

1 Knut S. Johnson (CSB 125725)  
2 Emerson Wheat (CSB 277456)  
3 Law Office of Knut S. Johnson  
4 550 West C Street, Suite 790  
5 San Diego, California 92101  
6 (619) 232-7080 (Phone)  
7 (619) 232-7324 (Fax)  
8 [knut@knutjohnson.com](mailto:knut@knutjohnson.com)

9 ATTORNEYS FOR JOSE SUSUMO AZANO MATSURA

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES,

13 Plaintiff,

14 vs.

15 JOSE SUSUMO AZANO MATSURA,

16 Defendant.

CASE NO. 14-cr-0388-MAA

**SENTENCING MEMO AND  
REQUESTS TO DEPART AND VARY**

**Time: October 27, 2017**

**Date: 2:00 p.m.**

17 **I.**

18 **18 U.S.C. § 3553 FACTORS**

19 **1. The Nature and Circumstances of the Offense**

20 Mr. Azano's Objections to the Pre-Sentence Report ("PSR") show the "nature  
21 and circumstances" of this offense: numerous persons – San Diego political insiders -  
22 enriching themselves at Mr. Azano's expense. Those people often worked together

23 In short (a detailed explanation of the facts are set out in the objections), Ernie  
24 Encinas began his involvement in political campaigns long before any donations related  
25 to Mr. Azano or his companies. He bragged to the FBI and on intercepted calls that Mr.  
26 Azano would donate to politicians of Encinas's choosing and that that "he brought Mr.  
27 A in to this in order to elevate his own status. Encinas took responsibility got bundling  
28 contributions." Others, such as Spillane, thought that Encinas was misleading Mr. Azano  
to promote himself. Spillane also testified that Encinas bragged that Mr. Azano would  
donate "according to whatever Ernie told him to do." (Spillane Transcript, P. 113:23-

1 114:2) Encinas had numerous personal conferences, calls, and meetings with politicians  
2 to whom he had directed financial support. Significantly, not a single email, text, or  
3 phone call exists between Mr. Azano and any politician.

4 Likewise, Chase befriended Mr. Azano to “sell him things” and stole millions of  
5 dollars from him. As of 2014, according to Chase, Mr. Azano “may still believe that he  
6 owns part of” the companies through which Chase donated money. According to Chase,  
7 Encinas told him who to support financially. Chase testified at trial that he has no  
8 engagement in politics and has voted only once in his life. Transcript, August 11, 2016,  
9 page 16:16-17:8. However, he failed to tell the jury that his company, Symbolic Motors,  
10 has donated just under \$7,000 to various political action committees as of 2013. See,  
11 California Secretary of State database political action committees and donors at  
12 <http://powersearch.sos.ca.gov/advanced.php>.  
13

14 Singh, the campaign guru, stole from Mr. Azano, purposely overcharged him, but  
15 also performed valuable and highly paid work for Mr. Azano in Mexico. Encinas and  
16 Singh pushed for Singh to work on campaigns but not a single call, email, or text exists  
17 that shows Mr. Azano ever asking a campaign to use Mr. Singh.  
18

19 From the perspective of Mr. Azano, this is an offense that involves others – all  
20 political insiders - urging him to support politicians. Any notion that he supported  
21 politicians to promote a “Miami West” is utterly without support in the facts. The only  
22 evidence that exists is an email Marco Polo Cortes sent to Mr. Azano on August 22,  
23 2012 presenting Mr. Azano plans and a Port of San Diego document relate to Chula  
24 Vista. He also offered to have Mr. Azano meet with the *Chula Vista Port Commissioner*  
25 (*not Filner, Dumanis, or Vargas*), an invitation Mr. Azano ignored. By December 3,  
26 2012, with Mr. Azano’s failure to respond to Cortes, Cortes forwarded the email to  
27  
28

1 Encinas. See, ENC-EMAIL-CORTES-0000226; Trial Exhibits 051-006 and 007.  
2 Apparently at Cortes's urging, Encinas then set up the meeting with Filner (who was  
3 many things, but never the Chula Vista Port Commissioner). Again, there is no email,  
4 text, call, or evidence of any sort that Mr. Azano was actually interested in a  
5 development.

6 The government's only theory (although not an element) has been that Mr.  
7 Azano donated because he wanted to create a "Miami West." The government's  
8 argument is based on the testimony of Jason Kizonak, who was asked about a meeting  
9 in London and who responded "I wasn't there, so I really don't remember what the  
10 meeting was about or why Mr. Azano was in London or why he went to London at that  
11 time." Transcript 8/23/16 28:6-10. However, the government showed Mr. Kizonak an  
12 email dated December 3, 2012 that mentions a "presentation" for the mayor of San  
13 Diego about "our firm credentials" (not about a "Miami West"). Transcript 8/23/16  
14 29:11-25; Ex. 3-6. That proved only that Kizonak's company hoped to make an  
15 impression on the mayor, not that Mr. Azano stood to profit from such a project. See,  
16 Transcript 7/27/16 Anthony Bufinsky.

17 The evidence is clear that Mr. Azano's projects with Kizonak were wide ranging  
18 but never involved a "Miami West." In fact, within weeks of the "smoking gun" email  
19 (Ex. 3-6) the work Kizonak performed for Mr. Azano is detailed by an email exchange in  
20 January 2013, referencing Kizonak and the development of a Saudi/Qatar hospital  
21 discussed in San Diego (and *not* a development in San Diego):  
22

23 ///

24 ///

25 ///

From: Anthony <abufinsky@gmail.com>  
 Subject: Re: Yasin Kiszonak: LAX Jan 12-16, 2012 (Hospitals Discussion in SD)  
 Date: January 6, 2012 12:49:26 PM PST  
 To: "sazano42@gmail.com" <sazano42@gmail.com>

Excellent Sir, I did want to confirm if you would like Bashar to also attend (he asked if he could) if you would only like Yasin to join you that is no issue I know how you felt about Bashars performance last trip, so if you can kindly let me know your preference Sir.

