

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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UNITED STATES OF AMERICA,	)	Criminal No. SA-21CR-00404-JKP
	)	
Plaintiff,	)	
v.	)	
	)	
HECTOR BARRETO,	)	
	)	
Defendant.	)	

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**SENTENCING MEMORANDUM ON BEHALF OF HECTOR BARRETO**

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We respectfully submit this sentencing memorandum on behalf of Hector Barreto (“Hector” or “Mr. Barreto”), an extraordinarily good and impactful person who deeply regrets his decisions that led to the charges and convictions in this case. For the reasons set forth below, we request that the Court impose a non-Guidelines sentence of probation.

Until his arrest in this case, Hector enjoyed a stellar reputation in the United States as a transformative national and community leader who was generous with his time and attention and had incalculable, positive impacts on many people’s lives. As a result of his conduct, Hector has suffered a colossal fall, from serving the President of the United States in his cabinet to appearing before this Court as a convicted felon. He has already been punished significantly for his conduct. He has lost his connection to many of the non-profits which he worked so hard to build and gave meaning to his life. He has let down the many individuals who saw Hector as their advocate, mentor and benefactor and the countless others who took pride in Hector’s rise as a nationally renowned Latino American leader. Even more personal and painful, he betrayed his father’s iconic legacy of servant leadership, which prioritized the needs of others above all else. He and his family have had to deal with the pain, anxiety, and shame of his criminal conviction.

Hector comes before the Court for sentencing after having accepted responsibility for the charges which arose from an aberrational detour in an otherwise honorable life. He recognizes that he exercised very poor judgment in using a portion of certain donations for personal use. However, Mr. Barreto’s offenses of conviction stand in stark contrast to the admirable life he led up until the conduct that led to the charges in the instant case and the remarkable good that is still felt throughout the country today because of his leadership.

On January 4, 2024, Mr. Barreto and his counsel received a copy of the Probation Department’s final Presentence Investigation Reports (collectively, the “PSR”) and Sentencing

Recommendation. We respectfully submit that Hector's lifetime record of service, together with all the other mitigating factors set forth herein, warrant a non-guidelines sentence that does not subject Mr. Barreto to any period of incarceration.

**I. Mr. Barreto's Personal History**

Mr. Barreto is best described as an extremely hard worker who is extraordinarily dedicated to his family, community, and country. He comes from a modest background of first-generation immigrants, and has always been generous with others, whether it be employees, interns, relations of friends, or complete strangers, both with his time and resources. As a result, Hector enjoys the friendship and support of many people, and for that he considers himself to be a very lucky man.

**A. Hector's Background, Education and Family**

Hector was born in Kansas City, Missouri in 1961. He is 62 years old. He is the oldest child of five children born to Mary Louise Barreto and Hector Barreto, Sr. His four siblings, all sisters, are Anna, Gloria, Rosa, and Mary, who is six years younger than Hector.

The Barretos were a tight knit, working-class family with an exceptionally strong work ethic. Hector's father was born in Mexico City and raised in Guadalajara, Mexico. Hector's mother was born in Kansas City and was the daughter of immigrants from Mexico. Hector's father graduated sixth grade; his mother graduated from high school. In 1958, when he was 23 years old, Hector's father immigrated on a work visa to the United States where he settled in Kansas City, Missouri with no money and speaking very little English. There, he met Hector's mother, who was working as a bank teller. In 1960, they were married in a ceremony where Hector's grandfather was his father's best man. Thereafter, Hector's father took labor-intensive jobs, including picking potatoes, meat packing, and janitorial work. A constant learner and

determined entrepreneur, Hector's father launched three Mexican restaurants and an import-export business, which were run on a day-to-day basis by Hector's mother. Although they had no prior experience in either enterprise, Hector's parents were willing to learn and work hard.

In three ways, Hector learned from his family how to live a life of purpose. First, there is no substitute for hard and honest work. His sister, Gloria Barreto-Smith recalls that all siblings were expected to work for what they received.

My parents raised us to believe that anything beyond food, shelter, clothes and an education would need to be worked for not given. From an early age, my siblings and myself were expected to help out at the restaurant. . . .

(Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) Hector began working at his family's restaurant, Mexico Lindo, when he was very young. A family friend, Mr. Moseley, writes,

He worked at the restaurant at an early age, which I found amazing as his family couldn't afford to pay employees and his daily routine was getting up early, cleaning the restaurant before school, removing trash, mopping the floor, and whatever else needed to be done after school.

(Ltr. of James Moseley, attached hereto as Ex. 2.) While attending West Rock Creek Elementary School, Nowlin Junior High School and Van Horn High School in Kansas City, Hector worked "20-30 hours a week for his family's restaurants." (Ltr. of Rosa Dobson, attached hereto as Ex.

3.) During these years, Gloria writes that Hector would "go to our restaurant before school clean tables, mop floors replenish supplies so that my mom could get us to school." (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.)

As a result, Hector did not have much time for outside activities and friends when he was young. When Hector asked his father for his first car at the age of sixteen, he was told that he had to take additional jobs to earn the necessary funds. According to his sister, Gloria,

My dad told him that he would match whatever he could raise. Hector promptly made a list of jobs he could do to earn money. He mowed lawns, shoveled snow, moved furniture, built fences, and worked in a factory. With Hector's hard work and determination, he was able to save \$1,500 dollars towards buying his first car.

(*Id.*) In the Barreto household, nothing was given outright, and short-cuts were never tolerated.

Second, education provides stability. Hector's mother "would often say that an education once obtained could never be taken away from us and our job was to work hard and do our best to earn that education." (*Id.*) Consistent with their strong faith, Hector was enrolled in a Catholic school, where his dark complexion made him a target of daily bullying.

When Hector was only about 9 years old, I was waiting for him to walk us home. When he didn't show up I went looking for him. I came upon a group of children surrounding my brother watching two boys hold my brother while another boy hit him. I remember walking home in tears and my brother consoling me and assuring me he was okay as he nursed a bloody nose. Our parents stressed that the only way to advance in this world was to get an education . . . . Even though being bullied became a common occurrence for Hector at school, he would always return the next day secure in the knowledge that he would not be intimidated or detoured from his goal of receiving an education.

(*Id.*) To Hector and his family, education was vital to one's dignity.

Third, no person is an island. The Barretos were religious. Sundays was "family day" which the Barretos celebrated by going to church and having a family dinner. (Ltr. of Mary Barreto Shearhart, attached hereto as Ex. 4.) In addition, the Barreto's took "pride" in being part of "a large Hispanic family" in America. (*Id.*) The family shared their Latino food and culture with others as their restaurants became favored destinations for Mexican food in Kansas City. The Barretos then expanded their restaurant business into an import export business by selling Mexican tiles to customers who enjoyed the décor in their restaurants.

Being accountable meant bearing responsibility for others. Gloria writes that Hector had the “arduous task” of caring for his younger sisters. (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) Rosa describes Hector’s importance as a role model to his sisters.

[M]y parents put [Hector] in charge of his younger sisters early and often. Hector has always been someone we could rely on for whatever we needed. He also has been an excellent role model for myself and my sisters.

(Ltr. of Rosa Dobson, attached hereto as Ex. 3.)

The Barretos’ sense of personal responsibility extended beyond their immediate family. Growing up, Hector witnessed his father leverage his personal achievements and resources to improve the lives of others. For example, a family friend, Jose Romo, describes the critical help that Hector’s father provided to him and his brothers in starting their own family restaurant in Kansas City.

My brothers and I had worked at restaurants as employees but very little knowledge of all that was needed to open one. Hector Barreto Sr. helped us in obtaining the licenses (i.e., food, liquor) and permits needed to open a restaurant. He also offered to help us look for all the necessary kitchen equipment and provided us with an orientation on how to manage a restaurant. Due to his help and advice, we had great success with our restaurant and then went on to open more locations. He motivated us to work honestly and consistently.

(Ltr. of Jose Romo, attached hereto as Ex. 5.)

In addition to mentoring others, Hector observed his father provide the Hispanic community with cohesion and strength through organization. In 1977, Hector’s father founded the Kansas City Hispanic Chamber of Commerce. Thereafter, in 1979, he founded the nation’s first Hispanic business network, the United States Hispanic Chamber of Commerce (“USHCC”), which he grew into the most influential Hispanic business association in the United States. Speaking to Hector and others about USHCC’s importance, Hector’s father stated that the Hispanic community needed a “Golden Triangle” of education, representation, and economic opportunity

for its members to succeed in the United States. Hector's father described his vision for how USHCC's "Golden Triangle" benefitted both U.S. corporations and Hispanic-owned businesses in the following two ways: (1) the "American Stewpot", which unlike a "Melting Pot", enabled Hispanic businesses to help grow the American economy by working with American centers of influence without losing their cultural identity (Ltr. of Michael Rezinis, attached hereto as Ex. 6.); and (2) "Sanchez to Sanchez to Smith" whereby a "Sanchez who farms tomatoes in Mexico could sell to Sanchez in New York who would sell to a Smith." (Ltr. of Julio Ochoa, attached hereto as Ex. 7.)

Given the remarkably close relationship between father and son, it is hard to overstate the impacts of Hector's father on Hector. According to Rosa, Hector "shared a special relationship" with his father, who gave Hector a "unique position in our family." (Ltr. of Rosa Dobson, attached hereto as Ex. 3.) Gloria writes that Hector's status as the "oldest and only son" came with "much responsibility" in their Latino family (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) According to Gloria,

He was expected to take care of his siblings, do well in school, do chores at home, and work outside the home in our family businesses. My father relied on him heavily when it came to our family businesses. (*Id.*)

Even in college, after Hector had stopped living at home, his father continued to rely heavily on him for the family business. During his freshman year at the Rockhurst Jesuit University in Kanas City, Hector was put "in charge of" launching a new family restaurant just before his father left home to serve as an adviser to President Reagan in Washington, D.C. (*Id.*) Gloria writes that the burden on Hector was intense.

Hector was responsible for renovations, hiring employees, and vendors, and collecting rent from tenets in the building. My parents expected a lot from my brother and he came through every time.

*(Id.)* Despite his family obligations, Hector graduated on time in 1983 with a Bachelor of Science in Business Administration, Management/Spanish. As with his car, he paid for a substantial portion of his college tuition with his own money.

While impressive, the most striking example of Hector's "special relationship" with his father is Hector's physical and emotional presence in his father's public life, including his advocacy for disadvantaged Hispanic businesses. Rudy Estrada, a family friend, and former District Director in California for the United States Small Business Administration ("SBA"), writes that Hector was "always in tow with his dad." (Ltr. of Rudy Estrada, attached hereto as Ex. 8.) Mr. Estrada writes about his impressions of Hector during a meeting with Hector's father and Hector on the use of small business services to help the underprivileged. "I was quick to notice that Hector junior was already developing an acute interest in economic development by the questions he was asking." *(Id.)*

Rudy Beserra, Special Assistant to President Reagan, writes about a meeting at the White House with Hector's father, which Hector also attended. During the meeting, Mr. Beserra describes "[a] moment I will never forget." (Ltr. of Rudy Beserra, attached hereto as Ex. 9.)

According to Mr. Beserra,

[Hector's father] said, "Son... This is what a True Hispanic Leader looks like... I want you to meet Mr. Beserra, the highest- ranking Latino in the White House, who is one of only 12 Special Assistants to the President." I noticed Hector Jr.'s eyes open wide and reveal the future potential leadership coming from within... That exact moment also had a profound impact on the future of my own life!

(*Id.*) As his father's eldest and only son, Hector was expected to become a "True Hispanic Leader" by using his father's "Golden Triangle" to create a rising tide for all.

After college, Hector continued to rely on his family values to live a purposeful life. In 1989, he met his wife-to-be, Robin. Robin, who was working as a young assistant in an office where Hector was also working. In her letter to the Court, Robin writes that she "quickly appreciated that Hector was not only the most hard-working person I had ever met but also one of the kindest." (Ltr. of Robin Barreto, attached hereto as Ex. 10.) According to Robin,

When the men spoke to one another outside of their office, they usually stood right in front of the secretary's work area. On Mondays, when the [men] came into the office, they would stand in our workspace and discuss their weekend exploits. They did this without acknowledging us. All, except Hector, that is. When Hector came into the office, he always greeted each of us by saying, "Good Morning, How was your weekend?" When the agents asked me and the other secretaries to do a task, they would presume that we should just drop everything and do what was being asked that very moment. Not Hector. Whenever he asked us for anything, he used a genuine, tender, patient and considerate tone.

(*Id.*) Describing her childhood, Robin notes that her "parents taught me to be kind and respectful of others and always expect that in return." (*Id.*) Unlike with old boyfriends, "I never saw Hector belittle or make derogatory comments about anyone. . . . Hector made me feel grateful for the goodness in my life." (*Id.*)

Robin and Hector were married in 1995 during a ceremony where Hector's father was his best man. Hector and Robin are the proud parents of 25-year-old Avrial, 23 year-old Tahlia and 21 year-old Julian. Robin notes that Hector has always been very involved in the children's upbringing.

From day one, Hector has been an amazing father. Although I nursed our children, Hector insisted on being the one to get up, change the baby's diaper, and bring the baby to me to feed.

(*Id.*) As their children grew up, Robin notes that Hector constantly rearranged his busy work schedule to attend school functions, sporting events and doctor's appointments. (*Id.*)

Hector is a source of emotional support for his children and is their biggest cheerleader. Among other things, Avrial fondly recalls how her father assured her that "learning is fun" on her first day of school, encouraged her "to keep it up" during family dinners where she would talk about her day, "being one of the only dads in the stands at my cheering competitions" and "trying to put on a tough face at the front door when he greeted the first boy ever to ask me out." (Ltr. of Avrial Barreto, attached hereto as Ex. 11.)

Tahlia writes about her father's support during her struggles with prejudice, which was crucial to her nascent sense of self-worth. (Ltr. of Tahlia Barreto, attached hereto as Ex. 12.)

I was very young when I gained consciousness of the way that I looked. My sister, brother and mother all have fair skin and light eyes which contrast with my tan skin and dark brown eyes. In elementary school, I would get asked if I was adopted and if I was sad that I didn't resemble my mom like my sister did. Instead of being hurt by comments which pointed out my lack of resemblance to the "California Beauty Standard", I was always honored that this meant that I resembled my dad. Seeing my dad succeed and live a happy life helped me to view skin color differently. He never felt like a victim in life even though he was at times. Witnessing his unwavering attitude towards hardships taught me the importance of looking beyond external appearances and focusing on inner qualities that truly define a person's worth. (*Id.*)

Julian writes that his father helped him grow into a man and future lawyer. (Ltr. of Julian Barreto, attached hereto as Ex. 13.) Julian fondly recalls "shooting hoops, kicking a soccer ball and swinging a baseball bat" on the weekends with his dad. When playing ball with his dad, Julian notes that his father was also teaching him that "practice makes perfect". (*Id.*) Julian describes the impact of his father's lessons on his decision to become a lawyer.

I thank my dad for all the times he spoke about the importance of justice, fairness, and the rule of law. His words have not only shaped my values but have also ignited a deep passion within me to pursue a career in law. As I embark on this new chapter in my life, I carry

with me the lessons my dad imparted, and I am grateful for his guidance and unwavering support. To this day, I still look up to my dad. He is truly my hero and role model.

