

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ALEXANDER NEUMEISTER,

Defendant.

**18-CR-385 (AT)**

**SENTENCING MEMORANDUM OF ALEXANDER NEUMEISTER**

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**PRELIMINARY STATEMENT**

Alexander Neumeister respectfully submits this memorandum, by and through his attorneys, in anticipation of his sentencing scheduled for October 10, 2018. On May 31, 2018, Dr. Neumeister pled guilty, pursuant to a written plea agreement, to one count of theft of government funds under 18 U.S.C. § 641. For the reasons set forth below, we respectfully request that the Court adopt the Probation Department's recommendation of a sentence of probation, but, to the extent the Court deems location monitoring to be a necessary component of such a sentence, that the period of location monitoring not exceed three months. We submit that the proposed sentence is sufficient but not greater than necessary to meet the purposes of sentencing under 18 U.S.C. § 3553(a).

Dr. Neumeister, and the crime he committed, present a paradox. He is highly intelligent, refined, and cultured. He has had a sterling scientific career, marked not only by academic achievement and peer recognition, but motivated by a genuine passion – and unique skill – for alleviating suffering. By all appearances, his life, both professional and personal, has been a great success. But beneath the surface, there is a man who carries tremendous guilt and shame, and who, in an inexplicable manner approaching compulsion, took repeated action to sabotage his own success and breach the mores of society for little personal gain. Alexander Neumeister is a tragically flawed person, whose all-too-human frailties overtook him during critical periods of his life, and have already acted to destroy and devastate his career, reputation, and family. He comes before this Court as a man whose life has been shattered by his actions. He recognizes that the blame for that falls squarely on his shoulders and he is in the process of trying to rebuild his life. He will no doubt continue to punish himself long after his sentencing in this case occurs.

To fulfill the Court's statutory mandate of individualized sentencing, a full account of Dr. Neumeister's life is necessary. Notably, the seeds of both his successful career and his deeply-rooted dysfunction took root in Dr. Neumeister's adolescence, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and, in two cases, misused grant funds that compromised his positions at major research universities. While Dr. Neumeister's actions are, on some level, inexplicable, and he has begun the long process of attempting to excavate the causes for them in therapy, for purposes of sentencing we ask that his poor decisions and criminal conduct be viewed within the context of the rest of his life, which he has dedicated to scientific knowledge and the alleviation of suffering for combat veterans, sexual assault victims, and others suffering from posttraumatic stress disorder.

On balance, Dr. Neumeister's personal history and psychological dysfunction, together with his positive contributions to science, to his community, and to his family warrant leniency. First, while certainly not an excuse, Dr. Neumeister's personal history is at least a partial explanation for his self-destructive and illegal behavior, and it is significant that Dr. Neumeister has taken full responsibility not only for his criminal conduct, but for the psychological underpinnings that may have contributed to his poor decisions. His full acceptance assures the Court that no measure of incarceration is needed to achieve individual deterrence or protect the public. Second, Dr. Neumeister's positive scientific work and its importance to human welfare

and vulnerable populations should also be weighed in the balance. As described more fully below, Dr. Neumeister did unique and important work in the area of exploring novel treatments for posttraumatic stress disorder, and was especially focused on alleviating the suffering of combat veterans, survivors of sexual assault, and victims of war crimes.

Finally, Dr. Neumeister's family circumstances, together with the immigration problems he faces as a result of this conviction, warrant the full measure of this Court's leniency. Despite the non-traditional marriage he had with his wife, Veronique, Dr. Neumeister has always been a devoted father, who has been integral to his children's upbringing. He continues to play an important and supportive role in the lives of his children, two of whom are now in college and one who lives at home with him and Veronique. Dr. Neumeister's focus throughout this case has been on maintaining his ability to care and provide financial support for his children..

Attached to our submission, as Exhibit A, are letters from colleagues, neighbors, family, and friends, as well as the therapeutic professional from whom Dr. Neumeister has sought treatment since his arrest in this case.

## **FACTUAL BACKGROUND**

### **I. Personal History**

#### **a. Early Life**

Dr. Neumeister was born in Vienna, Austria, in 1966. His mother came from an established Viennese family, while his father was from a small town in Southern Austria. His father was a Professor of Veterinary Medicine at the University of Vienna, and his mother stayed home with him, his older sister, and younger brother. He describes his childhood as "growing up in an old, conservative family in an old, conservative environment." He attended the local public school, as all Austrian children did at that time, and it was an intensely rigorous, competitive



[REDACTED]

[REDACTED] Dr. Neumeister met Dr.

