Nos. 23-1116 & 23-1138

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA,
Appellee/Cross-Appellant,

v.

CEDRIC CROMWELL,
Defendants - Appellant/Cross - Appellee.

On Appeal From A Judgment Of The United States District Court
For The District Of Massachusetts

BRIEF OF APPELLANT/CROSS-APPELLEE CEDRIC CROMWELL

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October 3, 2023

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment entered in the district court on January 31, 2023. Add:1. Appellant's timely notice of appeal was filed on February 1, 2023. App:2302. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether the evidence was sufficient to support the jury's verdict on Counts Two and Three, charging federal programs bribery in violation of 18 U.S.C. §666.

2. Whether the evidence was sufficient to satisfy §666's jurisdictional element.

3. Whether the district court erroneously excluded three proffered defense witnesses.

4. Whether the district court abused its discretion by precluding the jury from reaching a verdict until it received supplemental written instructions.

5. Whether the district court's restitution order was erroneous.

STATEMENT OF THE CASE

On November 12, 2020, Cedric Cromwell, Chairman of the Mashpee Wampanoag Tribal Council and President of the Mashpee Wampanoag Gaming Authority ("the Gaming Authority") was indicted on charges of federal programs bribery (18 U.S.C. §666(a)(l)(B)) (Counts Two-Three) extortion (18 U.S.C. §1951) (Counts Seven-Ten) and conspiracy (Counts One and Six). App:44.[1] The gravamen of the charges was that certain monetary donations and gifts provided to Cromwell by architect David DeQuattro during the course of DeQuattro's firm's contract with the Gaming Authority, were allegedly solicited, given, and accepted as part of a corrupt *quid pro quo* agreement in exchange for Cromwell's "protection" of that contract.

On April 19, 2022, an eleven-day jury trial commenced in the District Court (Woodlock, J., presiding). App:23-25. At the conclusion of the Government's case and of all the evidence, Cromwell moved for judgment of acquittal under Fed.R.Crim.P. 29(a). App.1075,1143. The court deferred ruling on the motion until after the jury verdict. *Id*. The jury returned a

[1] On March 22, 2021, a Superseding Indictment charging Cromwell with Filing False Tax Returns (Counts Eleven through Fourteen) was returned. App:67. The District Court severed the tax charges from the case, which await trial. App:17(#111). Those Counts are not before this Court.

verdict on May 5, 2022 acquitting Cromwell of conspiracy to commit federal programs bribery (Count One) and one of the extortion counts (Count Nine), while convicting him of two counts of federal programs bribery (Counts Two and Three), extortion conspiracy (Count Six), and the remaining substantive extortion counts (Counts Seven Eight, and Ten). App:1389-1391. Cromwell renewed his motion for judgment of acquittal post-verdict. At a consolidated motion/sentencing hearing, the court set aside the guilty verdicts and entered acquittals on the extortion-related counts of conviction (Counts Six, Seven, Eight, and Ten) on tribal sovereign immunity grounds but otherwise denied the motion. App:2037. The court imposed an above-guidelines sentence of 36 months' imprisonment and ordered Cromwell to pay restitution in the amount of $209,678.54. App:2270, 2089; Add:6. This timely appeal followed. App:2302.

STATEMENT OF THE FACTS

The Mashpee Wampanoag Tribe

The Mashpee Wampanoag Tribe (Mashpee Tribe or Tribe) is a federally recognized Indian tribe with about 2,600 enrolled members. App: 319,359. It gained recognition in 2007, after a decades-long effort to recover possession of tribal lands alienated by force by English settlers centuries

earlier. App.358-359. The Tribe is a sovereign entity with its own constitution, own laws, and own form of government. App:353-354. It is overseen and governed by a Tribal Council, comprised of nine elected members and two appointed members (a chief and a medicine man). App:321-322. Tribal elections are conducted separate and apart from any democratic process within the United States. App:1423. Only enrolled members of the Tribe, based upon documented and verified family lineage, are allowed to vote. *Id*. As relevant to this case and stipulated by the parties at trial, the Tribe had no laws or regulations governing the solicitation, acceptance, recording or disbursement of campaign contributions, nor were tribal members subject to federal or state laws governing campaign contributions. App:1141-1142.

Cedric Cromwell

Cedric Cromwell was first elected as Chair of the Mashpee Tribal Council in 2009; he was reelected to that position in 2013 and 2017. App:500-501. Under the Tribe's Constitution, Cromwell's duties as Chair were to "preside over all meetings of the Tribal Council" and to "perform the usual duties of Chairperson including but not limited to, acting as the official spokesperson for the Tribe . . . ." App:1427.

Following federal recognition in 2007, the Tribe sought to acquire "land in trust" for the benefit of the Tribe in Mashpee and Taunton, Massachusetts.[2] App:360. The acquisition of "land in trust" is essential to Tribal sovereignty and self-determination; it provides Tribes the ability to, *inter alia*, "build a casino on that property or build other things on that property as long as what they were building is also allowed in the state in which that sovereign land resides." App:286-287. The Tribe's plan and goal was to pursue a gaming license from the Commonwealth of Massachusetts, which was considering legalized gaming at the time, and to build and run a Las Vegas resort-style casino for the benefit of Tribal members that could ultimately make the Tribe economically self-sufficient. App:328,474,493.

The Tribe's effort to acquire land in trust was a "big deal." App:493,684. It required several years of advocacy on behalf of the Tribe before the U.S. Congress by Tribal members and assistants. App:360. Cromwell, as Chair, met with members of Congress, the Department of the Interior, and then-Governor Deval Patrick, as well as local officials. App:468-469,618,689,713. Ultimately, the Tribe's efforts were successful, both having land placed into trust and in negotiating the exclusive gaming

[2] *See generally*, 25 U.S.C. § 5108 (authorizing the Secretary of the Interior to acquire lands in trust for "Indians.").

license for southeastern Massachusetts. App:310,362,469. These successes received national attention; Cromwell, as Chair and *de facto* Tribal spokesperson was interviewed by national media outlets and gained a positive national reputation, particularly among other tribal leaders. App:467,516,621,689-670. Cromwell served as regional vice president of the National Congress of American Indians (NCAI), a national Native rights organization. App:471.

The Mashpee Wampanoag Tribal Gaming Authority

In furtherance of the goal of building a casino, the Tribal Council created the Mashpee Wampanoag Tribal Gaming Authority (Gaming Authority) by Tribal Ordinance (the Ordinance) to run and administer the Tribe's gaming interests. App:1439. The Ordinance established the Gaming Authority as "an unincorporated limited liability company" that "shall have a legal existence separate and apart from the Tribe, but shall, with respect to the Gaming Enterprise, act as an arm and instrumentality of the Tribe to promote fundamental governmental policies of the Tribe . . . ." App:1441. The Gaming Authority's purpose was to protect the Tribe from all gaming-related liabilities. App:328,1439. The Gaming Authority was required to "own or ... be deemed to own,... all Gaming Enterprise Assets"

other than real property and was contemplated to have a separate budget that "[t]he Tribal Council will not be obligated to present ... to the membership of the Tribe . . . ." App:1441,1448.

The Gaming Authority operated through a Board of Directors ("the Board"), consisting of the then-serving "Chairperson or Treasurer of the Tribal Council" and "up to three additional individuals appointed by the Tribal Council . . . ." App:1445-1446.. Board meetings were guided by Robert's Rules of Order. App:465-466. Cromwell, as presiding officer, created the agenda along with the secretary for meetings, recognized speakers during deliberations, and placed matters before the Board membership for votes. App:451-452,465-466,483. All actions of the Board required majority approval; each member enjoyed equal voting power. 344,355-356,475,491-492,1445.

Project First Light

In or about 2012, the Gaming Authority commenced Project First Light, a planned billion dollar resort casino to be built on tribal lands in Taunton. App:283, 713. Financing for the project was provided by Genting International, a Malaysian firm specializing in casino development with holdings all over the world. App:269-270, 284-285, 362-363, 490-491, 495,

713. All invoices related to the casino project were submitted to and paid by Genting through a drawdown process overseen by Gaming Authority Treasurer Robert Hendricks. App:346,369-371,1638.

Early on in 2012, the Gaming Authority hired JCJ Architects ("JCJ") for the casino project and D'Amato Associates ("D'Amato") as the owner's representative.[3] App:264,287. On April 2, 2014, the five-member Board voted 4-1 to terminate the contracts of JCJ and D'Amato. App:1464. The sole dissenting member, Treasurer Hendricks, testified the topic of termination was first presented by Cromwell, who expressed concerns about JCJ and D'Amato's ability to handle the job. App:234-236. Treasurer Hendricks did not share these concerns, but acknowledged that other members of the Board had concerns with D'Amato's communication and JCJ's ability to deliver on the building design that had been envisioned. App:371-373.[4] The two other Board members who testified[5], Trish Keliinui

[3] The job of an owner's representative is to act as the "eyes and ears" of the client. App:274.

[4] There was evidence that JCJ's design lacked the "wow" factor to compete with the Wynn casino, App:277-278,294,301, and that the Gaming Authority board members were frustrated by D'Amato's level of communication. App:296,305-306,372.