On Jan 6, 2012, at 12:41 PM, "susumo azano" <sazano42@gmail.com> wrote:

Perfect! Next friday  
 Sent via BlackBerry from T-Mobile

From: anthony bufinsky <abufinsky@gmail.com>  
 Date: Fri, 6 Jan 2012 08:58:24 -0800  
 To: sazano42<sazano42@gmail.com>  
 Subject: Yasin Kiszonak: LAX Jan 12-16, 2012 (Hospitals Discussion in SD)

Hi Mr. Azano, Yasin has asked if it would be advisable for him to make a trip from Dubai to LAX to be able to meet with you in SD next Friday January 13th through the weekend (anytime) to update you on the Saudi/Qatar Hospital Investment Structure which is now ready to move forward by way of the Saudi investor.

- As a note the JV documents are now completed and he wanted to discuss with you, as well as; see you again in person now that the New Year is upon us.

Secondly, Bashar Aql called me to ask if it would be advisable if he also make the trip, I told him I would check if your schedule permits, and would like your preference (I assume he should not?) but please kindly advise Sir.

Cheers,

Anthony  
 <image001.jpg>

The falsity of the government's theory is proved by the evidence. Out of over 34,000 intercepted emails, not a single one contains a reference to Mr. Azano wanting to build in San Diego, planning a development, financing a development, or taking any action whatsoever. Out of a hundred thousand or so texts, none are related to any development in San Diego. However, in August 2012 (just before the September donations) Mr. Azano was presented with a written agreement to do business in Abu Dhabi. No contracts of any sort exist for the fictitious Miami West fantasy that the government harbors.

Moreover, a text exchange in September 2012 shows Mr. Azano declining to move ahead with a hotel deal in Miami because of a pending lawsuit against Sempra:

	A	B	C	D	E	F	G	H
212		From: +13053328860	9/27/2012	9/27/2012 2:25:24 PM(UTC+0)	Inbox	Read		Susumo, I know you spoke to Manny about some of the things your dealing with back home. I know that you eventually will get through this successfully! I think we need to move ahead with the Hotel Deal and when your ready you can come in with me at any time. I am trying to get the purchase secured and will let you know how things are progressing. This way it will take the pressure off you for this period of time. Let me know if there is anything I can do for you. All the best. Jerry.
214								
215	213	From: +525591981195 Roberto Aboumrud	9/27/2012	9/27/2012 2:57:59 PM(UTC+0)	Inbox	Read		Susu ya te mande la info del 43
216	214	To: +13053328860	9/27/2012	9/27/2012 4:28:54 PM(UTC+0)	Sent	Sent		I cant My fried my attorneys consider is not good now i spoke to them and they said is not good now
217	215	To: +13053328860	9/27/2012	9/27/2012 4:29:05 PM(UTC+0)	Sent	Sent		I need to wait a little more
218	216	To: +13053328860	9/27/2012	9/27/2012 4:32:07 PM(UTC+0)	Sent	Sent		They also want to review the deal before i decide because there is a lawsuit involved they recommend a good dilligence before we move forward Anthony explained and they said not before we sign NDA with sellers and review the docs i think Anthony has a better idea
219	217	From: +13053328860	9/27/2012	9/27/2012 4:32:21 PM(UTC+0)	Inbox	Read		No problem. I am going to try and move forward and if you can later on you can join me. I wish you all the best with settling your dispute with them and if there is anything I can do please let me know! Personal regards, Jerry.

1 Similarly, in March 2012 Jason Wolter tried to get Mr. Azano interested in  
2 purchasing the Carlton Hotel in Miami. A WhatsApp exchange between the two about  
3 the hotel is as follows:

- 4 • 3/20/12, 8:35:01 PM: Jason Wolter: Carlton Hotel South Beach 1433  
5 Collins Ave, Miami Beach Fl 33139  
6 <http://www.carltonsouthbeach.com/phone/indexf.php>
- 7 • 3/20/12, 8:35:12 PM: Jason Wolter: 2012-03-20-PHOTO-00000031.jpg  
8 <attached>
- 9 • 3/20/12, 8:35:20 PM: Jason Wolter: 2012-03-20-PHOTO-00000032.jpg  
10 <attached>
- 11 • 3/20/12, 8:35:30 PM: Jason Wolter: 2012-03-20-PHOTO-00000033.jpg  
12 <attached>
- 13 • 3/20/12, 8:35:40 PM: Jason Wolter: 2012-03-20-PHOTO-00000034.jpg  
14 <attached>
- 15 • 3/20/12, 8:35:49 PM: Jason Wolter: 2012-03-20-PHOTO-00000035.jpg  
16 <attached>
- 17 • 3/20/12, 9:06:43 PM: Mr A: Thanks jay
- 18 • 3/20/12, 9:06:53 PM: Mr A: Appreciate
- 19 • 3/20/12, 9:07:29 PM: Jason Wolter: You got it! Anthony and I are looking  
20 into it a lot. Let me know if you need anything else.
- 21 • 3/20/12, 9:13:23 PM: Mr A: Yeap tx
- 22 • 3/21/12, 11:24:54 AM: Jason Wolter: Good morning Mr A. Just found out  
23 the hotel has an approved offer outside of the auction for \$9.6 million.  
24 Too high.
- 25
- 26
- 27
- 28

