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8 Attorney for Defendant
9 AARON BOREN

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 AARON BOREN,

17 Defendant.

Case No. 4:23-CR-00134-AMO

SENTENCING MEMORANDUM OF
DEFENDANT AARON BOREN

DATE: May 13, 2024

TIME: 2:00 p.m.

COURT: Hon. Araceli Martinez-Olguin

18 I.

19 INTRODUCTION

20 The Sentencing Guidelines have been amended to encourage lower and more lenient sentences
21 for defendants with no criminal history points now commonly referred to as “zero-point offenders.”
22 Defendant Aaron Boren is not only entitled to the 2-level reduction now awarded to zero-point
23 offenders. The amended Guidelines support a sentence other than a sentence of imprisonment for Mr.
24 Boren, upon award of a further downward variance in recognition of his personal history and
25 exceptional individual characteristics.
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1 II.

2 PROCEDURAL HISTORY AND FACTS

3 The procedural posture of Mr. Boren's case as set forth by the government is accurate: On May
4 4, 2023, the government filed an Information charging Mr. Boren, as well as Frank Mosley, Reginald
5 Mosley, Marcus Wilborn, and Scott Conway, with one count of conspiracy bank fraud, in violation of
6 18 U.S.C. § 1349. ECF No. 1. Mr. Boren was released pending trial. On September 12, 2023, he pled
7 guilty to the charge against him. ECF No. 40. Per the plea agreement, the parties agreed that the
8 applicable Offense Level under the Sentencing Guidelines is 16 (plus an additional two-point reduction
9 given that Defendant is a zero-point offender), and the government agreed to recommend a sentence of
10 12 months and one day in custody, as well supervised release, forfeiture, restitution, and a special
11 assessment. PSR, ¶ 3. The Probation Officer has determined that Mr. Boren is entitled to a two-level
12 reduction under USSG §4C1.1 for being a zero-point offender. This brings the Total Offense Level to
13 14. *Id.*

14 The facts are generally well known to the Court. Beginning in 2020, the Mosley brothers
15 engaged in CARES Act fraud and recruited financially compromised people who controlled business
16 entities to apply for additional fraudulent PPP loans. In 2021, Mr. Boren, through his company ABCG
17 fraudulently obtained a \$500,000 loan, and he spent the proceeds on the Mosleys' 15% fee, the
18 development of new (but eventually failed) business ventures, and some personal expenses.

19 III.

20 ARGUMENT

21 A. Amendments to the Sentencing Guidelines Reinforce the Propriety of Alternatives to
22 Incarceration for Zero-Point Offenders Such as Mr. Boren.

23 On November 1, 2023, the United States Sentencing Guidelines were amended. Subpart 1 of
24 Part B of the amendment creates a new Chapter Four guideline at §4C1.1 (Adjustment for Certain Zero-
25 Point Offenders). New §4C1.1 provides a decrease of two levels from the offense level determined
26 under Chapters Two and Three for offenders who did not receive any criminal history points under
27 Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

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1 In establishing new §4C1.1, “the Commission was informed by its studies of recidivism among
2 federal offenders, as well as other extensive data analyses of offenders with no criminal history points,
3 and public comment. [. . .] Recidivism data analyzed by the Commission shows [. . .] that offenders
4 with zero criminal history points have considerably lower recidivism rates than other offenders,
5 including offenders with one criminal history point. *See* U.S. Sent’g Comm’n, Recidivism of Federal
6 Offenders Released in 2010 (2021), available at [https://www.ussc.gov/research/research-](https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010)
7 [reports/recidivism-federal-offenders-released-2010](https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010). Among other findings, the report concluded that
8 “zero-point offenders” were less likely to be rearrested than “one point” offenders (26.8% compared to
9 42.3%), the largest variation of any comparison of offenders within the same Criminal History
10 Category.” U.S.S.G. Amendment 821, Reason for Amendment, Part B, Subpart 1.

11 In crafting the most recent amendments, the Sentencing Commission has recognized that some
12 defendants should receive lighter sentences and, in some instances, even alternatives to incarceration.
13 To that end, Commentary to U.S.S.G. §5C1.1, “Application Notes,” has a new Note 10(A) for Zero-
14 Point Offenders. —

15 *Zero-Point Offenders in Zones A and B of the Sentencing Table.*—If the defendant
16 received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and
17 the defendant’s applicable guideline range is in Zone A or B of the Sentencing Table, a
sentence other than a sentence of imprisonment, in accordance with subsection (b) or
(c)(3), is generally appropriate. *See* 28 U.S.C. § 994(j).

18 As previously noted, Mr. Boren is a zero-point offender entitled to a 2-level reduction pursuant
19 to U.S.S.G. §4C1.1. PSR ¶3. His Total Offense Level is therefore 14. *Id.* The government recommends
20 a further reduction to a sentence of a year-and-a-day to account for Mr. Boren’s waiver of Indictment,
21 early plea agreement, and quick acceptance of responsibility. PSR ¶3. While the government suggests
22 that Mr. Boren’s sentence should be served in custody, his personal history and characteristics (which
23 were *not* previously accounted for in the plea agreement) make him a good candidate for additional
24 downward variance and deserving of “a sentence other than a sentence of imprisonment.” U.S.S.G.
25 §5C1.1, Note 10(A).

