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Attorney for Defendant BABAK BROUMAND

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  Plaintiff,  v.  BABAK BROUMAND,  Defendant.	) No. CR-20-0224-RGK ) ) DEFENDANT BABAK BROUMAND’S ) SENTENCING MEMORANDUM ) -and- SUPPORTING DECLARATION OF ) STEVEN F. GRUEL ) ) ) ) Honorable R. Gary Klausner ) ) Date: February 27, 2023 ) Time: 1:30 pm ) ) )
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BABAK BROUMAND, by and through his counsel, Steven F. Gruel, hereby submits  
DEFENDANT BABAK BROUMAND’S SENTENCING MEMORANDUM and  
SUPPORTING DECLARATION OF STEVEN F. GRUEL.

**I. INTRODUCTION**

***TO FASHION AN APPROPRIATE SENTENCE, THE LAW REQUIRES THE  
COURT CONSIDER THE “FULL MEASURE” OF BABAK BROUMAND AND HIS  
UNDISPUTED CONTRIBUTIONS TO THE SECURITY OF THE UNITED STATES***

1 Babak Broumand presents himself before this Court for sentencing. In determining the  
2 appropriate sentence for any defendant, a sentencing court must “make an individualized  
3 assessment based on the facts presented,” which includes “a broad command to consider “the  
4 nature and circumstances of the offense and the history and characteristics of the defendant.”  
5 *Gall v. United States*, 552 U.S. 38, 50 & n.6 (2007), quoting 18 U.S.C. §3553(a)(1).

6 While the trial focused on only a two-year period in Mr. Broumand’s life, the evidence  
7 did little in presenting a complete picture of him or his achievements ensuring our Nation’s  
8 safety or his contributions to his community. True, we learned that Mr. Broumand was a 20-year  
9 FBI agent responsible for our national security in combatting terrorism, but we didn’t hear of his  
10 long and decorated track record. On August 23, 2022, the Court noted that details from 11  
11 operations conducted by Mr. Broumand posed a risk to national security if revealed at trial.  
12 (Dkt. #174). However, there is no such concern for the Court to now privately consider his far-  
13 reaching accomplishments in assessing the full measure of Mr. Broumand.  
14

15 At sentencing, the complete picture of Babak Broumand commands center stage. An  
16 axiomatic principle undergirding the federal sentencing regime is that “the punishment should fit  
17 the offender and not merely the crime.” *Pepper v. United States*, 131 S.Ct. 1229, 1240 (2011)  
18 quoting *Williams v. New York*, U.S. 241, 247 (1949) (internal quotes omitted). The mosaic of  
19 Babak Broumand’s, life including his 20 years of outstanding service to the United States, when  
20 correctly applied to the advisory United States Sentencing Guidelines and statutory sentencing  
21 factors enumerated in Title 18 USC § 3553(a) support a downward variance. Mindful that  
22 *fundamental fairness* is the guiding principle in fashioning a sentence “sufficient but not greater  
23 than” necessary to achieve the goals of sentencing, Mr. Broumand respectfully recommends the  
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1 following sentence: if the Court imposes incarceration, it be no greater than 18 months in  
2 custody, with 3 years of supervised release and 100 hours of community service. No fine is  
3 warranted in this case.

4 **II. THE ADVISORY PRESENTENCE REPORT (PSR)**

5 A. The PSR's Advisory Guideline Calculation Is Incorrect

6 Mr. Broumand's presentence report (PSR) was prepared on December 27, 2022. Mr.  
7 Broumand's written objections are filed herewith in a separate pleading but are summarized  
8 again here. In his objections, Mr. Broumand demonstrates that the final offense level should be  
9 21 levels, not 29. The correct guideline sentencing range should be 37 months to 46 months. The  
10 defense concurs with the PSR that the facts of the case warrant a downward variance from the  
11 advisory sentencing guidelines pursuant to 18 U.S.C. § 3553(a). PSR at ¶ 161. Together with the  
12 factors mentioned in the PSR, Mr. Broumand's submits that his 20 years of FBI  
13 counterintelligence service to the Nation is a critical component warranting a downward  
14 variance.  
15

16 **III. THE STATUTORY FACTORS AND GOALS OF SENTENCING**

17 Title 18, USC § 3553(a) lists the factors to be considered so that the court imposes *a sentence*  
18 *sufficient, but not greater than necessary*, to comply with the statutory purposes of sentencing.  
19 (emphasis added). The Court, in determining the particular sentence to be imposed, shall, among  
20 other factors, consider the following factors relevant to this case: (1) the nature and  
21 circumstances of the offense and the history and characteristics of the defendant; (2) the need for  
22 the sentence imposed to reflect the seriousness of the offense, to promote respect for the law and  
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1 to provide just punishment; to afford adequate deterrence to criminal conduct and to protect the  
2 public from further crimes of the defendant.