[5] A fifth member, Yvonne Avant, did not testify. App:448-449.

and Charles Foster, could not specifically recall eight years after the fact what discussions or materials led them to vote yes to terminate in April of 2014. App:456-457,486-487.

A month after the vote to terminate JCJ and D'Amato's contracts, the Board voted unanimously to approve architecture and design firm Robinson Green Beretta (RGB) as leading candidate to serve as owner's representative for Project First Light. App:1477.

Robinson Green Beretta (RGB)

From 2011-2014, RGB served the Tribe as owner's representative in another substantial tribal project, the construction of a Tribal Government Center. App:712. RGB's lead representative for the project was its vice-president of architects, David Dequattro. App:702,712. DeQuattro and RGB were instrumental in getting the Government Center funded and built; Tribal members were impressed with their loyalty to the tribe and responsiveness to the tribe's interests. App:379-382,477-479,494. In April of 2014, the Government Center was nearing completion and was considered a great success and source of pride for the Tribe. App:379-380,478-479.

On May 7, 2014, the Gaming Authority awarded RGB the contract to take over as owner's representative on the casino project. App:388,1481.

The contract, signed by Cromwell for the Gaming Authority and DeQuattro for RGB, provided that it could be canceled on seven days' notice for cause and thirty days' notice for "convenience." App:346,1525.

During the course of their professional relationship DeQuattro and Cromwell developed a personal friendship. DeQuattro spent time with the Cromwell family at the Cromwell home, attending such family functions as the fire ceremony on the death of Cromwell's mother and Cromwell's son's college graduation party. App:518, 637. Cromwell and Dequattro respected and admired each other. App:518. DeQuattro told FBI Special Agent Crandall that he felt Cromwell was an excellent leader for the Mashpee and that, after years of working with the Tribe, he considered Cromwell a friend. App:948.

In July 2014, DeQuattro told RGB's president Joseph Beretta that Cromwell was seeking a $10,000 donation to his re-election campaign in a check payable to CM International Consulting ("CM"). App:782. CM was a LLC created by Constantinos Mitrokostas, a close friend and political supporter of Cromwell's who had been involved tribal affairs, including elections, for thirty years. App:357-358,524,527,607-609,780,843. CM International lost its legal standing in 2010 when Mitrokostas stopped filing

annual reports and paying filing fees. App:546-547. It was reinstated on July 11, 2014 after Mitrokostas cured the lapses. App:547. Mitrokostas updated proof of CM's corporate registration to DeQuattro on July 12, 2014. App:1560.

Cromwell expressed concern to Mitrokostas about the appearance of receiving checks directly from someone with business before the casino. App:556-557. Mitrokostas testified that Cromwell and/or Dequattro may have indicated that the money from DeQuattro would go toward One Nation Development, but that his memory was not strong on that point. App:554,619,634.

One Nation Development ("One Nation") is the name of an LLC that Cromwell would form in September of 2014 to promote tribal business. App:692,1419. Cromwell wanted to create to use his experience to help other tribes across Indian nation. App:689. For a time, One Nation maintained a website representing that One Nation Development helped other Native American tribes with legal services, strategic planning, gaming, hospitality, business development, and community development. App:1568. During its existence, One Nation was not registered as a Political Action Committee (PAC) with the Federal Election Commission (FEC) and

was not organized as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code. App:657,674-675.

DeQuattro made the contribution on July 26, 2014, writing a check payable to CM International on his personal checking account. App:1400. Consistent with RGB's policy of reimbursing political contributions and business development expenses made personally, DeQuattro was reimbursed for his contribution through a bonus payment. App:704,722,777,792,864. Mitrokostas deposited the check to CM's bank account and used the funds to purchase three treasurer's checks payable to Cromwell—a $4,000 check on August 5, 2014, and two $3,000 checks on August 12, 2014 App:580,1406-1408,1413. Cromwell subsequently deposited the three checks into his joint checking account. App:1413.

About six weeks later, DeQuattro told Beretta that Cromwell had requested a second $10,000 donation. App:797-798. DeQuattro wrote a second personal check payable to CM. App:1401. RGB again reimbursed DeQuattro for the donation through a bonus payment. App:798-99. Mitrokostas' understanding of this second payment was that "it was for One Nation or for Cedric ... I don't know specifically." App:588. Mitrokostas deposited DeQuattro's second check to CM's bank account

and used the funds to buy two $5,000 treasurer's checks payable to Cromwell. App.588,591,1409-1410. Cromwell deposited the treasurer's checks the same day into his joint checking account. App:1414.

In October-November 2014 and January-February 2015, DeQuattro told Beretta that Cromwell requested additional $10,000 contributions, which DeQuattro made via personal check payable to CM and was reimbursed by RGB through bonus payments. App:799-81,844. Mitrokostas' understanding was that these payments were going to One Nation. App:591,596. Mitrokostas deposited the first of these checks, dated October 31, 2024, to CM's bank account and on November 1, 2014, used a portion of the funds to buy a treasurer's check in the amount of $8,800 payable to Cromwell. App:591-592,1411.[6] Cromwell deposited the $8,880 treasurer's check into his joint checking account. App:1415. Mitrokostas deposited the second of these checks to CM's bank account on January 6, 2015 and used the funds to buy a treasurer's check in the amount of $10,000 payable to One Nation. Cromwell deposited the treasurer's check into One Nation's account the same day. App:594,1412,1416.

[6] Mitrokostas kept the remaining $1,200 as reimbursement for some expenses he had incurred in connection with One Nation, probably for travel or dining. App:592-593.

Approximately 10 months later, in November of 2015, DeQuattro told Beretta that Cromwell was seeking a $10,000 donation to One Nation Development. App.806. On November 12, 2015, Cromwell emailed DeQuattro documents reflecting the formation of One Nation in September 2014 along with letters advising DeQuattro that "One Development will use the $10,000.00 dollar donation for Political Action Committee food towards food, campaigns and elections." App:1573,1579. DeQuattro made the contribution, writing a check on his personal checking account, and was reimbursed by RGB through a salary check. App:812-17. DeQuattro's check was cashed on November 14, 2015; $9,500 was deposited into the One Nation Development bank account, and $500 was taken as a cash withdrawal. (App. 966).

An IRS auditor tasked with reviewing and summarizing transactions on Cromwell's joint checking account and One Nation's business checking opined that only four debits—checks totaling $2,440—"appeared to be for campaign or election expenses[.]" App.986-87,991,1627. The auditor's criterion for inclusion was an explicit written reference to "campaign" or "election" on a check's memo line. App.992. The largest percentage of

withdrawals from the accounts were for what he characterized as "personal expenses."App:898-990.

Cromwell suffers chronically from a muscular condition called IBM, which has required him to undergo multiple spinal surgeries. App:520. After the first of these surgeries in the summer of 2016, DeQuattro told Beretta that Cromwell was looking for a BowFlex exercise machine. App:519-20,823-34. Beretta located a used one on Craigslist for $1,700, and Beretta and DeQuattro split the cost. App:824,827. DeQuattro went to Cromwell's home when the BowFlex was delivered and helped set up the machine, which Cromwell used to aid in his post-surgery rehabilitation. App:520. Cromwell pointed out that the machine was not new. App:826-27.

Cromwell was up for tribal re-election in February 2017, and in January 2017 DeQuattro made a $4,000 campaign contribution, via personal check payable to CM. App:597-98. DeQuattro was reimbursed by RGB through the weekly payroll. App:816-17.

In May 2017 Cromwell asked DeQuattro for a nice hotel in Boston for his birthday weekend. App:820. DeQuattro forwarded that text to Beretta, saying, "Joe, u can't think of this stuff. . . . what is next?" *Id.* RGB paid

$1849.37 for a room at the Boston Seaport Hotel, using a corporate credit card in DeQuattro's name. App:821-23.

Dequattro told the FBI in 2020 that he donated to Cromwell's campaigns because he believed Cromwell was an excellent leader, that he would do it again, and that he did not intend to influence the casino project directly or indirectly. App:948,950. Beretta, who testified for the Government under an immunity agreement, App:829,1571, also told the FBI he would never have agreed to the contributions had be thought they were in any way related to RGB's contract. App:846.

Throughout this time, the casino project was proceeding apace, to the complete satisfaction of both the Gaming Authority and the financier Genting. The Gaming Authority board members were uniformly pleased with RGB's work and denied any risk to RGB's contract. App:347,380,382,388-89,477,494-95,498. Indeed, RGB quickly became an irreplaceable partner to both the Gaming Authority and Genting, the financial backer, and was entrusted with an expanded scope of responsibilities to ensure the successful completion of the casino project on time and within budget. App:1636-1637.