- 1 • 3/21/12, 4:49:58 PM: Mr A: Yes i want to offer no more than 5m they
- 2 check the hotel and need lots of money for remodeling they r told me is
- 3 very bad condition
- 4 • 3/21/12, 4:51:29 PM: Jason Wolter: Yes I definitely agree w you. I also
- 5 checked customer reviews online and it got low ratings.
- 6 • 3/21/12, 4:53:07 PM: Mr A: Yes!
- 7 • 3/21/12, 4:53:48 PM: Mr A: Is very fuck top for 9m the most 5m and that
- 8 is too much
- 9 • 3/21/12, 4:55:14 PM: Jason Wolter: I Agree. 9m is way too much. They
- 10 are crazy
- 11 • 3/21/12, 4:55:35 PM: Mr A: Ok anyway

12 The government never explained why Mr. Azano would turn down two hotel  
13 deals in Miami (where they argue he wanted to be) and instead pursued a development  
14 in San Diego with no plans, permits, agreements, or support of any sort. As Samantha  
15 Bowman-Fleurov explained, Mr. Azano had a “vision” for San Diego that he generously  
16 shared. Arguing, as the government has, that Mr. Azano would invest hundreds of  
17 thousands of dollars to help support politicians with no authority for a development on  
18 which he had otherwise spent precisely nothing is absurd. This case is about the greed  
19 of people, including political insiders, who took advantage of the almost limitless  
20 generosity of a great person.  
21  
22

## 23 **2. History and Characteristics of Mr. Azano**

24 Mr. Azano is an incredibly generous person, who has donated hundreds of  
25 thousands of dollars to charitable causes and persons in need. Several witnesses for the  
26 government described Mr. Azano’s generosity, including Marc Chase (“extremely  
27  
28

1 generous”), Wolter, and the accountant Abel Garcia-Davila. He has never asked for  
2 anything in return for his generosity. Even the government’s informant Encinas stated  
3 over and over when his calls were being recorded that he could have just asked Mr.  
4 Azano to give him the money for a home, rather than for donations.

5 Mr. Azano has also filed Letters in Support of Sentencing Recommendation  
6 (“Letters in Support”), which are bates stamped with an index. Those letters document  
7 some of the incredible generosity shown by Mr. Azano. In particular, see the letters  
8 documenting some specific acts of generosity including giving \$88,000.00 to the  
9 church (Letters in Support, bates pages 8-9, 28), giving a sister a car when she needed it  
10 (bates pages 12-13), helping his sisters build homes at a cost of almost a million dollars  
11 for each home (bates pages 14, 17-19), paying employees medical bills (bates pages 36),  
12 building a chapel in an impoverished community (bates page 40), and buying desks and  
13 supplies for a poor school in Tijuana (bates pages 49-50).

14  
15 **A. Background**

16 Mr. Azano has been married to his wife, Maggie for approximately 30 years.  
17 Together, they live in Coronado with their son, Edward “Susu”(25 years old), daughter  
18 Paulina (11 years old; see her letter Letters in Support, bates pages 17-19) and Mr.  
19 Azano’s elderly mother in law (see her letter at Letters in Support bates page 36). Mr.  
20 Azano is a self-made successful Mexican businessman, who created his own business  
21 which is based in Mexico City. Although very successful, he is not close to being a  
22 billionaire as alleged by the government.  
23

24 Mr. Azano is a third generation descendant of a Japanese immigrant family that  
25 immigrated to Mexico from Japan with nothing but their own hard work. His large  
26 family has supplied many letters discussing his generosity and largess, including  
27  
28

1 spending millions on homes of relatives, paying for surgeries, and other acts of  
2 generosity. Mr. Azano created a company that assisted Mexican law enforcement in  
3 cyber security and anti- kidnapping efforts. By virtue of the nature of his main business  
4 relating to cyber security, Mr. Azano is prohibited from conducting his business in the  
5 United States. Mr. Azano has never had any interest in politics in the U.S., whether  
6 federal or local.

7  
8 **B. Mr. Azano has a history of helping law enforcement in anti-**  
9 **kidnapping and cyber security**

10 Mr. Azano's business is based upon assisting law enforcement agencies in  
11 Mexico. Mr. Azano constructed a centralized cyber security facility which was credited  
12 with the apprehension of tens of thousands of criminals in Mexico.

13 Mr. Azano also organized a task force that assisted Mexican law enforcement in  
14 Mexico in anti-kidnapping efforts and rescued many U.S. and Mexican citizens. See,  
15 Letters in Support, bates pages 33-34. Mr. Azano has also worked with various law-  
16 enforcement agencies in the United States. For example, Mr. Azano's task force worked  
17 with the FBI in rescuing approximately 17 US citizens, in addition to the many Mexican  
18 citizens.  
19

20 This Court is also aware from litigation in this case about the work performed by  
21 Mr. Azano for the DEA. The DEA has awarded him with challenge medals for his  
22 service.

23 Mr. Azano paid approximately \$300,000 from his own personal funds for the  
24 funding of the anti-kidnapping task force which rescued the U.S. and Mexican citizens.  
25 Mr. Azano never received, or requested, reimbursement of these funds.  
26

27 ///  
28



1           **C.     Mr. Azano is a philanthropist.**

2           Mr. Azano is extremely generous but has never expected anything in return for  
3 his generosity, not even a tax deduction. Examples of *some of* Mr. Azano’s philanthropy  
4 during the relevant period of 2011-2012, include the following:

5                   **1.     \$250,000 Medical expenses for boy in Mexico.**

6           Mr. Azano was asked to help a thirteen year old boy, a stranger to Mr. Azano,  
7 with medical expenses for a bone marrow transplant. The total cost was \$250,000 for  
8 the marrow transplant in related treatment. Mr. Azano agreed to contribute \$100,000  
9 and a company committed to contribute the remaining \$150,000, but later backed out,  
10 leaving the young boy without the funds necessary for the medical treatment. Mr.  
11 Azano paid the entire amount to save that young boy.  
12