Roland Kuhn, a Swiss psychiatrist who pioneered the first antidepressant drug. Kuhn [REDACTED]

[REDACTED] took Dr. Neumeister under his wing. He became a mentor and a role model, encouraging young Dr. Neumeister to read Shakespeare and the German-Swiss psychiatrist and existentialist philosopher Karl Jaspers to deepen his understanding of human psychology. [REDACTED]

[REDACTED] Kuhn remained an important figure in Dr. Neumeister's life, initiating his interest in psychiatry and encouraging his career.

[REDACTED]

[REDACTED]



National Institutes of Health (“NIH”) in Bethesda, Maryland. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While their relationship has followed a non-traditional path, Dr. Neumeister and Veronique very much fell in love when they met in 1996. They had an instant emotional and intellectual bond and they kept in touch when Dr. Neumeister returned to Maryland to finish his year at NIH. He then returned to Vienna and he and Veronique started dating more seriously. In 1998, she became pregnant with their first child. The pregnancy was unplanned, but Dr. Neumeister and Veronique were excited about the prospect of starting a family together. They married that year, and in September 1998, their daughter Anne-Sophie was born. Dr. Neumeister and Veronique had two more children together, Nicolas, born in 1999, and T [REDACTED], born in 2002.

At thirty years old, Dr. Neumeister was already a professor at the University of Vienna with a wife and children. Outwardly, his life appeared to be on a meteoric trajectory to success. The focus of his research at that time was the effects of serotonin and norepinephrine in the brain, specifically why the sudden cessation of taking antidepressant medication that targeted

those neurotransmitters caused people to commit suicide.<sup>1</sup> Another researcher who was looking at this same question at the National Institutes of Mental Health (“NIMH”), Dennis Charney, persuaded Dr. Neumeister to move back to the United States to work with him. Dr. Neumeister and his family moved to Bethesda in 2001 and from that point forward have called this country their home.

At the NIMH, Dr. Neumeister began working for the first time on neuroimaging studies, which use a variety of techniques to either directly or indirectly image the structure and function of the brain. While there are multiple methods currently in use for neuroimaging, Dr. Neumeister focused on Positron Emission Tomography (“PET”), which measures emissions from radioactively labeled metabolically active chemicals in the tissues of the live brain. PET scanning offers high resolution images of the areas of the brain that are activated by, for example, a particular task or the ingestion of a particular drug. Essentially, PET scanning allows the researcher to take a live picture of the working brain and make conclusions about particular patterns of brain activity that are correlated with symptoms or circumstances that can be observed in the world. At the NIMH, Dr. Neumeister worked under Dr. Charney and in 2004, he left to work with John Krystal, a highly-regarded psychiatrist and neuroscientist at Yale School of Medicine.

On a personal level, Dr. Neumeister’s marriage to Veronique was strong in the early years of their stay in the United States. They worked well together as co-parents, building a nourishing, safe environment for their three children. And they had a genuine friendship, enjoying each other’s company and supporting each other’s pursuits. Veronique stayed home

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<sup>1</sup> Dr. Neumeister was not consciously looking for the answer to the question of [REDACTED] [REDACTED] but one cannot miss the parallels between this formative experience and his work at the beginning of his career in psychiatry.

with the children while they were young but later, with Dr. Neumeister's encouragement, returned to the workforce, first working at a breast cancer research lab at Yale and later joining a pharmaceutical company in Connecticut. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

After a couple of years working at Yale under Krystal, Dr. Neumeister began to lead his own research projects and write his own grant applications. As he branched out on his own with own projects, he began to experience a great deal of success getting these projects funded. In addition to being a highly skilled scientist, it turned out that Dr. Neumeister had a knack for translating his research ideas into plain English and making scientific concepts compelling, while focusing on questions that had great potential for both successful studies and treatment options. This made his research highly attractive to funders. Dr. Neumeister was suddenly a hot commodity and envied by colleagues competing for the same pools of funds. He enjoyed a period of the greatest success of his career, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It should be noted that while the instant offense conduct did not include any allegation concerning Dr. Neumeister's tenure at Yale, he voluntarily disclosed this episode to the U.S. Attorney's Office through counsel.