26 B. Mr. Boren’s History and Characteristics Reveal Him to be an Outstanding Person.

27 18 U.S.C. §3553(a)(1) instructs the Court to consider who Mr. Boren is as an individual when
28 determining the particular sentence to impose. Mr. Boren is surrounded by family and friends who find

1 him “wonderful, loving, responsible, and compassionate.” PSR ¶76. His dedication to service to others
2 can be found earlier in Mr. Boren’s life when he joined the United States Army at the age of 26.

3 In the Army, Mr. Boren received various commendations, including an army achievement
4 medal, the army superior unit award, a good conduct medal, a national defense service medal, an
5 overseas service ribbon, a United Nations medal, a parachutist badge, and an air assault badge, among
6 others. PSR ¶92. Unfortunately, he sustained a verified health condition as a result of a terrible
7 incident that occurred while he was on duty and which is causing him increasing discomfort overtime.
8 PSR ¶79.

9 Mr. Boren lives a modest life in a 900 square foot home that is owned by his longtime girlfriend
10 Kate. PSR ¶ 75. The couple resides there with her adult daughter. One of his adult daughters, Keatyn,
11 lives on the property too, in an in-law unit. Due to his numerous verified medical and other health
12 conditions (set forth in the PSR at ¶¶ 78-80), Mr. Boren tries to limit stressors as much as possible. To
13 stay productive and helpful though, he enjoys woodworking that he sometimes gives away and
14 sometimes sells, and he teaches pickleball which, when he charges a fee, earns him around \$850 per
15 month. PSR ¶85.

16 Kate Bowers provides insight into Mr. Boren’s accountability relative to his crime, and also
17 insight into his kindheartedness:

18 Aaron was working in the car dealership business when we started dating. and had been
19 in that line of work for many years. He parted ways with the last dealership for which he
20 was consulting and started planning on starting a new business of his own. Aaron began
21 researching and taking courses for a variety of small businesses ideas that he was
22 interested in. He was approached by an acquaintance he had known for over 5 years who
23 had been a trusted financial and business advisor, who encouraged Aaron to apply for a
24 PPP loan through him. [. . .]

25 I’m not sure of the exact timeline, but at some point soon after receiving the funds, Aaron
26 became extremely concerned with the situation he had gotten himself in to and mentioned
27 to me he was not going to attempt to have the loan forgiven, but that he was going to
28 work to pay back the loan as soon as he was able. He worked constantly at building his
businesses in order to be able to pay back the loan. This caused a huge amount of stress
and anxiety for Aaron. I witnessed a man who had been happy, confident and content
become debilitated from panic attacks, to the point I had to drive him to the ER because
the stress had become so intense that he could barely function physically. His
overwhelming feelings of remorse began long before charges were filed against him. At
night he often has nightmares and periods of panic. Having to admit to his parents and
sister what he had done brought extreme shame and the feeling of having disappointed
his loved ones.

1 As I mentioned above, Aaron is a compassionate person. We share an interest in
2 volunteering and supporting charitable organizations, and early in our relationship on
3 multiple occasions the two of us prepared and served dinner at The Gathering Inn in
4 Auburn for the people they serve who are experiencing homelessness. He often takes it
5 upon himself when we go out to eat to bring food from the restaurant and give to a person
6 on the street who looks like they are in need and could use a meal. In our close-knit
7 community, he is the person people call when they need help - whether it's driving a sick
8 family member to the hospital, making household repairs for neighbors, towing cars out
9 of the snow, or sitting down to talk and offer guidance friends experiencing a personal
10 crisis.

11 Letter from Kate Bowers, Ex. 1. Keatyn Boren agrees with Kate's assessment of her dad:

12 My father is nothing short of a loving community man who would give the shirt off of his
13 back to anyone who may need it. I can think of many times that I have spent with my
14 father where he would stop in traffic or pull off to the side of the road to give money to
15 homeless people or when we would leave a restaurant, he would offer our leftovers to
16 those who may be hungry. My dad has a big heart and is always giving back to the
17 community. In the short months that I have been here, I have noticed how valuable he is
18 to the community around us. He is always there for our neighbors in times of need.
19 Anything from neighbors needing to borrow a few eggs to helping neighbors to the

20 hospital in times of crisis. He is someone that many people, including me, look up to and
21 look to for support. He is a great friend to all and a supportive father to his children.

22 Letter from Keatyn Boren, Ex. 2.

23 Mr. Boren's sister Bianca describes a unique way her brother has found to help people:

24 Allow me to share a perspective on Aaron's character that transcends the confines of this
25 unfortunate incident. Aaron has dedicated himself to living a healthy life and encouraging
26 others to do the same. He has always been exceptionally athletic and active, engaging
27 those around him in healthy activities. For instance, over the past several years, he took
28 up Pickleball and proactively expanded its community. He reached out to individuals
playing tennis or met people randomly, introducing them to the game and encouraging
them to play with him. In Grass Valley alone, he has successfully recruited 1-2 dozen
significantly older players, fostering a sense of community and rekindling a healthy
competitive and spiritual outlook for them.

