

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA

v.

GARY OZTEMEL,

Defendant

Case No.: 3:23-cr-00026-KAD

October 17, 2024

**DEFENDANT'S MEMORANDUM IN AID OF SENTENCING**

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**PRELIMINARY STATEMENT**

Gary Oztemel, age 67, appears for sentencing having accepted responsibility for his involvement in a serious federal offense. Gary is a first-time offender, a beloved family man, and a respected member of his community. Gary is also suffering from bladder cancer, and his prognosis is not good. Without continued treatment at Memorial Sloan Kettering (“MSK”), his condition is possibly life-threatening. Although Gary respectfully submits that a combination of grounds support a sentence that does not include incarceration, he submits that his serious health condition supports such a sentence on its own.<sup>1</sup>

Gary has been a resident of Greenwich, Connecticut for virtually his entire life. Gary’s dedication and service to his community is surpassed only by his dedication and love for his family, which includes his wife, Karen, two children, Harrison and Alexandra—ages 33 and 36, respectively—two grandchildren—ages three years and two months—four siblings, and his now-deceased parents, who provided a warm and joyful upbringing for the Oztemel children. Gary’s friends and family members uniformly describe him as kind, humble, thoughtful, respectful, trustworthy, and someone who makes others feel valued by taking time to reach out and show up for them in ways big and small. His commitment to his community is likewise reflected in the countless hours he has spent volunteering for the Town of Greenwich, including by serving for over 20 years on the Board of Parks and Recreation and for five as its chairperson.

[REDACTED]

[REDACTED]

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<sup>1</sup> The government agreed that if the United States Probation Office determined that the Court may wish to consider a departure or a non-Guidelines sentence due to Gary’s medical condition, the government would not object to such a departure. Plea Agreement at 5, ECF No. 187. The Presentence Report so states, *see* ¶¶ 91, 94–95, and Gary anticipates that the government will not object to Gary’s request for a departure or a non-Guidelines sentence.

[REDACTED]

Despite these ongoing medical challenges, Gary continues to provide significant emotional support to his immediate and extended family, including to his two sisters, who also experienced cancer diagnoses in recent years. Indeed, Gary plays a central role in the lives of many of his friends and family members, who describe his ability to bring people together, listen with thoughtful empathy, and offer meaningful guidance as they navigate their own challenges.

The conduct for which Gary stands convicted arose during a particularly difficult period in Gary's life, in which his business lost significant income. After a substantial loss in 2016, Gary was preparing for his daughter's wedding in 2017 and 2018, for which he had assumed financial responsibility. Around this time he accepted funds from Eduardo Innecco and overlooked his knowledge that these funds derived from unlawful activity. As reflected in the many character

letters that accompany this submission (*see* **Exhibit A**, attached hereto), Gary is someone who is admired and depended upon by those in his circle, and Gary did not want to disappoint his family during this incredibly important time in the life of his daughter. Since 2018, however, Gary's struggles have only compounded, as the instant investigation and prosecution have wreaked havoc upon his life, visited shame upon Gary and his family, and essentially wiped him out emotionally and financially. While Gary acknowledges the seriousness of the offense, it stands in sharp contrast to his otherwise law-abiding and conscientious life of service to his community and family.

### **BACKGROUND**

On June 24, 2024, Gary Oztemel pleaded guilty to Count Nine of the Superseding Indictment charging him with one count of money laundering, in violation of 18 U.S.C. § 1957. The parties stipulated in the written plea agreement that the base offense level is eight pursuant to U.S.S.G. § 2S1.1(a)(2), and that the base offense level is increased by 12 under U.S.S.G. § 2B1.1(b)(1)(G) and by one under U.S.S.G. § 2S1.1(b)(2)(A), resulting in an adjusted offense level of 21. With three levels subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, the resulting offense level is 18. The parties further stipulated that Gary is eligible for a two-level reduction as a "zero-point offender" under U.S.S.G. § 4C1.1, further reducing his total offense level to 16. At Criminal History Category I, the plea agreement contemplated a Guidelines range of 21 to 27 months of imprisonment and a fine range of \$10,000 to \$95,000. *See* Plea Agreement at 5.

