LANE MYERS
PRO PER

Pima County Adult Detention
Tucson Arizona.

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA, Plaintiff, v. LANE MYERS, Defendant.	Case No. CR20251454-001 **MOTION TO STRIKE LETTERS OF SUPPORT; MOTION TO STRIKE SENTENCING RECOMMENDATIONS; MOTION TO STRIKE UNCONSTITUTIONAL PROBATION RECOMMENDATIONS; OBJECTIONS TO PRE-SENTENCE REPORT** Assigned to the Honorable D. Metcalf

COMES NOW defendant, LANE MYERS, in pro per, and hereby moves this court at sentencing in this matter to: Strike Anonymous Letters of Support; to strike any sentencing recommendations made by the victim or any other person; to strike unconstitutional probationary terms recommended in any letter and hereby objects to certain portions of the pre-sentence report.

MOTION TO STRIKE SENTENCING RECOMMENDATIONS

In Arizona, persons other than the victim may submit victim impact letters during sentencing. The Arizona Constitution and statutes provide that victims have the right to be heard at sentencing proceedings, which includes presenting victim impact statements. The definition of "victim" under

Arizona law includes not only the person against whom the criminal offense was committed but also the person's spouse, parent, child, or other lawful representative if the person is killed or incapacitated. Ariz. Const. Art. II, §2.1.

Arizona law explicitly allows victims to present information at sentencing, including victim impact statements. This right is extended to the victim's immediate family members if the victim is deceased or incapacitated. *See*, *State v. Montoya*, 258 Ariz. 128 (2024). A victim has the right to be heard at sentencing. A.R.S. §13-752 (R); Rule 9, Ariz.R.Crim.Pro., *Montoya*, *Id.*

However, victim impact statements are not, and never were meant to be a place for the victims to make either sentencing recommendations, or to recommend probation conditions. Victim impact statements can include information about the victim's personal characteristics and the impact of the crime on the victim's family. However, these statements may not include opinions or recommendations about the appropriate sentence. *See*, *State v. Montoya*, 258 Ariz. 128 (2024); *State v. Rose,* 231 Ariz. 500 (2013). Further, the court must screen the impact evidence for potential unfair prejudice, ensuring the fair administration of justice. *See*, *Montoya*, *Id.*

In the instant case, the victim devotes a great deal of her letter to the legally-forbidden practice of providing a sentencing recommendation. Defendant hereby requests that the court strike those recommendations and make no findings based thereon. The defendant believes it to be the very height of hypocrisy, that as he is being sentenced for having run afoul of Arizona statutes for attempting to expose the failure of state actors to follow statutes, that they would then violate additional statutes and caselaw in the service of his punishment. These recommendations must be given no quarter.

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NON-VICTIM AND ANONYMOUS LETTERS

Arizona courts have recognized that individuals other than those defined as victims under the Arizona Constitution may submit letters to the judge, which are then included in the presentence report. These letters are treated as part of the normal procedure and are filed with the clerk's office, with copies provided to the defendant. *See, eg. State v. Mann*, 188 Ariz. 220 (1997). In *Mann*, non-victim members of the public sent letters directly to the judge. The court acknowledged the correct practice (undertaken by the court in Mann) was to file the letter letters with the clerk of the court, and have them presented as part of the sentencing memorandum, with a copy to the defendant.

In the instant case, the state has provided anonymous, non-victim letters directly to the court, rather than providing them to the clerk for inclusion in the pre-sentence report. Some of these letters include sentencing recommendations- a practice the state, and the letter draftor are well-aware is not permitted. As such, the defendant requests that the state strike all anonymous letters, as there is no means by which to evaluate them- and strike all sentencing recommendations from any letter provided by the state.

UNCONSTITUTIONAL PROBATION CONDITIONS

Setting aside for a moment that the court should not consider a single recommendation made by the alleged victim, the defendant notes that any probation conditions must comport with the First Amendment. To that end, the defendant notes the First Amendment protects the right to free speech, which includes the use of social media platforms for communication and expression. *See*, *Packingham v. North Carolina*, 582 U.S. 98 (2017)(a statute prohibiting sex offenders from accessing social networking websites violated the First Amendment because it was not narrowly tailored to serve a significant governmental interest and burdened substantially more speech than necessary); *Manning v. Powers*, 281 F.Supp.3d 953 (2017) (barring parolee's access to social media

websites violates his First Amendment rights likely to succeed- injunction granted).

