

1 SANDRA R. BROWN  
 Acting United States Attorney  
 2 THOMAS D. COKER  
 Assistant United States Attorney  
 3 Chief, Tax Division  
 JAMES C. HUGHES (CBN 263878)  
 4 VALERIE L. MAKAREWICZ (CBN 229637)  
 Assistant United States Attorney  
 5 Federal Building, Suite 7211  
 300 North Los Angeles Street  
 6 Los Angeles, California 90012  
 Telephone: (213) 894-2729  
 7 Facsimile: (213) 894-0115  
 E-mail: Valerie.Makarewicz@usdoj.gov  
 8 Attorneys for United States of America

9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION

13 UNITED STATES OF AMERICA,  
 14  
 Plaintiff,  
 15  
 v.  
 16 SEAN DAVID MORTON, et al.,  
 17  
 Defendant.  
 18

No. CR 15-00611-SVW  
UNITED STATES’ SENTENCING  
MEMORANDUM AND RESPONSE  
TO THE PSR FOR DEFENDANT  
SEAN DAVID MORTON;  
DECLARATION; EXHIBITS

19 The United States of America, by and through its undersigned counsel, hereby  
 20 submits a memorandum in anticipation of the sentencing of defendant Sean David  
 21 Morton currently scheduled for June 19, 2017.

22 As set forth more fully below, the United States requests that the Court sentence  
 23 defendant to a term of imprisonment of 87 months, followed by 5 years of supervised  
 24 release, and further order that defendant pay \$480,322.55 in restitution to the Internal  
 25 Revenue Service (IRS), and a special assessment of \$2,900.

26 On May 12, 2017, the United States received the Probation Office’s Presentence  
 27 Investigation Report (PSR) and the disclosed recommendation letter (Letter) prepared  
 28 with respect to defendant. See Docket Nos. 222, 223. The United States submits the



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Table of Contents**

MEMORANDUM OF POINTS AND AUTHORITIES ..... 1

I. Summary of the United States’ Sentence Recommendation..... 1

II. Procedural History ..... 1

    a. Indictment ..... 1

    b. Trial..... 2

    c. PSR and Letter ..... 2

III. Government’s Offense Level Calculation..... 3

    a. Loss Regarding Section 287 counts ..... 3

    b. Loss Regarding Section 371 count ..... 6

    c. Loss Regarding Section 514 counts ..... 6

    d. Defendant’s conduct during the prosecution and sentencing was, and continues to be, obstreperous, and should be considered as obstructionist under U.S.S.G. § 3C1.1 ..... 10

    e. Combined Offense Levels and Recommended Sentence..... 15

IV. Consideration of Section 3553(a) factors..... 18

    a. Nature and circumstances of offense and defendant’s history and characteristics ..... 19

    b. Deterrence, respect for the law, and protection of the public ..... 20

    c. Need to provide educational or vocational training ..... 21

    d. Need to avoid unwarranted sentencing disparities ..... 21

    e. Need for restitution ..... 23

V. Conclusion ..... 23

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Summary of the United States' Sentence Recommendation**

3 The United States has no objection to the PSR's charge and conviction  
4 discussion, offense conduct discussion, the calculation of defendant's criminal  
5 history, sentencing options discussion, or the discussion regarding factors that may  
6 warrant departure.

7 The United States disagrees with the Probation Office's finding that  
8 defendant's total combined adjusted offense level is 28. In an oversight, the PSR  
9 did not account for the loss related to defendant's making and passing of the  
10 fictitious checks/bonds to the IRS. Further, after the submission of its sentence  
11 recommendation to the Probation Office, the United States determined it was  
12 appropriate to argue for a 2-point obstruction enhancement under U.S.S.G. §  
13 3C1.1. A term of **87 months** imprisonment is warranted in this case, as explained  
14 further below.

15 **II. Procedural History**

16 **a. Indictment**

17 Defendant, along with his wife and co-defendant Melissa Morton, was  
18 charged in the first superseding indictment (FSI) filed on January 27, 2016, with  
19 one count of conspiring to defraud the United States in violation of 18 U.S.C. §  
20 371 (Count 1), two counts of filing false claims against the United States in  
21 violation of 18 U.S.C. § 287 (Counts 2 and 3), and 26 counts of passing,  
22 presenting, and/or offering, false or fictitious financial instruments in violation of  
23 18 U.S.C. § 514 (Counts 6-7 and 9-32) either on his behalf, or ones he and his co-  
24 conspirator marketed, sold, prepared, and passed on behalf of their "clients."  
25 Docket No. 17. Count 1 of the FSI related to defendants' conspiracy to defraud the  
26 United States between March/April 2009 and April 2013. Counts 2 and 3 of the  
27 FSI pertained to two fraudulent federal income tax returns filed by defendant  
28 during the aforementioned time period, wherein defendant claimed false federal tax

1 refunds based on nonexistent Original Issue Discount (OID) income and  
2 withholdings. Similarly, Counts 6 and 7 of the FSI related to two fictitious  
3 financial instruments submitted by defendant in an effort to pay off any debt he  
4 owed the IRS. Count 10 of the FSI related to a fictitious financial instrument  
5 submitted by defendant to the California Franchise Tax Board. Finally, Count 9  
6 and Counts 11 through 32 of the FSI related to fictitious financial instruments  
7 prepared, marketed, and sold by defendant and his co-conspirator on behalf of  
8 clients who wanted to pay off their commercial debt with various financial  
9 institutions.

