

1 RANDY GROSSMAN
Acting United States Attorney
Southern District of California
2 NICHOLAS W. PILCHAK
California Bar No. 331711
3 Assistant U.S. Attorney
RYAN R. CROSSWELL
4 North Carolina Bar No. 36700
Trial Attorney
5 880 Front Street, Room 6293
San Diego, California 92101
6 Telephone:(619) 546-9709
Email: Nicholas.Pilchak@usdoj.gov

7
8 Attorneys for the United States

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12
13 Plaintiff,

14 v.

15 DAVID ROMERO (1),

16
17 Defendant.

Case No.: 20-CR-1215-CAB

Date: April 30, 2021

Time: 9:30 a.m.

The Honorable Cathy Ann Bencivengo

**UNITED STATES' SENTENCING
MEMORANDUM**

18
19 **TO: Anthony E. Colombo, Jr., Attorney for Defendant DAVID ROMERO**

20 The UNITED STATES OF AMERICA, by and through its counsel, RANDY
21 GROSSMAN, Acting United States Attorney, Nicholas W. Pilchak, Assistant U.S.
22 Attorney, and Ryan R. Crosswell, Trial Attorney, hereby files its Sentencing
23 Memorandum.

24 **I.**

25 **INTRODUCTION**

26 Defendant David Romero and his confederate Bruno Suarez-Soto used their
27 public positions for their personal gain, to demand and obtain bribes in exchange for
28 conducting City business. Romero—the Mayor *Pro Tem* of the City of Calexico—and

1 Suarez-Soto subverted their responsibilities to the public by soliciting bribes behind
2 closed doors for the official acts they were supposed to be performing for the public’s
3 benefit. In recorded meetings with an undercover FBI agent whom they believed to be
4 an investor seeking to open cannabis businesses in the city, Romero and Suarez-Soto
5 agreed to guarantee the investor’s application in exchange for the direct payment of a
6 \$35,000 cash bribe. They promised to use their own influence to direct the activities of
7 other public servants to ensure that the investor’s application was approved. Romero
8 even volunteered to delay or revoke other applications to guarantee that the bribe-
9 paying investor’s application would be granted. Then, when confronted by overt FBI
10 agents about the arrangement, both Romero and Suarez-Soto lied repeatedly to try to
11 protect themselves. Notably, both Romero and Suarez-Soto have acknowledged that
12 the bribe they took from the undercover FBI agent was not the first bribe they had
13 accepted in connection with their public positions. As Suarez-Soto bragged to the
14 undercover agent, “This isn’t our first rodeo.”

15 Given the serious and brazen nature of the crime, the United States accordingly
16 recommends that the Court sentence Romero to 30 months of custody to be followed
17 by three years of supervised release.

18 **II.**

19 **STATEMENT OF THE CASE**

20 On May 21, 2020, a criminal Information was filed against Defendants David
21 Romero (1) and Bruno Suarez-Soto (2), charging them with conspiracy to commit
22 federal program bribery, in violation of 18 U.S.C. § 371.

23 On June 11, 2020, both defendants pleaded guilty.

24 **III.**

25 **STATEMENT OF FACTS**

26 David Romero was elected to the Calexico City Council for a term beginning in
27 November 2018; he was set to assume the rotating position of Mayor in July 2020.

1 Bruno Suarez-Soto was appointed in about December 2019 or January 2020 to
2 Calexico’s Economic Development and Financial Advisory Committee.

3 California state law has legalized the use and (under certain circumstances) the
4 distribution of marijuana, which remains a prohibited controlled substance under
5 federal law. Part of the state regime gives local jurisdictions control over whether to
6 allow commercial cannabis activities inside their boundaries. Under state law, the City
7 of Calexico has approved ordinances providing for permits for commercial cannabis
8 activities in the City. Businesses wishing to engage in these activities inside the City
9 must apply for these permits, in addition to passing state licensing requirements. The
10 FBI began a public corruption investigation in the City of Calexico based on complaints
11 from residents about local government officials demanding or accepting bribes in
12 exchange for preferred treatment as part of the application process for these permits,
13 and other applications being stymied for refusing to pay the requested bribes.