In the plea agreement, Gary reserved his right to argue for a departure, variance, or non-Guidelines sentence based upon, *inter alia*, Gary's age and physical condition, *see* U.S.S.G. §§ 5H1.1 and 5H1.4. The government agreed that if the United States Probation Office determined

that the Court may wish to consider a departure or a non-Guidelines sentence due to Gary's medical condition, the government would not object to such a departure.

Thereafter, a United States Probation Officer prepared the Presentence Report ("PSR") and adopted the Guidelines range agreed-upon by the parties and as set forth in the plea agreement. PSR ¶ 73. The Probation Officer noted that the Court may wish to consider departing downward pursuant to U.S.S.G. § 5H1.1<sup>2</sup> in light of Gary's physical condition and treatment needs. PSR ¶ 91. The Probation Officer further indicated that "[t]he Court may wish to consider Mr. Oztemel's personal history and characteristics, to include his medical condition and lack of criminal history," as a factor that may warrant a non-Guidelines sentence. PSR ¶ 94. These issues are addressed in the context of both a departure and a non-Guidelines sentence (*i.e.*, a variance) below.<sup>3</sup>

#### **STANDARD OF REVIEW**

"The standard of review for sentencing is one of 'reasonableness.'" *United States v. Cossey*, 632 F.3d 82, 86 (2d Cir. 2010) (*per curiam*) (quoting *United States v. Booker*, 543 U.S. 220, 260–62 (2005)). "To impose a procedurally reasonable sentence, a district court must '(1) normally determine the applicable Guidelines range, (2) consider the Guidelines along with the other factors under § 3553(a), and (3) determine whether to impose a Guidelines sentence or a

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<sup>2</sup> The PSR references Section 5H1.1, but it is likely that the Probation Officer additionally intended to cite Section 5H1.4.

<sup>3</sup> The description of the Offense Conduct in the final PSR differs considerably from and is significantly broader than the Stipulation of Offense Conduct set forth in the plea agreement. *See* PSR ¶¶ 7–15; *see also* PSR ¶ 99. Gary maintains the objections to these portions of the PSR identified in the letter of defense counsel dated October 9, 2024, *see* ECF No. 312-3. However, in Gary's view, the Court need not resolve this dispute for purposes of the Guidelines calculations, as the parties are in agreement as to the appropriate Guidelines range. *See* Fed. R. Crim. P. 32(i)(3)(B) (noting that "for any disputed portion of the presentence report," the Court may "determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing").



non-Guidelines sentence.” *Id.* (quoting *United States v. Villafuerte*, 502 F.3d 204, 206–07 (2d Cir. 2007)).

While “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range,” the Guidelines are merely the “starting point and the initial benchmark[,] . . . not the only consideration.” *Gall v. United States*, 552 U.S. 38, 49 (2007).

Rather, the Court must “consider all of the § 3553(a) factors.” *Id.* at 49–50. Those factors are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed:
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established [by the Guidelines] . . . ;
- (5) any pertinent policy statement[] . . . issued by the Sentencing Commission . . . ;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a). Ultimately, the Court must “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing. *Id.*

“[D]istrict courts enjoy considerable discretion in identifying the grounds that can justify a non-Guidelines sentence.” *United States v. Jones*, 531 F.3d 163, 172 (2d Cir. 2008). In exercising this discretion, “[t]he district court ‘may not presume that the Guidelines range is reasonable.’” *Peugh v. United States*, 569 U.S. 530, 536 (2013) (quoting *Gall*, 552 U.S. at 50). “[W]hereas appellate courts are permitted, if they wish, to presume the reasonableness of a within-range sentence, sentencing judges are strictly *forbidden* from doing so.” *United States v. Pruitt*, 813 F.3d

90, 93 (2d Cir. 2016). Accordingly, “the amount by which a sentence deviates from the applicable Guidelines range is not the measure of how ‘reasonable’ a sentence is.” *United States v. Dorvee*, 616 F.3d 174, 184 (2d Cir. 2010).