3 If a period of confinement is necessary, the defense suggests that a term of 18 months,  
4 with a subsequent supervised release period that requires community service, will amply meet  
5 the statutory goals and requirements of sentencing. No fine should be imposed.

6 **A. MR. BROUMAND’S PROFESSIONAL HISTORY & CHARACTERISTICS**

7 For 20 years, Babak Broumand worked in the FBI’s counterintelligence section to  
8 protect the country where he, as a 13-year-old boy, and his family fled in 1979 for safety from  
9 Iran’s tyranny. Given the secret nature of his counterintelligence work, his accomplishments  
10 went unheralded without public knowledge or fanfare. Even now, with the public’s perception of  
11 Mr. Broumand jaded by a prosecution stemming from a toxic 2-year relationship with serial con-  
12 man E.S., he cannot seek redemption and publicly disclose his extraordinary achievements.  
13

14 Mr. Broumand’s success was, however, recognized and appreciated within the  
15 Intelligence Community. Through the CIPA proceedings conducted in this case, this Court had  
16 the opportunity to learn of Mr. Broumand’s 20 years of achievements securing our Nation’s  
17 safety. The Court learned of the numerous national and international operations successfully  
18 conducted by Mr. Broumand. He simply asks that the Court consider those “secret” factors about  
19 him and not focus on the events from a 2-year relationship with E.S.  
20

21 Should there be any doubt of Mr. Broumand’s value as an FBI counterintelligence agent,  
22 his long lasting positive impact in combatting terrorism, or the danger Agent Broumand routinely  
23 faced, retired FBI Special Agent in Charge Frank Montoya, Jr. offers his letter for the Court’s  
24 consideration.  
25

1           **1.       Frank Montoya’s Letter Requesting Leniency**

2           Mr. Montoya served in numerous top level counterintelligence positions with the FBI. He  
3 knows of agent Broumand’s work and the profound impact of Broumand’s achievements. Mr.  
4 Montoya served as a Special Agent in Charge of two FBI field offices, and as the Director of the  
5 National Counterintelligence Executive, the senior-most counterintelligence agency in the US  
6 government. *See Declaration of Steven Gruel, Exhibit A.* From 2009 to 2011, agent Broumand  
7 worked for Mr. Montoya who was then the Assistant Special Agent in Charge for  
8 Counterintelligence in the FBI’s San Francisco Field Office. Mr. Montoya describes agent  
9 Broumand’s efforts “on behalf of the FBI, the US Intelligence Community (USIC), and our  
10 country in that time period were exceptional.” Of course, because of the sensitive nature of this  
11 information, Mr. Montoya, is limited in what he can say, but he nonetheless writes:  
12

13                       *“I cannot explain in any detail the nature of his successes—the Classified*  
14 *Information Procedures Act (CIPA) notwithstanding—but suffice to say their benefit to US*  
15 *national security were significant. That was not only evident during my time in San Francisco,*  
16 *but as I continued to rise through the ranks of the FBI and the USIC [United States Intelligence*  
17 *Community].*

18                       *I not only continued to appreciate Babak’s skills, temperament, loyalty, and*  
19 *determination, but sought those qualities in others with whom I worked to protect our country*  
20 *against intelligence threats from hostile nation states. I knew, with men and women like him on*  
21 *watch, that our country would be safe.*

22                       *Certainly, like many of my colleagues, I was troubled when I heard about Babak’s*  
23 *misdeeds. They were not the actions of the man I knew. Nor do I excuse them. There should be*  
24 *consequences for breaking the law, especially amongst those who occupy positions of trust. And*  
25 *I expect Babak knows that as well as anyone who served, and will suffer his punishment with the*  
26 *courage and dignity he exhibited when he worked for me in tough and dangerous places around*  
*the world, often with little to protect him but his own wits.*

*Indeed, for that reason alone, I would ask for your leniency. The kind of work*  
*Babak did, often in the shadows of a gray and treacherous world, frequently has a debilitating*  
*impact on those who do it. Knowing where to draw the line and when to return to reality can*  
*become an exceedingly difficult task when your very life depends on an ability to live a lie. Even*

1 *when you are home and safe, it can be challenging, especially in a zero-defect world that*  
2 *sometimes views moral frailty itself as a criminal act.*

3 *I do not say this to excuse Babak’s criminal acts, but I do offer it as an*  
4 *explanation. One which tempers my disappointment in what he did. And, one, I hope, will*  
5 *temper Your Honor’s as you contemplate his punishment.”*

6 Mr. Montoya’s words carry significance at this time of sentencing. He stands uniquely  
7 qualified not only as a career FBI agent who served at the highest levels of National  
8 Counterintelligence, but as someone who understands the 20-year contributions by Babak  
9 Broumand. He also knows, but cannot publicly share, the dangers and harm encountered by Mr.  
10 Broumand in his service to the United States. While Mr. Montoya knows that punishment is  
11 warranted, he asks the Court to consider the full measure of and the national contributions by  
12 Babak Broumand.

