyman, Executive Director of LAMI Top Sail, attached to the Krieger
25 Decl. at Exhibit F (“Heyman Letter”)) The violations here are large and significant; they
26 are also tragic in that the rest of Andrew Do’s career and life was unblemished.
27

1 **2. Andrew Do's Volunteer Work**

2 As a result of the plea agreement in this case, Andrew Do had to resign from the
3 Board of Supervisors. However, since that time, through his post-offense conduct and
4 rehabilitative efforts, Andrew Do has demonstrated that he presents a zero risk of
5 recidivism and will continue doing the good works he has done his entire life. Andrew
6 Do still wants to continue helping the community but now spends his time with working
7 with youth through a youth program since he no longer works as a member of the Board
8 of Supervisors. LAMI's TopSail Youth and TopSail STEM Programs provide leadership
9 training and experiential education to inspire youth to pursue careers in STEM-related
10 subjects and maritime trades. These Programs are offered year-round aboard the tall
11 ships.

12 Since Andrew Do left the Board of Supervisors, Andrew Do has devoted 3 to 4
13 days a week – or approximately 20 hours a week to this program. *See* Heyman Letter.
14 Andrew Do does everything – he works in the shop helping to maintain the ships as well
15 as assisting on board on single to multi-days trips. Andrew Do helps LAMI to empower
16 junior and high school students to discover their greater potential through at-sea
17 experiences aboard educational sailing vessels that were built to train and equip young
18 people with 21st-century leadership skills and inspire maritime and STEM career paths.
19 *Id.* Students are exposed to marine science topics, as well as the discipline in being on
20 board a ship. *Id.* Climbing the bowsprit and working together to raise and lower the sails
21 also helps them to overcome fear and build confidence. *Id.*

22 The head of that program remarks that “Andrew has demonstrated remarkable
23 dedication, integrity, reliability and a profound commitment.” (Exhibit F to the Krieger
24 Decl.) During his time there, Andrew “participated in maritime education, our primary
25 mission.” *Id.* They serve about 7000 students a year, “92% of whom are [people of] color
26 (Asian, Hispanic, Black) and almost all are from Title 1 schools qualifying for free lunch
27 programs.” *Id.*

1 During a recent trip, “Andrew was one of five crew,” with 23 high school students
2 from Lawndale. “Andrew stepped up and took on one of the more challenging jobs on a
3 vessel going to sea for such a long time, cook.” *Id.* Andrew made sure that “the students
4 were appropriately included in the process and learned and felt pride in their
5 accomplishments from working with Andrew.” *Id.* In addition, “one of Andrew’s
6 standout achievements has been his assistance in organizing our Building G, office and
7 work yard.” *Id.* The head of the program concludes that “[b]eyond his technical skills,
8 Andrew possesses an unwavering ethical compass. He approaches each task with
9 fairness, empathy and a genuine desire to make a positive difference.” *Id.*

10 Andrew Do is devoted to helping young people through this unique program.
11 Instead of doing nothing, or going into a money-making enterprise, he has thrown
12 himself into doing good for the community.

13 **D. RESTITUTION**

14 The factual basis in the plea agreement, including a separate confirming letter by
15 the District Attorney-Public Administrator on behalf of the County of Orange, had
16 Andrew Do, the County of Orange as well as the United States Attorney’s Office
17 agreeing that the amount of restitution is between \$550,000 and \$730,500. The reason for
18 this difference is related to how much of Rhiannon’s work is to be compensated and how
19 much was an attempt to curry favor with Andrew Do in his role as Supervisor.

20 Defendant urges the Court to strike the recent Victim Impact Statement from
21 Orange County as that Statement violates and is inconsistent with the plea agreement.
22 The County of Orange, through the District Attorney-Public Administrator, has already
23 fully vetted this case and determined that the restitution is between \$550,000 and
24 \$730,500. There are no new facts raised in the Victim Impact Statement that were not
25 already considered in the investigation of the District Attorney and United States
26 Attorney. We recognize the inherently political nature of positions taken by the Board of
27

Supervisors, and do not believe that media oriented self-serving political positions generating public statements and ultimate letter of Victim Impact, should be influential to this Court.