14 **A. Romero & Suarez-Soto Demand \$35,000 Bribe At First Meeting**

15 To determine whether Romero and Suarez-Soto were indeed soliciting and
16 demanding bribes, the FBI set up an undercover operation. The two men met with an
17 undercover agent (the UC) at a Calexico restaurant on December 19, 2019. Romero
18 excused himself near the beginning of the meeting—apparently so that Suarez-Soto
19 could outline the terms of the proposed arrangement outside of his presence. Suarez-
20 Soto stressed to the UC how many people were applying for cannabis dispensary
21 permits, and pointed out that the issue would be getting the UC’s application in the
22 queue: the line of applicants waiting for City approval.

23 Suarez-Soto then told the UC that the UC’s application would need at least three
24 votes from the Calexico City Council, and added, “that’s where David Romero comes
25 in.” Suarez-Soto explained that he had a “team” that could help with the UC’s
26 application. He pointed out that “there’s obviously a cost to it” “but it would include
27 all the processing with the city,” which he would guarantee, and “it guarantees you . . .
28 a top spot in the queue, let’s just say that; we’ll say it like that.”

1 After the restaurant meeting concluded, the UC and Suarez-Soto walked out to
2 the parking lot. While they waited for Romero to return, Suarez-Soto told the UC, “we
3 can do everything, I mean what I’m saying is put you in the queue, push you to number
4 one, that’s not an issue with David [Romero].” Suarez-Soto explained that the cost of
5 engaging the “team” on all of these issues would be “around thirty-five thousand.” He
6 immediately added that “I mean, it’s, you’re guaranteed. There isn’t gonna be any, you
7 know what [*Spanish expression for ‘bullshit’*]*—*none of that bullshit.”

8 Romero walked up and asked, “Good to go?” apparently to confirm that Suarez-
9 Soto and the UC had discussed the expected terms for his assistance. Suarez-Soto
10 agreed. The UC asked, “the number, is that a set number or is it gonna move around?”
11 Romero asked, “Which one?” Suarez-Soto replied, “I would say it’s set but you know
12 what I mean but again once we go more into detail, we could see how we could
13 negotiated but right now I say it’s set.” He immediately added, “But I mean again it’s
14 guaranteed. You know what I mean, it’s gonna be the real bullshit, yeah we’re not
15 gonna like disappear, you know what I mean?” Romero interjected “I can’t. I’m Mayor
16 *Pro Tem*. In July, I’ll be Mayor. If anything I ran based on this platform—which is
17 cannabis.”

18 The UC asked the two men again what he would be getting for his \$35,000:
19 “[T]his...thirty-five: that will get us to the front of the line?” Suarez Soto responded,
20 “Hell yeah.” At the same moment, Romero said “I didn’t want to say it in front of
21 everybody, but it will.” Romero added that, “There’s people that are already on queue
22 that are pulling off and I could just push it forward because I can just say this and that,
23 and some CUPs [conditional use permits] have been revoked, I can revoke CUPs if I
24 want to [*Romero and Suarez Soto laugh*] there’s a couple that are already on the fucking
25 they’re are on the, the . . .” Suarez Soto chimed in: “Shit list.” By these comments,
26 Suarez-Soto and Romero seemed to offer to reject or delay the submissions of other
27 applicants—in all likelihood, non-bribe-paying applicants—to ensure favorable
28 treatment for the UC. A moment later, Romero urged the UC to get his application (and

1 his payment) in soon “because the closer you are [to the front of the queue], the easier
2 it is for me to be able to manipulate that.”

3 Before concluding, the UC asked again for assurances that it was “guaranteed,”
4 and Suarez Soto responded, “Of course, of course.” The UC pressed, “it’s not gonna
5 move, it’s not gonna go from thirty-five to forty?” Both men strenuously denied that,
6 with Romero adding:

7 Nah, nah, nah, that’s what I’m saying it’s not gonna be like, oh by the way,
8 you want to push a little faster, nah! This is done. Set and sealed—we
9 won’t ask for anything else. But the only thing is we do ask... we work
10 for so many other people and when we have everything ready for them,
11 “oh by the way guys I don’t have the finances ready.” I burn favors, I burn,
12 you know I pull certain strings that and you know I got to wait till they ...
straighten up again so that’s the only reason why, but we don’t change any
of our prices. That’s why we talk about it before hand and we set it all up.