13 **2. The CIPA Pleadings – Operations and Topics**

14 This case involved considerable work in accordance with CIPA.<sup>1</sup> With the benefit of the  
15 general comments in Mr. Montoya’s letter, the significance of the Mr. Broumand’s CIPA 5  
16 Notice and the detailed Addendum listing operations and topics gather deeper meaning. Listing  
17 those operations for the Court were not merely words, but Broumand’s testament to (20 years of  
18 work) protecting the United States and the World against terrorism. As Mr. Montoya mentions,  
19 Mr. Broumand was often placed in harm’s way and was protected only by his wits.

20  
21 The Court is familiar with these sensitive materials. The defense respectfully requests  
22 that the Court consider the matters raised in the CIPA proceedings once again, however this time  
23 in the context of a just and fair sentence.

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25 \_\_\_\_\_  
26 <sup>1</sup> The CIPA Section 5 Notices, Addendum and relevant numerous CIPA pleadings are fully incorporated herein by reference .

1           **3.       The Intelligence Community’s Award Recognizing Mr. Broumand**

2           Mr. Broumand’s numerous investigative accomplishments were not “waved about” in  
3 FBI press releases or U. S. Attorney press conferences. Actually, there is no way of fully  
4 quantifying the success of a counterintelligence operation or appreciating the acquisition of key  
5 sensitive information connected to a hostile state or organization. However, together with the  
6 consideration of the successive operations led by Mr. Broumand, the defense hereby submits  
7 several of the commendations and awards presented from anti-terrorism and intelligence  
8 colleagues. *Gruel Declaration, Exhibit B.* These awards are their attempts to quantify and show  
9 appreciation for his career’s worth of work.  
10

11           **4.       Letters of Support For the Court’s Consideration**

12           Babak Broumand is a son, husband, father and beloved member of his community. The  
13 Defense submits 114 letters for the Court’s review from people sharing their experiences with  
14 and feelings for Mr. Broumand. If this sentencing hearing were in the Northern District of  
15 California, there would be no doubt that the courtroom would be packed with his supporters. The  
16 letters show a much different man than how the prosecution would like Mr. Broumand to be  
17 viewed. A following samples reveal a caring and responsible individual worthy of this Court’s  
18 leniency:  
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- 20           •   *“Babak is a model Christian, selflessly giving his time, resources, and talents to serve*  
21       *the community. When I fell ill with Covid, Babak took me into his home and took care*  
22       *of me like a Good Samaritan. Babak is sincere, generous, and trustworthy, whom I*  
            *love as a brother. I go to him for advice.” Metropolitan Tarasios –*  
  **Archbishop, Greek Orthodox Church**  
23  
24           •   *“Babak mentored and career counseled both of my sons, one of which just became a*  
            *Special Agent for the Treasury thanks to Babak.” Norma Sotomayor & Jim*  
  **Kolokotrones, Federal IRS Agents**  
25  
26

1 • *“Babak is a terrific friend and mentor to my children. My oldest son has autism and*  
2 *moved to Northern CA to live in a home with people with similar issues. It was his*  
3 *first time living away from home. He could not have made it in this program without*  
4 *the friendship Babak provided him. Picking him up when my son needed a break from*  
5 *the program, serving him home cooked meals, giving my son a sense of home. Babak*  
6 *gave my son a home away from home. I have watched Babak serve his church*  
7 *community for over 20 years. He provides friendship and knows the meaning of true*  
8 *community.”* **Kami Heist, Friend for 25 years**

9 • *“When I notified Babak that my husband was diagnosed with terminal cancer, he*  
10 *didn’t hesitate to drive 5 hours to visit us. This shows his commitment and love for a*  
11 *friend. I believe him to be a GOOD person.”* **Gisella Benitez, Friend for 30 years**

12 • *“Babak voluntarily enriched and educated hundreds of students at my high school.*  
13 *He told of experiences where he risked life and limb in his duty as a counter terrorism*  
14 *agent, and counter-intelligence to help thwart America’s enemies.”*

15 **Lawrence Freeman, Teacher for 40 years, US Constitutional Law, U.S.**  
16 **History, English and Journalism**

17 • *“Babak has always been extremely kind, humble, and genuine. Please look at the real*  
18 *character of Babak and the many accomplishments and good deeds. A family man*  
19 *and a God-fearing man.”* **Lori Boatright, Recovering Alcoholic / 30 years sober**

20 **5. Emotional Distress and Alcohol Abuse**

21 While not an excuse, it is worth noting that in 2014 to 2016, Mr. Broumand personally  
22 suffered from cancer along with his father who eventually died of lung cancer. Coupled with  
23 these life challenge, Mr. Broumand sought refuge in and abused alcohol.