SUMMARY OF THE ARGUMENT

I. The evidence did not support Cromwell's convictions of quid-pro-quo bribery under 18 U.S.C. §666. The evidence did not suffice to prove beyond a reasonable doubt that the donation to One Nation in November 2015, the used BowFlex in August 2016, and the hotel stay in May 2017, were each a separate *quid pro quo* transaction given by mutual agreement in exchange for "protection" of RGB's casino contract. Despite proceeding on a theory of "protection", the government's evidence offered no suggestion that RGB's contract was at any point in peril, or that Cromwell performed a single non-ministerial official act favoring RGB or its interests at any point. The government's attempts to bolster its deficient case with a novel and expansive theory of official "inaction"—that Cromwell "protected" the contract from *himself* by refraining from taking steps to persuade members of the Gaming Authority to arbitrarily and punitively fire RGB regardless of their complete satisfaction with RGB's performance—is unavailing. Completely passive inaction, unaccompanied by any evidence of an expectation, requirement, or duty to act and completely consistent with the official's duties and responsibilities, is not cognizable as an "official act" corruptly taken. Even if it were, the government's evidence failed utterly to

advance beyond conjecture its thesis that the donation and gifts underlying the counts of conviction were solicited, given and accepted in exchange for such hypothetical inaction.

II-IV. Cromwell adopts the arguments set forth in Parts II-IV of the brief of defendant-appellant David Dequattro: (1) that the government's evidence was insufficient to satisfy § 666's jurisdictional element; (2) that the district court abused its discretion in excluding testimony from three proffered witnesses who would have supported defense arguments that the donation to One Nation, the BowFlex, and the hotel reservation were gifts, or at worst gratuities, as opposed to quid-pro-quo bribes; and (3) that the district court's repeated admonishment to the jurors that they could not conclude their deliberations until receiving the written instructions constituted an abuse of discretion negatively implicating rights guaranteed by the Sixth Amendment. These arguments are readily transferrable to Cromwell who was tried jointly with Dequattro on common evidence and charges.

V. The district court's restitution order was erroneous where: (1) the alleged bribery at issue did not constitute "an offense against property" triggering the relevant restitution statute; and (2) the government failed to

prove that the Tribe is a "victim" entitled to mandatory restitution or (3) suffered a direct pecuniary loss as required by the statute.

ARGUMENTS

I. THE GOVERNMENT FAILED TO CARRY ITS BURDEN OF PROVING CROMWELL'S GUILT BEYOND A REASONABLE DOUBT ON COUNTS TWO AND THREE CHARGING FEDERAL PROGRAMS BRIBERY.

A. Standard of Review.

This Court reviews de novo the denial of a motion for judgment of acquittal. E.g., *United States v. Perez-Melendez*, 599 F.3d 31, 40 (1st Cir. 2010). In determining the evidentiary sufficiency of a guilty verdict, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *O'Laughlin v. O'Brien*, 568 F.3d 287, 299 (1st Cir. 2009). *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Notwithstanding its "prosecution-friendly overtones," appellate review of the sufficiency of the evidence "is not an empty ritual." *United States v. Burgos*, 703 F.3d 1, 9 (1st Cir. 2012)(citation omitted). While the Court will draw all *reasonable* inferences in favor of the verdict, *United States v. Valerio,* 48 F.3d 58, 63-64 (1st Cir.1995), it will not "stack inference upon inference in order to uphold the jury's verdict," *United States v.*

Guzman-Ortiz, 975 F.3d 43, 55 (1st Cir. 2020), and will "reject those evidentiary interpretations and illations that are unreasonable, insupportable, or overly speculative." *United States v. Blasini- Lluberas*, 169 F.3d 57, 62 (1st Cir. 1999). In the final analysis, this Court must take a "hard look at the record" to ensure that the "verdict is not based on sheer speculation, pure conjecture or improperly stacked inferences, but is fully supported by sufficient evidence." *United States v. Shaw*, 670 F.3d 360, 368 (1st Cir. 2012).

"In the end, '[i]f the evidence viewed in the light most favorable to the verdict gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, this court must reverse the conviction.'" *Burgos*, 703 F.3d at 10.

B. Legal Standards

Cromwell's two counts of conviction involve violations of the Federal Programs Bribery statute, 18 U.S.C. 666, which criminalizes the "corrupt[]" solicitation or acceptance of "anything of value" by an agent of "State, local, or Indian tribal government, or any agency thereof" with the specific intent "to be influenced or rewarded in connection with any

business, transaction, or series of transactions" of such government or agency. *Id.* at § 666(a)(1)(B).

As construed by this Court, § 666 criminalizes "bribes," and not mere "gifts" or "gratuities." *United States v. Fernandez*, 722 F.3d 1, 26 (1st Cir. 2013). "The essential distinction between a bribe and a gratuity is that a bribe requires a *quid pro quo*, the exchange of something of value for influence over some official conduct of the recipient." *United States v. Gracie*, 731 F.3d 1, 3 (1st Cir. 2013). Given this construction, a conviction arising under § 666 may not be sustained in this Circuit merely on proof that something of value was given or received to cultivate a business or political 'friendship' or even as a reward for some future or past act; it requires proof beyond a reasonable doubt of "a *quid pro quo* -- a specific intent to give or receive something of value *in exchange* for an official act *Fernandez*, 722 F.3d at 19 (quoting *United States v. Sun-Diamond Growers of Calif.*, 526 U.S. 398, 404-05 (1999)) (distinguishing bribes from gratuities ("a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken") and from gifts (items offered "to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now

and in the future"). Accord *United States v. Sawyer*, 85 F.3d 713, 741 (1st Cir. 1996) (bribery does not encompass gifts given "simply to cultivate a business or political 'friendship' with the [official].").

While the evidence need not establish that an exchange was ultimately fulfilled or even earnestly intended, it must prove beyond a reasonable doubt that the public official and donor *agreed* to exchange a thing of value for a specific official act. *See United States v. McDonough*, 727 F.3d 143, 153 (1st Cir. 2013)("What is needed is an agreement . . . which can be formal or informal, written or oral."); *United States v. Terry*, 707 F.3d 607, 615 (6th Cir. 2013) ("A flow of benefits from one person to a public official, to be sure, does not by itself establish bribery. The benefits instead must be part and parcel of an agreement by the beneficiary to perform public acts for the patron."). While this agreement need not be explicit, its existence, as the jury was instructed repeatedly and without objection, "must be established *clearly and unequivocally* beyond a reasonable doubt . . . ." App:1815. (emphasis added):

> In all events, that agreement *must be clear and unequivocal from the evidence* - whether characterized as direct, express or circumstantial - upon which you rely. If the government does not convince you beyond a reasonable doubt that there was an agreement to commit an official act entered into by the

> Defendant before you, you may not convict that defendant of bribery or extortion as charged in this case.

Id.

As the jury was further instructed (without objection), for criminal liability under § 666 to attach, the *quo* element of the requisite *quid pro quo* agreement must constitute an "official act" within the narrowing construction of that term established in *McDonnell v. United States*, 136 S. Ct. 2355 (2016). *Id.* at 2372 (avoiding unconstitutional overbreadth by limiting the types of "official acts" that violate the general bribery statute, 18 U.S.C. § 201). App:1813. Thus, as the jury was instructed, an "official act": (1) "must concern a focused, concrete and identifiable question or matter that may at any time be pending or may be brought before a public official in connection with the formal exercise of governmental power" and (2) "must involve a decision or an action taken on that focused concrete and identifiable question or matter or an agreement to do so." App:1243,1813.

The two jury instructions discussed immediately *infra*—requiring that the *quid pro quo* agreement "be clear and unequivocal from the evidence" and that the *quo* element of said agreement constitute an "official act" as defined by *McDonnell*—are law of the case for purposes of this

appeal. "It is settled that when a cause is submitted to the jury under an instruction, not patently incorrect or internally inconsistent, to which no timely objection has been lodged, the instruction becomes the law of the case." *United States v. Kilmartin*, 944 F.3d 315, 328-29 (1st Cir. 2019). These instructions were neither patently incorrect nor internally inconsistent. See e.g., *United States v. Carrasco*, 2023 U.S. App. LEXIS 22666, *11-12 (citing *United States v. Martínez*, 994 F.3d 1, 6-7 (1st Cir. 2021) (noting this Court's procession "on the understanding that § 666 does contain an 'official act' element" in cases where, as here, "the government did not dispute the point and in which the jury had been instructed that the offense does contain an 'official act' element"). The government not only failed to object to these instructions, it affirmatively acquiesced to both. *See* App:1900-1901 (discussing "a corrupt quid pro quo exchange for an 'official act,' *as the Court correctly defined that term*") (emphasis added); App:1333 (government says "[t]here has to be a clear and unequivocal understanding"); App:1335 (government suggests that court instruct jury that the government was required to prove that "it is clear and unequivocal that Mr. Cromwell . . ."). These are, therefore, among the standards that should govern this Court's assessment of the sufficiency of the evidence to support

Cromwell's convictions. *See, e.g., United States v. Gomes*, 969 F.2d 1290, 1295 (1st Cir. 1992).