We respectfully submit that the Impact Statement recommends a restitution amount that is inconsistent with the facts and investigation thoroughly conducted by both the United States and People of the County of Orange. In short, the recommended restitution amount is not warranted or justified. The considerations regarding the appropriate restitution were determined by both the United States Government and the County of Orange, and both agreed on the appropriate restitution. Importantly, Todd Spitzer, signing as “District Attorney—Public Administrator” on behalf of the County of Orange stated that “The Orange County District Attorney (“OCDA”) having jointly investigated and prosecuted this matter with the USAO, agrees that the interest of justice will be served by the plea agreement with the USAO.” (Letter Agreement attached to Plea Agreement, Clerk’s Record ID 54, at 44-45 (“Letter Agreement”)) Moreover, “This Letter Agreement [signed by the OCDA] fully incorporates all the terms and conditions set forth in the plea agreement with the USAP, *including all restitution provisions.*” Letter Agreement (emphasis added). We also recognize that the County Counsel and Supervisors were not part of the investigation and have no actual knowledge of the facts and circumstances considered by both the County of Orange and the United States government in this case. The Impact Statement, we believe was generated for political effect, and should be ignored.

Returning to the analysis of the actual payments made. As indicated above, the actual payments to Andrew Do’s daughters and for Andrew Do’s benefit were as follows:

- \$100,000 for Ilene (home) between November 2022 and March 2023;
- \$381,500 for Rhiannon’s home in July 2023;
- \$14,849 in property taxes paid by Rhiannon for the family home (12/22);

- \$15,000 in a credit card payment for a gift for Andrew Do's 60th birthday (3/23).

Total \$511,349.

Some amount of Rhiannon's salary should be paid back to bring the total to \$550,000² The fact is Rhiannon worked hard and accomplished a lot while setting up the program for mental health at the WWC. These facts should be acknowledged and, in fact, most of her salary (which makes up the remaining of the difference between \$550,000 and the maximum agreed upon restitution of \$735,000) was hard earned by Rhiannon

The amount of work Rhiannon did for her salary was impressive. She put together an Outreach and Education Plan. (Exhibit G to the Krieger Decl.) She delivered an app for the WWC. (Exhibit H to the Krieger Decl.) She created a program to train people what WWC was about and created a center with the vision "to achieve good mental health through education, stigma reduction and removal of all barriers to services." (Exhibit I to the Krieger Decl., PowerPoint describing the vision of the program). Her vision involved mapping out all of the people working at the center. (Exhibit J to the Krieger Decl.) Rhiannon mapped out everyone's responsibilities at WWC – from the clinicians, to the case managers, the community outreach specialists and even the responsibilities of the receptionist. *Id.* She set up a warm line (Exhibit K) and set up a strategic plan for WWC. (Exhibit L to the Krieger Decl., Strategic plan for WWC dated August 2022)

² All parties agreed that the minimum loss was \$550,000. Although the actual payments made add up to \$511,349, some amount of Rhiannon's salary may have been greater than it would have been had VAS not tried to curry favor with Andrew. For the purposes of this calculation, we will assume that overpayment was approximately \$39,000.

1 Rhiannon did significant work for WWC, and according to the factual basis in the
2 plea agreement, Rhiannon was paid less than she was offered at Jones Day, where she
3 was given an offer to start at an annualized salary of \$225,000. (Exhibit M to the Krieger
4 Decl.) Her decision to work at WWC was a sacrifice for her in terms of salary, but an
5 advantage to WWC in terms of getting a fine attorney for a lower salary than their
6 competition for her talents. Rhiannon was very concerned about providing health services
7 to Asian Americans—even wrote her thesis in law school specifically on health
8 disparities among Asian Americans entitled “Improving Immigrant Pathways to Address
9 Preventive Health Disparities Among Asian Americans.” Rhiannon took her position
10 with WWC seriously and she provided value for WWC.
11
12

13 Andrew Do urges the Court to find restitution of \$550,000. Since part of
14 Rhiannon’s salary may have been to curry favor with Andrew Do, or serve as some sort
15 of acknowledgment or gratuity indirectly paid to Andrew Do, it is reasonable that the
16 difference between the \$511,349 of money paid directly outside of salary and \$550,000 is
17 the amount of Rhiannon’s salary that was paid to curry favor. However, as discussed
18 above, most of Rhiannon’s salary was properly earned for the hard work she did.
19 Moreover, \$8,000 per month paid to her as stated in the factual basis was reasonable
20 relative to Jones Day, but was arguably high for a non-profit—which is why some of the
21 salary should be paid back in restitution
22

23 **E. ANDREW DO’S ACTIONS DEMONSTRATE HIS REMORSE AND**
24 **ATONEMENT FOR HIS ACTIONS**

25 It is clear from the letters submitted that Andrew Do takes responsibility for
26 implicitly agreeing to have his daughters accept the payments by VAS and its associated
27

1 entities. At this point, Andrew Do is no longer in public life, devotes his life to his
2 charitable works and will never be in a position to disadvantage the government again.
3 From Andrew Do's statement at his change of plea, as well as the letter he submitted to
4 this Court, as well as the letters submitted to this Court, it is evident that Andrew Do
5 takes responsibility for his acts and blames himself for this unethical lapse of judgment.