In 2010, Yale discovered the charges, and Dr. Neumeister negotiated a separation with the university, in which he paid back the misappropriated funds and accepted a position at Mount Sinai Medical Center in New York City. [REDACTED]

████████████████████ This was obviously a profoundly difficult time for their marriage, and they were estranged for a time when Dr. Neumeister first moved to New York, though he remained involved in the children's lives and schooling. Over time, Dr. Neumeister and Veronique reconciled and despite their non-traditional relationship, continued to see themselves as companions and as a married couple, and as life partners working together to raise children and support each other. As Veronique states in her letter, "Although we have been separated for years, we are one family." Exhibit A, Letter of Veronique Neumeister.

c. Relationship with ██████████

██  
██

████████ He met ██████████ P█████████, the "Friend" identified in the criminal complaint, ██████████  
██

At the time they met, P█████████ was in his early twenties, ██████████  
██

██ P█████████ had been the scion of an aristocratic Haitian family whose father was an official in Duvalier Regime, which ruled Haiti from 1959 to 1986. After the fall of the dictatorship, Haiti experienced military rule and violence associated with the rise, and subsequent ousting by coup, of Jean-Bertrand Aristide. P█████████ grew up in the midst of this political chaos, with his family's fortune and security rising and falling with each shift in power. P█████████'s family ultimately sent him and his brothers to live with a relative in Miami when he was a teenager. There, without any guiding parental figure, the young P██

██ Dr. Neumeister was taken with and sympathetic to



meals, among other things. To justify the travel, Dr. Neumeister began to develop Salt Lake City in his mind as a potential imaging site for a merger of two grants he had for a large-scale PTSD study, though he admits he did not have meetings with his counterparts there that he claimed to have had to discuss the project.

[REDACTED]

To be clear, neither we nor Dr. Neumeister contends that any of this excuses his criminal conduct, nor do we or Dr. Neumeister have an explanation as to why he used his research funds to support his relationship with P [REDACTED]. He fully accepts responsibility for his total lapse of judgment, which was without justification. We provide this background to aid the Court in understanding the complexity of his character, and the painful sources of the behavior that ultimately led to his involvement in this case. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d. NYU Investigation and Dr. Neumeister's Resignation

In early 2015, NYU confronted Dr. Neumeister about suspicious charges on his corporate credit card, known as a "P-card." Dr. Neumeister readily admitted that certain of the charges were fraudulent and agreed to pay them back to the university. However, when he was asked about P [REDACTED], Dr. Neumeister was unable to admit their relationship, and instead said that P [REDACTED] was a research subject. At a subsequent meeting with attorneys present, Dr. Neumeister further accepted responsibility for his conduct, but again denied his relationship with P [REDACTED]. Shortly thereafter, Dr. Neumeister agreed to resign his position at NYU.

Under normal circumstances, Dr. Neumeister would have been able to resume working on his grants at a new research institution. In this case, however, NYU attempted to retain his grants and transfer them to another researcher. This move, which was quite remarkable in academic science,<sup>2</sup> resulted in the federal agencies that had funded Dr. Neumeister's research withdrawing the grants, rather than allowing them to be taken over by another scientist. In response, NYU launched an academic misconduct investigation and sought to withdraw the results of many of Dr. Neumeister's studies. Although his peers in the field of science viewed

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<sup>2</sup> In discussions the undersigned counsel had with the grant officer at the Department of Defense who was in charge of funding Dr. Neumeister's research, we learned that, while permitted, a request to retain grant funds and transfer them to another researcher was unprecedented, at least in the grant-marker's experience.

these actions as both politically and personally motivated, based on longstanding competition between Dr. Neumeister and the chairman of the NYU Department of Psychiatry, Charles Marmar, and though the academic misconduct investigation ultimately cleared Dr. Neumeister of the vast majority and all of its most serious charges, a cloud hung over Dr. Neumeister's career during its pendency and he was unable to obtain stable employment besides infrequent consulting work. Finally, in January 2017, Dr. Neumeister obtained employment at the Royal Ottawa Mental Health Centre ("the Royal") in Ottawa, a position he held until shortly after his arrest in this case.