This is just one example of Aaron's charitable, educational, and civic activities that I
deeply admire about him. His unwavering dedication to helping people in his unique way
is evident through numerous instances. He possesses genuine compassion and a
remarkable willingness to utilize his talents for the betterment of others.

Letter from Bianca Karres, Ex. 3.

Mr. Boren's friends provide a chorus of support. His friend Steve states,

I met Aaron [3 years ago] not long after moving here. We had both just moved here. I
went back to NYC to bring the rest of my woodworking shop. Aaron and I immediately
became friends with our similar interests as veterans and aspiring woodworkers. When I
brought my woodworking shop back, Aaron was the first to help get it unloaded and
secured for me. I think he realized that as a senior citizen and disabled vet, I could use
some help. And we have become good friends, understanding that we each have skills
and abilities to help each other.

1 I have also seen how supportive he is with others as well. He has truly embraced being a
2 member of the "Downtown Grass Valley community".

3 In the almost 3 years I have known Aaron, I have become aware of his case. He's been
4 very open, forthright, and responsible about what he's done. I know he regrets the
5 decision he made and is willing to be responsible for his actions. I have learned that none
6 of us are perfect except that we are all perfectly imperfect.

7 While we have our own wood shops, I have been happy to serve as a mentor and a friend
8 for him. I would hire him as he's teachable, as well as coachable. He is not what I would
9 call "of the criminal type." I believe we will collaborate on projects as soon as our shops
10 and businesses get set up.

11 I truly believe society is better with Aaron around.

12 Letter from Steve Nathan, Ex. 4. Mr. Boren's friend Bob Thompson echoes those sentiments:

13 As we became better acquainted, [Aaron] became loyal to my business and wanted to
14 help me succeed. He is a woodworker and made beautiful original tables, a coffee table
15 and a bench swing, complete with [my business] logos. He only charged me for the
16 materials.

17 Aaron, myself and another friend formed a bond. We decided to meet weekly for coffee
18 to support each other and help improve our lives. Our third friend had revealed his
19 diagnosis of cancer and was struggling with this challenge. Aaron was and continues to
20 be very supportive.

21 During one of our weekly meetings, Aaron shared the details of the case that's before
22 you. He took full responsibility for his actions. and showed great remorse and regret.
23 After he told us I was surprised. His unsolicited generosity to my business and myself is
24 the man of character that I know.

25 As he navigates through this rough time, he has shown great resilience and hope for his
26 future. He is a valued member of this community [. . .].

27 Letter from Bob Thompson, Ex. 5. Another friend, Aaron Brown, joins:

28 I've come to know Aaron as a kind person that cares about others, and about improving
himself as a person. Within the local community he's frequently raising his hand to help.
He's volunteered for local landscape projects, he's given free pickleball lessons at the
city courts. He's a gifted woodworker and has provided numerous pieces of outdoor
furniture for downtown business. He's always energetic and positive. In October of 2023
several local guys, including Aaron and myself, formed a group to meet once a week to
talk about things happening in our lives that we really don't have anyone else to confide
in. We also share self-improvement books, podcasts, YouTube videos, anything we've
found helpful to our individual betterment. This has been a blessing for all of us and we
intend to continue and hope to grow our group.

Aaron owns what he did, and he lives with remorse. He is a good person and a trusted
friend, and we'll remain in each other's lives.

Letter from Aaron Brown, Ex. 6.

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1 A pattern emerges from the words of family and friends revealing Mr. Boren's charitable
2 service and good works, his community ties, his family ties, and his pre-sentence rehabilitation. This
3 veteran with physical and other conditions that, while not excusing his conduct, should be considered
4 when determining his sentence, should receive a downward variance in recognition of his many
5 positive attributes.

6 The defense endorses the following outcome: A downward variance to the middle of Offense
7 Level 11 (8-14 months) in conformance with the government's "year-and-a-day" recommendation,
8 placing Mr. Boren in Zone B of the Sentencing Table. Pursuant to U.S.S.G §5C1.1, Note 10(A), a
9 sentence other than a sentence of imprisonment is then "appropriate."

10 IV.

11 CONCLUSION

12 It is respectfully requested that Mr. Boren be sentenced to probation including a condition that
13 substitutes a period 10 months of home detention for imprisonment (one day of home detention for one
14 day of imprisonment served on a year-and-a-day custodial sentence). *See* §5C1.1(c)(3) & (e)(3).¹

15
16 Dated: May 6, 2024

CANDICE FIELDS LAW, PC

17
18 By: /s/ Candice L. Fields
19 CANDICE L. FIELDS
20 Attorney for Defendant
21 Aaron Boren
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28 ¹ Another Guidelines-endorsed option would be a sentence of supervised release including a condition of home detention combined with a short term of imprisonment of one or more months. *See* U.S.S.G §5C1.1(c)(2) and §5C1.1(d)(2).