24 The constant danger associated with Mr. Broumand’s counterintelligence undercover  
25 double-life was a very real stress, as noted by Mr. Montoya in his letter, that added to Mr.  
26 Broumand’s pressures. His wife writes that several times she found him crying at home due to  
the pressures, danger and troubles he incurred in the field of operation.

These facts are stated here not as an excuse for his behavior with E.S., but serve as real-  
life explanations for such unusual behavior by someone so committed to the FBI and this  
County’s safety.



1 Possibly vulnerable, Mr. Broumand was easily susceptible to E.S.'s wealth, lifestyle and  
2 lies. The trial showed that many others, including Presidents, Governors, State politicians, law  
3 enforcement officers and entertainers likewise were fell to E.S.'s scam. In fact, for years the FBI  
4 agents and federal prosecutors in this case were duped by E.S. into believing that he was a *bona*  
5 *fide* lawyer. E.S. also scammed *this Court* and the United States Attorney with a cooperation  
6 plea agreement that included a paragraph that he would voluntarily surrender his bar license.  
7 This was a completely meaningless gesture deceiving all involved that E.S. was remorseful and  
8 truthfully cooperating with the United States.

9  
10 Good people sometimes do bad things. While punishment here would include  
11 incarceration, Mr. Broumand respectfully asks that the Court also consider as mitigation many of  
12 the personal difficulties he faced when associating with someone like E.S.

13 Mr. Broumand requests that the Court also include in its sentencing Order that he be  
14 permitted the opportunity to participate in any alcohol treatment programs offered by the Bureau  
15 of Prisons during.

16 **B. THE NATURE OF THE OFFENSE**

17 This case involved very serious violations of the law. Bribery of law enforcement officers  
18 erodes the public's core faith in the agencies tasked with protecting community. While this case  
19 involved serious matters, it should be noted now at sentencing that there was no evidence that  
20 Mr. Broumand's actions had any negative impact on any other law enforcement operation or  
21 individual.  
22

23 **1. No Evidence of Any Jeopardy or Harm From Broumand's Actions**

24 There was no evidence that any violation of Broumand's law enforcement duties harmed  
25

1 or jeopardized any law enforcement investigations or the country’s security. In fact, E.S.’s  
2 requests to Mr. Broumand that he provide drugs to a Qatar Prince, conduct an FBI database  
3 search on Hovhannes Nazaryan or hire Beverly Hills officers and private investigators to follow  
4 Levon Termendzhyan were never fulfilled.

5 Likewise, as testified by the respective FBI case agents, Mr. Broumand’s database  
6 searches of Felix Cisneros and Sam Solakyan did not result in any negative impact on their  
7 investigations and successful prosecutions. Frankly, there was no evidence that Mr. Broumand  
8 actually “protected” E.S. from any ongoing investigation or inquiry. E.S. may have felt secure  
9 with Mr. Broumand as his “friend,” but the prosecution failed to show any evidence, because  
10 there was none, that anything he did in those 2 years from 2015 to 2016 protected him from  
11 anything.  
12

13 **2. Promote Respect for the Law, Provide Just Punishment, Protection & Deterrence**

14 There is nothing about the isolated activities from 2015 to 2016 that suggest Mr. Broumand  
15 will commit any further crimes or that the community needs protection from him. As this is a  
16 first conviction for a 56-year-old man, nothing suggests that a sentence of incarceration is  
17 necessary to promote respect for the law, protection or deterrence. While the prosecution will  
18 likely argue that the punishment here requires a greater period of incarceration than 18 months in  
19 order “to send a message,” it cannot support that claim upon the need to protect the community  
20 from or to deter Mr. Broumand. Simply put, any need for a “message” should be tempered by  
21 also considering what this man has done for the United States in his 20 years with the FBI.  
22

23 Dated: February 13, 2023

Respectfully Submitted,

24 \_\_\_\_\_  
/s/

STEVEN F. GRUEL

25 Attorney for Defendant Babak Broumand