

STEVEN F. GRUEL (SBN 213148)

315 Montgomery Street, 10th Floor

San Francisco, California 94104

Telephone Number (415) 533-6973

attystevengruel@sbcglobal.net

www.gruellaw.com

Attorney for Defendant ROBERT WILLIAM HIENEKAMP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND VENUE

UNITED STATES OF AMERICA,	)	No. CR-23-0340-YGR
	)	
Plaintiff,	)	DEFENDANT ROBERT WILLIAM
	)	HIENEKAMP'S SUPPLEMENTAL
v.	)	SENTENCING MEMORANDUM
	)	
ROBERT WILLIAM HIENEKAMP,	)	-and-
	)	
Defendant.	)	SUPPLEMENTAL SUPPORTING
	)	DECLARATION OF STEVEN F. GRUEL
	)	
	)	Honorable Yvonne Gonzalez Rogers
	)	
	)	Date: April 23, 2025
	)	Time: 11:00 a.m.
	)	
	)	
	)	

ROBERT WILLIAM HIENEKAMP, by and through his counsel, Steven F. Gruel, hereby submits his Supplemental Sentencing Memorandum in the above captioned matter.

SUPPLEMENTAL SENTENCING MEMORANDUM

Mr. Hienekamp's initial Sentencing Memorandum was timely filed on February 20, 2025. (DOC #21). He respectfully requests that the Court continue to consider the points asserted in that earlier filing along with the arguments made by defense counsel at the February 27, 2025,

1 hearing together with these supplemental pleadings in fashioning a sentence *sufficient, but not*
2 *greater than necessary* for Robert William Hienekamp.

3 **I. INTRODUCTION**

4 The Court continued the February 27, 2025, sentencing hearing so that the government
5 could provide an answer to the Court’s simple question explaining how did Mr. Hienekamp’s tax
6 matter elevate from a civil investigation into a full-blown criminal prosecution?¹ At the
7 sentencing hearing, the government twice represented to the Court that Mr. Hienekamp had been
8 the subject of a civil tax investigation for unpaid employment related taxes and that Hienekamp
9 continued to ignore the IRS’s opportunities to resolve the matter simply with his payments. The
10 Court gave the government *two weeks* to provide the answer to the question.

11
12 *Five weeks* later, after filing a motion seeking more time, the government filed its
13 supplemental pleading but buried its answer to the Court’s question back on page 7 in footnote 2.
14 We now know that *there never was a civil IRS tax investigation* pertaining to Mr. Hienekamp as
15 twice claimed by the prosecution! Confronted with the absence of this “previous civil
16 investigation” as the justification for a custodial sentencing, the government pivots and offers an
17 entirely new brief (not a supplement as instructed) claiming that regardless of its false
18 explanation of a previous civil investigation, Mr. Hienekamp nonetheless deserves an 18-month
19 custodial term.
20

21 However, as outlined below, the government’s latest approach to justify its sentencing
22 recommendation likewise fails. The defense Supplemental Sentencing Memorandum shows the
23 government’s patchwork of new “reasons” to be either unsubstantiated, embellished or outright
24

25
26

¹ A copy of the February 27, 2025, hearing transcript is attached as Exhibit A to the Supplemental Declaration of Steven F. Gruel.

wrong. Consequently, the defense respectfully requests that the Court first adopt the probation officer's recommendation of a variance and, second, as supported by the ***totality of facts*** in the case, rather than a simple mechanical application of IRS Tax Division Policy, impose the defense recommendation of 3 years of probation with 6 months of home or community confinement, along with 100 hours of community service with full restitution.