C. The Government Failed To Prove Beyond A Reasonable Doubt The Requisite *Quid Pro Quo*.

The government proceeded at trial on a theory that each of things of value solicited and received by Cromwell was a separate *quid pro quo* transaction given by mutual agreement in exchange for a discrete promise to "protect" RGB's casino contract from termination. App.229,1079-1080. It agreed that, in order to convict the defendants on this theory, the jury had to find that Cromwell communicated to DeQuattro his intent to protect the contract and that DeQuattro, by mutual agreement, provided each of these things in exchange for Cromwell's performing specific official acts to ensure that result. App:1079. Consistent with its decision not to indict on a "stream of benefits" theory of bribery (and express disavowal of reliance on any such theory at trial (App:1028-29, 1079-80)), the government agreed further that the constituent elements of *quid pro quo* bribery—communication, mutual agreement, and intent—had to be proved separately and independently with respect to each allegedly corrupt payment or gift as of the date each such payment or gift was provided. App:1080.

In light of the foregoing, the first determinative question with respect to Counts 4 and 5 is whether the government's evidence sufficed for a rational juror to find, beyond a reasonable doubt, that Mr. Cromwell clearly and unequivocally promised that he would undertake individual official acts to "protect" RGB's contract in exchange for the donation to One Nation in November 2015 the used BowFlex in August 2016 and the hotel stay in May 2017 and DeQuattro, by clear and unequivocal agreement, provided those things of value as part of a *quid pro quo* exchange aimed at securing that result. *See* App:1814. The evidence fell short of either proposition beyond a reasonable doubt.

1. The Government's Case Was Devoid of Direct Evidence of Any Corrupt Quid-Pro-Quo Agreement Between Cromwell and Dequattro and Deficient in Other Evidence from which a Rational Juror Could Reasonably Infer the Clear and Unequivocal Existence of Such a Quid Pro Quo Agreement Beyond A Reasonable Doubt.

Notwithstanding the truism that "evidence of a corrupt agreement in bribery cases is usually circumstantial, because bribes are seldom accompanied by written contracts, receipts or public declarations of intentions" *McDonough*, 727 F.3d at 153 (quoting *United States v. Friedman*, 854 F.2d 535, 554 (2d Cir. 1988)), it bears noting at the outset that the government's case was *entirely* devoid of direct evidence of any corrupt

quid-pro-quo agreement between Cromwell and DeQuattro. In five days of trial evidence, fifteen witnesses, and hundreds of exhibits, the government failed to produce any evidence that Cromwell communicated to DeQuattro, directly or indirectly, implicitly or explicitly, that he intended to undertake official acts to ensure continuation of RGB's contract, and no evidence that DeQuattro believed that he was conferring those things of value on Cromwell in exchange for Cromwell's protection of RGB's contract. No government witness (including immunized co-conspirators Joseph Beretta and Constantinos Mitrokostas) claimed to have knowledge of such an agreement having been made, and none recounted a single wink, a single nod or any other nonverbal conduct from which a *quid pro quo* might reasonably be inferred. Nor did any of the documents relating to the three transactions for which Cromwell was convicted reflect particular indicia of a corrupt *quid pro quo*. See App:1572-1592.

Beyond Cromwell's initial requests (as communicated by Dequattro to Beretta) and emails to Dequattro concerning the formation of One Nation and statement of One Nation's intent to use the requested donation "towards food, campaigns and elections" App:1578, no evidence of any further communications between Cromwell and DeQuattro at the time of

these gifts. Nor was there any evidence of communications between DeQuattro and Beretta indicating any belief on their part that RGB's contract was in need of protection or that the gifts were necessary to ensure the continuation of RGB's contract. To the contrary, Dequattro when interviewed by the FBI, stated he donated to Cromwell's campaigns because he believed Cromwell was an excellent leader, that he did not intend to influence the casino project directly or indirectly, and that he would do it again. App:948,950. Beretta, who testified for the Government under an immunity agreement, App:829,1571, also told the FBI he would never have agreed to the contributions had be thought they were in any way related to RGB's contract. App:846.

The deficiency of government's trial evidence, however, is not limited to the lack of a "written contract[], receipt[] or public declaration[]" expressly memorializing the corrupt *quid pro quo* agreements it alleges existed between Dequattro and Cromwell, *McDonough*, 727 F.3d at 153; it is deficient for the dearth of evidence—either direct or circumstantial—from which a rational juror could reasonably infer the "clear and unequivocal" existence of such an agreement beyond a reasonable doubt. If, as this Court has observed, "the best evidence of [a public officials'] intent to perform

official acts to favor [the payor's] interests is the evidence of [the public official's] actions on [matters] which were important to [the payor]" *United States v. Woodward*, 149 F.3d 46, 60 (1st Cir. 1998) (internal quotation marks and some brackets omitted), and "evidence of *preferential treatment*, when combined with the evidence of the timing of the receipt of the benefits and the awarding of the contracts, suffices to permit a rational juror to reject the more benign account of [the public official's] state of mind in receiving those benefits[,]*Martínez*, 994 F.3d at 9, it is important to assess at the outset what official actions the trial evidence establishes Cromwell took *in favor* of RGB and how such actions relate to Cromwell's receipt of benefits. Here, the evidence fails to reveal a *single* non-ministerial official act taken by Cromwell *in favor* of RGB or its interests at any point following the execution of its contract with the Gaming Authority, and none correlated in any way to the donations and gifts underlying the counts of conviction.

Despite proceeding on the theory that each of these items was given by mutual agreement in exchange for "protection of the RGB casino contract", the government's evidence offered no suggestion that the contract was at any point in peril, or that its continued viability was *ever* a "question matter, cause, suit, proceeding or controversy" before the

Gaming Authority subsequent to its execution on May 7, 2014. To the contrary, the trial evidence established overwhelmingly that the casino project was proceeding apace, to the complete satisfaction of both the Gaming Authority and the financier Genting, that RGB became an irreplaceable partner entrusted with an expanded scope of responsibilities to ensure the successful completion of the casino project on time and within budget, and that the members of the Gaming Authority board were uniformly pleased with RGB's work and denied any risk to RGB's contract. App:347,380,382,388-89,477,494-95,498,1636-1637.

The government's response to the mass of undisputed evidence demonstrating that RGB's contract was never in peril of termination by the Gaming Authority and never in discernable need of protection from Cromwell is simply to conjure an alternative (and far less natural) theory of beneficial "protection" to better suit that evidence—that Cromwell "protected" the contract from himself by *refraining* from taking steps to persuade members of the Gaming Authority to arbitrarily and punitively "fire RGB regardless of whether the board was satisfied with RGB[.]" See Supp.App:16. Thus, the government claimed, despite evidence that the Gaming Authority was content with RGB's performance, and that

terminating RGB could have delayed the casino project to the detriment of the Gaming Authority "[t]he jury supportably could have found that Cromwell accepted DeQuattro's check, the Bowflex, and the hotel stay in exchange for what he conveyed to DeQuattro as a promise not to use his influence to orchestrate such a vote." *Id.*

2. An Official's Routine and Entirely Foreseeable Inaction, Consistent with the Duties and Responsibilities and Unaccompanied by Any Evidence of an Expectation, Requirement, or Duty to Act, Is not Properly Cognizable as an "Official Act" Corruptly Taken and Cannot Serve as the Basis for a Bribery Conviction.

The government's novel expansion of the concept of "protection" as a means of eliding its utter failure to prove the paradigmatic bribery scenario in which "favors and gifts flowing to a public official [are] in exchange for a pattern of *official actions favorable* to the donor" *Woodward*, 905 F.3d at 46, suggests a classic "heads-I-win-tails-you-lose" scenario wherein evidence of preferential treatment, when present, establishes corrupt official action and such evidence when absent, simply establishes corrupt official *in*action—an agreed to *refrain* from orchestrating arbitrary negative action. Its casual incorporation of two facially contrary theories of "protection"—one of beneficial promise ("I am very powerful and have a lot of authority, and should there be complaints by other members of the board about your

contract, I'll make sure it goes nowhere") and another of threatened harm ("Give me the money or I, as a very powerful and influential leader, will persuade at least two other members of the board to terminate the contract") illustrates both the amorphous and malleable nature of the government's case in general and the superficiality of the evidence it adduced at trial to support it. App.1079 (arguing "it didn't matter" which of these messages Dequattro could have drawn from what Cromwell "said or implied ***or whatever happened***"). Indeed, the government's strategic pivot from a wholly unproven theory of "action" to a wholly hypothetical theory of "*in*action" draws the case against Cromwell out of a landscape of evidence and proof into an unacceptable realm of speculation and conjecture. While it has been hypothetically posited that bribery may be established through proof of official *inaction*, *see e.g. United States v. O'Brien*, 994 F. Supp. 2d 167, 187 (quoting *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998) ("an exchange of money (or gifts) for specific official action (or inaction)"), the type of inaction upon which the government relies—completely passive inaction unaccompanied by any evidence of an expectation, requirement, or duty to act and *completely consistent* with the official's duties and responsibilities—appears to be without precedent as a

basis of criminal liability in a § 666 prosecution. Were the government permitted to weaponize such routine and foreseeable inaction by an official simply by recasting it as a "refrain" some hypothesized *negative* action, every single item of value received as an elected official, whether characterized as a campaign contribution, a gift, or otherwise, would be exposed to prosecution as bribery.