10 On February 4, 2016, defendant plead not guilty to all counts. Docket No.  
11 31.

12 **b. Trial**

13 Beginning on April 4, 2017, a four day trial commenced, and on April 7,  
14 2017, a jury returned guilty verdicts against defendant Sean David Morton, and his  
15 co-defendant, Melissa Morton, on all counts. Docket No. 195.

16 **c. PSR and Letter**

17 On May 12, 2017, the Probation Office disclosed the PSR and Letter,  
18 wherein it recommend that defendant's offense level be 28, defendant's criminal  
19 history be Category I, and defendant be sentenced to a term of imprisonment of 78  
20 months, which is the low-end of the advisory Sentencing Guidelines range for said  
21 offense level. Letter, p. 1. This recommended term consists of 78 months on each  
22 of Counts 6, 7, and 9 through 32, and 60 months on each of counts 1, 2, and 3 of  
23 the FSI, all to be served concurrently. *Id.*, p. 2. The Probation Office recommended  
24 the imposition of a 5 year term of supervised release, a restitution order of  
25 \$480,322.55 payable to the IRS, and a special assessment of \$2,900. *Id.*, pp. 1-2.  
26 The Probation Office recommends certain terms and conditions to be imposed on  
27 defendant during supervised release. *Id.* p. 2.

28 ///

1       **III. Government's Offense Level Calculation**

2           The United States provides the following substantiation of the loss in  
3 relation to the recommended offense level for defendant, similar to that it  
4 submitted to the Probation Office. PSR, ¶ 13.

5           **a. Loss Regarding Section 287 counts**

6                   *i. Facts proven at trial*

7           Defendant was convicted of submitting false claims to the United States in  
8 Counts 2 and 3, in violation of 18 U.S.C. § 287, which conduct occurred from  
9 March/April 2009 through April 2013. During this time period, defendant  
10 submitted numerous federal income tax returns and claims for refunds to the IRS  
11 claiming large refunds amounts. Defendant's conduct in filing the false claims for  
12 refund can be grouped into four phases: March/April 2009, August 2010,  
13 November 2010, and June 2012.

14           As introduced into evidence at trial, in March/April 2009, defendant filed  
15 income tax returns with the IRS for years 2005, 2006, 2007, and 2008. See  
16 Declaration of IRS Special Agent John Lucero, Exhibits 4, 5, 7, 10, 153  
17 (Declaration). Each return falsely claimed that defendant earned large amounts of  
18 OID income from various financial institutions and reported that the majority of  
19 this income had been withheld and paid over to the IRS. The returns claimed that  
20 defendant was entitled to large federal tax refunds based on the difference between  
21 the resulting income tax and the amount of the reported withholdings. As proven  
22 at trial, these claims were fraudulent, as defendant had no OID income, and no  
23 withholding paid over to the IRS.

24           In August 2010, defendant filed income tax returns claiming fraudulent tax  
25 refunds based on false OID income and non-existent income tax withholdings. See  
26 Declaration, Exhibits 9, 11, 12.

27           In November 2010, defendant filed false income tax returns claiming even  
28 larger refunds, and paradoxically reported zero income but a large amount of

1 income tax withholdings, and claimed a refund for the entirety of these false  
2 withholdings. See Declaration, Exhibits 14-16.

3 In June 2012, defendant attempted to obtain false refunds from the IRS by  
4 filing a false Form 843, Claim for Refund. See Declaration, Exhibit 18.

5 *ii. Applicable Loss*

6 As seen in the Sentencing Guidelines and its related commentary, “tax loss”  
7 is the amount of the loss that was the object of the offense, including conduct that  
8 is a continuing pattern of violations of tax laws by the defendant. U.S.S.G. §  
9 2T1.1(c)(1) and commentary application note 2. Total tax loss includes each  
10 instance that involved a false claim. Id. This definition is supported in section  
11 2B1.1 and related commentary, application note 3(A) of the Guidelines. There, the  
12 Sentencing Commission defined the loss to include the greater of actual or  
13 intended loss, defined as the pecuniary harm the defendant purposefully sought to  
14 inflict. Id.

15 As seen in the FSI Counts 2 and 3, the United States charged defendant with  
16 two violations of section 287, which were the claims for refund submitted by  
17 defendant in November, 2010 and June, 2012. See Declaration, Exhibits 15, 18.  
18 The loss defendant sought to inflict was not limited to just these two claims for  
19 refund. Even though the United States did not charge each return defendant  
20 submitted to the IRS, beginning in 2009 and continuing 2012, as separate  
21 violations of section 287, pursuant to the Sentencing Guidelines and as advocated  
22 in the PSR, such conduct should be included in calculating defendant’s intended  
23 loss. These false claims were the basis of defendant’s conspiracy and the overt  
24 acts taken with respect to Count 1.