(*Id.*) As with his siblings, Hector ensured that his three children graduated from college and paid for a substantial part of the tuition with their own money.

In addition to supporting his wife and children, Hector helps his mother and siblings. After his father's passing in 2004, Hector provided his mother, siblings, and their children with emotional and financial support. Gloria writes that "my brother honors our father daily with how he has stepped up to fill the role of the head of the family." (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) For example, immediately after his father's death, Hector took care of his mother, who was then showing signs of isolation and depression. Hector's sister, Anna, notes that "[Hector's sisters] were too close to . . . [her mother's] situation and also mourning that we did not notice the danger she was putting herself in." (Ltr. of Anna Barreto-Favrow, attached hereto as Ex. 14.) This is when Hector "stepped up." (Ltr. of Rosa Dobson, attached hereto as Ex. 3.) Hector "put his own money into renovating" the family home in Kansas City, where his mother wished to continue living. (*Id.*) Gloria describes Hector's generosity, which gave his mother the serenity and security that she sorely needed. According to Gloria,

Hector and his mother do not live in the same state, I can only imagine how extremely difficult and the great sacrifice he endured. My brother never complained once. Whenever I would tell him, you do too much. His response was I want what's best for our mother.

(Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) Even after his mother lost her ability to live on her own, Hector's generosity did not waver. Gloria expresses her gratitude for Hector's monthly payments to her over the past ten years to cover their mother's living and medical costs.

(*Id.*) Aside from financial support, Hector always makes it a priority to visit his mother, who is 88 years old, and constantly inquire about her well-being. (*Id.*) According to Gloria, "[m]y brother

ensures that whatever my mom needs to make her life more comfortable and enjoyable, she has it.” (*Id.*)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Anna describes Hector as “generous, thoughtful, hardworking, committed, loving and faithful.” (*Id.*)

Gloria writes about Hector’s emotional support after the [REDACTED]

[REDACTED] (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.) Hector “has taught me to practice forgiveness, courage and optimism and I am grateful for those gifts.”

(*Id.*) Gloria writes that she has trusted and counted on Hector her whole life. “My brother is one of the most conscientious, strong, generous people I have ever known.” (*Id.*)

Rosa explains that she lives in the family home which Hector had paid to renovate. (Ltr. of Rosa Dobson, attached hereto as Ex. 3.) Without Hector’s generosity, the family home where Rosa now lives would have been sold long ago. (*Id.*) According to Rosa,

Hector has always been extremely generous with our family. Whenever any of us were struggling [Hector] was always there to help out. (*Id.*)

Mary writes about Hector's paying her daughter's first year college tuition during a time of need. (Ltr. of Mary Shearhart, attached hereto as Ex. 4.) Neither Mary nor her husband knew how they could afford to send their daughter, Emily, to college, until they asked Hector for help.

(*Id.*) According to Mary,

. . . without hesitation, Hector said he would invest in Emily on one condition that she worked hard in college to pursue her desire of becoming a vet through to completion. He knew that becoming a veterinarian would take a lot of hard work on her part and a lot of support from her family. Emily went on to become a veterinarian and has been practicing for the last 8 years.

According to Mary, "Hector is very proud of his eldest niece for becoming a doctor, the first in the family." (*Id.*) Refusing Mary's attempts to repay the tuition, Hector replied that Emily "could pay it forward." (*Id.*)

Equally noteworthy is Hector's humility. In her letter to the Court, Emily writes that her uncle has never once discussed his tuition gift to her.

A few years after I had graduated from Veterinary School, my father revealed to me that Hector had paid for my first semester of college. He had done this to help my parents, who would have otherwise not been able to afford it, but he had also done this as an investment in me. He never once told me . . . about this investment. He would not have wanted me to feel beholden to him. . . . To this day Hector and I have not spoken of it.

(Ltr. of Emily Shearhart, attached hereto as Ex. 15.) Emily expresses her gratitude for the life-changing impacts of her uncle's financial and emotional support.

I was so touched by [Hector's generosity] not because of the financial aspect of the action but by the unyielding support and belief in me that I could truly do it, even when at times along the journey my own belief waned. . . [] it also warms my heart to know that he took part in the foundation that propelled me to live my own American Dream. (*Id.*)

In addition, Hector cares for the family of his friends. Like their fathers, Mr. Romo describes how Hector helped Mr. Romo launch businesses with his brothers and, thereafter, keep

the family peace when disagreements arose. (Ltr. of Jose Romo, attached hereto as Ex. 5.) After being told by Mr. Romo that he and his brothers were thinking of separating their businesses,

Hector emphasized the importance of our family relationship which is why we needed to reach an agreement that was favorable for both my brothers and I. He referred to us a lawyer that separated our LLC's and aided us in forming our individual businesses. Hector's advice and help during this time was very important for our family relationship and it helped me move forward with my own business plans.

(*Id.*) In addition to preserving his family's peace, Mr. Romo writes that Hector "has been an excellent mentor to my daughter" and helped his wife find a lawyer to assist her with the process of obtaining her citizenship. (*Id.*)

Hector celebrates his family and friends in good times and bad. Emily notes that "he is one of the first people to clear the Thanksgiving dinner table so we can get the post-dinner board games out." (Ltr. of Emily Shearhart, attached hereto as Ex. 15.) Anna describes the joyful "Sibling Dinners," which Hector started about 10 years ago.

Anytime he comes to town for whatever occasion we have a sibling dinner for the five of us. We plan it. Hector pays for it. Without fail someone at the restaurant will comment on how much fun we are having and they will ask if we are siblings?

(Ltr. of Anna Barreto-Favrow, attached hereto as Ex. 14.) Not even the pandemic deterred Hector from Sibling Dinners.

[O]ne restaurant told us that we could only reserve the table for two hours. Hector told them that two hours was not long enough, we had too many things to catch up on. He asked the restaurant to make two reservations, one for 6:00 and one for 8:00. They obliged, but said they would need to move us after two hours. Hector said move us as often as you need to, but keep us all together. The waiter never moved us, he said we were having such a good time he didn't want to disturb us. (*Id.*)

Robin Barreto describes Hector as her "rock" and "the glue that holds our family together."

(Ltr. of Robin Barreto, attached hereto as Ex. 10.) She discusses the stress that the family is under because of this case and the toll it has taken on her and the children. (*Id.*) Nevertheless, "[t]hrough

it all, Hector has been there for all of us, doing his best to make sure that life continues for all of us as normally as possible.” (*Id.*)

**B. Hector’s Emerging Servant Leadership**

Hector’s early work history underscores his commitment to living a purposeful life. After leaving a profitable but dissatisfying job in corporate America, Hector worked in the insurance industry to solve massive resource inequities in the Hispanic community. Like his father, Hector leveraged his economic success into a diverse coalition that empowered disadvantaged small businesses and charitable organizations. Hector’s growth as a community leader in Southern California helped change the landscape of the Hispanic community in that region.

**1. Early Work History**

In 1983, after graduating from college, Hector left Kansas City to work for the Miller Brewing Company. As Miller’s Merchandising Representative, Hector monitored marketing activities and conducted promotional and public relations activities in Dallas, Texas, and its environs. In 1984, Hector was promoted to Area Manager and became responsible for the entire South Texas sales territory. Despite earning a great salary and experiencing some independence for the first time in his young life, Hector became disenchanted with his corporate job. According to his life-long friend, Mr. Moseley, Hector felt like he had more to achieve “because of his entrepreneurial passion and desire to help others in the community.” (Ltr. of James Moseley, attached hereto as Ex. 2.)

Mr. Moseley persuaded Hector to join his local insurance business, the Moseley Group, which was in Orange County, California. (*Id.*) Along with another insurance agent, Douglas Corbin, Hector sold insurance policies to the Anglo-American senior market. (Ltr. of Douglas Corbin, attached hereto as Ex. 16.) Although Hector did very well, Hector soon “developed a dissatisfaction with the company’s high-pressure sales tactics and limited relationship building arising from one-off transactions with senior citizens.” (*Id.*)

Around the same time, Mr. Barreto became aware of a USHCC report regarding the underutilization of needed insurance services in the Hispanic community (“the USHCC report”). According to Mr. Corbin,

[The USHCC] report articulated that the Hispanic community lacked quality education and information on insurance and financial services and the vulnerabilities that it created for community members who became ill, injured or suffered some set back in their life. In a country where most people obtain insurance from their employer, government job, negotiated by a union, the majority of Hispanics unfortunately did not fall into any of these categories.

(*Id.*) Although Mr. Barreto was, once again, making a profit at his job, he, along with Mr. Corbin, stopped working at the Moseley Group because its “philosophy and process was inconsistent with our values. . . .” (*Id.*)

Thereafter, in 1986, Hector began addressing the massive resource inequities which the USHCC report had identified. After both he and Mr. Corbin moved to Los Angeles, they formed a partnership called Barreto-Corbin and Associates (“Barreto-Corbin”). Under Barreto-Corbin, Hector began selling group life insurance plans which covered employees who otherwise might not have been able to afford insurance. In addition, he targeted the Spanish speaking community which had been historically ignored by the Spanish speaking insurance sales representatives. Mr. Corbin “watched with admiration . . . Hector’s commitment and dedication to the Hispanic

community and his tireless efforts to create a network within his community that would earn him the trust of Hispanic employers” (*Id.*) Helping create access to life insurance for the Hispanic community, Hector became “an asset to his community and our society.” (*Id.*)

In 1988, Hector addressed another critical need which had been identified in the USHCC report: lack of health care. At that time, Hector formed Barreto Insurance and Financial Services (“BIFS”), which he used to create a partnership with another insurance expert, Mike Rezinias. According to Mr. Rezinias, Hector used Barreto-Rezinias to address a dire situation in the Hispanic community.

Many small Latino businesses in the community do not have access, understanding or history of participating in these important health care plans. . . . There are countless examples where a business owner or key employee get (sic) ill and can’t continue contributing to their business. This can cause significant hardships and difficulty in paying company bills or incurring debt to pay for healthcare related expenses and sometimes even losing their business.

(Ltr. of Mike Rezinias, attached hereto as Ex. 6.) Under Barreto-Rezinias, Hector began selling group health insurance plans to Hispanic-owned small businesses, which helped “insure thousands of employees, providing them with essential coverage and key plans for their businesses.” (*Id.*)

In 1994, Hector addressed another inequity identified in the USHCC report: the lack of financial services in the Hispanic community. According to Mr. Barhorst, the Regional Director of the West Coast for Aetna Financial Services (“Aetna”), the USHCC report established that.

[t]here were no Hispanic owned securities firms to work with, there were no companies translating securities materials (including retirement plan materials), there were very few Spanish speaking securities representatives. The impact of the resource limitations meant that small businesses could not prepare there (sic) employees for retirement and individuals were not saving and preparing for home ownership or the college education of their children.

(Ltr. of Ronald Barhorst, attached hereto as Ex. 17.) In response to the USHCC report, Aetna created an initiative to focus on diverse markets and, through Mr. Barhorst, sponsored Hector as an Aetna securities representative. (*Id.*) While also managing his insurance business, Hector spent two years studying and passing the tests to qualify as a Broker Dealer Principal. In 1996, after achieving the necessary credentials, Hector partnered with the nation's largest community development corporation, the East Los Angeles Community Union ("TELACU"), to form TELACU-Barreto Insurance Services ("TELACU-Barreto"). Bridging Aetna with the Hispanic community, Hector brought financial services to the underserved.

Hector's focus on empowerment in the Hispanic community in Southern California changed the trajectory of countless lives. Given the gravity of Hector's success, we quote at length from Mr. Barhorst's letter to the Court:

It is difficult to describe in brief form the amount of work and effort it took to secure the resources, develop the program, and execute on the [TELACU-Barreto] plan. . . . We tracked and witnessed the expansion of small business participation in 401(K) retirement plans, individual participation in retirement and financial plans, and families enrolling their children in programs for higher education. In addition, there was a noticeable expansion of Hispanic owned financial service firms. The community impact of having culturally sensitive materials, access to well-trained Spanish speaking advisers and a broad array of educational resources significantly impacted the financial literacy gap. The real value of Hector's efforts are evident today as the landscape is filled with resources, individuals begin to retire with dignity and their children graduate from college. (*Id.*)

An intern at TELACU-Barreto, Ms. Plascencia similarly describes the impacts which she witnessed in the Hispanic community.

During my time with TELACU/Barreto, I saw how hard-working people in my East L.A., community became informed of the benefits of participating in their 401(k) plans and how they planned to use that money for their children's education or to help alleviate the burden on their family when they could no longer work.

(Ltr. of Maribel Plascencia, attached hereto as Ex. 18.)

## 2. Early Charitable Works

Like his father, Hector used his individual success to provide the Hispanic community with cohesion and strength through organization. Steve Caria, a former insurance broker in Los Angeles and friend of Hector, describes the prejudice which Hispanic businessmen faced in Los Angeles at the time, including “the irrational and unsupported fear of many bank executives that Hispanic businesspersons would be late in repaying their loans (or not return the borrowed capital at all.” (Ltr. of Steve Caria, attached hereto as Ex. 19.) In addition, many minority-owned businesses faced “red-lining from banks and significant hurdles in borrowing capital essential to assure new growth in neighborhoods where their customers reside.” (*Id.*) Through his charitable works, Hector helped others overcome prejudice with economic empowerment.

For example, in 1987, Hector joined the Board of the Latino Business Association (“LBA”) in Southern California. At the time, according to TELACU’s Chairman and Founder, Dr. David Lizarraga, LBA “had lost most of its constituency and had almost gone bankrupt.” (Ltr. of Dr. David C. Lizarraga, attached hereto as Ex. 20.) Rather than let LBA go under, Hector had a different vision: educate corporate America on the benefits of investing in Hispanic small businesses and, thereby empower LBA’s members with access to contracts, capital, and counseling. Under Hector’s leadership, LBA evolved from a “fledgling” organization into a “self-sustaining organization that will continue to be a tremendous resource for generations to come.” (*Id.*)

Hector achieved this transformation within LBA with his father’s Golden Triangle. Although LBA had once been the largest, oldest, and most influential Hispanic business organization in California, Hector lacked a single supporting document to justify to corporations

or lenders why each should invest in the Hispanic community. Critically, Hector caused LBA to fund a detailed and pioneering study of the Latino market's potential growth and importance in Southern California ("the 1998 case study"), which Hector used to overcome the public perception of the Latino community as a "small, niche minority market, whose purchase and consumption patterns were interesting, perhaps exotic, but certainly not the main drivers" of economic activity in Southern California. ("Introduction" to "Latino Business Dynamics: A 1998 Portrait" by David E. Hayes- Bautista, Paul and Paul Hsu, the Center for the Study of Latino Health, Division of General Internal Medicine, School of Medicine, UCLA", attached hereto as Ex. 21) (including entire report.) Armed with a powerful case study on the "explosive" purchasing power of the Latino community (*id.* at "Foreword"), Hector used LBA to link corporate America with Latino businesses in Southern California, and, thereby, opened doors to corporate America which had been previously shut for Hispanic small businesses and the broader Latino community, in general.