Moreover, the type of completely passive inaction theorized by the government is insufficiently focused, concrete and identifiable to satisfy the *McDonnell* definition of official act on which the jury was instructed. See; *Sun-Diamond*, 526 U.S. at 406 ("The insistence upon an 'official act,' carefully defined, seems pregnant with the requirement that some particular official act be identified and proved."); *United States v. Hills*, 27 F.4th 1155, 1179 (6th Cir. 2022) ("[T]he official must make a decision or take action, or promise to do so, on the particular question or matter at the time he receives payment or other things of value."); *United States v. Silver*, 948 F.3d 538, 552 (2d Cir. 2020) (holding that *McDonnell* "requires identification of a particular question or matter to be influenced" at the time of payment (emphasis in original)). An official who is merely does *nothing* in circumstances in which inaction was completely consistent with his duties

and responsibilities has not "made a decision or took an action" -- or agreed to do so – "*on*" a "question, matter, cause, suit, proceeding or controversy" that "may at any time be pending" or "may by law be brought before" any public official. *McDonnell*, 136 S. Ct. at 2368.

Finally, the particular "inaction" posited as corrupt in this case—*not* orchestrating the termination of a contract that was never in jeopardy for a vendor that was, by all accounts, meeting or exceeding every expectation, and upon whom more and more responsibilities had devolved over time App:1636-37—is a dubious basis for criminal liability under § 666 for the simple fact that such inaction was completely consistent Cromwell's duties and responsibilities as Chair and member of the Gaming Authority. To run afoul of the statute, an official must act "corruptly." 18 U.S.C. § 666(a)(2). See *United States v. Abdelaziz*, 68 F.4th 1, 25 (1st Cir. 2023) (observing that the "'corruptly' element provides a meaningful limit on the provision's sweep" but declining to fully construe is meaning in the §666 context). "[T]he term 'corruptly' in criminal laws has a longstanding and well-accepted meaning. It denotes '[a]n act done with an intent to give some advantage *inconsistent with official duty and the rights of others*.'" *United States v. Aguilar*, 515 U.S. 593, 616 (1995) (Scalia, J., concurring in part and

dissenting in part) (emphasis added) (citation omitted). *United States v. Buendia*, 907 F.3d 399, 402 (10th Cir. 2018) (finding elementary-school principal acted "corruptly" where awarding contracts in exchange for kickbacks "subverted the normal bidding process in a manner *inconsistent with her duty* to obtain goods and services for her school at the best value.")(emphasis added). Where, as here, termination of RGB's contract once construction began would have been a serious setback for the Gaming Authority and its goal to open a five-star casino before a competing casino could open, see App:316-17,339, Cromwell's theorized refrain from orchestrating such a termination can hardly be characterized as "inconsistent with official duty and the rights of others."

3. Even if Passive Refrain from Hypothesized Negative Action Is Cognizable as an "Official Act" Corruptly Taken, the Government's Evidence Failed Utterly to Establish any Non-Speculative Basis To Infer Beyond a Reasonable Doubt the Clear and Unequivocal Existence of an Agreement to Exchange Such Inaction for the Things of Value Charged.

Even assuming *arguendo* that the completely passive refrain from orchestrated arbitrary action hypothesized by the government is cognizable as an "official act" corruptly taken (Cromwell maintains that it is not), the government's evidence at trial failed utterly to establish any non-speculative basis to conclude that the items underlying Counts Two

and Three were solicited, given and accepted *in exchange* for such hypothetical inaction. While bribery may be and often is proved circumstantially, *McDonough*, 727 F.3d at 153, "there are limits to the probative value of circumstantial evidence." *Morgan v. Dickhaut*, 677 F.3d 39, 47 (1st Cir. 2012). "[T]here are times that it amounts to only a reasonable speculation and not to sufficient evidence." *O'Laughlin*, 568 F.3d at 302. This is such a case.

The government's articulation below as to how a rational juror could conclude beyond a reasonable doubt "that Cromwell accepted DeQuattro's check, the Bowflex, and the hotel stay in exchange for what he conveyed to DeQuattro as a promise not to use his influence to orchestrate ... a vote [to arbitrarily terminate RGB's contract]" is an object lesson in impermissibly "stack[ing] inference upon inference in order to uphold the jury's verdict." *Burgos*, 703 F.3d at 10 (citation omitted). It depends on a long series of increasingly speculative inferences founded in the first instance on evidence of the Gaming Authority's termination, by a 4-1 vote, of the contracts of RGB's predecessor, D'Amato, and an architecture firm, JCJ that, in April of 2014. Seizing on testimony of the one dissenter to that vote, Treasurer Hendricks, that the topic of termination was initially presented

to the Board by Cromwell based on concerns about JCJ and D'Amato's competency (that Hendricks did not personally share), and the inability of two other serving Board members, Keliinui and Foster, to specifically recall eight years after the fact what discussions or materials led them to vote yes to terminate, the government urged two threshold inferences: (1) "that the board was happy with the performance of RGB's predecessor, D'Amato [and] JCJ" and (2) despite that happiness, "Cromwell, exerting his influence as board President, orchestrated a successful vote to terminate" D'Amato and JCJ. App:1952.

But the trial evidence as a whole significantly undermines the reasonableness of even for these foundational inferences. The claim that "the board was happy" with the performance of D'Amato and JCJ is belied by a trial record replete with evidence of valid reasons for dissatisfaction with both, including evidence that JCJ's design lacked the "wow" factor to compete with the Wynn casino, App:277-278,294,301, and that the Gaming Authority board members were frustrated by D'Amato's level of communication. App:296,305-306,372. Indeed, even Treasurer Hendricks, who testified that he did not share these concerns, acknowledged at trial that other members of the Board had concerns with D'Amato's

communication and JCJ's ability to deliver on the building design that had been envisioned. App:371-373.

The urged secondary inference that "Cromwell, exerting his influence as board President, orchestrated a successful vote to terminate" D'Amato and JCJ *notwithstanding* the Board's purported "happiness" with their performance fares no better. It was undisputed that Cromwell lacked the authority to make unilaterally affect contracts with the Gaming Authority, which required a majority vote. App:355-356. Thus, the government's theory is dependent on proof that Cromwell exercised such outsize influence on the Gaming Authority board that he could bend it to his will as he chose. But trial witnesses with knowledge of the Gaming Authority meetings testified without exception to an open dialogue, in which all members were free to express their views. App:304-305,331,452,455,466,492. The fact that Cromwell, as Chair of the Gaming Authority, set the agenda for meetings and was relatively outspoken is neither surprising nor particularly consequential. Multiple witnesses testified that members other than Cromwell, including Treasurer Hendricks, were similarly "active" and "vocal." App:292,395,484. While Hendricks claimed that Cromwell sometimes lobbied board members outside meetings, there was no

suggestion that any such lobbying efforts ever involved any improper or coercive tactics. App:377,394. Rather, Cromwell simply voiced his opinion "as anybody would." App:394. In any event, all decisions were made by majority vote among the five board members, with all members exercising their voting responsibilities equally and independently. App:344,355-356,475,491-492.

Incredibly, the speculative and contradicted inferences that the terminations of D'Amato and JCJ were arbitrary and baseless orchestrations by Cromwell form but the first level of the government's circumstantial case. Its ultimate theory of guilt asks this Court to pile several additional inferences on this already shaky inferential foundation, including:

> "that: DeQuattro had reason to believe Cromwell could orchestrate a Gaming Authority board vote to terminate RGB's contract; DeQuattro did not want to take that risk because the contract was extremely lucrative; Cromwell asked DeQuattro for the money, Bowflex, and hotel stay because he believed DeQuattro would understand that failing to comply could put RGB's contract at risk; and DeQuattro, who shared that understanding, provided the money and Bowflex and hotel stay for at least that reason and possibly others as well."

App:1952-1953. The likelihood that the government's theory "describes what happened" becomes weaker with every inferential leap upon which it

depends. *United States v. Pothier*, 919 F.3d 143, 147 (1st Cir. 2019). Absent any evidence—direct or circumstantial—relating the $10,000 donation to One Nation Development, the used BowFlex, or the hotel stay to *any* official act by Cromwell in connection with RGB's contract with the Gaming Authority, the government's parade of third- and fourth- level inferences devolves quickly from probabilities, to possibilities, to chance and into rank speculation. See *O'Loughlin*, 568 F. 3d at 301 ("[g]uilt beyond a reasonable doubt cannot be premised on pure conjecture" and "[s]peculation and conjecture cannot take the place of reasonable inferences and evidence – whether direct or circumstantial...."). The government's evidence simply establishes no non-speculative basis to support its novel and attenuated theory that Cromwell's total *in*action with respect to RGB's contract was in fact an agreed-to and bargained-for refrain from orchestrating some hypothetical arbitrary firing of RGB. Such speculation built upon a weak inferential foundation cannot support a criminal conviction beyond a reasonable doubt. See *Guzman-Ortiz*, 975 F.3d at 55 (reversing conviction where "impermissible inference stacking" would be required "to conclude not merely that 'it is certainly possible -- maybe even probable -- that [defendant] was involved in the [crime charged],' but that

there was "proof beyond a reasonable doubt" that he was); *United States v. Guerrero-Narvaez*, 29 F.4th 1, 12 (1st Cir. 2022) (reversing conviction where ambiguous and equivocal evidence would require court to "engage in impermissible inference stacking" to find proof beyond a reasonable doubt).