In interpreting this conflict, the ninth circuit recently emphasize the importance of avoiding over broad restrictions on "speech that is protected by the first amendment." *See*, *United States v. Gnirke*, 775 F.3d 1155, 1158 (9th Cir. 2015)(condition of release must involve "no greater deprivation of liberty than as reasonably necessary…"); *United States v. Soltero*, 510 F.3d 858, 867 (9th Cir. 2007)(condition limiting association with "any known member of any….. disruptive group" was over broad for abridging right to strike or protest.)

In the supervised release context, conditions, restricting speech may be valid prior restraints, only when narrowly tailored and reasonably related to deterrence and rehabilitation. *United States v. Turner*, 44 F.3d 900,903(10th Cir. 1995); *United States v. Nu-Triumph*, 500 F.2d 596 (9th Cir. 1974). In crafting conditions, the court must ensure that conditions do not impose an "overly broad prior restraint upon speech, lacking plausible justification." *See*, *Tory v. Cochran*, 544 U.S. 734, 738 (2005).

Conditions that seek to prevent a defendant from commenting on public officials and matters of public interest must be closely scrutinized. Courts have routinely sought to prevent "a pall of fear and timidity" over those under supervision "who would give voice to public criticism…." *New York Times, Co. v. Sullivan,* 376 U.S. 254, 278 (1964). In doing so, the defendant's freedom of speech "serve significant societal interest holy apart from the speaker's interest in self-expression" and "protects the public interest in receiving information." *Pac.Gas & Electric, Co. v. Pub. Util. Comm'n*, 475 U.S. 1, 8 (1986) (quotoation marks and citations omitted).

Further, speech critical of the government is "subject to the highest degree of first amendment protection." *Wolfson v. Concannon*, 750 F.3d 1142, 1152 (9th Cir. 2014). That protection extends to. '[c]riticism of those responsible for government operations… less criticism of the government

itself be penalized." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

Courts have always recognized that those who hold public office and other public officials may suffer criticism that is often pointed and harsh. However, "the sort of robust political debate encouraged by the first amendment is bound to produce speech that is critical of those who hold public office" and that criticism "may not always be reasonable." *Hustler Mag. v. Falwell*, 485 U.S. 46,51 (1988). The first amendment reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times*, 376 U.S. at 270. Therefore, "in public debate, [we] must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." *Snyder v. Phelps*, 562 U.S. 443, 458 (2011).

Lastly, speech of public concern may relate to private or public figures as well as public officials. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 775 (1986); *Dworkin v. Hustler Mag., Inc.*, 867 F.2d 1188, 1197 (9th Cir. 1989). Regardless of outcome, the fear of revocation proceedings arising from a blanket prohibition of disparagement would stifle abundant speech of public concern. *Doe v. Harris*, 772 F.3d 563, 578 (9th Cir. 2014).

Accordingly, the defendant requests that this court not follow any recommendation by the victim, as every recommendation beyond his mentioning her name in posts is blatantly unconstitutional and an infringement upon the First Amendment.

OBJECTIONS TO PRE-SENTENCE REPORT

The PSR indicates that these are the defendant's fifth and sixth felony convictions. They are not. These are the defendant's third and fourth. The resisting arrest is wrongfully designated as a felony. Further, the other two felonies occur under the same case number.

Lastly, the "harassing voice mail messages" to the victim's work phone are singlular, not plural; and he did not encourage anyone to call the victim herein.

RESPECTFULLY SUBMITTED this _27th__ day of _June_, 2025.

LANE MYERS, PROP PER

By: _____
For Lane Myers by direction

Electronically Filed and electronically distributed to the following parties:

Clerk of the Court
PIMA COUNTY SUPERIOR COURT

The Honorable D. Metcalf
PIMA COUNTY SUPERIOR COURT

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