13                   **2.     \$75,000 Tsunami Relief Fund.**

14           Mr. Azano was approached by Leanne Kim for the Japanese Tsunami Fund to  
15 assist the devastated victims in Japan. Mr. Azano agreed to provide \$75,000 to this  
16 cause. See, Declaration of Knut S. Johnson in Support of Sentencing Argument  
17 (“Johnson Decl.”), ¶ 3.  
18

19                   **3.     4/15/11 \$50,000 San Diego Asian Film Festival.**

20           See Johnson Decl., ¶ 3.

21                   **4.     5/11/11 \$15,000 Fundacion Boletos/Patronito Barraquez.**

22           See Johnson Decl., ¶ 3.

23           ///

24           ///

25           ///

26           ///

27           ///

28

1                   **5.     12/7/11   \$50,000.00 St. John's Episcopal Church and**  
2                   **Day School.**

3                   The small Catholic school attended by Mr. Azano's daughter had a financial  
4                   shortfall and was soliciting small donations from the families of the students. Mr.  
5                   Azano asked the school how much they needed and he donated the full amount of  
6                   \$50,000. See Johnson Decl., ¶ 3.

7                   **6.     6/4/12   \$100,000 San Diego Asian Film Festival.**

8                   See Johnson Decl., ¶ 3.

9                   **7.     10/13/12   \$25,000 San Diego Asian Film Festival.**

10                  See Johnson Decl., ¶ 3.

11                  **8.     Enrique Acosta**

12                  In 2011-12, Enrique Acosta suffered life threatening medical issues, including a  
13                  heart attack. Because he had no insurance, Mr. Azano paid \$300,000 for his medical  
14                  and personal expenses.  
15                  and personal expenses.

16                  **9.     \$10,000 For Security Guard's family.**

17                  One of Mr. Azano's security guards unexpectedly died of a heart attack. Mr.  
18                  Azano donated over \$10,000, by paying for a funeral and burial expenses plus an  
19                  additional contribution to the family to ease the pain of their loss.  
20                  additional contribution to the family to ease the pain of their loss.

21                  **10.    \$88,000 to Church.**

22                  Mr. Azano donated smaller amounts to numerous in countless charities over a  
23                  significant period of time. As noted by the letter of the archbishop in Guadalajara, Mr.  
24                  Azano has donated 1.5 million pesos to the church (about \$88,000.00 at today's  
25                  exchange rate, significantly higher four years ago). See, Letters in Support, bates stamp  
26                  pages 8-9 and 28.  
27                  pages 8-9 and 28.  
28

1                                   **11. Money and time for donated to orphanages.**

2           Mr. Azano and his family donate money, time, and gifts to orphanages in Tijuana  
3 and Guadalajara every holiday season. He also helped build a chapel in a poor  
4 neighborhood in Jalisco. See, Letters in Support bates page 40.

5                                   **12. Gift to Ernie Encinas.**

6           Due to Mr. Azano's business and the help he has provided to US and Mexican  
7 law enforcement, Mr. Azano was fearful of retaliation against his family, and was  
8 obsessed with the security and safety of his family for this reason. Mr. Azano's business  
9 was based in Mexico City but his family resided in Coronado for their safety. In Mexico,  
10 Mr. Azano had armored vehicles and a security force of over 80 employees, consisting  
11 of former policeman and military personnel who protected Mr. Azano when he was in  
12 Mexico.

13  
14           Mr. Azano's perception of safety in the United States was shattered when he was  
15 informed that his son was targeted by and large kidnapping ring who targeted Mexicans  
16 living in Tijuana and the Chula Vista area. As a result Mr. Azano set out to hire a  
17 security company for the protection of his family in Coronado. Mr. Azano was referred  
18 to a former San Diego policeman named Ernie Encinas, by another ex-policeman.

19  
20           Mr. Encinas had a security company and told Mr. Azano about his many contacts  
21 with former policeman who he could hire to provide the 24 hour security for Mr.  
22 Azanos family. Mr. Encinas and his employees also drove and escorted Mr. Azano and  
23 his family virtually everywhere they went in San Diego.

24  
25           Mr. Azano trusted Mr. Encinas who was in charge of the safety and security of  
26 his family. Mr. Azano regularly travelled to Mexico and was out of the US virtually every  
27 week, returning only on the weekend to spend time with his family in Coronado. Mr.

28

1 Azano greatly appreciated the position of Mr. Encinas and was very generous with Mr.  
2 Encinas. Mr. Azano gave Mr. Encinas gifts and paid him generously for his services. Mr.  
3 Azano once flew Mr. Encinas and his entire family to a Mexican resort for the wedding  
4 and honeymoon of his daughter. ***The total cost of this gift to Mr. Encinas was***  
5 ***in excess of \$100,000.***

### 6 **3. The Need to Reflect the Seriousness of the Offense & Just** 7 **Punishment**

8 Mr. Azano has remained on bond for close to 4 years. During that time he has  
9 lost business, suffered personal attacks and public humiliation, and seen his family  
10 suffer. First, photos of his home were posted over and over on television political ads by  
11 Dumanis's opponent, causing his family and most seriously his young daughter,  
12 distress. Second, he has been verbally attacked in public while with his family and he  
13 received racist hate mail at his home about this case after his home address became  
14 public. In addition, his young daughter has suffered bullying at school because of the  
15 publicity surrounding this case. He also now faces deportation from the country where  
16 his wife and children live. Of all these consequences, Mr. Azano is most concerned  
17 about, distressed, and humiliated by the consequences to his young daughter.  
18

19  
20 Mr. Azano has been thoroughly punished emotionally, personally, and  
21 financially. He will also be punished again by the Federal Election Commission, which  
22 has a stayed case against him for the conduct alleged in the indictment. Mr. Azano is  
23 not a campaign professional, and the seriousness of this offense is well reflected by any  
24 financial penalty.