## **II. Dr. Neumeister's Contributions to Science**

Dr. Neumeister's research over the last decade has focused on using neuroimaging to make important discoveries about and develop treatment for posttraumatic stress disorder ("PTSD"). PTSD is categorized in the Diagnostic and Statistical Manual of the American Psychiatry Association as an anxiety disorder affecting some people who have experienced a past traumatic event, which is loosely defined as a shocking or frightening experience such as a natural disaster or violent incident, such as combat, a car accident, crime, or terrorist attack. Studies have shown that exposure to single or repeated sexual assault can also trigger trauma. Dr. Neumeister has focused his efforts on helping combat veterans, victims of sexual assault and war crimes, and those who suffer from debilitating psychological illnesses such as addiction and anorexia.

One of the questions Dr. Neumeister sought to answer is why only some people who experience a traumatic event develops PTSD, while others appear more resilient. His research has looked at a variety of neurotransmitters – chemicals in the brain that send signals across synapses – and their role in determining whether someone will experience symptoms of PTSD,

such as reexperiencing trauma, dysphoria, and anxiety. Animal studies have shown increased levels of availability of particular neuro-receptors in the brain of animals that have PTSD symptoms. These studies indicate that part of the reason certain individuals develop PTSD in response to trauma while others do not may have to do with a substantial release of neurotransmitters in the brain as a means of coping with the traumatic event, which causes long-term physiological changes in the amount of that chemical being transmitted through the synapses, and accordingly an elevated level of availability for the neurotransmitter from its associated receptor. Identifying these neurotransmitters offers opportunities for treatment.<sup>3</sup>

Dr. Neumeister's research involves some of the first *in vivo* (i.e., within a living organism) examination of human subjects, looking for neurotransmitters associated with PTSD using PET scanning. This research has looked broadly at numerous neurotransmitters that have been identified in animal studies, but an especially notable area of the research Dr. Neumeister was engaged in was examining elevated cannabinoid CB<sub>1</sub> receptor availability in the brains of PTSD patients. CB<sub>1</sub> is a receptor associated with various neurotransmitters including anandamide, a neurotransmitter whose role in the brain is still somewhat mysterious, but which appears to be related to the way the brain processes memories. Dr. Neumeister's research has shown dramatic increases – roughly 20% – of CB<sub>1</sub> receptor availability in patients diagnosed with PTSD, as compared with both control groups and individuals who have experienced trauma but did not

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<sup>3</sup> Drugs have already been developed in other contexts that act on neurotransmitters in the brain and have been successful in treating symptoms of other psychiatric disorders like depression and anxiety. For example, research has shown that depression is associated with a lack of adequate amounts of serotonin in the brain. Drugs known as selective serotonin reuptake inhibitors increase the amounts of serotonin circulating in the brain by preventing (inhibiting) the brain's absorption of serotonin it has secreted. If neurotransmitters associated with PTSD could similarly be identified, then drug targeting inhibition or expression of those neurotransmitters could be developed.

develop PTSD symptoms. Notably, Dr. Neumeister's research has shown that the disparity in experiencing trauma and developing symptoms of PTSD is significantly more pronounced in women, suggesting gender differences in the etiology of PTSD and treatment options.

Dr. Neumeister's findings received attention in part because tetrahydrocannabinol (THC), the psychoactive chemical in marijuana, also binds to CB<sub>1</sub> receptors, and medical marijuana is sometimes touted as a treatment for PTSD, *see* Gabe Gutierrez, *Marijuana may hold promise in treating veterans with PTSD*, NBC News, Nov. 30, 2017, <https://www.nbcnews.com/nightly-news/marijuana-may-hold-promise-treating-veterans-ptsd-n824956>. However, as Dr. Neumeister has noted in his writing, marijuana is a problematic treatment for PTSD because (a) it has not yet been studied with substantial scientific precision (the first FDA-approved clinical trial is currently being conducted); (b) research has shown that direct activation of CB<sub>1</sub> receptors with THC leads to "rapid downregulation," *i.e.*, degradation, of the signaling system associated with CB<sub>1</sub>, which, ironically, can cause the very symptoms associated with PTSD; and (c) marijuana use can lead to addiction. *See* Alexander Neumeister, *The Endocannabinoid System Provides an Avenue for Evidence-Based Treatment Development for PTSD, Depression and Anxiety* 30:93-96 (2013). Thus, Dr. Neumeister's research has focused primarily on the underlying science that would support development of a drug such as an anandamide reuptake inhibitor, which could target the CB<sub>1</sub> system without these associated problems.