For example, Hector obtained funding from banks to create the Latino Business Association Institute ("LBAI"), which educated Hispanic small businesses on how to open those closed doors and, thereby, "get access to capital and procurement opportunities." (Ltr. of Gilbert Vasquez, attached hereto as Ex. 22). According to Mr. Vasquez, an LBA board member and executive officer, LBAI's training led to expo events for bank-ready LBA members to access decision-makers at banks and corporations. (*Id.*) The Latin Business Expo, the most successful expo event, was described by one influential female entrepreneur as the "largest and most profitable small business expo at the Los Angeles Convention Center in the 1990s." (Ltr. of Martha de la Torre, attached hereto as Ex. 23.) According to a corporate executive, Silvia

Aldana, Hector used the expos “to bring together and motivate to action such a broad coalition of business, community and civic leaders in the interest of advancing the Hispanic community.” (Ltr. of Silvia Aldana, attached hereto as Ex. 24.) Another corporate executive, Fred Flores, recalls that, at the LA Business Expo, Hector “was at the podium speaking to over 3,000 attendees that included political, community, corporate and small business leaders throughout Southern California and I could already see his incredible ability to inspire and uplift everyone in attendance with a sincere message of hope and encouragement to many aspiring entrepreneurs.” (Ltr. of Fred Flores, attached hereto as Ex. 25.)

According to Darrel Saucedo, the Chair of the LA Latino Chamber of Commerce and the LA County Economic and Workforce Development, LLC, Hector “redefin[ed] how thousands of businesses conducted their operations.” (Ltr. of Darrel Saucedo, attached hereto as Ex. 26.) One such business was El Classificado, now the nation’s largest online and in print marketplace targeting the U.S. Hispanic community. According to Ms. de la Torre, El Classificado’s founder and CEO, “our \$19 million company has grown to employ over 120 people, largely due to the doors that Hector has opened for us.” (Ltr. of Martha de la Torre, attached hereto as Ex. 23.) Ms. de la Torre adds that “[n]o other leader of the LBA since has been able to match Hector’s success for the organization and its members.” (*Id.*)

In addition to the LBA, Hector served on various charitable boards representing underserved communities struggling with crime and limited economic opportunities in Southern California. Describing Hector’s charitable work in the 1980s, Mr. Saucedo writes about Hector’s “genuine concern” for the “lives of the men, women and their families” in East Los Angeles. (Ltr. of Darrel Saucedo, attached hereto as Ex. 26.) According to Mr. Saucedo, Hector

passionately worked to raise much-needed funds to support programs that would divert them from the clutches of gangs and crime. Hector's vision and determination and consistent involvement played vital role in providing a path to succeed for these individuals.

(*Id.*) In addition to his work with the East Los Angeles Red Cross and the Weingart East Los Angeles YMCA, Hector joined the board of TELACU, where, according to Dr. David Lizarraga, Hector helped advance TELACU's "mission – to serve, advance, empower, and create self-sufficiency" with "dedication and purpose, providing critical insight, guidance, and counsel. . . ." (Ltr. of Dr. David C. Lizarraga, attached hereto as Ex. 20.)

In 1990, while simultaneously working to expand the reach of health care to the Hispanic community, Hector joined the board of the California Latino Medical Association. According to Castulo de la Rocha, the Founder of AltaMed, a large non-profit organization providing healthcare for the underserved and underprivileged, "Hector has dedicated countless hours as a volunteer and has been a beacon of light in reaching leaders in the community to understand the importance of providing much-needed social and health care services ever since the 1990s." (Ltr. of Castulo de la Rocha, attached hereto as Ex. 27.)

In 1999, after having turned LBA into a singular success, Hector joined the board of USHCC, representing approximately 1.5 million Latino businesses in the United States. In 2000, he was appointed vice-chair of USHCC, where he advocated for and achieved increasing economic opportunity, representation, and education for disadvantaged Hispanic small businesses.

**C. Hector's Servant Leadership as Administrator of the SBA**

In July 2001, President George W. Bush nominated Hector to become the 21<sup>st</sup> Administrator of the U.S. Small Business Administration in Washington, D.C. Thereafter, he was unanimously confirmed by the United States Senate.

Prior to Hector's tenure as Administrator, the federal government had annually struggled to meet its statutory commitment to ensure a fair share of contracting dollars and lending to small businesses. Given historic contract bundling and redlining policies, along with bank guidelines that favored experienced borrowers, the SBA's institutional failings had a disproportionate impact on minority small business owners who were historically dependent on SBA guarantees to receive loans from financial institutions and contracts from the public and private sectors. At the time of his confirmation, minority small business owners were struggling in an economy enabled, in part, by the very government agency that had been created to support them.

This all changed under Hector's leadership at the SBA. From 2001 until his departure as Administrator in 2006, Hector dramatically increased small business lending/capital, counseling and training, procurement opportunities and high impact events for African Americans, Hispanics and Asian Americans to record levels. In addition, as a member of President Bush's Economic team, Hector used his power at the SBA, along with other federal agencies, to partner with the National Urban League and other non-profits, and achieve all-time highs in minority home ownership, income levels, financing, procurement, and education. ("Encouraging Minority Entrepreneurship", [Encouraging Minority Entrepreneurship \(archives.gov\)](#), attached hereto as Ex. 28) (identifying increases in minority home ownership, funding for Historically Black colleges and capital and procurement opportunities for minority businesses, among other achievements).)

Hector's leadership at the SBA sowed the seeds for today's minority small businesses, which are continuing to reap rapid gains in home ownership, income, and education. (*See, e.g.*, David Hayes-Bautista and Paul, Hsu (co-authors) "2023 U.S. Latino GDP Report", UCLA

Center for the Study of Latino Health and Culture (“2023 UCLA Report on Latino GDP”), [National Latino GDP Report - CESLAC | UCLA Health](#)) (documenting dramatic rise in economic security, home ownership, education and purchasing power within the Hispanic community) (website last visited on January 3, 2024).)

## 1. The Golden Triangle in Action

In the following three ways, Hector relied on his father’s Golden Triangle to benefit minority small businesses:

- **Economic Opportunity:** The SBA increased the number of loans to minority entrepreneurs by 175 percent. Nearly a third of SBA-back loans went to minorities, including African Americans, Hispanics, and Asian Americans. (“SBA Accomplishments 2001 - 05”, attached hereto as Ex. 29.)
- **Education.** The SBA’s improved management practices and focus on minority populations led to a 68% increase in the number of counseling sessions. In FY 2005, approximately 1.7 million entrepreneurs received business counseling through the SBA’s advisory and training programs, compared to 1.2 million in FY 2001. (*Id.*)
- **Representation.** Under the SBA’s oversight, in FY 2005, the federal government surpassed the 5 percent goal of contracts going to small, disadvantaged businesses. Women-owned small businesses were awarded a record \$10.5 billion in contracting dollars and contracts to service-disabled veteran-owned small businesses increased significantly, reaching \$1.9 billion, a 58% increase over the previous year. SBA held procurement Matchmaking events with over 36,000 one-on-one appointments conducted in ten cities across the country. (*Id.*)

Collectively, these statistics reveal the transformative impacts of Hector’s leadership at the SBA. By bridging the divide between American centers of influence and owners of small, disadvantaged businesses, Hector forever changed the national landscape for how small businesses qualify, compete and win contracts.

## 2. Making Dreams Come True for Minority-Small Business Owners

As Administrator, according to one minority small business owner, Hector “helped make many dreams come true for a great deal of minority and women owned businesses.” (Ltr. of Ernie Camacho, attached hereto as Ex. 30.) Because specific instances are too numerous to identify, we only highlight a few first-hand examples.

With respect to economic opportunity, Ms. Aldana writes about Hector’s focus “on empowering Latina entrepreneurs” which became the “fastest segment of small business in the U.S.” (Ltr. of Sylvia Aldana, attached hereto as Ex. 24.) Ms. Aldana notes Hector’s commitment “to level the playing field for this important segment of our economy” by “providing Latinas with valuable education, capital access and contacting opportunities.” (*Id.*) A small business owner in Southern California, Ricardo Beas describes Hector’s leadership in receiving essential resources, training, capital, contracts, and advocacy. . . .” (Ltr. of Ricardo Beas, attached hereto as Ex. 31.) Mr. Beserra observes that Hector fixed the “unconscionable delays” which small businesses experienced in getting paid from the government by cutting the lag from “6-8 months” to “4 weeks”. (Ltr. of Rudy Beserra, attached hereto as Ex. 9.)

With respect to education, Michael Zajur, the President and CEO of the Virginia Hispanic Chamber of Commerce, writes that Hector’s “dedication to service towards others is unparalleled” because he “tirelessly [worked] to ensure that the Hispanic community had access to the necessary tools and resources for their entrepreneurial endeavors.” (Ltr. of Michael Zajur, attached hereto as Ex. 32.) According to Mr. Zajur, Hector “initiated and played an instrumental role” in establishing the “first SBA Bilingual Business Information Center in the country in 2003.” (*Id.*)

With respect to representation, Mr. Beserra writes about Hector’s role in spearheading “Matchmaking” opportunities for minority and women-owned small businesses. According to Mr.

Beserra, Hector was “instrumental” in developing and launching “government and corporate ‘matchmaking’ programs across the USA . . . [which] brought together more than 50,000 buyers and sellers, resulting in billions of dollars in new contracts for small businesses including minority and women-owned small businesses.” (Ltr. of Rudy Beserra, attached hereto as Ex. 9.)

### **3. Hector’s Personal Values as Administrator**

In several ways, Hector’s use of his power in Washington, D.C. reflects his focus on living a purposeful life.

First, as Mary described in a different context involving Hector’s paying her daughter’s first-year college tuition (Ltr. of Mary Shearhart, attached hereto as Ex. 4), Hector’s conduct as Administrator underscores his commitment to pay it forward. After his nomination, Hector resigned from the TELACU board and sold his business related to TELACU-Barreto to avoid even the appearance of a conflict of interest. (Ltr. of Dr. David C Lizarraga, attached hereto as Ex. 20.) Moving forward himself, Hector could have easily left TELACU behind, including Ms. Maribel Plascencia, a TELACU scholar whom he had hired in 1996 as an intern and then, from 1997-2002, as a full-time employee at TELACU-Barreto. After all, Hector had already made sure things would be different for Ms. Plascencia, who recalls “how many of my family members and neighbors would end up moving in with other families once they could no longer work, due to lack of financial resources”, (Ltr. of Maribel Plascencia, attached hereto as Ex. 18.) Past would not be prologue for Ms. Plascencia because, at TELACU-Barreto,

[Hector] took me to meetings with clients, encouraged and sponsored me to get my life insurance and [securities] licensing, and provided me with opportunities to speak to people in my East L.A. community about the importance of setting up retirement plans. Hector wanted people living in economically disadvantaged communities to have the opportunity to have financial growth and economic security. Hector motivated me to want to do the same and he gave me the tools to do it.

(*Id.*) Having helped train and sponsor her to get her vocational licenses (*id.*), Hector had already ensured that Ms. Plascencia was firmly on the path to success even before leaving for Washington, D.C.

However, as Ms. Plascencia writes, Hector “made it clear to me that as he took a step up the success ladder, it was important to him that he held a hand behind to bring others up with him.”

(*Id.*) Hector acted on his values by offering Ms. Plascencia a job at the SBA, where she worked in Washington, D.C. during Hector’s term as Administrator. (*Id.*) In Washington, D.C. Ms. Plascencia poignantly describes how Hector supported her amidst D.C.’s elitist culture.

I remember going to my first Washington DC networking event where a young man asked me what my parents did for a living. As a I shared with him that my dad was a maintenance worker and that my mom was a school cafeteria worker. He quickly turned around and walked away when he thought I had no value to offer him. This initial introduction to Washington DC could have run me back to Los Angeles, but having worked with Hector for 5 years already, he taught me very well that true character is not determined by helping those that can help you, but rather by helping those that can’t do a darn thing for you. Even as Administrator for the SBA, whether it was an owner of a Fortune 500 company or a humble owner of a small start-up landscaping business, I witnessed how he treated everyone with respect and took the time to listen to their needs. If (sic) was this example that kept me grounded and focused on my work for the SBA.

Hector’s commitment to pay it forward underscores his “passion for helping others” at the SBA. (*Id.*) As Administrator, Hector asked Ms. Plascencia to identify TELACU Scholars from impoverished communities to attend a national political convention and generally witnessed Hector’s use of his power to give disadvantaged small business owners a fair shake. (*Id.*) In addition, in response to both 9/11 and Hurricane Katrina, Hector “brought a new lens to [SBA’s disaster relief] function to assist under-resourced communities in benefiting from available government programs during times of crisis.” (Ltr. of Silvia Aldana, attached hereto as Ex. 24.)

Second, at the request of the President, Hector stayed in his post longer than he had expected to serve the national interest. Before Katrina hit, Hector was planning on resigning from his SBA. According to Ms. de la Torre,

I remember Hector planning to resign from his SBA post early in President Bush's second term, but he changed his plans when Hurricane Katrina devastated so many communities in the South. Hector's commitment to duty came first and he extended his term with President Bush to be able to rebuild the many communities destroyed by the Hurricane and its aftermath.

(Ltr. of Martha de la Torre, attached hereto as Ex. 23.) After Katrina, however, Hector did his duty by tirelessly throwing himself into the job of rebuilding those areas which had been devastated by the hurricane. According to Mr. Barhorst,

I remember speaking with Hector and asking him what he was doing and what could be done. He was on-site working with multiple organizations in Louisiana, Mississippi and Alabama. His words concerning the devastation and impact to the underserved communities and the children of the area actually impacted our initiatives and was the genesis of programs for children we instituted through the Red Cross.

(Ltr. of Ronald Barhorst, attached hereto as Ex. 17.) Although Hector had ambitions to be elsewhere, his leadership in approving over \$10 billion in Katrina-related disaster relief loans, more than double the record, reflects his personal commitment to public service.

Third, Hector's response to his father's illness and death when he was Administrator underscores his commitment to family. Hector first learned that his father had been diagnosed with pancreatic cancer in September 2003, when he was overseeing the massive reconstruction needs following 9/11. Immediately thereafter, he traveled to see his father in Mexico, where his father had just been diagnosed while attending to his cherished agave farm on family property. Hector picked up his father and brought him back to the United States for medical treatment. Rosa recalls that "Hector spent as much time with my father as he could before he passed, traveling back

and forth between Washington DC and Kansas City and then Guadalajara. (Ltr. of Rosa Dobson, attached hereto as Ex. 3.)

After his father passed in May 2004, Hector managed all the details of the estate, which according to Rosa, “was a huge load off our mother’s and our [other sibling’s] shoulders.” (*Id.*) In addition to wrapping up the estate, Hector honored his father’s passion by managing the agave farm which had not yet reached maturity. According to Hector’s sister, Gloria, “[a]ll of my father’s hard work would have been lost if my brother had not taken charge [of the agave farm].” (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.)