In short, when imposing a sentence, the Court must “consider all of the § 3553(a) factors” and “must make an individualized assessment based on the facts presented.” *Gall*, 552 U.S. at 49–50. It is this individualized assessment, not a mechanical application of the Guidelines, which determines what a reasonable sentence is in any given case. *See Jones*, 531 F.3d at 171–72.

## ARGUMENT

### **I. Downward Departures Are Warranted Based on Gary Oztemel’s Age and Health**

U.S.S.G. § 5H1.1 provides that the Court may consider age in determining whether a departure from the Guidelines is warranted, and further specifies that “[a]ge may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration.”<sup>4</sup> Section 5H1.1 also references the Guideline for physical condition, U.S.S.G. § 5H1.4, which, as relevant here, provides that:

Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. An extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

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<sup>4</sup> The proposed amendment to this Guidelines provision, which goes into effect November 1, 2024, contains similar language and additionally provides that “[t]he age-crime curve, one of the most consistent findings in criminology, demonstrates that criminal behavior tends to decrease with age. Age-appropriate interventions and other protective factors may promote desistance from crime. Accordingly, in an appropriate case, the court may consider whether a form of punishment other than imprisonment might be sufficient to meet the purposes of sentencing.”

Gary is 67 years old and has been involved in intensive treatment for bladder cancer for three years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In these circumstances, where Gary is faced with a life-threatening illness that requires consistent and highly specialized medical attention, a downward departure is warranted. *See, e.g.,*

*United States v. Velasquez*, 762 F. Supp. 39, 40 (E.D.N.Y. 1991) (concluding significant downward departure was warranted in light of defendant’s metastasized cancer); *United States v. Vaughan*, No. 92 CR. 575-04 (RWS), 1993 WL 119704, at \*1 (S.D.N.Y. Apr. 15, 1993) (granting downward departure to defendant who was “ill with non-hodgkin lymphoma, a fatal form of cancer,” as though he was responding well to chemotherapy, “his doctor’s prognosis is by no means certain”); *see also United States v. Kloda*, 133 F. Supp. 2d 345, 349 (S.D.N.Y. 2001) (departing downward in light of, *inter alia*, defendant’s advanced age and heart problems). Indeed, given the severity and complexity of his cancer, Dr. Donahue has indicated that Gary’s ability to receive timely and appropriate medical care could be critical to his survival. Dr. Donahue does not believe that the Bureau of Prisons will be equipped to provide the level of care that is needed and strongly urges that Gary be afforded the opportunity to remain within the care of MSK. *See, e.g., United States v. Martin*, 363 F.3d 25, 49–50 (1st Cir. 2004) (affirming downward departure pursuant to Section 5H1.4 where, *inter alia*, the Bureau of Prisons could not administer medication critical to preventing progression of defendant’s Chron’s disease, and “[t]here is a high probability that lengthy incarceration will shorten [the defendant’s] life span”).

## **II. The Section 3553(a) Factors Support Imposition of a Non-Guidelines Sentence**

Even if this Court does not depart downward based on Gary’s age and/or health, it is respectfully submitted that application of the sentencing factors set forth in Section 3553(a) warrants a non-Guidelines sentence of probation.

As to the nature and circumstances of the offense, Count Nine is predicated on a single transfer of funds totaling \$11,000 from Petro Trade Services to Gary’s personal bank account. However, Gary has agreed to a forfeiture judgment that reflects his receipt of funds over a more extensive time period—that is, the sum of \$301,575, representing funds that Eduardo Innecco