At the time of his arrest, Dr. Neumeister was working at The Royal (which hired him on the strength of his research, despite knowing about the research misconduct allegations leveled against him by NYU) on a number of new research projects, including:

- Looking at the safety and efficacy of medical marijuana in treating PTSD in Canadian Armed Forces personnel and veterans.

- Imaging the roles of other neuroreceptors in PTSD patients.
- Looking at ways in which PTSD affects other parts of the nervous system besides the brain, such as the heart, in order to understand better why PTSD is associated with a higher risk of heart failure.
- A major project, building on prior research, looking at PTSD and alcohol dependence in trauma victims from Democratic Republic of the Congo, where extreme human rights abuses, including widespread sexual assault, have affected millions of people.

These projects have, of course, been halted as a result of this case, and accordingly, Dr. Neumeister views his behavior as not only having imposed crippling consequences on him personally and on his family, but also having disrupted his ability to continue with his important work.

### **III. Charges, Plea, and Dr. Neumeister's Activities Since His Arrest**

#### **a. Charges**

Dr. Neumeister was charged by criminal complaint with theft of government funds, in violation of 18 U.S.C. § 641, and wire fraud, in violation of 18 U.S.C. § 1343. *See United States v. Neumeister*, 17-MJ-8556 (S.D.N.Y. Nov. 15, 2017). The complaint alleged, *inter alia*, that Dr. Neumeister had used his P-Card to pay for expenses that had nothing to do with research funded by the NIMH, and instead were incurred for the benefit of himself, his family, and P██████, who was identified as Dr. Neumeister's "Friend" in court filings. The complaint alleged that in the written explanations that Dr. Neumeister provided to NYU for various of his expenses, he misrepresented the reason for the expenses to make it appear that the expenses were incurred in connection with NIMH research studies. The complaint acknowledged that, when confronted by NYU regarding the expenses, Dr. Neumeister admitted that some were fraudulent, though, as noted above, at that point he did not admit the true nature of his relationship with P██████.

b. Plea

On May 25, 2018, Dr. Neumeister entered into a plea agreement with the government, whereby he agreed to plead to an Information charging one count of theft of government funds. On May 31, 2018, Dr. Neumeister appeared before this Court and entered a plea of guilty.

1. Plea Agreement

Pursuant to the plea agreement, the parties stipulated that, under the 2016 United States Sentencing Guidelines Manual, the Guidelines provision applicable to the offense of conviction is § 2B1.1. The parties further stipulated that the following Guidelines provisions apply:

- Pursuant to U.S.S.G. § 2B1.1(a)(2), the base offense level is 6.
- A 6-level increase applies, pursuant to U.S.S.G. § 2B1.1(b)(1)(D) because the offense involved losses that exceeded \$40,000, but did not exceed \$95,000.<sup>4</sup>
- Because Dr. Neumeister has clearly demonstrated acceptance of responsibility, a 2-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(a).
- Accordingly, the applicable Guidelines offense level is 10.
- This is Dr. Neumeister's first offense; accordingly, he has zero criminal history points and his Criminal History Category is I.

2. Allocution

On May 31, 2018, Dr. Neumeister appeared before Your Honor and pled guilty to one count of theft of government funds in violation of 18 U.S.C. § 641. At the plea hearing, Dr. Neumeister accepted full responsibility:

[F]rom December 2011 from December 2011 to March 2015, I was on the faculty at NYU Medical School, first in a position of an associate professor, later professor. And in my capacity in that position, I applied and obtained federal funding to conduct research on the neurobiology of post traumatic stress disorder, and during that time period, I used some of the federal funds I received from the National Institutes of Health for private or for personal expenses. And I knew at the time

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<sup>4</sup> This figure represents \$32,215.43 in misappropriated federal funds, in addition to \$54,548.56 in funds belonging to NYU.

that I was not entitled to use those funds for anything different than research, and that by doing -- using those funds for personal expenses, that was not consistent and not aligned with the purposes of the grant.

And the amount of federal funds exceeded the amount of a thousand dollars, and I knew at the time that this was wrong, and I deeply regret my actions.

Plea H'rg 21:8-22, *United States v. Neumeister*, 18-CR-385 (AT) (S.D.N.Y. May 31, 2018). In response to questions from the Court, Dr. Neumeister further allocuted that he knew at the time that his conduct was illegal and he did the acts in question in New York City. *Id.* at 21:23-22:3.