Fourth, Hector used his position at the SBA to inspire respect for Latino Americans. A family friend, Ms. Dominguez describes Hector’s use of the White House to honor many “firsts” in the Hispanic community, including the first Hispanic Astronaut. (Ltr. of Dorene C. Dominguez, attached hereto as Ex. 33.) Ms. Dominguez writes that

Upon reflection, Hector opened so many doors for his community and highlighted many so we could be recognized and celebrate each other’s successes. More importantly, he inspired many of us to reach for the stars.

(*Id.*) Similarly, another friend, Ricardo Robles writes that Hector’s servant leadership inspired many Hispanic Americans to do good in the world. (Ltr. of Ricardo Robles, attached hereto as Ex. 34.) In addition to his sense of pride in seeing “a fellow Latino in such an important position within our government,” Mr. Robles describes Mr. Barreto’s influence on Latinos in the SBA’s Orange County office.

In my interactions with [the SBA], the name of Mr. Barreto was raised as a role model. In him, they could see integrity and excellence. This really impressed me, as I only knew of him by name and reputation at the time. (*Id.*)

**D. Hector’s Post-SBA Servant Leadership**

In 2007, after receiving the President’s approval to resign from the SBA, Hector returned to Southern California. While Hector’s paid work is discussed elsewhere, *see infra* (Section IIB), Hector relied on his volunteer work on both sides of the border to realize his father’s vision of the “American stew” and “Sanchez to Sanchez to Smith” relationships.

### **1. American Stew**

Once again, Hector played an important role in the minority community by helping connect minority business owners with corporate America via economic opportunity, education and representation. Relying on his father’s Golden Triangle, Hector was inducted into the Minority Business Hall of Fame (“MBHFM”) in 2010. (MBHFM 8<sup>th</sup> Annual Induction Ceremony event program, dated May 8, 2012, attached hereto as Ex. 35.)

Concerning economic opportunity, the MBHFM credited Hector for his lifetime of service and for his role as the “founder and former chairman of Business Matchmaking”, a non-profit which Hector formed after he left the SBA. (*Id.*) According to MBHFM, “Business Matchmaking brings together countless entrepreneurs, including women-, minority- and veteran-owned small business owners with procurement representatives of federal and local government agencies and several hundred major corporations.” (*Id.*) In addition, Marco Fragnito, who met Hector in 2005, describes Hector’s work with another non-profit, Jobs Creators Network Foundation, which promoted the economic development of American small businesses. (Ltr. of Marco Fragnito, attached hereto as Ex. 36.) In 2008, Hector joined AltaMed Foundation’s board and became its chair in 2011. Ricardo Robles credits Hector’s “dedication, and hard work” in raising hundreds of thousands of dollars for AltaMed’s Foundation. (Ltr. of Ricardo Robles, attached hereto as Ex. 34.) Similarly, Mr. Flores writes that, after he left the SBA, Hector “was the first to respond” to a

call by Children’s Hospital of Orange County (“CHOC”) for assistance in creating an Advisory Board from the Hispanic community. (Ltr. of Fred Flores, attached hereto as Ex. 25.)

Concerning education, Hector joined several boards promoting access to college or other important learning for students in underprivileged communities. In 2007, he joined the TELACU Scholarship Foundation in 2007. Mr. Estrada credits Hector as a “trailblazer” for “his concern for the advancement of young people who might not otherwise attend college/university if not for the assistance which he helped generate.” (Ltr. of Rudy Estrada, attached hereto as Ex. 8.) In addition, Hector joined the board of the California State University Foundation, whose Trustee, Dr. Abrego, describes Hector as a “dedicated individual to public service”. (Ltr. of Dr. Silas Abrego, attached hereto as Ex. 37.) In particular, Dr. Abrego expresses his gratitude for Hector’s “unwavering support and dedication” in helping establish a one-million dollar scholarship endowment at California State Fullerton. (*Id.*) Dr. Abrego also describes Hector’s personal interactions with individual students.

Hector would share his personal story of attaining his own education and obstacles he faced in achieving graduation. His message served to inspire students to never give up on their dreams of graduating from college.

(*Id.*) Similarly, Ricardo Beas writes about Hector’s “selfless work” in the “leadership, support and organization of CREER (to believe),” a non-profit which “benefits over 10,000 at risk Latino children, youth, and their underprivileged families with tutoring and after school homework.” (Ltr. of Ricardo Beas, attached hereto as Ex. 31.) Mr. Beas notes that “whenever I have asked Hector to support, speak to, or donate to his (sic) important cause, he has always helped.” (*Id.*)

Concerning representation, in 2010, Hector joined the board of the United States Chamber of Commerce (“USCC”), which he used to help collaborate with Latino organizations,

including USHCC. Noting the historic conflict between USCC and USHCC, Mr. Beserra explains that Hector's "unprecedented" leadership bridged the divide between the two organizations and, thereby, benefitted the membership of both. (Ltr. of Rudy Beserra, attached hereto as Ex. 9.) In 2004, as a result of Hector's remarkable contributions to USHCC, Hector was awarded its Chairman's Award, which was presented to Hector by his father. (Ltr. of Gloria Barreto-Smith, attached hereto as Ex. 1.)

## **2. Sanchez to Sanchez to Smith**

Hector played an equally important role in the Latino community by helping empower it with economic opportunity, education and representation across the border. As a result of Hector's successful promotion of bilateral trade between small businesses on both sides of the border, Hector received the "Aguila Azteca" award, the most prestigious award conferred on a foreigner by the Mexican government. (Ltr. of Alfonso Galindo, attached hereto as Ex. 38.)

In two ways, Hector promoted access to health care and, thereby, fostered economic security for the disadvantaged. First, for over ten years, Hector served as an adviser to the principals of two hospitals in Puerto Vallarta and Chapala, which provide critical health care services that are unmet by understaffed and overcrowded government run hospitals in Mexico. According to the hospitals' co-founder, Luis Antonio Michel Ruelas, Hector's "valuable advice" helped the hospitals fulfill their "mission to serve others in need of timely healthcare." (Ltr. of Luis Antonio Michel Ruelas, attached hereto as Ex. 39.). According to the hospitals' other co-founder, Joaquin Humberto Famania Ortega, Hector thereby provided "valuable healthcare services to hundreds of patients that would not have received them otherwise." (Ltr. of Joaquin Humberto Famania Ortega, attached hereto as Ex. 40.) Looking to the future, Mr. Ruelas

expresses his need for Hector's continued help to ensure the hospitals' continued viability. (Ltr. of Michel Ruelas, attached hereto as Ex. 39.)

Second, Mr. Barreto served as a Board member of Grupo Oftavision ("GO"), a global blindness prevention organization with operations in Mexico and elsewhere. Dr. Cesar Puesan, GO's President, commends Hector for his "integrity, strong values, and [] unwavering dedication" to GO's mission. (Ltr. of Dr. Cesar Puesan, attached hereto as Ex. 41.) Writing that Hector is "a leader who cares about others and not just himself", Dr. Puesan notes that Hector "will be instrumental in our plans to expand our services in underserved communities in Mexico and across the world." (*Id.*)

Concerning education, Hector served for the past ten years on the board of the medical school at UAG. UAG is an internationally renowned university that has graduated over 19,000 practicing physicians in the United States where the Hispanic community lacks bi-lingual and bi-cultural doctors to serve its burgeoning clinical needs. Mr. Ricardo Beltran Rojas, UAG's General Secretary, credits Hector for his "professionalism, dependability, generosity and service" in helping UAG fulfill its mission. (Ltr. of Mr. Ricardo Rojas, attached hereto as Ex. 42.) For example, as UAG board member, Hector intervened on behalf of UAG in the State of California to establish its graduates' eligibility to practice medicine in California.

In addition, Mr. Barreto helped market a public university in Guadalajara to U.S. donors and student prospects. As a result, Mr. Julio Ochoa, formerly Chief Development Officer for Philanthropic Affairs at a nearby public university, commends Hector for his support of "our executive leadership . . . [which] always sought Hector's advice as to how to strengthen our institutional work." (Ltr. of Julio Ochoa, attached hereto as Ex. 7.)

Concerning representation, Hector serves on the board of directors of COMCE, an association comprised of small to medium sized manufacturers in Mexico. The President of COMCE, Miguel Landeros, writes that Hector has provided a “critical impetus to COMCE’s success in boosting the economic relations between companies and entrepreneurs” on both sides of the border. (Ltr. of Miguel Angel Landeros Volquarts, attached hereto as Ex. 43.) Mr. Landeros notes that, “as COMCE’s only U.S.-based board member for the past ten years,” he expects that “Hector’s continued involvement and leadership will be vital to COMCE in the years to come.” (*Id.*)

**E. Mentoring and Acts of Generosity**

It is important to note that Mr. Barreto has made it a practice to lift up those around him by mentoring those in need and with quiet acts of kindness.

Hector’s mentorships reflect his sincere commitment to community service. Mr. Flores, businessmen and fellow philanthropist, describes how Hector “recruited many, including myself, to follow his path and commitment to serve on many of the organizations and initiatives . . . to help provide better resources and services for all communities.” (Ltr. of Fred Flores, attached hereto as Ex. 25.) Darrel Saucedo writes that “Hector’s mentorship has been instrumental in shaping my leadership skills and fueling my passion for advocating on behalf of voiceless business owners.” (Ltr. of Darrel Saucedo, attached hereto as Ex. 26.) Many others express their gratitude to the Court for Hector’s role as their personal mentor. (*See* Ltrs. of Martha le la Torre (owner, El Classificado), attached hereto as Ex. 23, Marco Fragnito (owner, MCF Capital Management, LLC), attached hereto as Ex. 36, Richard Gomez (owner, Total Corporate Solutions), attached hereto as Ex. 44, Jose Nino (President/CEO of USHCC), attached hereto as Ex. 45, and George

Peppas (advisory board member for the Latino Advisory Council and CHOC and President, San Juan Capistrano Chamber of Commerce), attached hereto as Ex. 46.)

Hector's mentees go far beyond the leaders of Hispanic organizations. Ms. Aldana, for example, discusses Hector's support of a mutual friend struggling with drug addiction. (Ltr. of Silvia Aldana, attached hereto as Ex. 24.) Quoting the mutual friend, Ms. Aldana writes that "Hector believed in me when I was a nobody and no one else believed in me." (*Id.*) Ms. Aldana notes that "[d]ue in large measure to Hector's support and mentorship today, that man is a thriving, successful business owner who is also an active philanthropist and benefactor in underrepresented communities." (*Id.*) Mr. Jose Nino describes how Hector "would even volunteer to assist in mentoring . . . [others] to grow or re-invent their business during times of 'economic hardship.'" (Ltr. of Jose Nino, attached hereto as Ex. 45.)

Ms. Dominguez describes Hector's mentorship of young students seeking access to higher education. (Ltr. of Dorene Dominguez, attached hereto as Ex. 33.) Noting that she and Hector organized an event for First Generation students to learn about Notre Dame, Ms. Dominguez observed that "Hector had nothing to gain from helping these students as this came from a place of kindness and pure heart." (*Id.*) According to Ms. Dominguez, Hector "has served as a mentor for many and helped transform lives." (*Id.*) Similarly, Mr. Famania describes Hector's help of Mr. Famania's friend, who is now half-way towards his medical degree, in obtaining admission to medical school in Mexico. (Ltr. of Joaquin Humberto Famania Ortega, attached hereto as Ex. 40.) Mr. Ochoa writes about Hector's help of a family member with receiving admission to UAG "soon after the pandemic during a most challenging time when students were left in limbo." (Ltr. of Julio Ochoa, attached hereto as Ex. 7.)

Mr. Caria describes Hector's substantial volunteer work to help the homeless and those "on the margins of society." (Ltr. of Steve Caria, attached hereto as Ex. 19.) According to Mr. Caria,

I saw instances where [Hector] volunteered through his community and his church to help feed the homeless, volunteer to assist those living on the margins of society, and work with those less fortunate. Hector's character can be measured by his empathy towards those less fortunate than himself.

I have personally witnessed numerous acts of Hector's selfless concern for others. These small but continued acts of kindness are typified by his use of his prestige and connections to assist cash-strapped tenants, single mothers, without immediate recourse to government programs, such as SNAP, and his endeavors to assist minority small business owners. This assistance took the form of facilitating opportunities for Hispanic and Black business owners to access government projects under the Section 8(a) business development program as well as assisting them in obtaining SBA-guaranteed loans, and providing guidance in helping minority entrepreneurs navigate the complex maze of bureaucracy and bewildering state and federal business regulations.

(*Id.*) According to Mr. Caria, Hector's generosity reflects his "strong Christian faith and belief in God." (*Id.*)

In addition, several friends describe Hector's generosity in times of crisis. Mr. Corbin describes Hector's support after [REDACTED].

Hector's friendship during the most difficult time in my life is something that I will never forget. He was always there for me . . . providing words of encouragement, prayers of support, and a shoulder to lean on. He provided all of this, even though he was on the cusp of heading to Washington, D.C. to serve as Administrator of the SBA.

(Ltr. of Douglas Corbin, attached hereto as Ex. 16.) Similarly, Mr. Famania discusses Hector's critical help when he was "very ill and didn't know if [he] would make it." (Ltr. of Joaquin Humberto Famania Ortega, attached hereto as Ex. 40.) Mr. Landeros writes that Hector "showed me what it truly means to be a very supportive man and a good friend" after the death of his father and sister. (Ltr. of Miguel Angel Landeros Volquarts, attached hereto as Ex. 43.)

Hector has been caring and creating opportunities for people to better themselves for many years. This is assuredly not a cynical case where a defendant facing sentencing suddenly becomes a model citizen. The simple fact is that throughout his life, Hector Barreto has always – of his own accord – always striven to help others find success in life.<sup>1</sup> As Ms. Plascencia writes, Hector once told her something to the effect of:

I don't like to give up on people, everyone has something valuable to offer . . . we just have to be patient and allow them the space to put their talents into action.

(Ltr. of Maribel Plascencia, attached hereto as Ex. 18.) Hector's character for compassion and kindness reflects his commitment to living a purposeful life and explains why Hector has spent a lifetime serving as a motivating force for others to "reach for the stars." (Ltr. of Dorene C. Dominguez, attached hereto as Ex. 33.)

#### **F. Collateral Consequences**

This case has drawn significant negative attention from major news outlets. An internet search of Hector Barreto's name results in pages of articles announcing his indictment or conviction for "Fraud;"<sup>2</sup> no doubt his sentencing will likewise be covered in the press. Mr.

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<sup>1</sup> Counsel received so many letters of support for Hector Barreto from family, friends, former colleagues, former staff, business, and the non-profit communities that each letter could not be specifically referred to in this Memorandum. However, these additional letters have been compiled together and attached hereto as Ex. 47.