25 Unlike a campaign professional such as Ravi Singh, Mr. Azano need not be  
26 imprisoned to reflect just punishment. The punishment he has received and will  
27  
28

1 continue to receive reflects the seriousness of this case. He has suffered and will suffer  
2 steep financial penalties (both in this case and in the pending civil Federal Elections  
3 Commission case), deportation, loss of business, harm suffered by his family, and deep  
4 anxiety. He has never before been involved in U.S. elections, unlike Maruccia, Singh,  
5 Dumanis, Cortes, and all the other experts involved in this case.

6  
7 **4. The Need for Deterrence and Protection of the Public**

8 The public needs no protection from Mr. Azano, and he needs no additional  
9 deterrence to donate to any political campaign.

10 **5. The Need to Avoid Unwarranted Disparities**

11 This Court should be greatly troubled by facts relating to uncharged persons Bonnie  
12 Dumanis and Kelli Maruccia and their unrelenting solicitation of campaign funds from  
13 Mr. Azano and his company knowing he was a foreign national. As noted in more detail  
14 in the Objections, the evidence also demonstrates that Ernie Encinas was the architect,  
15 leader, organizer and the engine driving efforts to collect contributions from Mr. Azano,  
16 regardless of his status. At no point did Mr. Azano inject himself into a single campaign.  
17 Rather, Encinas, like every campaign fund bundler, was trading bundled contributions  
18 for access to elected politicians and using his relationship with Mr. Azano as collateral.  
19 Encinas, and the politicians and political insiders he was helping, were the true  
20 beneficiary of any campaign contributions.

21 First, after the jury's verdict in the Azano case, a juror advised counsel for Mr. Azano  
22 that "the jury considered [Bonnie Dumanis] a liar and very complicit in the case." The  
23 jury realized the true catalyst of these campaign financing irregularities had escaped  
24 responsibility. Second, in reviewing the materials and speaking with witnesses it is  
25 clear to me that months **before** Bonnie Dumanis accepted a check from Mr. Azano or  
26 his company, she, Ernie Encinas and Kelli Maruccia all knew Azano was a foreign  
27 national and couldn't contribute. And yet Dumanis, Maruccia, and Encinas all targeted  
28 Mr. Azano as a potential contributor. Each diligently avoided the truth and deliberately

1 avoided reality when cajoling contributions. Not only did Ms. Dumanis accept the  
2 donation from Airsam, but even **after** Mr. Azano's nationality was published in a local  
3 paper, Dumanis and her campaign retained the money. To this day neither Dumanis  
4 nor her campaign have ever returned the funds to Airsam or made any attempt to do so.

5 The most salient and troubling facts are the following:

6  
7 **i. In SEPTEMBER 2011, ENCINAS BEGAN FUNDRAISING FOR THE**  
8 **DUMANIS CAMPAIGN.**

- 9
- 10 • Encinas began his campaign work for Dumanis well before he had Mr. Azano  
11 contribute. Trial exhibits include email exchanges between Encinas and  
12 Maruccia about fund raising for Dumanis in September 2011 (Ex.s 5005, 5006,  
13 5007, and 5008), months **before** any discussion of Mr. Azano.
  - 14 • In September 2011, Encinas had raised over \$2,000.00 for Dumanis and wanted  
15 information about future fundraisers.
  - 16 • That fall he was the "host" of a fundraiser for Dumanis that occurred on  
17 December 7, 2011, which required a \$500.00 contribution. See, Exhibit 19-17.
  - 18 • In November 2011, Encinas was invited by Maruccia to a fund raising event in  
19 San Francisco for Dumanis ("Bonnie would LOVE to have you there and bring  
20 your daughter and family!") He also appeared to be pushing Singh's services on  
21 Maruccia at the same time. See exhibits 19-18.

22 **ii. MARUCCIA ADVISED ENCINAS ABOUT OBTAINING DONATIONS**  
23 **FROM MR. AZANO FOR THE DUMANIS CAMPAIGN.**

- 24
- 25 • Maruccia's politician clients included, Dumanis, Gore, Filner, and Vargas.  
26 Coincidentally, Dumanis, Filner, and Vargas were all recipients of contributions  
27 associated with Encinas and Azano.
  - 28 • Encinas told Maruccia repeatedly how much he respected Dumanis and  
wanted her to win the mayoral election. While most donors will indicate a  
specific policy issue on which they agree with a candidate as the reason they

1 would like to see them elected, Encinas never expressed a specific reason for his  
2 support of Dumanis other than his “respect” for her. (Maruccia 302 12/28/15).

3 • Encinas pushed Maruccia to introduce Dumanis to Azano. He also pushed  
4 Maruccia to have Dumanis introduce Gore to Azano.

5 • Dumanis went to Azano’s home in 11/11 for a meeting. Encinas attended  
6 this meeting. After the meeting Maruccia and Dumanis both researched Azano  
7 and his conflict with SEMPRA. It is impossible to have researched this SEMPRA  
8 conflict and not to have discovered that Azano was a foreign national. This is  
9 especially true given the fact that Dumanis was the Chief law Enforcement  
10 Officer in San Diego County.

11 • Every conversation Kelli had about donations from Azano were with Ernie  
12 Encinas and never with Azano.

13 • Encinas approached Maruccia for guidance on starting an independent  
14 expenditure committee (IE) for Dumanis. (Maruccia 302 12/28/15).

15 • Since Maruccia worked for the campaign, she could not be involved in  
16 fundraising for an IE. So, Maruccia told Encinas that he should obtain guidance  
17 on starting an IE from a political consultant, and referred him to John Wainio.  
18 (Maruccia 302 12/28/15).