II. ARGUMENT

A. **Driven Solely By Tax Division Internal Policy, The Government's Sentencing Recommendation Lacks Justification & Credibility**

The government's two sentencing memoranda (submitted on February 20, 2025 and April 2, 2025) are contradictory. Initially, the prosecution described Hienekamp as remorseful and as someone who was extremely willing to assist the IRS in addressing his tax liability. Now, the government scrambles to present its 180-degree turnabout: Hienekamp is an unrepentant longtime tax scofflaw living lavishly off his sophisticated schemes. This second portrayal is not only inaccurate but is clearly contrived to fill the void created by the absence of the nonexistent civil investigation. In other words, to avoid the overwhelming appearance of overreaching, the prosecution is compelled to "dirty-up" Hienekamp.

1. **The Government Originally Described Hienekamp's Behavior as "Aberrant" And Applauded His "Swift" Cooperation with the Prosecution**

Following Tax Division policy, the prosecution's first sentencing memorandum recommended 18 months in custody. (DOC. #22). At page 8 of its memorandum, the prosecution noted that:

"Hienekamp, however, has factors in mitigation. Hienekamp has no prior criminal history and has been gainfully employed and is an entrepreneur. Hienekamp also has the emotional support of his wife and family, which will help him to overcome this chapter in his life. ***Hienekamp also promptly took responsibility for his crime and has expressed sincere remorse for his actions. Further, Hienekamp has taken efforts to ensure that Endowance complies with tax laws and has expressed a commitment to paying the restitution in full.***

1 *These factors indicate that Hienekamp's criminal conduct is an aberration and that he will*
 2 *comply with the law moving forward."* (emphasis added). (DOC. #22; p. 8; lines 6-12).

3 At the February 27, 2025, hearing, the prosecution further expressed a favorable view of
 4 and interactions with Mr. Hienekamp:

5 MR. LAGRAMA: Thank you, Your Honor. The government agrees that Mr.
 6 Hienekamp certainly has substantial mitigating factors. *He took swift responsibility*
 7 *for his offense, saving us substantial time and energy.* He has no prior criminal history.
 8 And by all accounts, he seems to be a very nice and responsible individual; however,
 9 Your Honor, the government stands by our recommendation of 18 months, which is at the
 10 lowest end of the applicable guidelines . . . (emphasis added)
 11 (Trans. Page 7; lines 1-8).²

12 The Court naturally wondered why an 18-month sentence was recommended.

13 THE COURT: So the JSIN information that was provided suggests that crimes of this
 14 offense, even if custodial, would warrant a lower amount. Given that he waived
 15 indictment, why does the government maintain that it should be a guideline sentence?

16 MR. LAGRAMA: Your Honor, that's -- one of the main factors that I -- before we made
 17 a recommendation, I consulted heavily with Tax Division. *And from -- my*
 18 *understanding is what we're recommending here is what the Tax Division recommends*
 19 *nationwide for these types of offenses so that, essentially, if you commit a crime in one*
 20 *part of the United States, the Tax Division ensures uniformity.* And that's -that's -- three
 21 recommendation that we're making, Your Honor, is in conformance with what Tax
 22 Division recommends based on this offense level and criminal history category.

23 THE COURT: So are you saying that the Tax Division never wavers from the
 24 guidelines?

25 MR. LAGRAMA: My understanding is if it's -- if there's extraordinary circumstances.
 26 *But, for the most part, they stay -- they make their guideline sentence.* (emphasis
 added). (Trans. Pages 8-9; lines 21-25; 1-15).

² His remorse for his crime is not genuinely contested here and is evident from his immediate, full and complete cooperation with law enforcement in both the criminal investigation and prosecution phases of this case. Prior to being charged, Mr. Hienekamp agreed to be extensively interviewed by investigating IRS agents and prosecutors. Mr. Hienekamp openly admitted his tax violations to the interviewing law enforcement agents. He waived his right to a Grand Jury (saving the prosecution time and expense to present an Indictment) and agreed to be charged with a felony Information

Therefore, an arbitrary nationwide policy, not the specific facts of case, serves as the simple reason for the 18-month recommendation. Frankly, this nationwide mechanical approach by the Tax Division likely explains the JSIN information that only 62% of the defendants facing a 18 – 24 month sentencing range actually received a custodial sentence --- and the average of those sentences was 9 months incarceration. See PSI ¶ 75. Put another way, no matter what mitigating action Mr. Hienekamp took or how swiftly he acted, the low end of his sentencing range was the best the government would ever recommend.