25 The following chart enumerates the entirety of defendant’s intended loss  
26 with respect to every false claims for refund he submitted to the IRS:

27  
28

Date Claim Filed (Count, Corresponding Overt Act ¶, Exhibit #)	Claim for Refund	Amount
March 13, 2009 (Count 1, ¶ 17, Ex. 4)	2006 Form 1040	\$1,560,634
March 13, 2009 (Count 1, ¶ 18, Ex. 5)	2007 Form 1040	\$1,754,594
April 14, 2009 (Count 1, ¶ 20, Ex. 7)	2005 Form 1040	\$136,077
April 14, 2009 (Count 1, ¶ 21, Ex. 10)	2008 Form 1040	\$479,506
August 31, 2010 (Ex. 9) <sup>1</sup>	2007 Form 1040	\$1,754,594
August 31, 2010 (Count 1, ¶ 40, Ex. 11)	2005 Form 1040	\$180,326
August 31, 2010 (Count 1, ¶ 41, Ex. 12)	2006 Form 1040	\$180,326
November 5, 2010 (Count 1, ¶ 43, Ex. 14)	2007 Form 1040	\$1,762,289.25
November 19, 2010 (Count 1, ¶ 44, Count 2, Ex. 15)	2006 Form 1040	\$2,809,921.18
November 19, 2010 (Count 1, ¶ 45, Ex. 16)	2005 Form 1040	\$244,230
June 21, 2012 (Count 1, ¶ 47, Count 3, Ex. 18)	IRS Form 843 for 2006	\$1,560,634
	<b>Total False Claims:</b>	<b>\$12,423,131.43</b>

Defendant Sean David Morton's base offense level for the section 287 offenses is **26**, as the intended loss exceeds \$9.5 million, but is less than \$25 million. U.S.S.G. §§ 2T1.1, 2T4.1.<sup>2</sup>

<sup>1</sup> Though uncharged and not listed as an overt act, this return was filed with the IRS, and introduced into evidence at trial. This effects the amount of loss stated in the PSR, ¶ 25, a typographical omission.

<sup>2</sup> If using the table at section 2B1.1(a) and (b) to calculate intended loss of section 287 violations, defendant's base offense level is also **26** (6 as base offense level, increased by 20), though the government maintains that the loss as calculated by the tax table section 2T4.1 is more appropriate. PSR, ¶¶ 41-52.



1                   **b. Loss Regarding Section 371 count**

2                   Defendant was convicted of conspiring to defraud the United States under 18  
3 U.S.C. § 371 in Count 1.

4                   Under U.S.S.G. § 2T1.9, the base offense level for the defendant is tied to  
5 the offense level as determined under the Sentencing Guidelines §§ 2T1.1 and  
6 2T4.1. As such, defendant’s base offense level for the section 371 offense  
7 remains a Level 26. PSR, ¶¶ 41-52.

8                   **c. Loss Regarding Section 514 counts**

9                   As charged in Counts 6, 7, and 9 through 32 of the FSI, defendant was  
10 convicted of making and passing false financial instruments with respect to himself  
11 and clients.

12                               *iii. Facts proven at trial re: Counts 6, 7, 10*

13                   With respect to defendant’s making and passing false financial instruments  
14 for himself to the IRS, defendant submitted a false check in the amount of \$5.2  
15 million to the IRS, which purported to allow the IRS to draw upon U.S. Treasury  
16 funds to pay off any of his tax liability. See Declaration, Exhibit 14. Defendant  
17 signed and submitted this check,. Then, in 2013, defendant submitted a false bond  
18 to the IRS in the amount of \$10 million, again, as purported payment of any  
19 outstanding tax liability with the IRS. See Declaration, Exhibit 20. Defendant  
20 was also convicted of passing a false bond to the California Franchise Tax Board  
21 in Count 10 in an attempt to resolve his debt. See Declaration, Exhibit B.

22                               *iv. Facts proven at trial re: Counts 9, 11 through 32*

23                   Defendant’s criminal conduct also involved the marketing of fictitious  
24 financial instruments to other individuals as a way to pay off debt. In total, the  
25 government proved that defendants made and passed 23 fictitious financial  
26 instruments on behalf of others individuals.

27 ///

1                   v.   *Applicable Loss*

2           The total amounts of the check/bonds defendant and his co-conspirator made  
3 and passed are astronomical—the principal amounts of said instruments range  
4 from \$50,000 (Count 32) to \$10 million (Count 7).

5           The United States argues that the correct amount of loss as to the making  
6 and passing of fictitious financial instruments is perhaps not the amount of the  
7 false check/bonds themselves, but rather, the amount of the debt the check/bonds  
8 were trying to pay off on behalf of the defendant or his clients if the scheme had  
9 worked.

10           As to defendant’s making and passing of the false check and bond,  
11 defendant was trying to pay off the erroneous refund the IRS issued to him in the  
12 amount of \$480,322.55. See Declaration, Exhibits 14, 20, 153. Defendant made  
13 and passed the false check and bond as a form of payment to the IRS for this debt,  
14 since he had otherwise disposed of the erroneous refund shortly after receiving it.

15           As the Court is aware, in September 2015, the United States searched  
16 defendants’ home pursuant to a warrant, wherein client files prepared and  
17 maintained by defendants were found. In the various client files were copies of the  
18 balances of the debts each client was trying to resolve by using defendant’s bond  
19 scheme. Attached hereto are copies of the bills/statements for the clients, redacted  
20 for personal identifying information, which show the balances of the clients’ debt  
21 they were trying to resolve. See Declaration, Exhibits A-U. In issuing and passing  
22 these bonds, defendant intended to defraud the various institutions receiving the  
23 subject bonds. Therefore, the intended loss should be calculated based on the total  
24 outstanding debts sought to be discharged by the use of the bonds, as follows:

25 ///

26 ///

27 ///

28

Count	Client	Exhibit	Debtor/Bank Recipient	Amount
9	D.B.	A	IRS	\$153,689
10	Defendant	B	CA FTB	\$115,816
11	W.P.G.	C	Quicken Loans	\$382,353
12	W.P.G.	D	IRS	\$44,497
13	W.F.K.	E	PNC Bank	\$110,000
14	A.M.	F	PennyMac	\$233,563
15	M.W.	G	Chase	\$66,734
16	D.N.M.	H	Bank of America/AAA	\$25,540
17	D.N.M.	I	BJ/Barclay/Comenity	\$32,389
18	D.N.M.	J	Costco/AMEX	\$9,484
19	M.B.R.	K	Chevron	\$403,630
20	M.B.R.	L	ACS	\$66,868
21	M.C.U.	M	Chase	\$26,000
22	S.H.Y.		Contra Costa County Treasurer	n/a
23	D.W.	N	CitiMortgage	\$134,475
24	E.C.	O	Santander Bank	\$277,916
25	T.C.		Chase	n/a
26	P.M.	P	Nationstar	\$236,024
27	B.L.		Navient	\$75,000
28	M.A.E.	Q	IRS	\$204,582
29	M.A.E.	U	CA FTB	\$54,930
30	M.G.K.	V	Nationstar	\$444,682
31	D.M.S.	W	Barclay	\$15,185
32	N.J.Z.	X	Bank of America	\$37,428
			<i>Total Intended Debt to be paid by bonds for clients:</i>	\$3,151,785

Count	Client	Exhibit	Debtor/Bank Recipient	Amount
6/7	Defendant	14/20	<i>Defendant's Debt with the IRS:</i>	\$480,322.55
			<b>Total Intended Debt to be paid by check/bonds:</b>	\$3,632,107.55

See Declaration, Exhibits 14, 20, 153, A-U.

Based on the government's calculation of the intended loss of defendant's use of false check/bonds to pay off his debt with the IRS, and the intended loss of defendant's clients with their purchase of his bonds, under U.S.S.G. § 2B1.1, defendant's total offense level for each of the violations of 18 U.S.C. § 514 is **25**.<sup>3</sup> The base offense level is 7, as defendant was convicted of an offense (18 U.S.C. § 514) referenced in the Sentencing Guidelines §2B1.1, and these offenses have a statutory maximum term of imprisonment of 25 years. The offense level is increased by 18 levels because the intended loss is more than \$3.5 million, but less than \$9.5 million. U.S.S.G. § 2B1.1(b)(1)(J).

///  
///  
///

---

<sup>3</sup> This is a different offense level than stated in the PSR, ¶ 28, 55. When submitting its position to the Probation Office, the United States unintentionally omitted defendant's use of fake check/bonds to the IRS to wipe-out his debt in Counts 6 and 7, and such was not included in the calculation found in the PSR. *Id.* This inclusion increases the offense level by 2 levels more than what the Probation Office calculated.

1                   **d. Defendant’s conduct during the prosecution and sentencing was,**  
2                   **and continues to be, obstreperous, and should be considered as**  
3                   **obstructionist under U.S.S.G. § 3C1.1**

4                   The Court is familiar with the multitude of nonsensical pleadings defendant  
5                   filed and stated in Court throughout the course of this criminal case, which has not  
6                   abated since his conviction.<sup>4</sup> Defendant’s pattern of conduct of filing unintelligible  
7                   pleadings began weeks after the initial indictment of defendants. Docket No. 10.  
8                   The day defendant was released from his arrest, he filed unintelligible pleadings  
9                   which the assigned Magistrate Judge refused to file. Docket No. 44.

10                  While the case was pending, defendant continued to file senseless and  
11                  frivolous pleadings, first focusing on challenging the government’s prosecution of  
12                  him, and later, turning his ire to challenging this Court’s jurisdiction. Docket Nos.  
13                  69, 72-81.

14                  Defendant’s obstreperous conduct increased markedly with the proximity of  
15                  trial. Docket Nos. 115-120, 130-138, 145-148, 158-167, 179-184. The Court  
16                  recognized these pleadings as “devoid of merit.” Docket No. 171, p. 3.

17                  The morning of the first day of trial, defendant handed the assigned AUSAs  
18                  a civil suit he filed in California State Court against them, as well as the United  
19

20 \_\_\_\_\_  
21 <sup>4</sup> In this argument, the United States distinguishes defendant’s pattern of frivolous  
22 pleadings to others that defendant has brought against the government that state  
23 actual claims for relief—for example, defendants filed a civil suit against the  
24 United States for the return of property seized during the search of their residence  
25 pursuant to Fed. R. Civ. P. 41(g), wherein defendants generally limited their  
26 sovereign citizen rhetoric and made coherent legal arguments for the return of their  
27 property. See Morton v. Lu, et al., 2:15-cv-09262-CBM-AGR (C.D. Cal., Dec. 1,  
28 2015). Such example shows that defendant clearly understands the effect of his  
nonsensical pleadings, and does not engage in nonsensical filings when it generally  
inures to his benefit. See also, defendant’s motion for reconsideration of the  
parties’ stipulation for a continuance of this case, Docket No. 91.

1 States Attorney and the First Assistant United States Attorney, to stop the criminal  
2 trial. Defendant recently voluntarily dismissed this action after the United States  
3 removed the case to federal court and filed a motion to dismiss. See Morton v.  
4 Brown, et al., Case No. 2:17-cv-02403-R-JC (C.D. Cal. April 4, 2017).