<sup>2</sup> See, e.g., Layoffs hit WellMed Medical, but scope of cutbacks unclear. San Antonio Express-News, August 15, 2023; Official Takes Deal on Fraud Charges. San-Antonio Express-News, April 21, 2023; Former Nonprofit Leader Pleads Guilty to Fraud in San Antonio. DOJ Press-release, April 21, 2023; Former nonprofit leader pleads guilty to fraud in San Antonio. Texas Standard, April 22, 2023; Former Nonprofit Leader Pleads Guilty To Fraud In San Antonio. IRS Criminal Investigation, April 21, 2023; Former nonprofit leader pleads guilty to fraud in San Antonio. FOX 7 Austin, April 21, 2023; Former Nonprofit Leader Pleads Guilty to Fraud in San Antonio (United States Attorney's Office for the Western District of Texas). WN.com, April 21, 2023; Fraud Friday – Former Head of SBA Pleads Guilty to Fraud Charges During His Trial. Coleman Report, April 21, 2023; Former nonprofit leader pleads guilty to fraud in San Antonio. IRS Press-release, April 21, 2023; Trial starts here for ex-SBA chief in money-laundering case. San Antonio Express-News, April 19, 2023; Former SBA chief Hector Barreto's money-laundering trial gets underway in San Antonio federal court. San Antonio Express-News, April 18, 2023; In unexpected move, former SBA chief, Hector Barreto pleads guilty during San Antonio criminal trial. San Antonio Express-News, April

Barreto's career as a nationally respected leader and champion for the less fortunate is essentially over.

Compounding Hector's isolation is his separation from the very same U.S.-based philanthropic organizations which have served as a critical source of connection for Hector throughout his entire life. Upon being informed that he was a target of the government's investigation, Hector immediately resigned his position on his various philanthropic board positions. (*See* Lttrs. of Silvia Aldana, attached hereto as Ex. 24, Michael Lizarraga, attached hereto as Ex. 48, and Ricardo Robles, attached hereto as Ex. 34.) Now that he has been convicted, his ability to service these and other U.S.-based non-profits is over. Moreover, as a licensed professional, Hector has lost his ability to practice in the insurance industry. As Micheal Lizarraga, President and CEO of TELACU, makes clear, "Hector's future career in any regulated business is either over or forever tarnished." (Lttr. of Michael Lizarraga, attached hereto as Ex. 48.) His ability to continue serving as a business advisor is also damaged. The once vibrant BIFS is now a shell of its former self.

In addition, Hector's sense of humiliation is acute. As Anna writes,

Your Honor, if you only knew the way we were raised you would know how much Hector has already suffered and will continue to suffer as a result of his conduct.

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20, 2023; Judge tosses conflict claim in ex-SBA chief's trial over use of WellMed founder's donations. San Antonio Express-News, November 14, 2022; Ex-SBA chief's trial slated for April. San Antonio Express-News, November 15, 2022; Political intrigue in San Antonio criminal case against ex-WellMed consultant and former SBA boss. San Antonio Express-News, August 29, 2022; Ex-SBA chief accused of misusing donations made to nonprofits. Houston Chronicle, September 18, 2021; "Political fixer" is accusing WellMed founder. San Antonio Express-News, September 11, 2022; San Antonio federal grand jury indicts former SBA administrator under President George W. Bush. San Antonio Express-News, September 17, 2021; S.A. grand jury indicts EX-SBA chief. San Antonio Express-News, September 18, 2021; San Antonio Businessman Pleads Guilty to Money Laundering Conspiracy. DOJ Press-release, February 4, 2020.

(Ltr. of Anna Barreto-Favrow, attached hereto as Ex. 14.) Hector’s dramatic decline from serving in the Cabinet to becoming a felon cannot be fully measured without taking stock of the pedestal on which Hector so proudly stood when his father placed the USHCC’s Chairman Award for lifetime achievement around his neck.

Since this case began, Hector has been focused on taking care of his family. This has been difficult in large part because of the profound shame and humiliation which he feels. However, Mr. Barreto has always been an optimist and is committed to resuming his purposeful life while finding ways to support his immediate and extended family

## **II. The Sentencing Factors Mitigate in Favor of a Non-Custodial Sentence**

### **A. Applicable Legal Standard**

“It has been uniform and constant in federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). In choosing a sentence, the district court must “consider all of the § 3553(a) factors,” and “he may not presume that the Guidelines range is reasonable.” *Gall v. United States*, 552 U.S. 38, 49-50 (2007). “He must make an individualized assessment based on the facts presented,” and “[i]f he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Id.* at 50.

A sentencing court must “impose a sentence that is sufficient, but not greater than necessary, to comply” with the purposes of 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3553(a). In undertaking its analysis, the Court must give consideration to the sentencing range recommended

by the Guidelines and any relevant Guideline policy statements, as well as several other traditional sentencing factors, such as: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to protect the public from further crimes from the defendant; (3) the need for the sentence imposed to reflect the seriousness of the offense, to promote deterrence, respect for the law and to provide just punishment; (4) the type of sentences available; (5) the interests of consistency in sentencing; and (6) the need to provide restitution. *Kimbrough v. United States*, 552 U.S. 85, 101 (2007). Supreme Court precedent and the requirement under §3553(a)(3) direct the Court to “consider sentences other than imprisonment.” *Gall*, 552 U.S. at 59.

The Supreme Court’s decisions in *Gall* and *Kimbrough* significantly broadened the discretion of courts to impose a less stringent sentence than the one suggested by the Guidelines. As a result, the Circuit Court’s review of sentences for substantive reasonableness is “highly deferential.” *United States v. Campos-Maldonado*, 531 F.3d 337, 339 (5<sup>th</sup> Cir. 2008).

In light of these considerations, we respectfully submit that, in this case, the Court should exercise its discretion and impose a sentence of probation with any special conditions suggested by the Probation Department. *Gall*, 552 U.S. at 48 (noting that a probationary sentence is a form of punishment that imposes “several standard conditions that substantially restrict [an offender’s] liberty”).

**B. The Conduct at Issue**

From 2006 to 2020, Mr. Barreto was the Chairman of The Latino Coalition (“TLC”), a membership organization of Hispanic entrepreneurs across the United States. To fulfill its mission, TLC relied on its charitable organization, The Latino Coalition Foundation (“the

Foundation”) and its non-partisan political/issue advocacy organization, The Hispanic Business Roundtable Institute (“the Institute”) (collectively, “the non-profits”), to meet the needs and expectations of its donors, many of whom limited their philanthropy to charitable or issue advocacy organizations. While affiliated with one another, the non-profits individually served distinct functions. As the educational arm of TLC, the Foundation was responsible for underwriting and organizing all educational content for the TLC membership at its events. As the political and policy arm of TLC, the Institute was responsible for partisan political advocacy and analysis of policies and regulations impacting TLC members. However, both the Foundation and the Institute relied on TLC to plan, convene and execute the events which the Foundation and Institute promoted to its sponsors. In turn, TLC relied on the Foundation and Institute for funding from donations to pay for the staff, contract partners and the expenses related to: (1) consultants on political projects; (2) administration and staff; (3) marketing and fundraising; and/or (4) events and initiatives.

Neither the Foundation nor the Institute paid for any staff; TLC primarily relied on contractors and only employed two full-time employees in 2020. Hector, himself, oversaw the non-profits’ day-to-day operations.

Given their operational interdependence, Hector operated as the CEO of the non-profits. As CEO, Hector’s work included the production of the biannual “Summit” events in DC and California, which spanned multiple days. Hosted by TLC, each summit was co-sponsored by the Foundation and the Institute, whose branding was prominently displayed and viewed by all who attended and by those who saw media reports of the Summit. In addition to planning,

fundraising and marketing the Summits, Hector obtained the participation of high-profile executives and legislative office holders, including

- President Donald J. Trump on two occasions (2018, 2020);
- Vice President Mike Pence on two occasions (2017, 2019);
- seven cabinet secretaries (Ben Carson (HUD), Betsy DeVos (Education), Rick Perry (Energy), Alexander Acosta (Labor), Elaine Chao (Transportation), Jovita Carranza (SBA), Linda McMahon (SBA); and
- over a dozen members of Congress, including Senator Ted Cruz, Senator John Cornyn and Congressman Tony Cardenas (collectively, “POTUS, Cabinet Secretaries and Members of Congress”).

In addition to Hector’s support of the Summits, Hector did the following for the non-profits:

- **Advisory Council** - recruited a prestigious corporate advisory council of over 100 leaders, including some of the most influential corporations and community leaders;
- **Affinity/Membership** - developed member programs, opportunities and benefits, including discount, procurement, capital and training programs;
- **Annual Corporate Partnership/Fundraising** – acted as the main fundraiser who personally raised at least \$12,000,000 from over 30 discrete donors;<sup>3</sup>
- **Database Project** – donated a database including over 1.1M contacts to the non-profits;
- **International Outreach** – built an international network, especially in Mexico, to represent the interests and opportunities for the non-profits’ members;
- **Marketing** - oversaw all marketing efforts and programs;
- **Media** – served as the only spokesperson for the organization for more than 15 years and, thereby, generated substantial earned media for the non-profits;
- **Monthly Updates** - created and distributed messaging to the non-profits’ membership on

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<sup>3</sup> These figures do not include any donations from either Wells Fargo or Dr. Rapier or any entity which he controlled.

a frequent basis;

- **MOU** - negotiated and formed partnership agreements with more than 100 non-profit organizations;
- **Policy and Advocacy Outreach** - worked with contractors and staff on all policy and advocacy positions;
- **Political Elite Outreach** – built and oversaw an effective outreach capability in Washington, D.C. to support a national advocacy platform;
- **Political Endorsements** – identified, vetted and endorsed federal and state political candidates on a biennial cycle;
- **Political Party Conventions** – designed and managed all aspects of the non-profits’ operations at the Democratic and Republican Party National Conventions; and
- **Social Media** – developed the social media engagement program for the non-profits, hired contractors to manage outreach and provided the majority of content.

Hector’s success on behalf of the non-profits was dramatic. In 2006, when Hector took over as the Chairman of TLC, the organization and its affiliated non-profits were on the verge of bankruptcy, contesting two civil lawsuits for non-payment to prior contactors, lacking a database and had lost the confidence of corporate sponsors which had stopped contributing to the non-profits.

Over 15 years, Hector built a membership organization consisting of more than 10,000 participants, which resulted in sustained corporate investment and engagement.<sup>4</sup> As a result, Hector transformed the nonprofits into some of the most prominent and influential organizations in the Hispanic business community. For example, Dr. Silas Abrego notes that through the nonprofits, Hector built a “creative network of Hispanic owned businesses resulting in strong

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<sup>4</sup> Every two years, since 2006, Hector was unanimously elected by the board to serve as the Chair of TLC with management responsibility for the other non-profits.

advocacy for community economic development.” (Ltr. of Dr. Silas Abrego, attached hereto as Ex. 37.) When he left at the end of 2020, the non-profits had over \$400,000 in their bank accounts and enjoyed a strong reputation and relationship with all of its stakeholders, which continues to this day.

Consistent with his success at the non-profits, Hector leveraged his personal network and experience to increase their members’ economic opportunity, education and representation in the following ways:

- **Economic Opportunity:** The Summit events provided procurement opportunities and intelligence, technical assistance on capacity building and access to capital and lenders like Bank of America, Wells Fargo, Biz2Credit and SBA;
- **Education:** The non-profits provided members with access to influential educational providers, including, district SBA offices, SCORE (a non-profit which provides education and technical assistance to start-up businesses) and the network of small business development centers; and
- **Representation:** The non-profits used political elite outreach via its office in Washington, D.C. and elsewhere to advocate for critical policy needs like regulatory reform, health care, immigration and trade on behalf of its members.

In addition, Hector aligned the objectives of the non-profits with donors. For example, concerning Dr. Rapier’s direction to create an apprenticeship program, the non-profits did the following:

- Financed construction of a home in San Antonio, Texas for SA Youth to support its mission (“the SA Youth Project”);
- Paid for the development of the SA Youth Project;
- Obtained the participation of Secretary of Labor Alexander Acosta in support of the SA Youth Project; and
- Created a video impact report on the construction of the home and the development of the student training program for the SA Youth Project.

As a result, the non-profits facilitated Dr. Rapier's goal of financing and developing a training program for low-income youth in San Antonio.<sup>5</sup>

Concerning Wells Fargo, Hector did the following to make MatchPoint effective:

- Hired a contractor to build the software to power the Matchmaking website;
- Marketed MatchPoint to the non-profits' membership via emails, brochures, podcasts, media and Matchmaking events; and
- Executed partnership and revenue sharing agreements with strategic non-profit partners.

MatchPoint became a very successful program. As a result, Wells Fargo benefited from MatchPoint in the following ways:

- Sold Wells Fargo financial products and services to MatchPoint users;
- Received preferential access to the qualified businesses in the MatchPoint database; and
- Increased brand awareness by promoting Wells Fargo's small business diversity goals via the MatchPoint database.

Based on these tangible outcomes, from 2018 to present, senior high-ranking executives at Wells Fargo boasted about their support for the MatchPoint program at various non-profit events.

As established during the plea hearing, Mr. Barreto has accepted responsibility for using a portion of certain donations for his personal use. He has agreed to pay restitution for actual monies received in relation to his conduct, which, according to the plea agreement, caused a loss between \$250,000 - \$500,000. Mr. Barreto accepts that he exhibited poor judgment by using a portion of the funds from certain donations for personal use. However, he maintains that he never intended

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<sup>5</sup> The government's discovery includes statements from SA Youth that its third-party financing of its apprenticeship program excluded the costs of construction. As a result, the non-profits helped provide SA Youth with a critical source of funds which it otherwise had lacked to build the home.

to harm the non-profits and that his overall course of conduct while serving as their CEO reflects a sincere commitment to their core mission. For example, Mr. Barreto made interest-free loans from his personal funds to the non-profits by taking out a line of credit on his home, among other things, to help the non-profits pay for the Summit in D.C. in March 2020. Absent Mr. Barreto's loan, the non-profits would not have been able to hold its signature annual event at which the President of the United States served as keynote speaker and several Cabinet Secretaries also spoke. Even after he resigned from the non-profits in December 2020, Hector has been asked, and continues to be asked, to advise and assist the non-profits' new leadership team on operations, fundraising, strategy and contacts. Hector's willingness to volunteer his time and money to support the non-profits reflects his genuine devotion to their success.

Notwithstanding Mr. Barreto's success with the non-profits and his high visibility as a former Administrator, it is important to note that neither Wells Fargo nor Dr. Rapiere were making their donations based on Mr. Barreto, himself. Wells Fargo, for example, only made its first donation to the Foundation in 2019, even though Mr. Barreto had been soliciting Wells Fargo for a donation each year since he joined the non-profits in 2007. In 2019, Mr. Barreto himself did not move the needle for Wells Fargo; MatchPoint did. Because MatchPoint was a technology program, Wells Fargo insisted on speaking with MatchPoint's technologist, Jeff Vigil, before making it would agree to its first donation. Moreover, even after Mr. Barreto had left, Wells Fargo continued to donate \$550,000 to the Foundation in support of MatchPoint.<sup>6</sup>

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<sup>6</sup>According to the Foundation's bank records, in 2021, Wells Fargo donated a total of \$475,000 to the Foundation. In 2022, it donated a total of \$75,000 to the Foundation.