19 • Maruccia could not recall a specific conversation during the Dumanis  
20 campaign wherein she told Encinas that Azano could contribute to an IE through  
21 a U.S. company, however, if asked, she would have told Encinas that a U.S.  
22 company could contribute to an IE. (Maruccia 302 12/28/15)

23 • Maruccia did not recall having questions about the rules regarding legal  
24 permanent resident/green card holders during the Dumanis campaign. This  
25 issue came up later, when Azano wanted to contribute to Juan Vargas, who was  
26 running for U.S. Congress. At that time, Maruccia sent an email to the  
27 Democratic Congressional Campaign Committee (DCCC) to obtain clarification  
28

1 on the rules regarding green card holders contributing to a campaign.  
2 (Maruccia 302 12/28/15).

3 • On August 18, 2012, Maruccia sent an email to campaign fundraiser  
4 Samantha Bowman-Fleurov and Edward Clancy stating that “you’d need to run  
5 this up the legal flagpole. We can only accept contributions from those that legal  
6 US residents, no foreign nationals. If all these folks live in TJ I don’t see the  
7 reason to do this.” (Gov. Trial Exh. 37-16.)

8 • On August 18, 2012, Maruccia sent another email to Samantha Bowman-  
9 Fleurov and Edward Clancy stating “I’ll follow-up on you meeting yesterday as it  
10 relates to party stuff. Sam let’s talk today. Companies can give to the party they  
11 need to be US based.” (Gov. Trial Exh. 37-16.)

12  
13 **iii. ON MARCH 2, 2012, MR. AZANO EXPRESSLY TOLD MS. DUMANIS**  
14 **THAT HE WAS A MEXICAN CITIZEN AND NOT A GREEN CARD**  
15 **HOLDER.**

- 16 • Ernie Encinas calendared an appointment for March 2, 2012, for Azano to “meet  
17 and greet” Dumanis and Sheriff Gore at Gore’s office. (Exhibit 1) However,  
18 Azano was unaware of the meeting until the morning of March 2<sup>nd</sup>, when Ernie  
19 phoned Azano while he was driving to another appointment with a friend, Adrian  
20 Reyes. It was then that Ernie first told Azano about the meeting. In that call,  
21 which Reyes heard on the car speaker, Encinas insisted that Azano change his  
22 plans so he could meet Gore and Dumanis that day. Adrian Reyes has been  
interviewed and, along with Mr. Azano, confirmed the following facts:

23 (i) Ernie arranged the meeting with Bonnie Dumanis and called while they were driving  
24 to another appointment.

25 (ii) Azano and Adrian were met by Kelli Maruccia, Bonnie Dumanis, and Ernie in the  
26 parking lot when they arrived at Gore’s office. Azano had no idea what the meeting was  
27 about.  
28



1 (iii) Maruccia immediately excused herself and did not enter the building, but the  
2 others went up to the Sheriff's office and all of them met with Gore.  
3 (iv) Bonnie Dumanis introduced Mr. Azano to Sheriff Gore as a "good citizen" of San  
4 Diego whose business involved surveillance equipment for law enforcement agencies.  
5 (v) Realizing that this was an attempt to establish a business arrangement, Mr. Azano  
6 immediately told the group that he was not a US citizen and he and his companies were  
7 Mexican and as a result could not do business with the Sheriff's office.  
8 (vi) After the group left Gore's office on the way back to their cars, Ms. Dumanis  
9 expressly asked Encinas if Mr. Azano had a residence card, to which Azano in her  
10 presence said no. He confirmed he only had a Mexican passport and a visa.  
11 Azano, still believing this was a business meeting, apologized for wasting everyone's  
12 time. Dumanis assured him that she and Encinas would take care of it.

13 The March 2nd meeting referred to above was arranged by Kelli Maruccia.  
14 According to Gore's statements, given that Maruccia set the meeting up campaign  
15 contributions were expected in the future. (Testimony of Sheriff Gore).

16  
17 **iv. MR. WAINIO REFUSED TO FORM A DUMANIS PAC FOR ENCINAS**  
18 **BECAUSE HE SUSPECTED THE DONATION MAY BE ILLEGAL AND**  
19 **THAT DUMANIS KNEW MR. AZANO WAS NOT A GREEN CARD**  
20 **HOLDER.**

- 21 • Encinas contacted Wainio because he had "clients" who wanted to contribute  
22 large amounts to the Bonnie Dumanis Campaign. (Wainio Transcript, Pp. 5:23 –  
23 6:22)
- 24 • Wainio "had the ability to execute an independent expenditure on [Dumanis']  
25 behalf. [He] had the professional background and experience, and [he] was a  
26 Bonnie supporter." (Wainio Transcript, Pp. 7:16 – 8:2)
- 27 • In February 2012, Encinas contacted Wainio because "He had supporters of  
28 Bonnie's that wanted to campaign on her behalf and on an independent capacity,

1 you know, beyond the limits provided by the County ordinance.” (Wainio  
2 Transcript, Pp. 5:23 – 6:22)

- 3 • Encinas was referred to Wainio “by representatives of Bonnie's campaign by  
4 Bonnie and by him.” (Wainio Transcript, Pp. 5:23 – 6:22)
- 5 • Waino never met Azano and only knew about him through Ernie.
- 6 • Wainio was suspicious of the Encinas’ proposed donation from a “Mexican  
7 billionaire” for the simple reason that it appeared to be a foreign contribution.  
8 (Wainio Transcript, Pp. 8-9)
- 9 • Wainio immediately became “suspicious” because “The description as a foreign  
10 billionaire made me concerned that the money may not be eligible for use in a  
11 campaign and also there didn't seem to be any rationale, in other words, typically  
12 people spend money for a reason in politics of that size.” (Wainio Transcript, P p.  
13 8-9)
- 14 • Encinas’ proposed contribution “sounded fishy” in that Encinas “described him  
15 as a Mexican billionaire which again, I understood to represent his nationality,  
16 which wouldn't in itself be fishy, but fishy with regard to political contributions.”  
17 (Wainio Transcript, P. 13:3 – 14:6)
- 18 • In late February 2012, Wainio spoke to Dumanis and apparently felt she knew,  
19 or suspected, the Mexican billionaire was a foreign national that was not allowed  
20 to make campaign donations. Wainio asked Dumanis if Azano had a green card  
21 and about Mr. Azano's immigration status. (Wainio Transcript, P. 32:21 – 33:14)
- 22 • Dumanis responded to Wainio’s questions with “a long silence.” (Wainio  
23 Transcript, P. 33:23 – 25). This was of course **after** the meeting at Sheriff Gore’s  
24 office and **after** Dumanis was aware that Azano didn’t have a residents or green  
25 card.
- 26 • Dumanis’ response to this question about Mr. Azano “moved [Wainio] from  
27 being suspicious and cautious to making a firm determination that [Wainio]  
28 wasn't going to have anything to go do with it.” (Wainio Transcript, P. 34:8 – 18)