4. The Government's Already Speculative Theory is Further Undermined by Evidence of Reasonable Explanations other than Quid Pro Quo Bribery for the Donations and Gifts Charged in Counts Two And Three.

The untenably speculative nature of the government's case becomes even more apparent when viewed against ready evidence of reasonable explanations other than *quid pro quo* bribery for the November 2015 donation to One Nation Development, the used BowFlex, and the hotel stay. App:1825 (instructing jury that it may "consider evidence that campaign contributions, charitable donations, expressions of friendship, concern for health, endorsement of policy positions taken by Cromwell, belief in his leadership skills or desire to cultivate future business opportunities were among the purposes" of the payments and gifts).

Turning first to the November 2015 donation, the government's case-in-chief contained direct and uncontroverted evidence—a letter sent directly from Cromwell to DeQuattro stating that the payment was a

"donation for Political Action Committee towards food, campaigns and elections" App:1577—supporting a *prima facie* finding that the funds were solicited, understood, and intended by the parties to be a political/charitable contribution. Seeking to dismiss this evidence as pretext, the government argued below "that bribery was the *only* rational explanation for the money" because "[t]he fact that Cromwell spent all of DeQuattro's money on personal expenses *proved* that the payments were neither political nor charitable donations." Supp.App.:14-15 (emphasis added)). It emphasized in this regard Cromwell's use of the funds for personal expenses despite "telling DeQuattro his fifth $10,000 check was going toward [One Nation Development], and stating on the internet that One Nation Development was going to help Native American tribes with economic development[,]" on a website that it asserted was a "fraud." Supp.App.:15.

But Count Two, the sole count of conviction pertaining to the November 2015 donation to One Nation Development, does not charge Cromwell with fraud against DeQuattro or any other person, nor does it allege misuse of political donations. It charges Cromwell with *quid pro quo bribery* an offense which, under the binding law of this circuit, *Fernandez*,

722 F.3d at 19, and the district court's jury instructions App:1815, required proof not of general or fraudulent intent, but of a clear and unequivocal *agreement between* Cromwell and DeQuattro that November 2015 donation was solicited, given and accepted as bribe in exchange for a specific official act. The trial record is devoid of evidence that Dequattro was contemporaneously aware or understood that this donation would be used for purposes other than those established in his written communications with Cromwell. Absent such evidence, Cromwell's unilateral post-facto use of the funds says nothing about the substance of any agreement between him and Dequattro; it does not "prove" the requisite understanding that DeQuattro's "payments were neither political nor charitable donations" much less establish that "bribery was the only rational explanation" for the donation. Indeed, the evidence showed (and the jury appears to have found) that DeQuattro believed the money was being requested for just such purposes. *Fernandez's* requirement of a *quid pro quo* "exchange," renders evidence of DeQuattro's innocent intent independently exculpatory with respect to Cromwell. *Id.* at 19 (quoting *Sun-Diamond*, 526 U.S. at 404-05. The insinuation that Cromwell received the donation under false pretenses tantamount to fraud belies the existence of a mutual

agreement or understanding between Cromwell and DeQuattro that November 2015 donation was a *quid pro quo* bribe.

The government's failure to prove that the November 2015 donation to One Nation Development was not intended as a campaign contribution renders Cromwell's conviction problematic given the special Constitutional considerations and heightened standards for conviction implicated in the context of campaign contributions. It is well established that where the "thing of value" alleged to have been corruptly exchanged "is treated as" or "takes the form of" a campaign contribution, the government bears an enhanced burden of demonstrating that the payment was given "in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *United States v. D'Amico*, 496 F.3d 95, 101 (1st Cir. 2007) (quoting *McCormick v. United States*, 500 U.S. 257, 273 (1991)) (emphasis added), cert. granted, judgment vacated on other grounds, 552 U.S. 1173 (2008).[7] Under *McCormick*, no crime has been committed absent

[7] While *McCormick* dealt with extortion under color of official right in violation of the Hobbs Act, 18 U.S.C. § 1951, its reasoning has been held applicable outside of the § 1951 context as well, including to bribery charges under 18 U.S.C. § 666(a). *See United States v. Siegelman*, 640 F.3d 1159, 1169-70 (11th Cir. 2011) (applying *McCormick* to bribery charges under 18 U.S.C. § 666(a); *United States v. Donagher*, 520 F. Supp. 3d 1034,

an *explicit* quid pro quo between the elected official and the constituent for official action in exchange for a contribution. But, as noted, no evidence was presented of a specific offer by Cromwell to perform an official act in exchange for payment or of any request by DeQuattro for Cromwell to perform an official act. Nor was there sufficient evidence of a "clear and unambiguous" implicit agreement to exchange specific official acts for money. In the absence of such evidence the mere fact that Cromwell, who as a tribal leader was not subject to federal or state laws governing the solicitation, acceptance, recording or disbursement of campaign contributions, (May 3, 2022 Tr. at 19-20), may not have spent or accounted for donated funds as campaign contributions falls well-below the bar required for conviction. *Cf. McCormick*, 500 U.S. at 272 (absent evidence of an explicit quid pro quo, failure to meet campaign contribution strictures "could not possibly by themselves amount to extortion").

The trial evidence likewise readily establishes reasonable explanations other than *quid pro quo* bribery for the used BowFlex and hotel stay underlying Count Three. The evidence established not only that the Tribe was an important client for RGB over many years but also that

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1043-45 (N.D. Ill. 2021) (applying *McCormick* to campaign contribution-based bribery charges under 18 U.S.C. § 666(a)(2)).

DeQuattro and Cromwell, in the course of their professional relationship, had developed a personal friendship sufficiently close that DeQuattro was invited to and attended important events at the Cromwell home such as the fire ceremony on the death of Cromwell's mother and Cromwell's son's college graduation party. App:518,637-38; see also App:2143 (court acknowledges that the friendship between DeQuattro and Cromwell played a part in the giving of the two gifts); App:948 (DeQuattro told FBI he considered Cromwell a friend). It showed that the $1,700 BowFlex and $1849.37 hotel stay were consistent in nature and in value, with RGB's routine business practice giving gifts to clients and potential clients in the hope of securing future business. App:863-64,866-67. See App:159 (RGB business record showing 21 business development expenses exceeding $1,800 from 2014-17). It also showed that, at the time Cromwell mentioned he was looking for a BowFlex, he was suffering from physical ailments that exercise could ameliorate and had recently had back surgery. App:519-20. This evidence, on balance, substantiates at least two plausible explanations other than *quid pro quo* bribery for the provision of the BowFlex and purchase of the hotel room, namely the ordinary (and non-criminal) cultivation business relationships and personal friendship.

The government's principal rejoinder below to this evidence was to characterize "requests for personal exercise equipment and a personal hotel stay" as "outrageous demands." But contrary to the government's suggestion, there was no evidence that Cromwell "demand[ed]" the Bowflex. Supp.App:15. To the contrary, Beretta's testimony simply relayed DeQuattro's statement that Cromwell "was looking for an exercise bike," App:823-824, after his hospitalization for surgery. In any event, such *ipse dixit* claims of "outrageousness" do no more than reemphasize the government's conjecture that "something" untoward must be going on—they are no substitute for proof beyond a reasonable doubt of the existence of the requisite *quid-pro-quo*. Evidence that a representative of a client that has a lucrative contract with a vendor requested certain gifts from the vendor is not proof beyond a reasonable doubt that the gifts were provided in exchange for any specific action on the contract, as opposed to in a lawful effort "to cultivate a business or political 'friendship.'" *United States v. Sawyer*, 85 F.3d 713, 741 (1st Cir. 1996). Even insofar as DeQuattro's text message to Beretta: "Joe u can't think of this stuff..... what is next?" supports an inference that Cromwell's hotel request may have been somewhat off-putting, mere expression of frustration about a high-

maintenance, in the Court's words "graspy," App:1989, client, it falls far short of proving a clear and unequivocal agreement that failing to comply would put RGB's contract at risk. Like the subjective characterization of such requests as "outrageous", it does nothing to advance beyond conjecture the claim that these items were given in exchange for Cromwell's refrain from orchestrating some hypothetical negative action against RGB, or to render implausible the alternative innocent explanations readily established by the trial evidence.

5. The Speculative Character of the Government's Case is Not and Reasonably Cannot Be Cured or Ameliorated by Evidence Relating Solely to Campaign Contributions Made Months to Years Earlier that Were Separately Charged in Count One on which the Jury Acquitted both Cromwell And Dequattro.