At the same time it filed the criminal complaint, the government filed a civil action under the False Claims Act and other causes of action based on the same set of facts. *United States v. Neumeister*, 17-CV-9287 (AKH). Dr. Neumeister has been in active settlement negotiations with the government since the civil complaint was filed, and as of this writing, the parties have reached an agreement in principle to resolve the case. We expect that the settlement – which will require Dr. Neumeister to pay additional penalties beyond the agreed-upon restitution in this case – will be finalized at or shortly after sentencing.

#### **IV. Dr. Neumeister's Post-Arrest Conduct**

At the time of the filing of the criminal complaint, Dr. Neumeister was working as a research scientist at the Royal in Ottawa. He was arrested in the Northern District of New York while crossing the border to Canada to report for work. While Dr. Neumeister was attempting to negotiate a bail package with the U.S. Attorney's Office that would allow him to cross the border to continue his employment, the Royal placed him on administrative leave, first with and subsequently without pay. Ultimately, because of the pendency of the criminal case, the Royal terminated him.<sup>5</sup> Based on the reaction of the Royal and discussions Dr. Neumeister has had

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<sup>5</sup> The pendency of the case between the filing of the complaint and Dr. Neumeister's guilty plea was lengthy because of counsel's filing, and the government's thorough consideration of, an

with former colleagues, it is apparent that the criminal charges, let alone the conviction and sentence, have effectively ended Dr. Neumeister's career in research science.

As such, Dr. Neumeister has spent the ten months since his arrest focused inward and on domestic duties. He has become the primary "stay-at-home" parent to his three children (Dr. Neumeister's daughter is in college at the University of Connecticut; his elder son began college this fall at Middlebury; and his youngest is a junior in high school) while his wife works which includes frequent travel. He has involved himself in activities at his younger son's school. He continues his consulting work for a small biotech company located in New York City, and was able to secure smaller, short-term consulting opportunities for pharmaceutical companies. He regularly applies for jobs but has been unable to date to secure new long-term employment. Instead, he has begun working three days a week in a community soup kitchen in his neighborhood. And he has filled his days with simple tasks such as helping a neighbor clear brush from his property and taking the dog for long walks. Perhaps most importantly, although funds are tight, he has also begun the long, difficult process of coming to terms with his demons, seeing a therapist on a weekly basis and reopening old wounds from his life's passions ██████████ ██████████. Dr. Neumeister has resolved to reckon with his past, but with the hope of rebuilding his life and continuing to provide for his family.

#### **V. Pre-Sentence Report Recommendation**

In its final Pre-Sentence Report ("PSR"), the Probation Department adopted the Guidelines calculation stipulated by the parties in the plea agreement. PSR ¶¶ 102, 116.

However, after weighing all of the facts and circumstances of the case in light of the factors set

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application for a deferred prosecution. We received many letters of support for Dr. Neumeister while preparing the deferred prosecution application, and we now provide those letters to the Court for consideration in sentencing.

forth in 18 U.S.C. § 3553(a), the Probation Department recommended a sentence of 3 years’ probation with 6 months’ location monitoring, and no period of incarceration. *Id.* at 27. The Probation Department noted that, in light of the history and characteristics of Dr. Neumeister, “we do not believe that a custodial sentence is necessary to satisfy the sentencing objectives indicated in . . . [§] 3553(a).” *Id.* at 28.

## ARGUMENT

### I. Legal Standard

District courts have an “overarching duty ‘to impose a sentence sufficient, but not greater than necessary,’ to serve the purposes of sentencing.” *Pepper v. United States*, 562 U.S. 476, 492 (2011) (quoting 18 U.S.C. § 3553(a) (2012)). These purposes, set forth in 18 U.S.C. § 3553(a)(2), are:

[T]he need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment, . . . to afford adequate deterrence to criminal conduct; . . . to protect the public from further crimes of the defendant; and . . . to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2) (2012). Though a sentencing court must consider the “kinds of sentence and sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant as set forth in the [U.S.S.G.],” *id.* § 3553(a)(4), “calculating the correct Guideline range [is] ‘just an initial step in the sentencing process,’” *United States v. Al Halabi*, 563 F. App’x 55, 57 (2d Cir. 2014) (citation omitted). A “district court may not presume that a [G]uidelines sentence is reasonable.” *Id.* (quoting *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc)). Rather, the court must “make an individualized assessment based on the facts presented.” *United States v. Thavaraja*, 740 F.3d 253, 259 (2d Cir. 2014) (quoting *Gall v. United States*, 552 U.S. 41, 50 (2005)). Thus, in addition to the Guidelines, courts are

also required to consider a variety of other factors set forth in § 3553(a), including the “nature and circumstances of the offense” and the “history and personal characteristics of the defendant.” 18 U.S.C. § 3553(a)(1) (2012). Indeed, the United States Supreme Court has “emphasized that ‘[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.’” *Pepper*, 562 U.S. at 487-88 (citations omitted) (alterations in original).