With respect to Dr. Rapier, the same is true. Mr. Barreto did not move the need for Dr. Rapier; Mr. Gutierrez did. In fact, Mr. Gutierrez, through his own counsel, has made this very same point. (See Defendant Gutierrez’s Response to George Rapier’s Motion to Quash (“Defendant Gutierrez’s Motion”), ECF No. 53 at ¶¶ 31- 59). According to Defendant Gutierrez’s Motion, Dr. Rapier “instructed Mr. Gutierrez to execute . . . political activities and strategies in ways that would not disclose the funding sources.” (*Id.* at ¶ 34.). For this purpose, Dr. Rapier hired Mr. Guterrez in 2007 (*id.* at ¶ 35), when he began serving as a consultant for the Wellmed Charitable Foundation. Thereafter, Dr. Rapier relied on Mr. Gutierrez for “coordination efforts” regarding the use of non-profits to spend his charitable donations for political purposes. (*Id.* at ¶ 38.) These non-profits, Protect My Medicare and the Coalition to Protect Seniors, were formed by Wellmed and identified Mr. Gutierrez as their FEC contact. (*Id.* at ¶¶ 36-38.) However, in November 2011, when Optum purchased a majority share in Wellmed, Dr. Rapier was “directed” by Optum “to no longer use Wellmed or any of its organizations for political advocacy.” (*Id.* at ¶ 42.) As a result, Dr. Rapier “instructed Mr. Gutierrez to form America is Not Stupid, a 501(c)(4) organization for the purpose of “Candidate and Issue Advocacy. . . .” (*Id.* at ¶ 43.) Serving as its President (*id.* at ¶ 45.), Mr. Gutierrez followed Dr. Rapier’s directions on “radio and television political advertisements in various markets nationwide as well as “Get Out the Vote” (GOTV) campaigns”, among other AINS expenditures financed by Dr. Rapier’s charitable donations. (*Id.* at ¶ 44). In two years, from 2011-2013, Dr. Rapier had entrusted Mr. Gutierrez with control over

the expenditure of more than \$2M in charitable donations to AINS, which substantially approximates the total amount of donations by Dr. Rapier to the non-profits from 2013-19.<sup>7</sup>

In 2014, after “the Media and the IRS became aware of the true purposes of AINS,” Mr. Gutierrez felt the heat and AINS was dissolved. (*Id.* at ¶ 45.) Needing a new vehicle “to conceal Dr. Rapier’s financial political activity” (*id.* at ¶ 46), Mr. Gutierrez recommended TLC and the Foundation to Dr. Rapier (*id.* at ¶4). Mr. Barreto had a rolodex which he eventually used to advocate for Dr. Rapier, but so did many others, who also ran non-profits. What made Mr. Barreto, who was living in California, and the non-profits attractive to Dr. Rapier was Mr. Gutierrez, whose “previous association with the non-profits. . .” appealed to Dr. Rapier (*id.* at 47). The face of the non-profits was fungible so long as it was neither Wellmed nor Mr. Gutierrez; the only thing that mattered was how Dr. Rapier’s control of the non-profits was exercised, which Mr. Gutierrez accomplished from behind the scenes.

Dr. Rapier’s unique dependence on Mr. Gutierrez is so manifest that the government directed Dr. Rapier, who was then cooperating with the government, to send a pretextual email to Mr. Gutierrez alone. (Email dated October 9, 2019 from Dr. Rapier to Mr. Gutierrez, attached hereto as Ex. 49.) In the email, Dr. Rapier asks Mr. Gutierrez, not Mr. Barreto, for an accounting of the expenditures related to his charitable donations. (*Id.*) If Mr. Barreto had been anything other than Mr. Gutierrez’s subordinate, the government would have ensured that Mr. Barreto was included in that email.

**C. The Non-Profits Were Not Harmed**

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<sup>7</sup> This figure is based on the tax returns of AINS from 2011-13.

The defense acknowledges that Mr. Barreto caused a loss of \$311,160.86. For two reasons, however, we submit that the application of § 2B1.1 to Mr. Barreto's conduct overstates the seriousness of the offense. First, the actual "loss" is eclipsed five-fold by the fair market value of the services which Mr. Barreto, in fact, rendered to the non-profits. Second, Mr. Barreto was substantially undercompensated as CEO to a degree that far exceeds the amount of "loss" to the non-profits. As a result, the Court should reject the application of § 2B1.1 to the instant case.

**1. The loss is eclipsed five-fold by the fair market value of the services which Mr. Barreto rendered to the non-profits.**

For several reasons, the fair market value of the services which Mr. Barreto rendered to the non-profits exceeds the amount of loss.<sup>8</sup>

First, from 2017-2020, the non-profits were benefited by Mr. Barreto's conduct by at least \$3.2M.<sup>9</sup> As reflected in the government's discovery in this case, Mr. Barreto's work for the non-profits included two critical areas: organizing their signature, biannual Summit events and generating earned media for the non-profits.

Regarding the former, data from Federal Election Commission Financial Disclosures ("FEC") tracks speaker fees received by any former elected officer holder or cabinet official who is seeking the Office of President of the United States. In former President Trump's 2023 FEC

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<sup>8</sup> This analysis does not include the fundraising benefits provided by Mr. Barreto to the non-profits. Although Mr. Barreto was contracted to receive commissions of between 10-15 % for all monies raised, he never collected commissions in any year. At the time of his departure in December, Mr. Barreto was still owed \$500,000 in earned fees not including commissions of approximately \$700,000 for 2017-2020 per his contract.

<sup>9</sup> This analysis is conservatively scoped to the factual basis of Mr. Barreto's plea and, therefore, excludes the value of the benefits which had accrued to the non-profits from October 2006, the inception of his leadership of the non-profits, through 2016. However, the defense notes that, based on the above-mentioned methodology regarding speakers' fees, the value of the speakers at the Summits from October 2012 through 2016 was \$1.2M.

disclosure, the median speaker's fee which he charged was \$900,000.<sup>10</sup> (Summary of former President Trump's 2022 Speaker Fees Based on 2023 FEC Disclosures, attached hereto as Ex. 50.) In former Vice President Pence's FEC Disclosures, the median speaker's fees which he charged was \$80,000. (FEC Disclosures of former Vice President, Mike Pence, attached hereto as Ex. 51.) FEC disclosures of speaker fees for former cabinet officials typically range between \$25,000-\$100,000. (FEC Disclosures of former US Ambassador to the United Nations, Nikki Haley, attached hereto as Ex. 52.) In addition, a review of Washington Speakers Bureau website, <https://www.wsb.com/speakers>, confirms that the median speaker's fee for former members of Congress is between \$25,000-\$40,000. (Summary of 2023 Speaker Fees for Former Members of Congress Based on a Review of Washington's Speaker's Bureau, attached hereto as Ex. 53.) As a result, the median value of the speakers at the Summits, based solely on the appearances by POTUS, Cabinet Secretaries and Members of Congress was \$3.1M.

With respect to the earned media, TVEyes is a subscription-based media monitoring service, which provide an audience value and a corresponding dollar value for each media hit involving the earned media of Mr. Barreto, who served as the face of the non-profits and as its sole spokesman. Between 2017-2020, the non-profits released more than 30 press releases, all of which featured Mr. Barreto. During the same time period, Mr. Barreto was a frequent guest on Fox News, Fox Business, CNN and Bloomberg Radio, among other television and radio outlets. Mr. Barreto also authored more than a dozen op-ed pieces which appeared in high-profile outlets, including Fox News (online), USA Today and Washington Times. According to the TVEyes

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<sup>10</sup> The monetary value of a speaker who is a sitting elected or appointed official is greater than that of a former elected or appointed official.

reports to the non-profits about the monetary value of their earned national media, the approximate value of Mr. Barreto's earned media coverage from 2017-2021 was at least \$1.2M.<sup>11</sup> (Summary of TVEye Reporting on Major National Earned Media Appearances by Hector Barreto from 2017-2020, attached hereto as Ex. 54.)

**2. Mr. Barreto was substantially undercompensated as CEO to a degree that far exceeds the amount of "loss" to the non-profits.**

Mr. Barreto was substantially undercompensated as CEO to a degree that far exceeds the amount of "loss" to the non-profits under the Guidelines. According to three distinct salary calculation websites, salary.com, payscale.com, and Glassdoor.com, the median compensation for similarly situated CEOs of a non-profit with 1-5 full time employees ranged between \$150,000-\$250,000 from 2017-20. (CEO Compensation Analysis Based on Industry Websites, attached hereto as Ex. 55.) The average salary was, therefore, \$200,000 per year. Although Mr. Barreto's 2017-21 compensation agreement with the non-profits identified his compensation as \$180,000 per year, he only received \$165,000 during that time. Based on his contract alone, Mr. Barreto was undercompensated by \$555,000 between 2017-2020. By comparison with the fair market value of similarly situated CEOs during that same time, however, Mr. Barreto was undercompensated by \$635,000.

**D. The PSR Erroneously Includes Certain Sentencing Enhancements and Omits a Sentencing Adjustment**

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<sup>11</sup> For purposes of simplicity, this analysis excludes Mr. Barreto's substantial, earned media in local outlets, including the Orlando Sentinel, the Reno Gazette, and the Los Angeles Daily News.

The PSR erroneously includes sentencing enhancements for Mr. Barreto's role in the offense and for abuse of trust and omits the sentencing adjustment for a "zero-point" offender. As more fully stated below, the defense respectfully objects to each finding.

**1. The role in the offense enhancement is inappropriate.**

Contrary to the government's position in the plea agreement, the PSR argues that Mr. Barreto "was an organizer, leader, manager, or supervisor" of the participants in the instant case. (PSR at ¶ 34.) Although the PSR implicitly concedes that Mr. Barreto was not a manager or supervisor of Mr. Hewitt, the PSR argues that Mr. Barreto "used and directed Gutierrez and Brent de la Paz to falsify invoices for payment" and "reported false information on the IRS Form 990." (PSR at ¶ 21.) Just as Mr. Barreto did not manage or supervise Mr. Hewitt, Mr. Barreto never managed or supervised Mr. de la Paz. Moreover, Mr. Gutierrez managed Mr. Barreto, not visa versa. Finally, Mr. Barreto's conduct in causing the filing of false 990s is irrelevant to the role in the offense enhancement.

**a. The Participants**

For three reasons, the application of the role in the offense enhancement to the facts mistakes Mr. Barreto's knowledge of the fraud with his purported management or supervision of Mr. Gutierrez or Mr. de la Paz (collectively, the "participants").

First, Mr. Gutierrez hired and had a preexisting relationship with Mr. de la Paz, just as he did with Mr. Hewitt. In 2010, before the offenses of conviction, Mr. Gutierrez met Mr. Hewitt during a political campaign. (PSR at ¶ 14.) In 2012, Mr. Hewitt reached out to Mr. Gutierrez for political work. (*Id.*) Similarly, in 2013, Mr. Gutierrez met Mr. Brent de la Paz and hired him

to “step in” for the role played by Mr. Hewitt. (PSR at ¶ 15.) Mr. Gutierrez, not Mr. Barreto, hired Mr. de la Paz and Mr. Hewitt.

Second, Mr. de la Paz, who stood in the shoes of Mr. Hewitt (*id.*), was managed by Mr. Gutierrez, not Mr. Barreto. While Mr. Barreto was in California, Mr. Gutierrez became part-owner of Mr. de la Paz’s La Verdad Consulting and shared office space with Mr. de la Paz in San Antonio (*id.*). Mr. Gutierrez alone negotiated Mr. de la Paz’s scope of work. (*See, e.g.*, email dated August 31, 2016, attached hereto as Ex. 56 (Mr. Gutierrez sending Mr. Barreto La Verdad contract with LCF for 2016 and 2017). As with Mr. Hewitt’s work with Mr. Gutierrez (PSR at ¶ 14), Mr. de la Paz’s scope of work with Mr. Gutierrez included polling and providing political resources in all 50 states, a matter for which Mr. Barreto had no experience or expertise. As opposed to every other consultant who worked on behalf of the nonprofits, Mr. de la Paz, just like Mr. Hewitt, never submitted a status report to Mr. Barreto nor did Mr. Barreto request one. Unlike the invoices from Mr. de la Paz (and Mr. Hewitt), Mr. Barreto, not Mr. Gutierrez, exercised control over the invoices from media consultants who assisted Mr. Barreto with his substantial media work for Dr. Rapier. Barreto knew, hired, and supervised each media consultant and negotiated his/her remuneration. Mr. de la Paz (and Mr. Hewitt) were irrelevant to Mr. Barreto’s media campaign on behalf of Dr. Rapier. As a result, Mr. Barreto never discussed how he should do his job with them and vice versa. Mr. Gutierrez, not Mr. Barreto, supervised the work of Mr. de la Paz, just as Mr. Gutierrez supervised the work of Mr. Hewitt.

Third, the same is true with respect to payments of Mr. de la Paz’s invoices. As with Mr. Hewitt, Mr. Barreto knew that Mr. de la Paz’s invoices were fraudulent. However, the issue here is not Mr. Barreto’s guilt, for which he has accepted responsibility, but his culpability i.e. his role

in the offense. For example, Mr. Gutierrez, not Mr. Barreto, controlled the timing and amount of every invoice submitted for payment. Mr. Gutierrez, not Mr. Barreto, generally prepared the invoices for Mr. de la Paz (PSR at ¶ 15), just as Mr. Gutierrez, not Mr. Barreto, directed Mr. Hewitt on how much to invoice and which organization to invoice. (PSR at ¶ 14.) The reason for this is simple: Mr. Gutierrez, not Mr. Barreto, originated and sent to Dr. Rapier the specific budgets with specific line-items regarding the work of Mr. Barreto's, Mr. de la Paz (and Mr. Hewitt). Mr. Gutierrez, alone, conferred with Dr. Rapier regarding the budgets and obtained Dr. Rapier's approval for the cost and compensation for the budgeted work. Mr. Gutierrez, not Mr. Barreto, knew the fees that Mr. de la Paz (and Mr. Hewitt) were owed under their agreements with Mr. Gutierrez.

Notwithstanding these facts, the PSR argues that Mr. Barreto was an “organizer, leader, manager, or supervisor” because he “used and directed” Gutierrez and Mr. de la Paz to falsify invoices”. With respect to Mr. de la Paz, in particular, the Addendum to the PSR states that Mr. Barreto “instructed De La Paz to send him (the defendant) an invoice for LCF. . . .” (Addendum to PSR at ¶ 22.) For several reasons, the PSR's reliance on a single email during a nine year conspiracy is misplaced. First, consistent with every invoice from Mr. de la Paz (and Mr. Hewitt), Mr. Gutierrez, not Mr. Barreto, initiated the request for the invoice at issue from Mr. de la Paz. (Email string dated March 30, 2023, attached hereto as Ex. 57 (including La Verdad Consulting invoice dated March 30, 2015 for \$50,000 from TLC (“March 30, 2015 invoice”).) On March 30, 2021, Mr. de la Paz sent Mr. Barreto the March 30, 2015 invoice without any prompting of any kind from Mr. Barreto. Mr. de la Paz includes Mr. Gutierrez in the cover email. (*Id.*) Eleven minutes after Mr. de la Paz sent the March 30, 2015 invoice to Mr. Barreto, Mr. Gutierrez advised

Mr. Barreto via email how the \$50,000 lump sum payment on the March 30, 2015 invoice would be broken down into individual payments to “Jamie”, “Consultant 1”, “Consultant 2” and “Consultant 3”. (Email dated March 30, 2015, attached hereto as Ex. 58.) Six minutes after receiving the directions from Mr. Gutierrez to pay the March 30, 2015 invoice (*id.*), Mr. Barreto sent his lone reply to Mr. de la Paz and to Mr. Gutierrez. (Email string dated March 30, 2023, attached hereto as Ex. 57.) The string of communications which preceded Mr. Barreto’s reply to Mr. de la Paz demonstrates that Mr. Gutierrez, not Mr. Barreto, is managing the payment of the March 30, 2023 invoice.