5 Defendant's filings continued during the course of trial. Docket Nos. 187-  
6 188, 198-192.

7 Defendant's conduct persisted post-conviction, with sustained attacks on the  
8 Court's jurisdiction. Docket Nos. 213, 217-219.<sup>5</sup>

9 Defendant's conduct continued with the Probation Office in submitting  
10 further sovereign citizen documents during his interview. PSR, ¶ 81. Further,  
11 defendant did not provide the Probation Office with clear information regarding his  
12 financial condition. PSR, ¶¶ 149 through 152. Defendant reported no income on  
13 his financial statement, but monthly expenses of \$3,306, with no genuine  
14 explanation as to how he meets these expenses. Id.

15  
16 Then, on April 17, 2017, defendant, along with his co-defendant Melissa  
17 Morton, filed a federal civil suit against the assigned AUSAs, currently pending  
18 before Judge Gee. See Morton, et al., v. United States Inc., et al., Case No. 2:17-  
19 cv-02890-DMG-E (C.D. Cal. April 17, 2017).

---

20  
21  
22 <sup>5</sup> To that end, at the conclusion of defendant's sentencing, the government  
23 anticipates that it will move for defendant be immediately remanded into custody,  
24 as there is clear and convincing evidence that: 1) defendant has continuously  
25 denied that this Court has jurisdiction over him, 2) he is a flight risk as he has  
26 admitted to having passports and Canadian identification, and 3) as the court has  
27 found, brings the frivolous appeal of his case for the purpose of delay, is without  
28 merit, and does not present a substantial question of law or fact that would result in  
a reversal, order for new trial, a sentence that does not include incarceration. PSR,  
¶ 81, 128; Docket No. 220; 18 U.S.C. §3143(b).

1 Currently, defendant is pursuing an appeal in the Ninth Circuit, wherein he  
2 claims that no court has jurisdiction over him. See United States of America v.  
3 Morton, Case No. 17-50144 (9th Cir. April 26, 2017).

4 The design of the aforementioned conduct of defendant is crystal clear: to  
5 burden the court system, harass the prosecutors and the Court, and delay the  
6 administration of justice. One of the goals of the “sovereign citizen” criminal  
7 subculture is the harassment and burdening of courts with mountains of frivolous  
8 paperwork – what some courts have referred to as “paper terrorism” tactics – in an  
9 effort to degrade the court system over time and make it more difficult to  
10 efficiently resolve cases, especially tax cases. See, e.g., El Ameen Bey v. Stumpf,  
11 825 F.Supp.2d 537, 540 (D. N.J. 2011). In fact, during the investigation of this  
12 case, defendant touted he was a “paper terrorist” when giving seminars regarding  
13 his schemes. On October 16, 2015, defendant gave a lecture at the New Life Expo,  
14 held in New York City, New York. An undercover IRS Special Agent attended  
15 defendant’s lecture, which was recorded and transcribed. Declaration, Exhibit V.  
16 As defendant explained, in June 2016, he was in court for a case involving his  
17 driver’s license. Defendant stated he filed a motion to dismiss, and stated the  
18 following regarding how he “resolved” the matter:  
19

20 DR. MORTON: And he's like okay. And then the Judge is like all  
21 right. So now this girl chases me out of the courtroom, because now  
22 they've got this thing on their docket for two years, right? For two  
23 years. And she chases me out of the courtroom and she goes oh, Dr.  
24 Morton. And I said you know what? You ever heard of those people  
25 they call *paper terrorists*? You ever hear of those guys? They file  
26 liens against your bond for hundreds of millions of dollars and make  
27 sure that you never see the inside of a courtroom because you can't  
28 work because you have a lien against your bond and shut down  
courtrooms? She goes yeah, I've heard of those people. And I said,  
"I'm that guy."

1 [Laughter]

2 DR. MORTON: I am that guy. And here's what we're going to do. I  
3 will accept, so you can save face, I will accept a fine of less than 250  
4 dollars and we'll drop this to an infraction of simply driving without a  
5 license. Have we got a deal? Or I will shut this place down. And she's  
6 like wait here. And she runs through the place. About a minute later  
she comes out and she goes we're taking your deal.

7 Declaration, Exhibit V [emphasis added].

8 Defendant's filing false and frivolous documents with this Court, as well as  
9 filing frivolous cases in California state court and the Ninth Circuit against the  
10 prosecutors or the Court, is meant to cause delay, waste court resources, and  
11 constitutes obstruction of justice for purposes of U.S.S.G. § 3C1.1 This section  
12 provides:

13 If (1) the defendant willfully obstructed or impeded, or attempted to  
14 obstruct or impede, the administration of justice with respect to the  
15 investigation, prosecution, or sentencing of the instance offense, of  
16 conviction, and (2) the obstructive conduct related to (A) the  
17 defendant's offense of conviction and any relevant conduct; or B) a  
closely related offense, increase the offense level by 2 levels.

18 As to the multitude false, fraudulent, and frivolous papers defendant has  
19 filed with this court since his indictment, defendant has willfully and belligerently  
20 filed these documents. In United States v. Taylor, 509 Fed.Appx. 205, 211-13 (4th  
21 Cir. 2013) (unpublished), the Fourth Circuit found the district court was more than  
22 justified in finding for the 2-point obstruction enhancement when the defendant, a  
23 sovereign citizen, filed numerous frivolous filings despite repeated warnings of the  
24 consequences of his behavior. The Fourth Circuit found the filing of numerous  
25 frivolous pleadings and lawsuits with the intent to hinder the prosecution can be  
26 considered obstructive conduct. Id., at 211. Like the Court in the instant case, the  
27  
28



1 district court in Taylor often warned the defendant, in open court, as to the  
2 consequences of his actions and his purported “defense”:

3 [I]f you are found guilty and the time comes for sentencing, I  
4 want you to know that under our sentencing guidelines, if I  
5 conclude that you've taken steps to obstruct justice, that that  
6 could enhance the amount of sentence you might be  
7 recommended for under those guidelines.