transferred to Petro Trade between 2017 and 2018. Gary does not dispute the seriousness of this offense, but he contends that in the context of the more expansive scope of the forfeiture judgment, he was a minor participant in the conduct that enabled these payments. Indeed, it is undisputed that Gary played no role in facilitating the bribe payments that generated these illicit proceeds. Nor was Gary or his companies involved in the underlying trades between Petrobras and Freepoint during this timeframe. After 2013, Gary ceased engaging in trades with Petrobras and pursued other business opportunities. As a sole proprietor, and given the volatility of the trading industry, Gary's business tended to ebb and flow and the years leading up to the time of the offense conduct were particularly difficult. In 2016, for example, Gary's business lost approximately \$470,000. Thus, Gary was willing to accept payments from Innecco that he knew derived from unlawful activity because he was determined to recover this loss and felt he needed to make money. Indeed, even crediting Rodrigo Berkowitz's testimony at Glenn Oztemel's trial indicates that Innecco had received a request from Glenn "to give Gary five cents per barrel on every deal[,] [j]ust to help his brother." Sept. 9, 2024 Afternoon Trial Tr. at 42. Gary's role during this time period was accordingly limited to receiving a portion of the proceeds of Freepoint's deals with Petrobras, essentially because he was struggling financially. *See, e.g., United States v. Vargas*, No. 11-CR-240-01 (RWS), 2012 WL 363120, at \*7 (S.D.N.Y. Feb. 2, 2012) (sentencing defendant convicted of bank fraud and money laundering and conspiracies to commit the same to time served in light of, *inter alia*, defendant's "relatively minor role in the instant offenses" and the fact that he "profited minimally from his crimes relative to his co-conspirators"); *United States v. Sobol*, No. 08-CR-76, 2008 WL 4427908, at \*1 (E.D.N.Y. Sept. 12, 2008) (finding non-Guidelines sentence of probation appropriate and citing defendant's minor role as a relevant consideration when weighing the nature and circumstances of the offense).

This conduct, moreover, is inconsistent with Gary's history and personal characteristics, which overwhelmingly reveal an individual who is held in high esteem by his family, friends, and community and admired for his integrity. The character letters submitted in conjunction with this memorandum are remarkably consistent in their depiction of a man who carves out time to show up for, encourage, mentor, and inspire others—not only for his own children and grandchildren, which is evident in spades, but for his friends and their children, his nieces and nephews, neighbors, and even strangers. From being a regular attendant at wakes to honor the loss of friends, acquaintances, and their loved ones (letter of Harrison Oztemel, Exhibit A-3), to visiting his elderly neighbor every week (letter of Kathryn Wolfe, A-33), serving as a father figure to the children of a longtime friend after their father's traumatic passing (letters of Kristin Durkin and Harrison Oztemel, A-15 and A-3), volunteering to coach youth sports (letter of Matthew Shapiro, A-20), being the “glue” that holds together his high school friends (letter of E. Michael Bacon, A-4), and providing outreach and support to friends during difficult times (letters of Margaret Drake, A-14), Gary is appreciated uniformly for his selflessness, care, and generosity of spirit. As stated by a friend of over fifty years (and Gary has many of these), Mark Vallely, “If he and I were left in the desert to share one canteen of water, he would be sure that I was taken care of before himself.” Exhibit A-31.

Gary also maintains especially close relationships with the children of his siblings. His nephews describe him as “a pillar figure in my life” and the type of uncle who always calls to check in and shows up for graduations and birthdays (letter of Cooper Barnes, Exhibit A-5), “not just a relative but a friend and mentor” whose “lessons on honesty and respect have guided my actions and decisions throughout life” (letter of Skyler Barnes, A-7), and “much more than an uncle,” and “a mentor, a guide, and a source of unwavering support” (letter of Conor Caporale, A-

11). Gary’s only niece credits Gary with being “the kindest, funniest, most caring person I know” who always showed up for her during childhood despite being three hours away (letter of Wesley Barnes, A-9).