Second, Mr. Barreto’s email to Mr. de la Paz is delimited to what Mr. Gutierrez had instructed Mr. Barreto to do, i.e., pay the March 30, 2015 invoice. The PSR ignores the critical fact that, before Mr. Barreto first replied to Mr. de la Paz, Mr. de la Paz had already sent Mr. Barreto an invoice to the wrong entity. Because TLC did not have any Rapier funds, TLC could not be used to pay the invoice. As a result, Mr. Barreto could not follow Mr. Gutierrez’s instructions to pay the March 30, 2015 invoice. In response to Mr. de la Paz’s email, therefore, Mr. Barreto asked Mr. de la Paz for a corrected invoice. In seeking this solitary change, from one entity without Rapier funds to one with Rapier funds, Mr. Barreto did not ask for a description of the services provided or any other justification for the billed fees which, per the invoice, were contained in a 2015 contract, which Mr. Barreto had neither executed, possessed nor reviewed. Mr. Barreto’s narrow request underscores that Mr. Gutierrez, not Mr. Barreto, was managing Mr. de la Paz.

Third, the PSR ignores that this communication between Mr. de la Paz and Mr. Barreto is an outlier. In the entirety of the government’s discovery, including hundreds of thousands

documents, this is the single instance of Mr. Barreto's requesting an invoice from Mr. de la Paz. In fact, Mr. Gutierrez almost always directly communicated with Mr. Barreto on Mr. de la Paz's (and Mr. Hewitt's) behalf and did the same with each on Mr. Barreto's behalf. As a result, Mr. Barreto typically paid the invoices and received payments from Mr. de la Paz (and Mr. Hewitt) without having any contact with any of the participants.

For example, on March 3, 2014, Mr. Gutierrez directed Mr. Hewitt to create and send invoice for "2<sup>nd</sup> quarter" in the amount of "53K" to Mr. Barreto. (Email dated March 3, 2014, attached hereto as Ex. 59). Thereafter, on the same day, Mr. Hewitt emailed his invoice to Mr. Barreto and Mr. Gutierrez. (Email dated March 3, 2014, attached hereto as Ex. 60 (including Red Point Strategies invoice dated March 3, 2014, for \$52,000).) Thereafter, Mr. Gutierrez directed Mr. Barreto to pay the Red Point Strategies invoice, which, according to Mr. Gutierrez, was necessary for Mr. Gutierrez and Mr. Hewitt to create "report" and "to get ready for Rapier." (Email dated March 3, 2014, attached hereto as Ex. 61.) On March 11, 2014, Mr. Gutierrez informed Mr. Barreto that Mr. Gutierrez sent an invoice for Mr. Barreto to Mr. Hewitt. (Email dated March 11, 2014, attached hereto as Ex. 62 (attaching Miguel Gutierrez invoice dated March 8, 2014, to Red Point Strategies for \$24,000).) In that email, Mr. Gutierrez asked Mr. Barreto to "confirm that the account number listed is correct." (*Id.*) Mr. Gutierrez also stated, "same invoice from past two quarters." (*Id.*)

The same is true with respect to Mr. de la Paz. For example, Mr. Gutierrez sent multiple invoices on behalf of Mr. de la Paz to Mr. Barreto, including an email dated May 4, 2015 with a La Verdad Consulting. (Email dated May 4, 2015, attached hereto as Ex. 63 (including La Verdad Consulting invoice dated May 3, 2015 for \$18,000).) In addition, on July 13, 2015, Mr. Gutierrez

forwarded to Mr. Barreto the La Verdad Consulting invoice dated July 13, 2015, for \$20,200 and wrote,

Here is the invoice for August 1. I have not yet sent the invoices for Justin or MMarketing but will do so this week. This invoice includes a 1600 dollar payment that we will be making to Juan Pablo and 680 Dollars for Brent reimbursement for his expenses last two months.”<sup>12</sup>

(Email dated July 13, 2015, attached hereto as Ex. 64 (including the July 13, 2015 La Verdad invoice).) On July 21, 2015, Mr. Gutierrez emailed Mr. Barreto a Justin Perkins invoice dated July 21, 2015, for \$2,000 and the MMarketing invoice dated July 21, 2015, for \$3,000, along with the July 13, 2015 La Verdad invoice. (Email dated July 21, 2015, attached hereto as Ex. 65 (including all three invoices).) Notably, the MMarketing and Justin Perkins invoice used the same format. (*Id.*) In the email, Mr. Gutierrez wrote, “Invoices to be paid. One for HBRI and Two for LCF.” (*Id.*) On August 27, 2015, Mr. Gutierrez sent an invoice for Mr. de la Paz to Mr. Barreto and wrote, “I would like to pay . . . Brent before end of month.” (emphasis added). (Email dated August 27, 2015, attached hereto as Ex. 66 (including La Verdad invoice dated August 27, 2015 for \$5,000). In addition, Mr. de la Paz and Mr. Gutierrez used the same format for the invoices which each sent to Mr. Barreto. (*Compare* Ex. 57 (Mr. de la Paz sending La Verdad invoice to Mr. Barreto) *with* Ex. 64 (Mr. Gutierrez sending La Verdad invoice to Mr. Barreto).)

Fourth, after Mr. de la Paz’s invoices were paid, Mr. Gutierrez, not Mr. Barreto, directed Mr. de la Paz how and where to send money to both Mr. Barreto and Mr. Gutierrez. For example, on October 14, 2014, Mr. Gutierrez sent invoices for both Mr. Barreto and Mr. Gutierrez and stated, “Brent, these invoices need to be paid out.” (Email dated October 14, 2014, attached hereto

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<sup>12</sup> Mr. Perkin is the personal assistant to Mr. Gutierrez and Mr. de la Paz and MMarketing is company of Mr. Gutierrez’s mother.

as Ex. 67 (including Barreto and Associates invoice dated October 12, 2014 for \$9,000 and Miguel Gutierrez invoice dated October 12, 2014 for \$9,000).) Notably, the Barreto and Associates invoice and the Miguel Gutierrez invoice used the same format. (*Id.*) Similarly, on January 30, 2015, Mr. de la Paz emailed Mr. Gutierrez, not Mr. Barreto, a list of past payments which Mr. de la Paz had made to both Mr. Barreto and Mr. Gutierrez. (Email dated January 30, 2015, attached hereto as Ex. 68 (including breakdown of payments to “Barreto”, “Gutierrez” and “OTHER VEND”).) In the government’s discovery, there is not a single instance where Mr. Barreto was directing Mr. Gutierrez how to spend Dr. Rapier’s money on Mr. de la Paz (or Mr. Hewitt).

Finally, the PSR ignores the fact that Mr. Gutierrez, not Mr. Barreto, originated the budgets on which the participants’ invoices were based. For example, on July 5, 2015, Mr. Gutierrez attached the Rapier budget “for the next three months” in an email to Mr. Barreto. (Email dated July 5, 2015, attached hereto as Ex. 69 (including budget for Barreto and Associates, Gutz Group, Justin Perkins, MMarketing and Brent de la Paz from July-September 2015).) On October 26, 2015, Mr. Gutierrez emailed Mr. Barreto an invoice for Brent de la Paz and the budget for Rapier funds. (Email dated October 26, 2015, attached hereto as Ex. 70 (including La Verdad invoice dated October 26, 2015 for \$115,500).) In the email, Mr. Gutierrez wrote,

Hector, attached find the invoice to cover every expense for the GOTV as well as pay all consultants to include Dr. Huysman, HB and MG. If you can please send out the wire today. Initially the GOTV plan was for 192k dollars but we figured out a way to split the Red Point and La Verdad in order to get the 75k Households and only cost 95k. . . . (*Id.*)

**b. The Books and Records of the Non-Profits**

The PSR erroneously relies on Mr. Barreto’s internal authority within the nonprofits, which resulted in the reporting of false information on the IRS Form 990. (PSR at ¶ 21.) Because the

nonprofits' staff members and their outside accountant are not participants in this case, Mr. Barreto's conduct in causing the filing of false 990s is irrelevant to the role in the offense enhancement. (USSG 3B1.1, comment. (n.1) (defining "participant" as a "person who is criminally responsible for the commission of the offense. . . .").) Once again, the PSR confuses Mr. Barreto's guilt with his purported management of Mr. de la Paz and Mr. Gutierrez.

## **2. Mr. Barreto qualifies for the "zero-point" offender adjustment.**

The PSR argues that Mr. Barreto does not qualify for the "zero-point" offender adjustment based on his role in the offense. (PSR at ¶ 37 (citing conclusion that USSG §3B1.1(c) is applicable).) The "zero-point" offender adjustment is applicable where "the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848." USSG §4C1.1(a)(10).

For two reasons, Mr. Barreto is entitled to the "zero-point" offender adjustment. First, Barreto was not an "organizer, leader, manager, or supervisor" in the offense of conviction. *See supra*. Second, the offense of conviction was not drug related and does not qualify as a "continuing criminal enterprise" under 21 U.S.C. § 848 (*see United States v. Hicks*, 945 F.2d 107, 108 (5<sup>th</sup> Cir. 1991) (three predicate drug offenses are necessary to establish CCE)).

## **3. The enhancement for abuse of trust is inappropriate.**

The PSR includes a two (2) level enhancement under USSG § 2B1.1(b)(9)(A) because, according to the PSR, "the defendant misrepresented where the donations received from the victims for the organizations were being used." (PSR at ¶ 30.) Elsewhere, the PSR includes a two (2) level enhancement under USSG § 3B1.3 because, according to the PSR, "[i]n his role as President and CEO of the nonprofit organizations, Barreto abused a position of public trust which

significantly facilitated the commission or concealment of the offense.” (PSR at ¶ 33.) Because the conduct that forms the basis for the enhancement under USSG § 2B1.1(b)(9)(A) is the only conduct that forms the basis for the adjustment under USSG § 3B1.3, the application of the “abuse of trust” enhancement is inapplicable to this case. (USSG §2B1.1, comment. (n.8(E)(i).) As a result, we object to the application of USSG § 3B1.3 to this case.

For three reasons, Mr. Barreto’s opportunity to misrepresent how the charitable donations were used was based exclusively on his role as President and CEO of the nonprofits.

First, given their small size, the nonprofits relied on Mr. Barreto as their President and CEO, to exercise plenary authority over the nonprofits’ fundraising, media, operations and contracting. The nonprofits employed two contractors to perform basic administrative functions at the office and assist Mr. Barreto in planning events. Unlike other organizations, however, the nonprofits did not employ a policy director, a finance director, a political director, a program manager or a procurement director. In addition, the nonprofits did not employ dedicated staff to run an internal budget department or any other department. For all these functions, the nonprofits relied on Mr. Barreto to lead a team of contractors whom Mr. Barreto hired and paid with funds from the nonprofits.

Second, the disbursements in this case are inextricably tied to the nonprofits’ reliance on their President and CEO to engage and pay contractors in the ordinary course of the nonprofits’ business. A program manager, for example, would have managed all elements of the apprenticeship program related to Dr. Rapier’s specific donations, including the receipt, review, and approval of invoices from contractors. In lieu of a program manager, the nonprofits relied on Mr. Barreto. Similarly, a procurement director would have managed all aspects of the nonprofits’

procurement initiative related to Wells Fargo's Matchmaking donation, including the receipt, review and approval of invoices from all contractors. In lieu of a procurement director, the nonprofits relied on Mr. Barreto. More generally, given the nonprofits' skeletal staff, the nonprofits relied on Mr. Barreto to outsource every function which was essential for their existential viability, including communications, policy, event planning and programs. In lieu of a finance director, the nonprofits relied on Mr. Barreto, over the course of 15 years, to spend over \$12M in non-Rapier donations to pay contractors and vendors without ever asking him to justify a single payment.

Third, the operational board of directors were experienced executives who acted more like an advisory board which deferred to Mr. Barreto, as the nonprofits' President and CEO. The non-profits were formally organized and had bi-laws that detailed board member responsibilities which predated Mr. Barreto's tenure. All board members had the same fiduciary responsibility. Moreover, long-term board members like Mr. Gutierrez were on the board before Mr. Barreto joined.

Mr. Barreto sought a prestigious board with hundreds of years of experience at senior levels in non-profit organizations. For example, Board members were experienced leaders of Chambers of Commerce and other major non-profits, including the Kansas City Hispanic Chamber of Commerce, the Dallas Hispanic Chamber of Commerce, the Central Exchange (organization of woman entrepreneurs in Kansas City), Kansas Republican Party, San Francisco Chamber of Commerce, California Hispanic Chambers of Commerce, and USHCC. Every year, board members had to be renominated and, during this process, Mr. Barreto invited board members to resign if they were dissatisfied in any way with the running of the non-profits.

Board members typically affirmed their interest in being reelected to the board of directors because they were satisfied with their participation in the governance of the non-profits and enjoyed the opportunity to meet with public officials at the Summit events.

Although the board members voluntarily re-upped every year to serve, and the board members regularly showed up for scheduled meetings and attended all of the signature events annually, they rarely contributed or asked questions despite an open sessions on the agenda. Because of the board members lack of participation in the planning and operations of the non-profits, the board acted more like a passive, advisory board. Mr. Barreto requested their involvement and assistance in all of meeting minutes but was the only one who was required to plan, convene, and execute the programs with the help of contractors whom he exclusively oversaw and paid.<sup>13</sup>

## **E. The Guidelines Recommend an Unreasonable Sentence**

### **1. Legal Analysis**

A review of recent fraud cases in this and other Circuits demonstrates that the application of the advisory guidelines would result in an unwarranted sentencing disparity with other similarly situated defendants, whether for “white-collar” or “blue collar” offenses.

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<sup>13</sup> The PSR misstates Mr. Barreto’s monthly income. (PSR at ¶ 63 (identifying spousal income as \$8,300.00).) Last year, Ms. Barreto earned a one-time commission of \$100,000. However, she is not expecting to earn any commissions this year. As a result, Mr. Barreto’s monthly income is not \$20,142.70 (*id.*) but \$13,699.30. Moreover, Mr. Barreto received a \$150,000 Economic Injury and Disaster Loan during COVID. The principal is still outstanding although Mr. Barreto makes monthly payments. As a result, Mr. Barreto’s total liabilities are not \$870,000 (*id.*), but \$1,020,000.