8 And the court warned Taylor again when it told him that “I'll be  
9 very patient with you, but I want to make sure you understand  
10 that when and if you're found guilty, if that happens, and you're  
11 presumed to be innocent, that that could affect your sentence  
12 potentially.”

13 Id., at 212. Despite these warnings, the defendant continued to file groundless  
14 filings. And at sentencing, the district court found:

15 [T]his is clearly a case in which there's been a systematic effort  
16 to thwart this prosecution, both by actions internal to the case  
17 with the pleadings that I have summarized previously, as well  
18 as frivolous suits that were consistently dismissed by this court  
19 after a considerable amount of effort by staff of this court and  
20 by this judge to deal with it.

21 The Fourth Circuit agreed that the disruptive conduct, resulting in the  
22 expenditure of administrative and judicial time and expense, was sufficiently  
23 obstructive to warrant the enhancement under section 3C1.1. Id., at 213.<sup>6</sup>

24 This Court has expended a lot of effort to repeatedly warn defendant, at  
25 various stages of this litigation, that his actions in continuing to file frivolous  
26 pleadings and making frivolous arguments have real consequences. Likewise, the

---

27 <sup>6</sup> The Tenth Circuit has held that the mere threat of filing of frivolous lawsuits  
28 against IRS agents, as well as the actual filing of frivolous lawsuits to quash  
investigative summonses, is grounds for the obstruction enhancement. United  
States v. Hopkins, 509 Fed.Appx. 765, 782 (10th Cir. 2013)(unpublished).

1 Court here should determine the real consequences to taking actions designed to  
2 thwart the court system and the proper administration of justice, by finding that  
3 defendant has engaged in obstructionist behaviors to impede the prosecution and  
4 sentencing of this matter, and increase his offense level by 2 levels. This is clearly  
5 a case where defendant has undertaken a systematic effort to impede this  
6 prosecution and the resulting sentencing. Like the defendant in Taylor, defendant  
7 consciously disregarded the Court's repeated warnings to him. He has made  
8 numerous false and frivolous legal claims that he knows are untrue. He filed two  
9 frivolous lawsuits against government prosecutors, one of which was brought with  
10 the express purpose of halting the trial of this case. The application of the 2-point  
11 enhancement for the obstruction and impediment of justice is warranted under  
12 section 3C1.1.

13  
14 **e. Combined Offense Levels and Recommended Sentence**

15 Pursuant to U.S.S.G. §§ 3D1.1 and 1.2, the loss relating to the Form 1099-  
16 OID scheme by defendant should be one "Group of Closely Related Counts"  
17 (Group #1) and the loss pertaining to the bonds defendant made and passed on his  
18 behalf and that of his clients should be a separate Group (Group #2). These  
19 separate Groups each involve distinct criminal undertakings by the defendant,  
20 while within each group, the individual actions involve substantially the same  
21 harm and criminal objective. PSR, ¶¶ 41-60.

22 Under U.S.S.G. § 3D1.3, the highest offense level for defendant is with  
23 respect to Group #1, as his total offense level is 26, while the Group #2 offense  
24 level is 25. PSR, ¶ 61.

25 Under U.S.S.G. § 3D1.4, defendant's Combined Offense Level is  
26 determined by taking the offense level applicable to the Group with the highest  
27 offense level, here Group #1, increasing that offense level pursuant to the  
28

1 applicable table in this section of the Sentencing Guidelines. Then, the Court must  
 2 count one additional Unit for each Group that is equally serious or from 1 to 4  
 3 levels less serious, which is Group #2 at Level 25. PSR, ¶ 61.

4 As argued above, filing false and frivolous documents with any court as a  
 5 way to delay and waste limited court resources, as defendant did in this matter,  
 6 constitutes obstruction of justice for purposes of U.S.S.G. § 3C1.1, and the Court  
 7 should increase defendant’s offense level by 2 levels. If the court agrees to impose  
 8 the obstruction enhancement, the offense level computation varies depending on to  
 9 which offense the court assigns the enhancement, as follows:

10 Scenario 1: Court increases the offense level related to § 287 counts, Group #1

11 Base Offense Level for		U.S.S.G § 2T4.1(K)
12 § 287 offenses	26	Loss is \$12,423,131.43
13 Adjustment for		U.S.S.G. §3C1.1
14 obstruction of justice	+2	
15 Adjusted Offense Level		
16 (Group #1)	28	

19 Base Offense Level for		U.S.S.G § 2B1.1(a)(1)
20 § 514 offenses	7	
21 Specific Offense		U.S.S.G. §2B1.1(b)(1)(K)
22 Characteristics:	+18	Loss is \$3,632,107.55
23 Adjusted Offense Level		
24 (Group 2)	25	

25 ///

26 ///

27 ///

28

1 Multiple Count Adjustments

2 Group #	Adjusted Offense Levels	Units
3 1	28	1.0
4 2	25	1.0
5	Total Units	2.0

6 Greater of the Adjusted Offense Levels above: 28 (Group #1)

7 Increase in Offense Level per Units above: +2

8 **Combined Adjusted Offense Level: 30 (97-121 months)**

9 Scenario 2: Court increases the offense level related to § 514 counts, Group #2

10 Base Offense Level for	26	U.S.S.G § 2T4.1(K)
11 §287 offenses		Loss is \$12,423,131.43
12 Adjusted Offense Level	26	
13 (Group 1)		