In opposition to Cromwell's Rule 29 motion below, the government relied substantially on evidence relating *solely* to campaign contributions made months to years earlier that were separately charged in Count One on which the jury acquitted both Cromwell and Dequattro. Paying no mind to the jury's acquittal, the government indiscriminately cited to not only the *fact* of these acquitted transactions, but also to circumstances pertaining solely to them (and entirely absent from the transactions on which the jury convicted) that it contends may be interpreted as inculpatory efforts to

conceal. [8] It insisted that, despite the jury's acquittal, such evidence can and must be considered in determining the sufficiency of the evidence under the "viewpoint principle" "which holds that the evidence must be viewed, for the purpose of an acquittal motion, in the light most flattering to the government." *United States v. Olbres*, 61 F.3d 967, 974 (1st Cir. 1995). Citing this "viewpoint principle" at a hearing on the pending Rule 29 motions, the government expressly contended that the court "ha[d] to look at it as a cumulative set of bribes." App:2058.

But the government's case against Cromwell was neither charged, tried, nor presented to the jury on a theory of "a cumulative set of bribes." To the contrary, by not indicting on a "stream of benefits" theory of bribery and expressly disavowing reliance on any such theory at trial, (App:1028-29, 1079-80)), the government assumed the burden of proving the constituent elements of *quid pro quo* bribery separately and independently with respect to each allegedly corrupt payment or gift as of the date each

[8] This included evidence that Cromwell requested that early donations be payable to CM International and thereafter directed his friend and CM International's principal, Mitrokostas, to purchase treasurer's checks payable to Cromwell, in what was alleged was an effort to conceal the identities of the payor and payee. None of these circumstances are present in relation to the November 2015 donation to One Nation Development, the used BowFlex in August 2016, and hotel stay in May 2017.

such payment or gift was received. When the conduct underlying the counts of conviction are properly evaluated, as it must be, as individual, stand-alone transactions, circumstantial evidence pertaining *solely* to acquitted contributions months or years earlier (e.g. evidence of the aggregate size, frequency, and purported efforts to conceal such prior donations) does nothing to advance the government's discrete burden of proving Cromwell's intent and agreement to engage in *quid pro quo* bribery in conjunction with November 2015 donation charged in Count Two and his receipt of a used BowFlex in August 2016 and hotel stay in May 2017, each of which was unaccompanied by the same or similar evidence of purported concealment.

II. CROMWELL ADOPTS THE ARGUMENTS OF DEFENDANT DAVID DEQUATTRO THAT THERE WAS INSUFFICIENT EVIDENCE PRESENTED AT THEIR JOINT TRIAL TO SATISFY §666'S JURISDICTIONAL ELEMENT.

Cromwell adopts and incorporates herein by reference the arguments set forth in Part II of the brief of defendant-appellant David Dequattro that the government's evidence was insufficient to satisfy § 666's jurisdictional element. These arguments are readily transferrable to Cromwell who was tried jointly with Dequattro on common evidence and charges carrying an identical jurisdictional requirement. See 18 U.S.C. §666(a)(1)(B) and (b)

(requiring for bribery, a specific intent "to be influenced or rewarded in connection with any business, transaction, or series of transactions of" an "organization, government, or agency" receiving $10,000 in federal benefits annually). Because the sole entity with business with RGB that could have been influenced by an illegal bribe (the Gaming Authority) received no federal program benefit and the sole entity that received federal benefits (the Tribe) was not a party to the contract that related to the alleged bribery, Cromwell's convictions, like Dequattro's, cannot stand.

III. CROMWELL ADOPTS THE ARGUMENTS OF DEFENDANT DAVID DEQUATTRO THAT THE DISTRICT COURT ERRONEOUSLY EXCLUDED A DEFENSE EXPERT WHOSE TESTIMONY WAS HIGHLY RELEVANT AND EXCULPATORY.

Cromwell adopts and incorporates herein by reference the arguments set forth in Part III.B of defendant-appellant David Dequattro's brief that the district court erred in excluding a defense expert who was prepared to testify, based on decades of practice as an attorney in the area of Indian law, that gift-giving in tribal culture is "accepted and in some instances expected" and that such gifts may be provided to cultivate a relationship with the legitimate hope of developing future business rather than as part of a quid-pro-quo. These arguments are readily transferrable to Cromwell who where this proffered testimony would have provided the jury with an

alternative explanation for DeQuattro's gifts to Cromwell, and where, as set forth above, the evidence against Cromwell in this case was, assuming arguendo the Court rejects DeQuattro's Rule 29 argument, only minimally sufficient to go to the jury.

IV. CROMWELL ADOPTS THE ARGUMENTS OF DEFENDANT DAVID DEQUATTRO THAT THE DISTRICT COURT ERRONEOUSLY AND IN FACIAL VIOLATION OF FED. R. CRIM. P. 31 PRECLUDED THE JURY FROM REACHING A VERDICT UNTIL RECEIVING WRITTEN INSTRUCTIONS.

Cromwell adopts and incorporates herein by reference the arguments set forth in Part IV of defendant-appellant David Dequattro's brief that the district court's repeated admonishment to the jurors that they could not conclude their deliberations until receiving the written instructions constituted an abuse of discretion negatively implicating rights guaranteed by the Sixth Amendment. These arguments are readily transferrable to Cromwell who was identically situated to Dequattro with respect to the instructions and timely objected both to the court's admonitions and refusal to instruct in writing with respect to the requirement of proof beyond a reasonable doubt. App. 1363,1366,1371,1373.

V. THE DISTRICT COURT'S RESTITUTION ORDER WAS LEGALLY ERRONEOUS IN SEVERAL RESPECTS.

The district court ordered, pursuant to the Mandatory Victims Restitution Act ("MVRA"), that Cromwell be liable for more than $209,000 in legal expenses[9] incurred by the Tribe during the course of the investigation giving rise to this case and the subsequent criminal prosecution. In doing so, the court violated several aspects of the MVRA. Restitution orders are reviewed "for abuse of discretion," with factual findings upheld absent "clear error," but legal conclusions examined "*de novo*." *In re Akebia Therapeutics, Inc.*, 981 F.3d 32, 36 (1st Cir. 2020).

"Federal courts possess no inherent authority to order restitution, and may do so only as explicitly empowered by statute." *United States v. Hensley*, 91 F.3d 274, 276 (1st Cir. 1996) (citation omitted). The Mandatory Victims Restitution Act of 1996 ("the MVRA") is a statute of limited application. It applies to only a limited subset of offenses, including "an offense against property under this title ... including any offense committed by fraud or deceit, "in which an identifiable victim or victims has suffered a physical injury or pecuniary loss." 18 U.S.C. § 3663A(c)(1)(A)-(B). The Act

[9] Cromwell's liability for $140,707.79 of this amount was joint and several with Dequattro. [Judgment p. 7].

defines "victim" as "a person directly and proximately harmed as a result of the commission" of a specified offense. 18 U.S.C. § 3663A(a)(2). In cases in which it applies, the MVRA requires that "victims" so defined be reimbursed "for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." 18 U.S.C. §§ 3663A(b)(4).

A. Federal Programs Bribery under 18 U.S.C. § 666, Committed in the Manner and Circumstances Alleged by the Government at Trial, Does not Constitute "An Offense Against Property" under the MVRA.

The MVRA does not include a definition of an "offense against property." And neither the Supreme Court of the United States nor this Court has expressly defined or construed that term in context. Multiple authorities, however, reflect a consensus that some, but not all, bribery constitutes an "offense against property" triggering the restitution requirements of the MVRA. *United States v. Collins*, 854 F.3d 1324, 1335 (11th Cir. 2017)(observing that it is "not readily apparent" that bribery "will always trigger" this statutory provision); *United States v. Adorno*, 950 F. Supp. 2d 426, 429 (E.D.N.Y. 2013)(explaining that "the elements of" §666 "do not make it an offense against property"); *United States v. Razzouk*, 984

F.3d 181, 188 (2d Cir. 2020) (courts must look to facts and circumstances bribery offense under § 666(a)(1)(B) and the manner in which it was committed to determine whether the MVRA requires restitution). The one circuit to address the issue in detail, the Eleventh Circuit, held persuasively that in order for an offense to be "against" property, as expressly required by the MVRA's text, the defendant's conduct must be "'in opposition to' or 'contrary to' the classic property rights of ownership and possession." *Collins*, 854 F.3d at 1331.

Here, the government's theory was that Cromwell engaged in bribery by agreeing *not* to orchestrate the termination of a contract that was never in jeopardy for a vendor that was, by all accounts, meeting or exceeding every expectation, and upon whom more and more responsibilities had devolved over time. App:1636-37. The government never alleged, nor did it present evidence to support any allegation, that Cromwell misappropriated as much as a single dollar from Tribal funds, or for that matter, any monies advanced to Gamming Authority by Genting, the Tribe's investment partner. The evidence established that termination of RGB's contract once construction began would have been a serious setback for the Gaming Authority and its goal to open a five-star casino before a

competing casino could open. App:316-17,339. Thus, Cromwell's theorized refrain from orchestrating such a termination was completely consistent Cromwell's duties and responsibilities as Chair and member of the Gaming Authority and in no way "'in opposition to' or 'contrary to' the classic property rights of ownership and possession." *Collins*, 854 F.3d at 1331. Compare *United States v. Razzouk*, 984 F. 3d 181, 189 (2d Cir. 2020) (involving payments from the victim for which it "received no consideration").