In *United States v. Taffaro*, 919 F.3d 947 (5<sup>th</sup> Cir. 2019), for example, the government appealed a probationary sentence after the defendant, the second-in-command at the primary law enforcement and tax-collecting agency for his parish, i.e. a public official, was convicted of six counts of tax evasion, five counts of filing a false tax returns every year for 12 years and using the proceeds of his crime for an Alaskan cruise for his wife and friends, among other dubious expenditures. In affirming as reasonable the District Court’s grant of probation, which represented a downward variance from the sentencing guidelines imprisonment range of 27 to 33 months, the Court relied on, the defendant’s lack of criminal history and his “charitable activity”, among other things. *Id.* Unlike the defendant in *Taffaro*, who testified in his defense at trial, Mr. Barreto accepted responsibility for his conduct.

Moreover, in *United States v. Hoffman*, 901 F.3d 523, 554 (5<sup>th</sup> Cir. 2018) the Court applied a “holistic evaluation” of the sentences for two defendants, Peter and Susan Hoffman, based on their convictions for wire fraud related to filings and reports to obtain state tax credits for film production. (*Id.* at 558.) Analogous to the instant case, the crimes in Hoffman implicated monies that were being held in trust because “tax credits are . . . the functional equivalent of government spending programs.” (*Id.* at 537.)

As to Susan Hoffman, the Court affirmed a variance to probation from the guidelines recommended range of 46-57 months. (*Id.* at 559-561.) Accordingly, the variance of Ms. Hoffman’s sentence is greater than the one applied for here. As the Court noted in Hoffman, this is well within variances the Fifth Circuit has upheld. (*Id.* at 560, citing to *United States v. Rowan*, 530 F.3d 379, 380–81 (5<sup>th</sup> Cir. 2008)).

The *Hoffman* case is also instructive because it delineates the extent of downward variances that the Fifth Circuit has considered reasonable. Specifically, while affirming the sentence of Susan Hoffman, the court vacated and remanded Peter Hoffman’s sentence of 60 months incarceration where the range under the sentencing guidelines was 168-210 months, a variance which the Court deemed to be “colossal.” (*Id.* at 555) Importantly, that range goes well beyond the requested variance in the instant case. Moreover, Peter Hoffman intended to defraud the government of over \$3,500,000. Mr. Barreto caused a loss of between \$250,000-\$550,000. Peter Hoffman had a prior federal conviction (with probation) for filing a false income tax return. Mr. Barreto has no criminal history. Peter Hoffman was a wealthy Hollywood executive. Mr. Barreto was a former public servant and community leader and entrepreneur whose life has been devoted to service.

These striking and substantial differences between Mr. Barreto and Peter Hoffman demonstrate why a downward variance to a grant of probation is reasonable in the instant case and imposition of a sentence within the Guideline range would create a sentencing disparity.

This conclusion is confirmed when looking at downward variances courts have granted in other jurisdictions involving “defendants with similar records who have been found guilty of similar conduct.” See *Frescas v. United States*, No. EP-14-CR-1237-DCG-1, 2021 WL 4483402, at \*6 (W.D. Tex. Sept. 29, 2021), *appeal dismissed sub nom. United States v. Del Carpio Frescas*, No. 21-51213, 2022 WL 2155111 (5th Cir. Apr. 7, 2022) quoting *United States v. Guillermo Balleza*, 613 F.3d 432, 435 (5th Cir. 2010) (per curiam) (a “district court [in consider[ing] the need] to avoid unwarranted sentence disparities ... must focus on similarly situated defendants nationwide ...”) (emphasis added). See also *United State v. Reed*, No. CR 15-100, 2020 WL 4530582, at \*1 (E.D. La. June 5, 2020) (referring to district court’s decision granting a substantial

downward variance from an applicable guideline range of 18-24 months to five years of probation in case involving conspiracy to commit wire fraud and to launder money, wire fraud, and money laundering); *United States v. Vigil*, 476 F.Supp.2d 1231, 1242 (D.N.M.2007) (involving conviction for attempt to extort property by wrongful use and threat of use of economic harm, and under color of official right; the court applied a downward variance from 235 months imprisonment to a sentence of 37–months).

In addition, the rate of downward sentencing variances for fraud/money laundering cases in the 5<sup>th</sup> Circuit is higher than the national average. See “Statistical Information Packet, Fiscal Year 2022, Fifth Circuit”, 2022 Federal Sentencing Statistics, United States Sentencing Commission, [2022 Federal Sentencing Statistics | United States Sentencing Commission \(ussc.gov\)](https://www.ussc.gov), at p.10 (comparing by Circuit the rate for white collar offenders receiving non-prison sentences for “Fraud/Theft/Embezzlement”, Money Laundering, and other offenses) (website last visited on January 3, 2024).

Similar downward variances have been commonly applied to cases involving similarly situated defendants of “blue-collar” offenses. See *United States v. Rowan*, 530 F.3d 379, 380-81 (5th Cir. 2008) (affirming variance to probation from guidelines recommended range of 46-57 months for possessor of child pornography); *United States v. Duhon*, 541 F.3d 391, 394-95 (5th Cir. 2008) (affirming variance to probation from guidelines recommended range of 27-33 months for possessor of child pornography); *United States v. Polito*, 215 F. App'x 354, 358 (5th Cir. 2007) (same); see also *Gall*, 552 U.S. at 59 (2007) (no abuse of discretion for variance to probation from guidelines recommended range of 30-37 months for conspiracy to distribute drugs); *United States*

*v. Pyles*, 272 F. App'x 258, 258-59 (4th Cir. 2008) (no abuse of discretion for variance to probation from guidelines recommended range of 63-78 months for distribution of crack cocaine).

The above-mentioned cases demonstrate that higher financial levels under the sentencing guidelines in fraud cases like Mr. Barreto's are much more onerous than required. *See, e.g., Nelson v. United States*, 555 U.S. 350, 352, 129 S. Ct. 890, 172 L. Ed. 2d 719 (2009) ("The Guidelines are not only not mandatory on sentencing courts; they are not to be presumed reasonable."). More than onerous, the higher financial levels distort Mr. Barreto's true culpability. *See, e.g., United States v. Bart*, 973 F. Supp 691, 701-704 (W.D. Texas, April 27, 1997) (holding that its previously imposed sentence of 21 months was reasonable despite a recommended Guidelines range of 46 to 57 months based, in part, on personal characteristics of the accused). As the Court in *Bart* stated:

"A sentencing judge is not required to be blind to common sense and fundamental fairness . . . . Applying the guidelines to the individual circumstances of each defendant is heavily dependent . . . on the application of the fact-finding tribunal's experience with the mainsprings of human conduct." (*Id.* at 697.)

Considering the affirmed variances from this Court and other courts, applying the recommended sentencing guidelines would result in an unwarranted sentencing disparity.

## **2. Mr. Gutierrez**

Mr. Gutierrez's plea agreement with the government limits the government's allocation to one year in prison. Although the defense defers to the Court regarding Mr. Gutierrez's actual sentence, we respectfully note that any sentence for Mr. Barreto which exceeds Mr. Gutierrez's would result in an unwarranted sentencing disparity.

In each of Mr. Gutierrez's four meetings with the government,<sup>14</sup> Mr. Gutierrez promised to tell the truth but, in fact, lied to the prosecutors and their case agents. The manifold number of inconsistencies between what Mr. Gutierrez told the government in 2020 with what he told the government in 2022 struck at the core of Mr. Barreto's trial defense. Mr. Gutierrez's lack of credibility was the primary reason why Mr. Barreto exercised his right to a trial.

Moreover, the government's discovery makes clear that Mr. Gutierrez continued to lie to the government while purporting to cooperate. Stark contradictions exist between what Mr. Gutierrez told the prosecutors just before and after he signed his cooperation agreement in 2022, and what other government witnesses told the government and/or what other documents, whose authenticity is not in doubt, clearly show. Representative examples include:

- Maria Cuellar – Mr. Gutierrez's mother who received over \$200,000 in kickbacks from non-profits with Rapier funds.
  - Mr. Gutierrez told the government that his mother met Mr. Barreto in person during a meeting where she advised him that she could do work for him.
  - In fact, Ms. Cuellar never acknowledged to the government that she knew of or worked with Mr. Barreto.
- Carlos Salazar - purported contractor who submitted an invoice in the amount of \$20,880 to the Foundation for work on SA Youth Project.
  - Mr. Gutierrez told the government that Carlos Salazar was a lawyer for Mr. Barreto.
  - In fact, Mr. Salazar was a partner with Mr. Gutierrez in a cell phone company and, when asked by the government, disclaimed any knowledge of Mr. Barreto.
- Rev Enterprises (Ray Lopez, owner) - purported contractor which submitted an invoice in the amount of \$15,000 for work on the SA Youth Project.

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<sup>14</sup> According to the government's discovery, Mr. Gutierrez met with the prosecutors and their case agents on the following dates: March 16, 2020, June 24, 2020, May 27, 2022, and September 7, 2022.

- Mr. Gutierrez told the government that Rev Enterprises did work on the SA Youth project.
- In fact, Ray Lopez told the government that he was partnering with Mr. Gutierrez on unrelated construction projects, had no knowledge of either Mr. Barreto or TLC, and never did any work on the SA Youth Project.
- Response to Rapier’s inquiry for an accounting in October 2019
  - Mr. Gutierrez told the government that, regarding a reply, Mr. Barreto would handle it.
  - In fact, the government’s discovery shows the opposite. (Email string dated October 16, 2019, attached hereto as Ex. 71.) On October 16, 2019, Mr. Gutierrez emailed a “draft letter” to Mr. Barreto and Prisma Soto, a staff contractor for the non-profits. Mr. Gutierrez wrote, “Please review and comment and make changes.” (*Id.*) In response, Mr. Barreto wrote, “I think it’s fine. Prisma will send to you on our [Foundation] stationary.” (*Id.*) Thereafter, Mr. Gutierrez asks Mr. Barreto for “any pictures [Ms. Soto] thinks we should include of events and stuff we have done. I have pics of the house build.” (*Id.*) The exact same wording – verbatim is then sent on TLC letterhead to Dr. Rapier (Ltr. to Dr. Rapier, attached hereto as Ex. 72).

After a few days of testimony, defense counsel was able to separate the wheat from Mr. Gutierrez’s chaff. Thereafter, Mr. Barreto immediately began the process of accepting responsibility for his guilt via a factual basis which had been purged of Mr. Gutierrez’s deceit. With the need to cross-examine Mr. Gutierrez now moot, the trial ended with the testimony of only two witnesses, including one civilian. The government’s long witness list had included Dr. Rapier, whom the government had identified to the defense on the day before Mr. Barreto’s plea as an imminent witness.

For many reasons, including those already discussed elsewhere in this Memorandum, *supra*, Mr. Barreto is dissimilarly situated from Mr. Gutierrez. Unlike Mr. Gutierrez, Mr. Barreto never lied to the government. Unlike Mr. Gutierrez, Mr. Barreto never used the Court as a self-

serving charade for mendacity glossed as cooperation. Any sentence which exceeds Mr. Gutierrez's would, therefore, result in an impermissible sentencing disparity.

**F. The Unusual Facts of this Case Call for Leniency**

Hector Barreto has already been punished severely because of the conduct that has brought him before this Court. He is a rightfully proud public servant whose reputation has been forever tarnished despite the incalculable good which he has done in his life for the disadvantaged. He is an entrepreneur who built a business from nothing into a successful and respected enterprise but ultimately will have lost that business entirely. He has been publicly humiliated by press reports about this case. Mr. Barreto's family and friends supported him during the trial which he cut short by pleading guilty and they continue to support him as he stands before this Court for sentencing. As detailed throughout this memorandum, Mr. Barreto's conviction and imminent sentencing have impacted not only him but also his very close family – including his wife and children who adore him, and those who look to him for emotional support. Mr. Barreto now must also face – as a convicted felon – the very same public whom he once inspired with ethical and effective servant leadership. To be sure, the sentencing goal of deterrence has been thoroughly accomplished here, as Mr. Barreto's case has provided the country with a tragic example of how someone so successful and so admired can lose virtually everything he has built by violating the law. Mr. Barreto has learned an extremely painful but important lesson because of this case and most assuredly will never again come before a criminal court.

It is important to note that, despite the anxiety that he, his family and his many supporters have felt since this case began, Mr. Barreto has – as he has done his entire life – tried to think

positively and not wallow in self-pity. Rather, since this case began, Mr. Barreto has continued to realize his father's vision of "Sanchez to Sanchez to Smith" by working with several non-profits which need Mr. Barreto now and into the future. In addition, he is working on creating a partnership with project financing and management team to convert a rural tract of land which is owned by Mr. Barreto in Arenal, Jalisco, into a commercial and residential master plan. In addition, he has created a business plan with Mr. Caria to "implement [Hector's] vision to develop real estate and construction projects that would employ minority contractors and build mixed use facilities for underserved communities of color." (Ltr. of Steve Caria, attached hereto as Ex. 19.) There can be no doubt that Mr. Barreto will bring the same enthusiasm for justice and compassion in the next phase of his life.

In addition to the punishment that he has already suffered because of this case and the effect incarceration would have on his family, we further submit that Mr. Barreto's conduct merits a below-Guidelines sentence. Mr. Barreto's lifetime of servant leadership in the private sector, nonprofits and government helped raise awareness, enroll partners, and realize tangible economic gains for the Hispanic Small Business community and minority small businesses, in general. Mr. Barreto's ground-breaking 1998 case study has now become the norm as evidenced by the now annual reports from prestigious institutions focusing on the growing economic contributions of Latinos in the United States. (*See* 2023 UCLA Report on Latino GDP); (*See also* 2023 LDC U.S. Latino GDP Report, 6<sup>th</sup> Annual Edition, [LDCRprtGDP-0823.indd](#) ([lattitude.net](#)) (same) (website last visited on January 3, 2024). As Mr. Moseley writes so eloquently in his letter to the Court, "I know that Hector has given far more to the Hispanic community than he's taken. . . ." (Ltr. of James Moseley, attached hereto as Ex. 2.) The same

is true of the minority community at large, as evidenced by Mr. Barreto's induction into the MBHFM based on his lifetime of commitment and contribution to equality, access, and fairness for the minority small business community. We submit that he has, through his many years of service and acts of charity, kindness, empathy, and support shown to others throughout his life, demonstrated that he is worthy of this Court's mercy.

### **III. CONCLUSION**

Hector Barreto has spent his life giving back to his family, community, and country. Assisted by his servant leadership, Latino Americans have become a powerful force creating a rising tide for all. While propelling the national economy forward for both Sanchez and Smith, Latino Americans, as a group, now enjoy more economic security, access to higher education and healthcare than ever before. Throughout his entire life, in both the public and private sector, Hector Barreto has offered leadership which helped empower Latinos with the resources and training to attain the high level of educational achievement, income, household ownership and healthcare which so many now enjoy. In addition, there can be no doubt that the nonprofits substantially benefited from Mr. Barreto's leadership and generosity. Despite the regrettable circumstances involving the four loans at issue in this case, we submit that there is no meaningful benefit to society by placing Mr. Barreto in prison for any period. Therefore, for all the foregoing reasons, we respectfully request that, in this case, the Court impose a non-guidelines sentence of probation subject to the special conditions suggested by the Probation Department.

Dated: January 5, 2024  
Washington, D.C.

Respectfully Submitted,

/s/ Jonathan N. Rosen

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