13 After agreeing with both men that the bribe could be paid in two installments, the UC
14 told the pair, “Let’s get this started.” Suarez Soto added that, “This isn’t our first rodeo.”

15 **B. At Second Meeting, Romero & Suarez-Soto Suggest Manipulating City Hall.**

16 The UC met again with Romero and Suarez-Soto at an El Centro restaurant on
17 January 9, 2020. At the conclusion of the meeting, the UC paid the pair \$17,500 in cash
18 in two envelopes in the parking lot outside.¹

19 During the dinner meeting, Romero emphasized how hard it was to work with
20 the City. He added “thankfully I’m part of the City, which will make it easier, at least
21 you know at the municipal level.” When Romero got up from the table, Suarez-Soto
22 took the opportunity to point out “the benefit of having him [Romero] part of it, because
23 there is gonna be red tape but it’s gonna be red tape that we would have regardless. You
24 know what I mean? [And] He’s gonna get rid of so much bullshit tape that exists, that’s
25 just gonna fast track everything.” The UC clarified that, with their agreement in place,
26

27 ¹ This cash has not been recovered by law enforcement and is the basis for the
28 agreed-upon forfeiture.

1 “it’s just a matter of checking the boxes.” Suarez Soto agreed, “It’s just literally just
2 checking the boxes turning in the paperwork, and we’re good.”

3 When Romero returned to the table, the UC tried to nail down the details of
4 what would happen once he filed his application. Romero responded that he would
5 clarify the process after going over the checklist with the City tomorrow, and added:

6 **Romero:** Oh trust me, you’re good with my guy.

7 **UC:** Okay, okay.

8 **Romero:** And our planning guy [*laughs*] [*unintelligible*]

9 **Suarez-Soto:** Let’s just say the people that have to approve your license...

10 **Romero:** They’re my best friends at the entire City Hall.

11 **UC:** Have they approved it already?

12 **Romero:** Fuck yeah! [*everyone laughs*]

13 Discussing the approval process for the application, Romero added another
14 benefit: “I’ll tell you this, your real estate agent, slash, property manager, is your
15 planning commissioner.” The UC sought to clarify whether the \$35,000 payment would
16 handle all of these services: “the thirty-five will handle, planning, planning and all
17 that?” Suarez-Soto responded, “Yeah, that handles—” Romero interjected,
18 “Everything. It handles all of our services. Which includes everything we just talked
19 about.”

20 After dinner, in the parking lot, the UC handed Romero and Suarez-Soto \$17,500
21 in cash: half of the agreed-upon \$35,000 bribe. The cash was split into two envelopes;
22 one for each man. Romero took a step back when the UC handed over the envelopes,
23 so that they were physically passed only to Suarez-Soto. When the UC asked whether
24 “you guys want to count it,” Romero responded “We trust you.” The UC asked, “We’re
25 good, right?” Romero replied “Trust me—where I’m at, in my line of business, I can’t
26 fuck up. Which means he [Suarez-Soto] can’t fuck up.”

1 **C. At Third Meeting, Romero & Suarez-Soto Lie To FBI Agents.**

2 Romero and Suarez-Soto met with the UC a final time on January 30, 2020, at an
3 El Centro restaurant. During the dinner meeting, Romero again assured the UC that he
4 would protect the priority of the UC's application: "What I can do, is that, we can do,
5 is, pretty much I can talk to Planning, and make sure to put everybody else on hold... I
6 can pretty much make sure to put everyone else on hold—but you." Once again,
7 Romero apparently promised to delay the applications of non-bribe-paying applicants
8 in order to ensure that the UC's application made the cut.

9 At the conclusion of the meeting, the UC paid the second half of the cash bribe
10 to both men, and again Suarez-Soto accepted both envelopes of cash. The UC reiterated
11 that his "only concern was, that no one jumps in front of us." Romero replied "No!
12 Nope. . . . You're gonna get your—you know. We'll hook you up."