2. Given No Civil Tax Investigation Which Was Said To Have Been Flaunted By Hienekamp, The Prosecution’s New Approach Is To Embellish His Willfulness”

At the February 27, 2025, hearing the Court inquired of the Government as to how and under what circumstances the investigation and prosecution of Mr. Hienekamp went from a civil investigation to a criminal prosecution.

Specifically, the Court stated that:

THE COURT: Okay. So I need more information. And this is -- and it's significant because it's, in my view, the difference between a custodial sentence and a noncustodial sentence. So we're going to put off the balance of this sentencing so I can get some more information. What I would like to have happen is the government can make a filing that lays out what the circumstances were that led this to become a criminal prosecution as opposed to a civil prosecution that is a civil demand for payment. And then you can respond. And then I will decide. I don't know if you'll want to reply or not. (Trans.; p.19, lines 9-19).

Originally, as the court may recall, the prosecution affirmatively represented to this Court that:

MS. WEIDLER: Your Honor, if I may speak, this case was originally with the civil section of the IRS. And there was numerous back-and-forths asking for payment. And they were ignored by Mr. Hienekamp. Finally, it referred to the criminal section. The parties are speaking about and moving quickly. These taxes are from 2016. 2016. (Trans.; p.15, lines 1-7).

Further, the Court inquired of Government’s counsel “And you have nothing in your notes to better answer my question about the gravity that led this to transition from a civil action

1 into a criminal one?" (Trans.; p.17, lines 1-3). Upon conferring with the case agent,
2 Government's counsel further represented to the Court that:

3 MS. WEIDLER: So the agent, Ms. Jennifer Chiou, is also confirming what I said. She
4 does not have the exact dates; however, she did confirm that there was a meeting with the
5 civil side of the IRS and Mr. Hienekamp's CPA. And his attorney was also present at that
6 meeting. And they -- they asked him to pay. And it was ignored -- communication was
7 ignored. And that's why the civil side finally decided to refer the matter to the criminal
8 side. And this happened about a year before the investigation started -- this -- the
9 criminal investigation started. And if you would like, I can ask the special agent to come
10 before you and answer any questions that you think she may be able to answer better.
11 (Trans.; p.17, lines 11-19).

12 We, of course, now know that there was never a civil investigation and worse yet, there
13 was never a meeting with the "civil side" of the IRS.³ Frankly, this amazing revelation to the
14 Court's inquiry should weigh heavily in imposing the defense sentencing recommendation and
15 end the debate over a custody versus noncustodial sentence.

16 Nevertheless, rather than filing a supplement, the government seeks a "second-bite-of-
17 the-apple" with its revised 16-page sentencing memorandum with 278 pages of exhibits. The
18 memorandum is geared to "ramp-up" Mr. Hienekamp's degree of willfulness to justify 18
19 months in custody. Instead of being described as remorseful, he is now portrayed as a
20 sophisticated fraudster engaged in an elaborate tax fraud so that he can fund his lavish lifestyle.
21 Instead of mere aberrant behavior, the new approach seeks to label Mr. Hienekamp as a callous,
22 vindictive, tax avoiding jet-setter. The prosecution's new embellishments, as with the phantom
23 civil investigation, fall flat and should be disregarded.

24
25 ³ The government footnote 2 blithely asserts that there was "civil activity" without making mention of what that "civil activity"
26 was or even could have been. It is suggested that in the context of either an IRS criminal or civil investigation, a "civil activity,"
as used here by the government is nothing more than convenient *ad hoc* nomenclature.