6 In Andrew's Letter, he writes "I am guilty. I am ashamed and fully admit the
7 wrongs that I have done." Andrew admits that he "was blinded by a father's seeing his
8 daughter as being worth every penny of what they paid her. . . However, it is clear that I
9 simply did not want to see the payments for what they were (a bribe) and now my bad
10 judgment has derailed all that I had sought to achieve before I left public office." (*See*
11 Andrew's Letter) Andrew notes that "anyone in public service comes in contact with
12 many opportunities for wrongdoing. . . Until the events that lead me to your Court, I
13 never accepted or t[ook] advantages of these extravagances, as I did not go into public
14 service to become rich." *See Id.* Moreover, "my motivation in working with the non-
15 profit was not to enrich my family beyond what they would have made on their own." *Id.*

16 Two of the four purposes for sentencing, namely deterrence and incapacitation to
17 protect the public, which would otherwise justify a significant sentence of incarceration,
18 are counter-balanced by evidence of low risk of recidivism and the exemplary way
19 Andrew Do has lived his life both before and after his dealings with VAS. All of the
20 letters submitted to this court (including and especially his own) are a testament to that,
21 demonstrating that Andrew Do has been successfully rehabilitated and does not need
22 lengthy imprisonment to be deterred from re-offending, or locked up to protect the
23 public.

24 Moreover, Andrew Do has already been sufficiently punished as Andrew Do's life
25 has been destroyed by his association with VAS. Andrew Do has no work, a destroyed
26 reputation and basically devotes his life to his non-profit and his family. Andrew Do will
27 do more good for society out of custody than in custody.

1 Although in this case the sentencing guidelines places Andrew Do in prison for 60
2 months, such a sentence fails to properly reflect the unique circumstances of this case.
3 Andrew Do is not asking for the Court to spare him prison, he is asking for a sentence
4 that is truly just sufficient for the goals of sentencing, but not more. The fact is, Andrew
5 Do has fully accepted responsibility and shame and is more important to his children, his
6 family, his friends and his community than any good that would come of incarcerating
7 him for an extended period of time.

8 **F. A 33 MONTH SENTENCE IS APPROPRIATE**

9 **1. Under Guideline 2C1.2**

10 If the court accepts that the guidelines under 2C1.2 are the appropriate Guidelines
11 and varies from the typically mandated Guidelines of 2C1.1, then its variance should be
12 as follows:

13	(a) Base Offense Level: 2C1.2(a)(1)(1)	11
14	Single Gratuity:	+14
15	(between \$550,000 and \$1,500,000)	
16	TOTAL:	25
17	Acceptance of Responsibility	-3
18	First Time Offender	-2
19	LEVEL 20	33 Months

20
21 **2. Regardless of Theory, a 33 Month Sentence is Appropriate**

22 Andrew Do concurs with the United States Probation Department in
23 recommending a variance from the 60-month Guidelines sentence. Regardless of theory,
24 as Probation properly points out, he is a first-time offender and as such, *any* sentence
25 imposed in this matter will represent a significant period of custody.” *Id.* In
26 recommending a variance, Probation notes that “[t]he seriousness of the offense. . . is
27

1 balanced against Do's overall background and characteristic, which include an otherwise
2 lifelong productive life, including years of significant public service." *Id.* As noted
3 throughout our submission, there are also significant factors not included in the PSR and
4 recommendation. In all, the Court is urged to vary from the guidelines for these reasons
5 and impose the more appropriate 33-month sentence.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Andrew Do respectfully urges the Court impose a level
8 20, low end, 33-month sentence. In light of all the facts and reasons stated herein, this
9 will address all the sentencing goals as outlined in 18 U.S.C. § 3553(a). Such a sentence
10 is "sufficient, but not greater than necessary . . . [to] serve the goals of sentencing,"
11 considering Andrew Do's unique set of circumstances.

12
13
14 Dated: May 19, 2025

Respectfully submitted,

/s/

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