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 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO**

16 UNITED STATES OF AMERICA,
 17 Plaintiff,
 18 vs.
 19 JOSEPH J. GIRAUDO,
 20 Defendant.

Case No. CR 14-00534 CRB

**DEFENDANT JOSEPH GIRAUDO'S
 RULE 35(a) MOTION TO CORRECT
 SENTENCE**

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1 Defendant Joseph Giraudo respectfully requests that the Court correct its sentence, which,
2 left uncorrected, would result in unwarranted sentencing disparities. *See* Fed. R. Crim. P. 35(a)
3 (providing that the district court “may correct a sentence” “[w]ithin 14 days after sentencing”).
4 Factors considered by the Court to be worthy of reductions in sentence for some defendants were
5 not considered for Mr. Giraudo, despite the fact that equivalent circumstances exist.

6 The Court said in its sentencing of Mr. Giraudo that it would not hold against him the timing
7 of when he plead, or the fact that he had challenged the government on various points.¹ But then, in
8 the sentencing of others, the Court granted departures for either the inability to provide cooperation
9 or for substantial assistance.

10 Specifically, the Court granted Mr. Cullinane a departure based on his lost opportunity to
11 cooperate. Just like Mr. Cullinane, Mr. Giraudo told the government repeatedly and on multiple
12 occasions that he would plead guilty and cooperate if the mail fraud charges were dropped. The
13 government declined, and pre-empted his cooperation by sustaining its unsupportable charges.
14 Moreover, just like Mr. Cullinane, when the Court finalized its decision with respect to the
15 unauthorized tapes and dismissed the fraud charges, Mr. Giraudo promptly pled guilty without a
16 plea agreement. Mr. Giraudo offered in writing to cooperate fully on September 12, 2017. *See*
17 Exhibit A, Letter from Matt Jacobs to Thomas Greene re *United States v. Giraudo*, Case No. CR
18 14-534 (“Although we reject the government’s proposed plea agreement, Mr. Giraudo is ready and
19 willing to cooperate fully and to provide appropriate substantial assistance to the government’s
20 investigation, including truthful testimony.”). Unfortunately, the government declined to interview
21 Mr. Giraudo or otherwise accept the offer of cooperation. The Court granted a downward variance
22 to Mr. Cullinane on the basis that he was deprived of the opportunity to cooperate; the same is true
23 for Mr. Giraudo.

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26 ¹ *See* Defendant Joseph Giraudo’s Sentencing Memorandum (ECF 313) at 2, 7, 10-11; *and*
27 Defendant Joseph Giraudo’s Response to Government’s Sentencing Memorandum (ECF 319) at 4,
28 4 n.2 (addressing Mr. Giraudo’s lost opportunity to plead guilty earlier and cooperate with the
government).

1 Importantly, Mr. Giraudo made this offer to cooperate before Messrs. Grinsell, Appenrodt
2 and Farag entered into their cooperation agreements. Plea Agreement, *United States v. Grinsell*,
3 No. 3:14-cr-00534 (N.D. Cal. Oct. 17, 2017), ECF 273; Plea Agreement, *United States v.*
4 *Appenrodt*, No. 3:14-cr-00534 (N.D. Cal. Oct. 6, 2017), ECF 270; Plea Agreement, *United States v.*
5 *Farag*, No. 3:14-cr-00534 (N.D. Cal. Oct. 25, 2017), ECF 277. These defendants were given the
6 opportunity to provide statements to the FBI and appear to have received cooperation credit for
7 doing so, even though the person they were ostensibly cooperating against, Mr. Giraudo, had
8 already pled guilty of his own accord.² Because Mr. Giraudo resisted the government's demands
9 during plea negotiations and pled open, he was never given his own opportunity to cooperate at this
10 time.

11 The government's refusal to let Mr. Giraudo cooperate deprived him of the ability to obtain
12 cooperation credit and to rebut a series of accusations made by people who were trying to curry
13 favor with the government, and whose stories changed in the weeks leading up to sentencing. The
14 Court made clear that it did not intend to punish Mr. Giraudo—who has lived a generous and
15 charitable life—for challenging the government's authority by refusing to plead to mail fraud (as 19
16 others did), and by litigating volume of commerce and the illegal recording scheme. But by giving
17 a downward departure to Mr. Cullinane for the inability to cooperate, and substantial departures to
18 those who entered plea agreements with the government, the Court's current sentencing has exactly
19 the effect that the Court indicated it wished to avoid, and sorely punishes Mr. Giraudo for not
20 signing a plea agreement or being interviewed by the government.

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23 ² Indeed, much of the 302 evidence used against Mr. Giraudo at sentencing—statements he could
24 have rebutted, but was refused the opportunity to make his own statement to FBI investigators—
25 was obtained after Mr. Giraudo pled guilty. See Declaration of Andrew Mast in Support of United
26 States' Sentencing Memorandum, Exs. C (11/14/17 interview of Appenrodt), E (11/27/17 interview
27 of Farag), H (12/18/17 interview of Grinsell), I (12/20/17 interview of Grinsell), O (2/6/18
28 interview of Rezaian), U (12/15/17 interview of Salma). As discussed at length in our other papers,
many of these statements were rife with inconsistencies, inaccuracies, and outlandish depictions of
Mr. Giraudo that run directly counter to his nature and character, which your Honor recognized
during sentencing. Had Mr. Giraudo been given the opportunity to make his own statement, much
of this could have been dispelled.

1 For the reasons stated above, we respectfully request that the Court correct and lower the
2 sentence of Mr. Giraudo to reflect that he was prevented from cooperating and to not punish him for
3 having put the government to its proof before pleading guilty.

4 Respectfully submitted,

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6 DATED: May 16, 2018

VINSON & ELKINS L.L.P.

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8 By: /s/ Matthew J. Jacobs

Matthew J. Jacobs

Attorneys for Defendant JOSEPH J. GIRAUDO

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 16, 2018 , the foregoing document was electronically filed with the Clerk of the Court for the UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, using the Court’s Electronic Case Filing (ECF) system. The ECF system routinely sends a “Notice of Electronic Filing” to all attorneys of record who have consented to accept this notice as service of this document by electronic means.

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