B. The Contrived Effort to Manufacture a “High Degree” of Willfulness

There is no question that Mr. Hienekamp acted willfully in violating 26 U.S.C. §7202. In fact, the plea agreement explicitly admits to “acting willfully” as the third element of this tax offense. *See* Plea Agreement ¶ 1. However, in light of the Court’s inquiry regarding the prosecution’s justification for its 18-month sentencing recommendation, the government (with no prior civil investigation to rely upon) is reduced to fabricate a purported “high degree” of willfulness.

1. IRS & Tax Division Policy Spurred This Criminal Investigation

The government’s own exhibit number 19 shows that government policy rather than Mr. Hienekamp’s conduct prompted this criminal case. In paragraph #8 of his November 9, 2020 Memorandum of Telephone Interview of Hienekamp’s previous attorney, David Klasing, IRS Special Agent David Sihota notes that “S/A Sihota explained that the IRS and DOJ Tax have made employment tax cases a priority.” While the prosecution’s nearly 300 pages of exhibits fail to include any of the alleged IRS civil notices sent to Mr. Hienekamp, the defense hereby submits 2 Notices of Investigation mailed to Hienekamp to enforce the agency policy directive mentioned by agent Sihota. *See Gruel Supplemental Declaration, Exhibit 2*. Significantly, these criminal Notices are dated June 24, 2020 and August 7, 2020, thereby preceding the IRS interviews of Endowance employees and CPA Patty Ramus. Put another way, IRS policy labeled this as a “criminal” case and followed up by subsequent employee interviews, not that the content of the employee interviews served to elevate this matter from a mere civil issue into a criminal investigation.

2. The Government Now Attempts to Make This A “Sophisticated” Offense

Contrary to the plea agreement, the prosecution hopes to convince the Court that there was a

high degree of willfulness by belatedly attempting to describe Hienekamp's actions as a long-lasting nefarious scheme. Indeed, if Hienekamp's conduct truly rose to the level of willfulness now claimed by the prosecution, then the sentencing guidelines 2-point enhancement for "sophisticated means" would have been applicable. *See U.S.S.G. §2T1.1(b)(2)*.

No such enhancement was contemplated or sought here. In fact, an indication that the government actually considered Hienekamp's actions as "run-of-the-mill" was the lack of any notes, much less an IRS report, generated from Hienekamp's August 10, 2023, pre-plea proffer with the prosecutors and IRS agents. Hienekamp's description of his actions certainly would have been memorialized by law enforcement if noteworthy and in any way beyond routine.⁴

3. **Hienekamp Did Make Payments to the IRS**

The government tries to get some traction by noting that Hienekamp owned 2 homes, but neglects to tell the complete scenario. First, the houses in San Ramon and Tahoe were purchased in 2002 and 2005, respectively – well before the events of this case.⁵ Second, the 2019 sale of the San Ramon house generated net proceeds of approximately \$409,000 which immediately went to pay taxes and business expenses. Attached as Exhibit D to the Supplemental Gruel Declaration are true and correct copies of documents pertaining to the sale of 250 Gale Ridge Court, San Ramon, California. The first page shows a highlighted payment of \$73,000 going

⁴ In fact, from May 29 to June 2, 2024, defense counsel requested the IRS agent's notes and report from the AUSA. The defense explicitly stated that it sought this information to assist in eventually arguing for a probationary sentence. Nothing was produced. Defense counsel served 16 years as an AUSA in the NDCA and participated in countless proffer sessions and had never seen when no report or notes were generated from interviewing a target of a criminal investigation. Attached as Exhibit C are the emails seeking the agent's proffer report and notes from the August 10, 2023 proffer interview.

⁵ Inflated characterizations are likewise witnessed in the efforts to create Hienekamp's "lavish lifestyle." The prosecution intentionally overlooks that the Jet skis are from 2009, the small boat (hardly a yacht) from 2007 and the snowmobiles from 2019. A photo of the boat can be shown at the April 23, 2025, hearing if the government insists that the Hienekamps are out "yachting" on Lake Tahoe.