13 At that point, FBI agents and task force officers approached the group, identified
14 themselves, and proceeded to interview everyone separately. During Suarez-Soto's
15 interview, he was warned that lying to federal officers was a crime. Nevertheless, he
16 made a series of false statements. Suarez-Soto claimed that his services as part of his
17 arrangement with the UC were limited to consulting services. More concretely, Suarez-
18 Soto specifically denied that anyone provided guarantees to the UC in connection with
19 his application. Suarez-Soto did admit that the UC had agreed to pay him a fee, but
20 claimed that the fee was merely for his consulting services and assistance with getting
21 the business set up. Suarez-Soto also falsely claimed that the agreed-upon fee was only
22 \$25,000, and he denied receiving any prior payments from the UC.

23 Romero was also advised that it was a crime to lie to federal agents. He
24 nevertheless told interviewing agents that the UC's arrangement was between the UC
25 and Suarez-Soto, and that Romero was not a party to it. Romero denied having any
26 involvement in the arrangement beyond helping the UC understand the steps for a
27 cannabis permit application and the associated paperwork. He claimed that the deal
28 with the UC was going to be conducted through Suarez-Soto's consulting firm, RS

1 Global Solutions LLC.² Romero told the agents that there was nothing difficult about
 2 getting a permit from the City. He also denied that the UC had made any prior
 3 payments—saying “we never even got to that.” Romero denied knowing what was in
 4 the envelopes that the UC had handed over moments ago, and denied even seeing the
 5 envelopes. Finally, Romero squarely denied that anyone had provided the UC with a
 6 guarantee about his application.

7 **IV.**

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **A. Guidelines Calculations.**

10 **1. Introduction**

11 The parties have agreed to jointly recommend the following guidelines
 12 calculations:

| | | |
|----|---|----|
| 13 | Base offense level [USSG § 2C1.1(a)(1)] | 14 |
| 14 | Amount of bribe (\$35,000) | +4 |
| 15 | [USSG §§ 2C.1.(b)(2) & 2B1.1(b)(1)(G)] | |
| 16 | Elected official [USSG § 2C1.1(b)(3)] | +4 |
| 17 | Acceptance of responsibility [USSG § 3E1.1] | -3 |

18 Based on the parties’ plea agreement, and for the reasons set out below, the Court should
 19 follow these recommended guidelines. Based on the seriousness of the offense, the
 20 Court should decline to depart further.

21 **2. Further departures are unwarranted**

22 In his sentencing memorandum, based on a host of factors, Romero requests a
 23 six-level departure to an effective sentence of probation—amounting to an effective
 24

25 ² In their plea agreements, Romero and Suarez-Soto admitted that they created RS
 26 Global Solutions LLC as a shell entity in May 2019 in order to receive payments made
 27 by individuals seeking to do business in Calexico. Romero admitted that he controlled
 28 RS Global together with Suarez-Soto, even though another person was listed as a straw
 owner of the entity alongside Suarez-Soto.

1 reduction in real custody time of 100%. *See* ECF No. 46. This extraordinary reduction
2 is unjustified in Romero’s case chiefly because of the seriousness of the offense, as
3 discussed below. But a dramatic downward departure is also unjustified on the grounds
4 that Romero offers, which are mostly either commonplace among federal criminal
5 defendants or already fully accounted for by the existing guidelines. For example,
6 Romero’s lack of a prior criminal record is certainly to his credit (although hardly
7 unusual for public corruption defendants), but he already receives a benefit for that
8 status in his criminal history calculation. Similarly, the collateral consequences of
9 Romero’s felony conviction are identical to every other federal felon. And while it is
10 certainly thankful that the offense here was a non-violent one, that is also fully
11 accounted-for by the guidelines, which contain upward adjustments for most crimes
12 involving violence or the threat of violence. *E.g.*, USSG §§ 2B1.1(b)(16), 2D1.1(b)(2).

13 While Romero’s family situation is sympathetic and any imprisonment would
14 doubtless be a hardship on his minor children, this is hardly extraordinary. Indeed, he
15 guidelines specifically provide that family ties and responsibilities are ordinarily not
16 relevant in assessing a departure. *See* USSG § 5H1.6. While the Court is naturally free
17 to depart from the guidelines on its own discretion, Romero does not provide any
18 concrete reasons why the hardship on his family here would be more severe than any
19 other defendant-parent facing a moderate term of imprisonment.