Gary’s medical condition (described in detail above) also presents a compelling reason to impose a non-Guidelines sentence of probation. *See, e.g., United States v. Alatsas*, No. 06-CR-473 (JBW), 2008 WL 238559, at \*2 (E.D.N.Y. Jan. 16, 2008) (determining that “Defendant has multiple complex medical problems, which will be better cared for outside of prison” as one of the reasons that warranted a non-Guidelines sentence of probation). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regarding the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence, the undersigned respectfully submit that the need for specific deterrence is non-existent in this case, where Gary, at age 67, is retired, suffering from a myriad of serious health conditions, and, frankly, incapable of offending again. *See, e.g., Older Offenders in the Federal System*, U.S. Sentencing Comm’n, at 8 (July 2022) (noting that “Commission studies have repeatedly demonstrated an inverse relationship between age and recidivism: as an offender’s age at sentencing increased, the



rate of a later rearrest decreased”).<sup>5</sup> Considerations related to just punishment also militate against imposing a term of incarceration, as the financial, psychological, and reputational harm that Gary has suffered as a result of this criminal prosecution has already inflicted severe punishment, the reverberations of which are far from having abated. *See, e.g., United States v. Nesbeth*, 188 F. Supp. 3d 179, 194 (E.D.N.Y. 2016) (citing collateral consequences defendant had and would likely suffer as a result of her convictions in concluding “that she has been sufficiently punished, and that jail is not necessary to render a punishment that is sufficient but not greater than necessary to meet the ends of sentencing.”). Gary has been branded a felon, and carries with him all of the consequences of that status. Gary has had bank accounts closed and credit cards cancelled. The letters submitted by Gary’s wife, Karen Oztemel (Exhibit A-1), and from his children, Alexandra and Harrison (Exhibits A-2 and A-3, respectively), describe the enormous negative impacts that this case has visited upon the stability of their family and upon Gary’s physical and mental health and financial condition. Gary has no income, is facing an impending divorce, and the marginal assets he will retain in retirement are insufficient to provide for his basic living expenses and ongoing healthcare in the long-term. Thus, the forfeiture judgment, while not intrinsically punitive, is in an amount that approaches what will remain of Gary’s savings after his divorce and is something that weighs extremely heavily on Gary’s mind and will likely burden him for the rest of his life.

In terms of the types of sentences available, a sentence of probation is optimally suited to satisfying the purposes of sentencing for a defendant like Gary whose health and medical condition would be threatened by a term of incarceration. The restrictions on liberty that accompany a term

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<sup>5</sup> Available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726\\_Older-Offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220726_Older-Offenders.pdf) (last accessed Oct. 17, 2024).

of probation are also not insubstantial and would confer sufficient punishment in these circumstances. *See, e.g., Gall*, 552 U.S. at 48 (explaining that “[o]ffenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty” and citing a variety of such restrictions); *United States v. Zimmerman*, No. 10-CR-598 (JG), 2012 WL 3779387, at \*6 (E.D.N.Y. June 19, 2012) (noting that alternatives to incarceration still constitute punishment, and “[s]upervised release brings with it a series of significant restrictions on a defendant’s liberty”).

### **III. Gary Oztemel is Unable to Pay a Fine**

The Probation Officer concluded that Gary has the ability to pay a fine. We have objected to that conclusion because it overlooks the likely impacts of Gary’s pending divorce,<sup>6</sup> the forthcoming forfeiture judgment, his outstanding liabilities, and his absence of any income. The characterization of Gary’s net worth as amounting to over \$900,000 (PSR ¶ 71) is based on assets that are jointly held with Gary’s wife, Karen, including the marital residence. After the residence is sold, assuming a 50/50 division of the proceeds, and Gary’s debts are accounted for, Gary will be left with less than \$400,000. He will need to find a place to live and maintain his increasing medical expenses with no income and while facing a forfeiture judgment of approximately \$301,000. In short, Gary has been devastated financially, largely as a result of the instant case, and he has no ability to pay a fine without further threatening his ability to take care of his medical needs and other basic living expenses.

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<sup>6</sup> Although, as noted in the PSR, Ms. Oztemel has filed for dissolution of marriage, Gary and his family are trying to maintain the privacy of this issue to the extent possible.

**CONCLUSION**

For the foregoing reasons, the Defendant, Gary Oztemel, respectfully requests that the Court impose a sentence that does not include a period of incarceration.

Respectfully submitted,

*/s/ Joseph W. Martini*

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**CERTIFICATION**

I hereby certify that on October 17, 2024 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF system.

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