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- Wainio understood the silence as her (Dumanis) knowing that Azano’s nationality was an obstacle to his contributing.
- Wainio didn’t want the job of creating the IE and suggested Spillane as a person to contact.

**v. ENCINAS CONVINCED MR. SPILLANE TO CREATE THE DUMANIS PAC BY TELLING HIM THAT MR. AZANO WAS A GREEN CARD HOLDER.**

- Spillane was contacted by Ernie who asked him to form an IE for Dumanis. This was after Wainio didn’t want to get involved. **(Spillane Transcript, P. 112:10-13)**
- Ernie told him that he had a client who was a billionaire that would donate money according to whatever Ernie told him to do. **(Spillane Transcript, P. 113:23- 114:2)**
- Spillane never communicated with Azano. **(Spillane Transcript, P. 145:5-146-19)**
- Ernie told Spillane that money was coming from Azano who was a Mexican citizen and green card holder. **(Spillane Transcript, P. 119:23 – 120:2)**. This was after the Dumanis Gore meeting when Azano advised Dumanis he was not a green card holder and after Wainio declined to get involved.
- Spillane knew it was illegal for a foreign national to donate, unless they had a green card. **(Spillane Transcript, P. 123:3-10)**
- Spillane consulted with legal counsel who told him that corporations could donate as long as they were controlled by US citizens/green card holders. **(Spillane Transcript, P. 120:21-121:1, 130:14-131:1)**
- Spillane checked public records re Airsam entity and satisfied himself since Azano was a "green card holder." **(Spillane Transcript, P. 131:15-132:1)**
- Spillane never attempted to communicate with Azano or Airsam. **(Spillane Transcript, P. 145:5-146-19)**

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- Spillane "relied" on Ernie's representation that Azano had a green card. Nothing more, and no independent verification. **(Spillane Transcript, P. 120:21-121:1, 144:6-21)**
- Spillane was interviewed by reporters and told them that Susumo was a green card holder, because that is what Ernie told him. **(Spillane Transcript, P. 124:7-125:10)**
- Spillane believed that Ernie was misleading Azano to support Ernie's candidates so "he could look like the big guy on campus." **(Spillane Transcript, P. 127:22-128:13)**. This is precisely what was happening.
- Ernie was the one who deposited the Airsam check into the IE account. **(Spillane Transcript, P. 119:14-20)**
- The only contributions to the IE were from Ernie himself and the Airsam check Ernie presented and deposited. **(Spillane Transcript, P. 117:11-14)**

**vi. DUMANIS WAS ALLOWED TO FREELY COMMUNICATE WITH THE GOVERNMENT AND WAS NEVER INDICTED OR EVEN SERIOUSLY INVESTIGATED.**

- On 1/24/2014 Bonnie Dumanis sent an email to FBI SAC San Diego (Daphne Hearn) to request a meeting to discuss the investigation:  
"There has been a lot swirling around since the recent complaint filed by the FBI. I want you to know I am totally willing to sit down with you, or any law enforcement officer, federal or state at any mutually convenient time as soon as possible."

\* \* \*

"I also want to let you know that I will be releasing this to the public because I believe the public deserves to hear it from me. "  
Bonnie

- On 2/14/14, Ms. Dumanis met with the FBI. The interview was audio and video recorded in its entirety. The original recording is maintained by the FBI:

1 After being advised of the identities of the interviewing agents, Dumanis  
2 presented a digital voice recording device and stated that she wished to  
3 record the interview. After being advised of FBI policy regarding the  
4 prohibition of recorded interviews by third party recording devices,  
5 Dumanis stated that the FBI could keep the recording device at the  
6 conclusion of the interview. Therefore, at the conclusion of the interview,  
7 the digital voice recorder was taken into FBI custody and subsequently  
8 submitted to the San Diego Evidence Control Center.

9 (302 by Phan, Meisel, Schuld)

- 10 • On 2/14/14, Dumanis and AUSA [unknown name] had a telephone conference.  
11 DOJ tells Dumanis that she is not a Target, but was considered a subject of the  
12 investigation.

13  
14 (AUSA name redacted) informed Dumanis that despite her earlier request  
15 for a letter declaring her status in the investigation, the United States  
16 Attorney's Office (USAO) did not provide such letters or statements, if  
17 any, until the end of an investigation. (AUSA name redacted) advised  
18 Dumanis that although she was not presently a target in this federal  
19 investigation, she was considered a subject at this time. (AUSA) explained  
20 that although the negative publicity regarding Dumanis' connection to the  
21 investigation was unfortunate, for such to happen was not the intention or  
22 agenda of the United States Attorney's Office.