20 Likewise, Romero cites his employment record in seeking a departure, but a
21 defendant’s “[e]mployment record is not ordinarily relevant in determining whether a
22 departure is warranted.” *See* USSG § 5H1.5. Here, some facts about Romero’s
23 employment history actually weigh *against* leniency. For example, he apparently
24 embarked on the bribery scheme culminating in this conviction relatively quickly after
25 ascending to elected office on the Calexico City Council.³

26
27 ³ Additionally, the PSR notes that one of Romero’s prior private sector jobs was
28 as an insurance agent in 2016 and 2017. PSR ¶ 69. Presumably this position is part of
the employment history that Romero relies upon in seeking a departure. But according

1 Finally, Romero argues that his hypertension justifies a downward departure
2 because he is more likely to be at heightened risk from COVID-19 if imprisoned. The
3 United States agrees that certain forms of hypertension (specifically, pulmonary
4 hypertension) indicate a heightened risk of severe complications from COVID-19. At
5 the same time, all adults in California recently became eligible to receive one of several
6 remarkably effective vaccines that each provide extensive protection against the virus.
7 If Romero has not yet had the opportunity to receive such effective treatment—which
8 would dramatically reduce his personal risk from infection—the United States would
9 not be averse to a reasonable self-surrender date to enable him to obtain it.

10 **B. The Sentencing Factors.**

11 ***1. The need for punishment and to reflect the seriousness of the offense.***

12 This was a very serious offense that justifies a term of imprisonment as
13 punishment. The bribery scheme between Romero, Suarez-Soto and the UC was about
14 as straightforward and brazen as possible. At their very first meeting, Romero and
15 Suarez-Soto solicited a bribe, making clear that it was in exchange for Romero’s official
16 action as a City public official.⁴ In furtherance of the bribery scheme, Romero even

17 _____
18 to Romero’s recruiter at the insurance business, Romero (and later Romero’s own
19 recruit, Suarez-Soto) signed individuals up for insurance without their knowledge,
20 promising them \$2,000 if they provided their personal information and paid him \$300
21 up front. Romero would then use the individuals’ personal information to sign them up
22 for life insurance policies owing hundreds of dollars of monthly premiums, using each
23 individual’s cash payment to cover the first month’s premium. The insurance firm paid
24 Romero thousands of dollars of commissions on each of the policies, but the policies
25 defaulted after a four-month grace period when the individuals failed to pay any
26 premiums after the first month. According to Romero’s recruiter, Romero and Suarez-
27 Soto owed about \$100,000 of commissions to the insurance firm, which sought to claw
28 them back after the policies were rescinded.

⁴ Curiously, Romero’s sentencing memorandum characterizes his interaction with
the UC as “[g]overnment agents offer[ing] Mr. Romero and Mr. Suarez-Soto a bribe in
exchange for expediting the licensing process,” and “Mr. Romero and Mr. Suarez-Soto
[unfortunately] accept[ing]” that offer. ECF No. 46 at 6. In Romero’s telling, “Mr.
Romero and Mr. Suarez-Soto did not solicit the bribe, but rather the case involved a

1 volunteered to thwart the submissions filed by other applicants in order to ensure
2 favorable treatment for the UC's application.

3 This nakedly corrupt dealing totally subverts the honest functioning of local
4 government that the residents of the City of Calexico have a right to expect from their
5 public officials. Before even seeing the UC's application, Romero and Suarez-Soto
6 guaranteed it. They didn't know whether it would be a better or worse proposal than
7 any other application tendered to the City, or whether it would even meet the City's
8 minimum requirements. All Romero and Suarez-Soto knew was that the application
9 was stapled to a \$35,000 bribe. But that was enough.