16 Base Offense Level for §	7	U.S.S.G § 2B1.1(a)(1)
17 514 offenses		
18 Specific Offense	+18	U.S.S.G. §2B1.1(B)(1)(K)
19 Characteristics:		Loss is \$3,632,107.55
20 Adjustment for	+2	U.S.S.G. §3C1.1
21 obstruction of justice		
22 Adjusted Offense Level	27	
23 (Group 2)		

24 ///

25 ///

26 ///

1 Multiple Count Adjustments

2

Group #	Adjusted Offense Levels	Units
3 1	26	1.0
4 2	27	1.0
5	Total Units	2.0

6 Greater of the Adjusted Offense Levels above: 27 (Group #2)

7 Increase In Offense Level per Units above: +2

8 **Combined Adjusted Offense Level: 29 (87-108 months)**

9

10 **IV. Consideration of Section 3553(a) factors**

11 After many years of flouting the law, defendant now faces sentencing.  
 12 Defendant's criminal conduct, considered in light of the 3553(a) factors discussed  
 13 below, calls for a meaningful punishment and a sentence of **87 months**  
 14 imprisonment.

15 In determining the appropriate sentence to be imposed, this Court must also  
 16 consider all of the sentencing considerations set forth in Title 18, United States  
 17 Code, Section 3553(a). Those factors include: (1) the nature and circumstances of  
 18 the offense and the history and characteristics of the defendant; (2) the need for the  
 19 sentence imposed to reflect the seriousness of the offense, to promote respect for  
 20 the law, and to provide just punishment for the offense; (3) the need to afford  
 21 adequate deterrence to criminal conduct, and to protect the public from further  
 22 crimes of the defendant; (4) the need to provide the defendant with educational or  
 23 vocational training, medical care, or other correctional treatment in the most  
 24 effective manner; (5) the guidelines and policy statements issued by the Sentencing  
 25 Commission; (6) the need to avoid unwarranted sentence disparities among  
 26 defendants with similar records who have been found guilty of similar conduct;  
 27  
 28

1 and (7) the need to provide restitution to any victims of the offense. See 18 U.S.C.  
2 § 3553(a).

3 **a. Nature and circumstances of offense and defendant's history and**  
4 **characteristics**

5 In seeking an 87-month sentence, the United States is consciously  
6 advocating for a significant period of incarceration. This period of incarceration is  
7 commensurate with the seriousness and flagrancy of defendant's crimes.

8 Defendant is a serial fraudster with a long history of perpetrating financial crimes  
9 and wasting precious time and resources of the government and the courts.

10 In 2010, the Securities and Exchange Commission brought a civil suit  
11 against both defendants for their participation in a foreign currency exchange  
12 scheme. See Securities and Exchange Commission v. Sean David Morton, et al.,  
13 Case No. 1:10-cv-01720-KBF (S.D. N.Y. 2010).<sup>7</sup> Defendants filed multiple  
14 sovereign citizen-type documents, all of which were rejected by the District Judge.  
15 At the conclusion of the suit, on March 7, 2013, the District Court entered  
16 judgment against defendants in the amount of approximately \$11 million, for the  
17 losses related to their currency scheme.

18 Also, on June 27, 2013, defendants filed for Chapter 7 bankruptcy protection  
19 in this District. See In re Morton and Thomson, Case No. 2:13-bk-26725-BB

---

21 <sup>7</sup> During the SEC investigation, on March 18, 2009, defendants filed a civil lawsuit  
22 against the attorneys for the SEC, the Attorney General, and the U.S. Attorney of  
23 this District, to enjoin the investigation, declare that the SEC had no jurisdiction  
24 over the matter of the currency trading in which defendants were involved, and  
25 accuse the SEC attorneys of criminal misconduct. See Morton, et al. v.  
26 Ellenbogen, et al., Case No. CV 09-1875-PA-JCx (C.D. Call 2009). On motion by  
27 the government, the Court dismissed the action. See Docket No. 12. On June 29,  
28 2009, defendants appealed the District Court's ruling to the Ninth Circuit. See  
Morton, et al. v. Ellenbogen, et al., Case No. 09-56041 (9th Cir. 2009). On  
September 15, 2009, the Ninth Circuit affirmed the dismissal by the District Court.  
See Docket No. 20.

1 (C.D. Cal. 2013). This Court is familiar with the litany of false statements made  
2 by defendants in their Section 341 meeting of creditors proceedings, as submitted  
3 by the United States to the Court in supplemental briefing prior to trial in this case.  
4 Docket No. 173. Defendants were questioned under oath by the U.S. Trustee’s  
5 Office and the Chapter 7 trustee, wherein they lied in answering simple questions,  
6 for example, if they owned bank accounts. Thereafter, the United States Trustee’s  
7 Office filed an adversary proceeding against defendants to deny their discharge.  
8 See United States Trustee v. Morton, et al., 2:13-ap-01927-BB (C.D. Cal. 2013).  
9 After protracted litigation, on February 24, 2015, the United States Trustee’s  
10 Office was successful against defendants to deny any bankruptcy discharge under  
11 11 U.S.C. § 727(a)(4)(A). Again, throughout both the bankruptcy and the  
12 adversary proceedings (which itself lasted 2 years), defendants filed a multitude of  
13 frivolous documents, all of which cost the government and the Bankruptcy Court  
14 time and effort in which to respond.