23 (302 by Stephanie Schuld)

- 24 • On 3/6/14, Ms. Dumanis herself called AUSA Phillip Halpern to discuss issues  
25 relating to this criminal matter. The FBI report provides:

26  
27 "AUSA Phillip Halpern received a telephone call from Bonnie Dumanis. Dumanis  
28 advised that she had received a telephone call from her fundraiser. Her

1 fundraiser was in tears because Bob Brewer had released a statement in writing  
2 that Dumanis' fundraiser had been given immunity by the U.S. Government in  
3 exchange for her cooperation in the ongoing investigation. Dumanis forwarded a  
4 mass e-mail sent by Brewer with the statement regarding Dumanis' fundraiser  
5 receiving immunity. A copy of the e-mail is maintained (by the FBI).

- 6 • On 3/6/14, Ms. Dumanis sent an email to AUSA Halpern:

7  
8 Phil,

9 Pursuant to our telephone discussion I am forwarding this eblast with the  
10 statement that has included information I believe to be untrue regarding an  
11 immunity letter to my fundraiser. I am asking that you look in this matter.

12 Thank you.

13 Bonnie

- 14 • On 6/23/16, Ms. Duffy learned that a local reporter had inquired whether Ms.  
15 Dumanis: (i) had been tipped off about search warrants executed in the Azano case; and  
16 (ii) called the FBI and told them that she would comply with any request for records.

- 17 • On or about 6/24/16 (the following day), Ms. Duffy received a text message from  
18 Ms. Dumanis regarding AUSA Schopler's selection to fill an open Magistrate Judge  
19 position in the Southern District of California. The exchange was as follows:

20 Dumanis: Was magistrate position yours?

21 Duffy: Yep. Ugh.

22 Dumanis: On the big case? Will he finish?

23 Duffy: Call me Right quick – can you?

- 24 • In the subsequent phone conversation, Ms. Duffy related the rumor from the  
25 local reporter to Ms. Dumanis. At this time, the United States Attorney stated that she  
26 did not know what was going on in the case as she was recused. Ms. Dumanis indicated  
27 that she understood the recusal and would not ask any questions about the substance of  
28 the case. Ms. Dumanis further stated that in her earlier text message she only wanted to

1 learn if the trial was going to be continued (as she was hoping that wasn't the case). Ms.  
2 Duffy responded that she was not sure of the exact trial date, but understood that Mr.  
3 Schopler was going to ask for permission to take the bench after the Azano trial was  
4 concluded.

5 • On 8/5/16, during the trial in this matter, Ms. Duffy sent a text to Ms.  
6 Dumanis, inquiring:

7  
8 "How goes everything with you? Are you holding strong through  
9 the Azano press coverage?" The following day, Ms. Dumanis responded: "I  
10 think it best not to communicate right now. But thanks for checking in."  
11

12 These communications, although occurring as early as June 2016,  
13 were not even disclosed to the defense until well after the trial  
14 commenced and long after they occurred. (There was a Halpern e mail  
15 which should be referred to here and included in part)

16 These facts, individually and in combination, are beyond troubling. Indeed,  
17 based on the available facts, the activities of Dumanis and Maruccia amount to  
18 knowledge that any campaign contributions solicited from Azano or his company would  
19 be in violation of various campaign financing laws. And yet, neither Dumanis nor  
20 Maruccia were made to answer for their conduct in this affair. Rather the *donors*  
21 became the scapegoats. And as far as Encinas is concerned, based upon troubling  
22 testimony he would have disclosed at trial, he was kept off the witness stand and the  
23 true facts relating to Dumanis and Maruccia would never see the light of day.  
24

25 **6. The Need to Provide Needed Educational and Vocational Training, or**  
26 **Medical Care**

27 This factor does not apply in this case.  
28

1 **7. The Kinds of Sentences Available, the Sentencing Range, and Policy**  
2 **Statements**

3 This Court may impose probation and a fine.

4 **III.**

5 **18 U.S.C. § 3553(a) Variances and Reductions**

6 The PSR recommends a downward variance because the sentencing range is  
7 “greater than necessary, based on the nature of the offense and the history and  
8 characteristics of” Mr. Azano. PDR. ¶ 219.

9 **IV.**

10 **CONCLUSION**

11 Virtually all of the aggravating factors alleged (role, intimidation, donation  
12 value) are based on unreliable allegations that this Court should not take into account.  
13 As the Ninth Circuit has noted, false or unreliable allegations demonstrably made the  
14 basis for the sentence violate the right to due process. *United States v. McGowan*, 668  
15 F. 3d 601, 606 (9<sup>th</sup> Cir, 2012) (citing *United States v. Vanderwerfhorst*, 576 F. 3d 929,  
16 935-936. (9<sup>th</sup> Cir. 2009). “Challenged information is deemed unreliable if it lacks “some  
17 minimal indicium of reliability beyond mere allegation.” *Vanderwerfhorst*, supra at  
18 936.

19 More importantly, this Court’s sentencing decision is about Mr. Azano, who he  
20 is, and what he has done:

21 But, surely, if ever a man is to receive credit for the good he  
22 has done, and his immediate misconduct assessed in the  
23 context of his overall life hitherto, it should be at the  
24 moment of his sentencing, when his very future hangs in  
25 the balance. This elementary principle of weighing the good  
26 with the bad, which is basic to all the great religions, moral  
27 philosophies, and systems of justice, was plainly part of  
28 what Congress had in mind when it directed courts to  
consider, as a necessary sentencing factor, "the history and  
characteristics of the defendant." [*United States v. Adelson*,  
441 F. Supp. 2d 506, 513-14 (SD NY 2006)]



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This Court should give him “credit for the good that he has done” and weigh that with his conduct in this case. A fair analysis of his generosity and life filled with giving supports a sentence of probation for Mr. Azano.

For the foregoing reasons, this Court should impose a sentence of probation.

Dated: October 10, 2017

Respectfully submitted,

          /S/ Knut S. Johnson            
**Knut S. Johnson, Esq. for**  
Jose Susumo Azano Matsura