10 The scheme was premeditated and planned, and executed in a series of steps. For
11 one thing, Romero and Suarez-Soto had a shell consulting entity (registered months
12 earlier to a family member of Romero's) which seemed to exist specifically to launder
13 the proceeds of such a scheme.⁵ The actual negotiations with the UC took place over a
14 series of hour-plus meetings spanning about six weeks. According to Romero's
15 representations, following through on the scheme would have involved his coordinating
16 and directing the activities of other individuals at City Hall, which he was more than
17 willing to do in exchange for his unlawful fee.

18 The seriousness of the offense was also aggravated by Suarez-Soto and Romero's
19 decision to lie about it when confronted by FBI agents. Caught red-handed accepting
20 envelopes of cash in a parking lot, both men still stuck to the cover story that the deal
21

22 government sting operation." *Id.* at 7. As set out above (and in the PSR, *see* ECF
23 No. 28 at ¶¶ 5–8), however, the truth is just the opposite. Romero and Suarez-Soto
24 themselves proposed the bribe in pitching their "services" to the UC from their very
25 first meeting. They also set the amount of the bribe themselves.

26 ⁵ In fact, when Romero was pressed about the details of the arrangement during
27 his overt FBI interview, he tried to interject the consulting firm (claiming the true deal
28 was between the UC and Suarez-Soto's firm) as a way to insert an extra layer of
plausible deniability between himself and the dirty deal.

1 was a legitimate consulting arrangement—even after being advised that lying to the
2 federal agents would constitute a separate crime.

3 Finally, Romero and Suarez-Soto demonstrated by the boldness of their demand
4 that they were confident that they could simply demand a bribe without being caught.
5 Why? Most likely because they had done it before. In Suarez-Soto’s own words: this
6 wasn’t their first rodeo. The two men seemed to believe that that was how City business
7 was done, and they were simply doing it again. This dramatically underscores the
8 seriousness of the offense and the need for punishment.

9 Romero and Suarez-Soto weren’t entrapped by a wily undercover agent who
10 enticed them to make a deal they otherwise wouldn’t have made. They were exposed
11 by an FBI operation that recorded them making a demand for a bribe that they otherwise
12 could have plausibly denied or palmed off as an unsavory (but perhaps technically not
13 criminal) “consulting” arrangement—just as Romero actually tried to do when
14 confronted by agents in this case. The fact that this was not Suarez-Soto and Romero’s
15 “first rodeo” further supports the need for a serious sentence for this conduct.

16 **2. The need for deterrence and to promote respect for the law.**

17 The Court must also consider whether the sentence it fashions will promote
18 deterrence and respect for the law. A non-custodial sentence here will do neither.
19 Sentencing the defendants to probation (or home confinement)⁶ will tell other public
20 figures that they have little to lose from extorting their own constituents for bribes in
21 exchange for performance of their official duties. Such crimes are difficult to detect
22 and prosecute, and they dissolve the public’s trust in their government in a uniquely
23 pernicious way—especially when the corruption is as shameless as the crime uncovered
24 in this case. When these crimes are discovered, citizens have a right to expect that

25
26 ⁶ House arrest is a particularly inapt punishment during the ongoing global
27 pandemic, when much of the population has spent months under variously severe
28 restrictions on their activities outside the home.

1 corrupt officials will be treated severely, to deter others from embarking on the same
2 path. The Court should not miss that opportunity here by imposing a sentence lower
3 than the one called for under the guidelines.

4 **C. Forfeiture.**

5 Romero has agreed to forfeit \$17,500 jointly and severally with Suarez-Soto.
6 This money represents the first installment of the bribe paid to both men in cash, which
7 has not yet been recovered. It is forfeitable as property that constitutes or is derived
8 from proceeds traceable to the offense of conviction. *See* 18 U.S.C. § 981(a)(1)(C).

9 **V.**

10 **CONCLUSION**

11 For the reasons stated above, the United States respectfully requests that this
12 Court impose a sentence of 30 months in custody to be followed by three years of
13 supervised release. The parties also jointly recommend forfeiture of \$17,500.

14
15 DATED: April 23, 2021

Respectfully submitted,

16
17 RANDY GROSSMAN
Acting United States Attorney

18
19 /s/ Nicholas W. Pilchak
20 NICHOLAS W. PILCHAK
21 Assistant United States Attorney
22 RYAN R. CROSSWELL
23 Trial Attorney
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