B. The Tribe Is not a "Victim" Entitled to Mandatory Restitution under the MVRA.

Likewise, and for similar reasons, the evidence fails separately to establish (and the District Court erred in finding) that the Tribe is a "victim" entitled to mandatory restitution under the MVRA. As noted, the statute defines "victim" as limited to "a person *directly and proximately* harmed as a result of the commission of an offense . . . ." § 3663A(a)(2)(emphasis added). In determining whether this definition has been met, courts must focus "on the causal relationship 'between the *conduct* and the loss,' not between the nature of the statutory offense and the loss." *United States v. Chin*, 965 F.3d 41, 60 (1st Cir. 2020) (quoting *United States v. Cutter*, 313 F.3d 1, 7 (1st Cir. 2002)) (emphasis in original)

(noting that "[t]his approach to the 'victim' analysis tracks the language of the statute, as it focuses on whether the victim was 'harmed as a result of the *commission* of an offense' . . . ."")(quoting 18 U.S.C. § 3663A(a)(2)). Such focus on a defendant's conduct comports with the Supreme Court's pronouncement that restitution awards are limited to "the loss caused by the specific conduct that is the basis of the offense of conviction.'" *Cutter*, 313 F.3d 1, 7 (quoting *Hughey v. United States*, 495 U.S. 411, 413 (1990). Here, for reasons discussed above, the *conduct* that the government theorized Cromwell engaged in—refraining or agreeing to refrain from orchestrating RGB's arbitrary termination in circumstances where such conduct was consistent the interests of the Gaming Authority and did not involve the misappropriation or misuse of any Tribal property or funds—did not directly or proximately harm the Tribe.

The government's attempts to cast the tribe as a "victim" as defined by § 3663A(a)(2) on account of purported "damage to the Tribe's reputation caused by Mr. Cromwell's conviction" or "legal fees and expenses the Tribe incurred during its participation in the investigation and prosecution of the crimes of conviction" App:2240, are unavailing. Neither alleged harm was adequately direct or proximate to the specific

conduct, discussed above, that is the basis of the offense of Cromwell's convictions to qualify the Tribe as a "victim" entitled to mandatory restitution under the MVRA. Any causal connection between Cromwell's specific conduct between November 2015 and May 2017 and unparticularized claims of "distrust in [unidentified] potential lenders," allegedly "impeding the Tribe's ability to obtain financing [in an unspecified amount] for economic development" as a result of Cromwell's convictions in 2022 (between five and seven years later) is far too removed, both factually and temporally, to satisfy § 3663A(a)(2)'s requirement of direct and proximate harm. *Cf*, *In re McNulty*, 2010 U.S. App. LEXIS 4249, *21 (holding that "direct" harm "requires that the harm to the victim be closely related to the conduct inherent to the offense, rather than merely tangentially linked" and that a cooperating witness' "firing and blackballing from the industry, if proved, are ancillary"). The government's inability to cite a single case in which the narrowing requirement of direct and proximate harm was satisfied by unparticularized claims of spillover reputational harm arising *not* from a defendant's specific conduct but rather indirectly from the fact of a conviction years later is both telling and unsurprising given the practically unlimited cohort of crime "victims" this

would create. *United States v. Kearney*, 672 F.3d 81, 95 (1st Cir. 2012) (discussing Congress' intent to "define victim more narrowly, as 'a person directly and proximately harmed as a result of the commission of an offense'"). S. Rep. 104-179, 19 (1995)("The committee intends this provision to mean . . . that mandatory restitution provisions apply only in those instances where a named, identifiable victim suffers a . . . pecuniary loss directly and proximately caused by the course of conduct under the count or counts for which the offender is convicted."). As to the Tribe's legal fees and expenses, the government expressly conceded before the District Court that these were "indirect" losses. App:2237. This, in itself, should have precluded their use to qualify the Tribe as a "victim" entitled to mandatory restitution under the MVRA. The fact that "victims" *meeting* the narrowing definition of that term set out in § 3663A(a)(2), are entitled under § 3663A(b)(4) to restitution for patently *in*direct expenses such as "lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense" simply does not render such patently *in*direct expenses direct and proximate harms. *United States v. Yu Xue*, No. 16-CR-22, 2021 WL 2433857, at *6 (E.D. Pa. June

15, 2021). ("[E]xpenses for legal fees and costs incurred during an investigation and prosecution of a defendant would only arise after a victim suffers a pecuniary loss 'as a result of the commission of an offense.'" *Id.* (quoting 18 U.S.C. 3663A (a)(2))).

C. The Government Has Not Proven That The Tribe Suffered A "Pecuniary Loss"

In addition to limiting "victim[s]" those "directly and proximately harmed as a result of the commission of an offense . . . .[,]", the MVRA statute contains the prerequisite of "an identifiable victim or victims" that "has suffered a physical injury or pecuniary loss." 18 U.S.C. § 3663A(c)(1)(B). Here, the legal expenses claimed as subject to restitution cannot be "subsumed under the term 'pecuniary loss.'" *Yu Xue*, No. 16-CR-22, 2021 WL 2433857, at *6 (E.D. Pa. June 15, 2021)). This is because the statutory language "distinguishes between pecuniary loss and necessary expenses." *Id.* Likewise, alleged damage to the Tribe's reputation, even if particularized and proved, is self-evidently not "pecuniary" in nature. See Black's Law Dictionary (8th ed. 2007) (defining "pecuniary" to mean "Of or relating to money; monetary"). Thus, in addition to being inadequately direct or proximate to the specific conduct underlying Cromwell's offenses,

the "harms" cited by the government fail because they are neither "physical injury [n]or pecuniary loss."

CONCLUSION

For the foregoing reasons, Mr. Cromwell's conviction should be reversed. At minimum, the conviction and restitution order should be vacated and the matter remanded for a new trial.

Respectfully submitted,

APPELLANT CEDRIC CROMWELL

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **12,219** words (according to Microsoft Word's word count feature), excluding the parts of the brief exempted by Fed. R. App. P. Rule 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. Rule 32(a)(5) and the type style requirements of Feb. R. App. P. Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, using Microsoft Word in size 14 font, Book Antiqua type style.

/s/ Robert Hennessy
Robert Hennessy
Attorney for Defendant-Appellant

October 3, 2023

CERTIFICATE OF E-FILING AND SERVICE

I certify that on October 3, 2023, the foregoing document was electronically filed with the United States Court of Appeals for the First Circuit by using the CM/ECF system, thus effectuating service on all parties to this appeal.

/s/ Robert Hennessy
Robert Hennessy
Attorney for Defendant-Appellant

October 3, 2023

Nos. 23-1116 & 23-1138

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA,
Appellee/Cross-Appellant,

v.

CEDRIC CROMWELL,
Defendants - Appellant/Cross - Appellee

On Appeal From The United States District Court
For The District Of Massachusetts

ADDENDUM

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA
v.
CEDRIC CROMWELL

JUDGMENT IN A CRIMINAL CASE

Case Number: **1 20 CR 10271 - 01 - DPW**

USM Number: 17213-509

Timothy R. Flaherty
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. two and three of the superseding indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds	11/13/15	2s
18 U.S.C. §666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds	05/18/17	3s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 1 and 9 (jury verdict) 6, 7, 8 & 10 (acquittal) of Superseding Indictment

☑ Count(s) 1,2,3,6,7,8,9,10 Indictment ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/18/2023
Date of Imposition of Judgment

/s/ Douglas P. Woodlock
Signature of Judge

The Honorable Douglas P. Woodlock
Judge, U.S. District Court
Name and Title of Judge

1/31/2023
Date

AO 245B (Rev.02/18) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: **1 20 CR 10271 - 01 - DPW**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 36 month(s)

This term consists of terms of 36 months on each count, to be served concurrently.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☑ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: **1 20 CR 10271 - 01 - DPW**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 1 year(s)

This term consists of terms of one (1) year on each count, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: **1 20 CR 10271 - 01 - DPW**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: **1 20 CR 10271 - 01 - DPW**

SPECIAL CONDITIONS OF SUPERVISION

1. You must pay the balance of any fine and restitution imposed according to a court-ordered repayment schedule.

2. You are prohibited from incurring new credit charges or opening additional lines of credit without the approval of the Probation Office while any financial obligations remain outstanding.

3. You must provide the Probation Office access to any requested financial information, which may be shared with the Asset Recovery Unit of the U.S. Attorney's Office.

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: 1 20 CR 10271 - 01 - DPW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 200.00	$ 0.00	$ 25,000.00	$ 209,678.54

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Mashpee Wampanoag Tribe		$209,678.54	
TOTALS	$ 0.00	$ 209,678.54	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CEDRIC CROMWELL
CASE NUMBER: **1 20 CR 10271 - 01 - DPW**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 234,878.54 due immediately, balance due

☐ not later than _____ , or
☑ in accordance with ☐ C, ☐ D, ☑ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☑ Payment during the term of supervised release will commence within 30 days *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☑ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Co-Defendant David DeQuattro, Joint and Several Amount = $140,707.79 to the Mashpee Wampanoag Tribe.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

See Order of Forfeiture (Money Judgment) [ECF # 333] and Preliminary Order of Forfeiture [ECF #334] entered on 1/26/2023.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.