1 directly to satisfy an IRS tax lien. The next page also summarizes a breakdown of further tax
 2 payments from the house sale: \$140,148.65 going to the IRS payroll taxes and \$80,000 to the
 3 Dutch government. Remaining amounts went to pay Endowance employee salaries and its
 4 operating platform (Jitterbit). This closer look reveals that it is completely disingenuous to
 5 suggest, as the government does, that the San Ramon house sale directly put nearly a half-million
 6 dollars in Hienekamp's pocket. *Gov't Memo; p.10; line 24*. Likewise, the government
 7 completely makes-up that the 2 defense continuances of the sentencing date were to ". . .
 8 generate funds to pay at least some of the taxes . . . but he made no payments to these liabilities."
 9 *Gov't Memo; p.8; lines 26-27*. First, a simple review of the 2 defense stipulations and orders
 10 continuing the sentencing hearing make no mention whatsoever that the continuances are
 11 predicated on an expectation or requirement to pay restitution before sentencing. *See DOC #11-*
 12 *12; #16-17*. Additionally, nothing in the plea agreement mentions, suggests or requires a pre-
 13 sentence restitution payment.

14 4. **The Need To Make Hienekamp a Bad Actor To Support The IRS Policy**

15 It is now abundantly clear that the decisions to first criminally prosecute Mr. Hienekamp and
 16 then mechanically recommend a low end of the guidelines sentence was directed by nationwide
 17 agency policy – not the circumstances of the case. To no one's surprise, the prosecution's
 18 revised memorandum is therefore reduced to a repetitive hollow drumming that Mr. Hienekamp
 19 is a bad actor living lavishly. For instance, the IRS criminal investigator's interviews of some
 20 Endowance employees and onetime CPA Patty Rumas add nothing to the guidelines, are mainly
 21 irrelevant and of questionable value given the lack of any cross-examination to arrive at the truth.
 22 Plus, notably missing in the government's presentation are copies of the 4 phantom notices
 23 claimed to have been sent to Hienekamp in 2016-2019. Interesting enough, if one examines the
 24
 25
 26

1 IRS record of the verbal notices regarding missing employment taxes it was Mr. Hienekamp who
 2 initiated the calls with the IRS. Mr. Hienekamp has a serious tax problem that has now resulted
 3 in his criminal conviction. However, it would be inaccurate to suggest that he has not attempted
 4 to identify and correct these tax issues. Undersigned counsel, as outlined in his accompanying
 5 declaration, is aware of at least 3 CPAs / accountants and 3 attorneys who have worked on
 6 addressing and complying with the IRS forms 941 and 940. Mr. Hienekamp has hardly ignored
 7 the IRS and his tax responsibilities.

8
 9 **5. The JINS Information Supports the Defense Sentencing Recommendation**

10 Curiously, the government also asserts that the JSIN data used by Probation, and relied
 11 upon by innumerable courts, is inaccurate as applied to Mr. Hienekamp because of the 2024
 12 Amendments to the Guidelines. The government is certainly aware that U.S.S.G. § 1B1.11
 13 requires that the Court utilize the Guideline edition in effect at the time of sentencing unless such
 14 would result in an *ex post facto* problem. The government in essence is asking this Court to
 15 ignore Mr. Hienekamp's guideline calculation of 15, the detailed JSIN data and consider Mr.
 16 Hienekamp to be sentenced as if he was level 17 (24 to 30 months). Simply put, Mr. Hienekamp
 17 is at a level 15 and the JSIN data supports a sentence as recommended by the defense.

18
 19 **IV. CONCLUSION**

20 The facts, law and arguments support a sentence of 3 years of probation with a condition
 21 of 6 months of home or community confinement, 100 hours of community service, restitution, no
 22 fine and a \$100 special assessment as appropriate in this case.

23 Dated: April 9, 2025

Respectfully Submitted

24 / STEVEN F. GRUEL

25 STEVEN F. GRUEL

26 Attorney For Robert William Hienekamp