15 Nothing in the defendant’s personal characteristics warrants a downward  
16 departure or a variance.

17 **b. Deterrence, respect for the law, and protection of the public**

18 An 87-month sentence adequately addresses, in accordance with section  
19 3553(a), the need for the sentence imposed “to promote respect for the law,” as  
20 well as “the need to afford adequate deterrence to criminal conduct.” The United  
21 States relies heavily on deterrence to enforce the internal revenue laws—more so  
22 than many other statutes. The reason is simple: the number of taxpayers in the  
23 United States far, far exceeds the number of auditors and criminal investigators  
24 available at the IRS.

25 The need for deterrence, both specific and general, warrants a strong  
26 sentence. This case presents a powerful need and opportunity for this Court to  
27 deter similar “sovereign citizen” fraudsters. Members of the tax-defier movement  
28

1 will take note of whatever sentences the Court imposes in this case. In this case,  
2 real deterrence can only be achieved by a significant jail sentence.

3 To date, defendant has not accepted responsibility for his criminal conduct.  
4 Throughout these proceedings, defendant has demonstrated an utter disregard for  
5 the Court's authority and attacked the Court and the prosecution, rather than  
6 addressing the charges against him. The sentence that defendant receives in this  
7 case must take into account his complete lack of remorse and his continued efforts  
8 to obstruct lawful government actions.

9 In light of his ongoing denial of guilt and his continued adherence to tax-  
10 defier views, there is a strong likelihood that, given the opportunity, defendant  
11 would commit further crimes similar to those in which he was convicted. See  
12 United States v. Simkanin, 420 F.3d 397, 417 (5th Cir. 2003) (holding that  
13 defendant's beliefs about the tax laws demonstrated a likelihood of recidivism).  
14 The sentence recommended by the government is sufficient, but not greater than  
15 necessary, to address this concern.

16 **c. Need to provide educational or vocational training**

17 The need to provide defendant with any educational or vocational training,  
18 medical care, or other correctional treatment is generally not a factor in this case.

19 **d. Need to avoid unwarranted sentencing disparities**

20 An 87-month sentence reflects the seriousness of the offense, promotes  
21 respect for law, and provides for just punishment in this case. This sentence  
22 reflects the consensus that those convicted of economic crimes, such as those  
23 committed by defendant, should not be able to avoid incarceration.

24 The need to avoid unwarranted sentencing disparities also entails a  
25 consideration of the sentences that defendants in other similar cases have received.  
26 Defendant testified about two individuals from whom he learned the OID and bond  
27 schemes: Brandon Adams and Gordon Hall, both of whom, as the government  
28 pointed out on cross examination, are currently incarcerated for committing crimes



1 similar to those committed by defendant. See Transcript, April 6, 2017, pp. 34, 35,  
2 95, 96, 104, 105.

3 At trial, defendant testified in his direct that both defendants had their false  
4 OID returns prepared by Brandon Adams. See Transcript, April 6, 2017, p. 10. In  
5 2014, Adams was indicted for violations of 18 U.S.C. § 514 in the District of  
6 Arizona, and on January 13, 2015, plead guilty to two violations of 18 U.S.C. §  
7 514. See United States v. Adams, Case No. CR 14-00184-2-PHX-NVW (D. Ariz.  
8 2014). On June 16, 2015, Adams was sentenced to 40 months imprisonment. Id.

9 At trial, defendant testified that defendants learned about the bond scheme  
10 from Hall, who often stayed at defendants' house as a guest. See Transcript, April  
11 6, 2017, pp. 104, 105. Hall was indicted, along with Brandon Adams, for  
12 violations of 18 U.S.C. § 514. See United States v. Hall, Case No. CR 14-00184-  
13 1-PHX-NVW (D. Ariz. 2014). On January 22, 2015, after a trial, Hall was  
14 convicted of four counts of violations of 18 U.S.C. § 514, and was sentenced on  
15 June 17, 2015 to 96 months incarceration. Id. Following an appeal by Hall, the  
16 Ninth Circuit upheld the ordered term of incarceration, but remanded the case to  
17 the District Court for clarification on 2 conditions of Hall's supervised release. Id.  
18 The recommended sentence of 87 months is well within the range for similarly  
19 situated defendants who taught the defendant the schemes he peddled.

20 For all of these reasons, defendant's criminal conduct warrants a significant  
21 prison sentence of 87-months. There are no other Section 3553(a) factors in this  
22 case which militate against imposition of such a sentence upon defendant; to the  
23 contrary, the 3553(a) factors on balance support the imposition of the  
24 recommended punishment. The United States respectfully submits that this  
25 sentence is sufficient, but not greater than necessary, to comply with the purposes  
26 set forth in Title 18, United States Code, Section 3553(a).

27 ///

28 ///



PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7211, Los Angeles, California 90012.

On **May 30, 2017**, I served

**UNITED STATES' SENTENCING MEMORANDUM AND RESPONSE TO THE PSR FOR DEFENDANT SEAN DAVID MORTON; DECLARATION; EXHIBITS**

on each person or entity name below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. Date of mailing: **May 30, 2017**

Place of mailing: Los Angeles, California

**See attached list**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: **May 30, 2017**, Los Angeles, California.

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

**Barbara Le**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RE: USA V. SEAN DAVID MORTON, ET AL

CASE NO.: CR 15-611 SVW

Service List

Sean David Morton  
565 Pier Avenue  
Box 1274  
Hermosa Beach, CA 90274-1274