## **II. The Recommended Sentence of 3 Years’ Probation Is Sufficient to Meet the Purposes of Sentencing**

### **A. The Nature and Circumstances of the Offense, and Dr. Neumeister’s Personal History and Characteristics Warrant a Non-Incarceratory Sentence**

While no one seeks to minimize the seriousness of theft of government funds, here, Dr. Neumeister’s history and characteristics provide a full picture of his true character and substantially mitigate the offense conduct. These factors support a non-custodial sentence as recommended by the Probation Department. We highlight three specific factors that, we submit, merit leniency in this case: First, Dr. Neumeister has accepted responsibility for his conduct and is remorseful to a degree that has occasioned a painful soul-searching and wrenching emotional process. His personal history makes clear that these were the actions of a flawed, broken person, but not one lacking a moral compass. Second, Dr. Neumeister’s actions must be weighed against his substantial contributions to human health and welfare, as well as his many other good deeds – his role as a caring father, a conscientious neighbor, and a compassionate friend. Third, the impact that the prosecution has had on Dr. Neumeister and his family has already been severe, and should be taken into account in fashioning a sentence that is sufficient, but not excessive.



field describe his research as highly regarded and at the very forefront of important efforts in understanding and treating PTSD. *See, e.g.*, Exhibit A, Letters of Moses V. Chao; Rachel Brody; Joseph Dunsmoor; Tom Hildebrandt. His niche as a PET researcher in this area was especially significant, as few other scientists had developed a specialty in looking at PTSD etiology directly through the neurochemical processes that PET scanning reveals. That is why many of his peers – as well as the grant officer at the Department of Defense we spoke with by telephone – stressed that the loss of Dr. Neumeister from the field would result in a significant gap in scientific knowledge that is unlikely to be filled in the foreseeable future. Numerous scientists the undersigned has spoken with in our investigation of Dr. Neumeister’s case also noted that he was a congenial colleague and a pleasure to work with. He took great care to mentor younger scientists and sought out collaborations with researchers from cross-cultural backgrounds, with whom he could have a genuine, productive exchange of ideas and energy. *See id.*, Letter of Christopher Bailey (describing Dr. Neumeister’s mentorship) and Letter of Yves Fuamba (describing collaboration treating PTSD in Congolese refugees).

But Dr. Neumeister’s work was not only cutting-edge science. He cared deeply for the subjects of his research, who were desperately searching for medicines that would alleviate their suffering. Several of these individuals have reached out to us to express support for Dr. Neumeister. These individuals describe the kindness, care, and patience Dr. Neumeister displayed in dealing with them and explaining their illness. *See id.*, Letter of H■■■■ S■■■■. In addition to his research subjects, Dr. Neumeister has provided assistance and support to individuals suffering from mental disorders. F■■■■ K■■■■ has suffered from debilitating depression for years. She got in contact with Dr. Neumeister through a mutual acquaintance from Vienna. Dr. Neumeister recommended a psychiatrist he knew to treat her in Montreal. But



good works. Taken as a whole, his character is far from irredeemable or characterized by greed or callousness. To the contrary, the manner in which Dr. Neumeister has lived his life substantially mitigates the offense and counsels in favor of a non-incarceratory sentence.

(3) Dr. Neumeister's Family Circumstances Warrant Leniency

Among the many harsh consequences of this prosecution is the effect it will have on Dr. Neumeister's family, particularly as it relates to his immigration status. Although Dr. Neumeister has been in this country for more than two decades and has U.S. citizen children, as a green card holder, his criminal conviction presents potentially dire consequences in the future. Assuming Dr. Neumeister is sentenced to less than one year imprisonment, he will not be subject to automatic deportation (though, to the purpose of specific deterrence, were Dr. Neumeister ever to commit another criminal offense, he *would* be subject to mandatory removal from the United States). He may, however, be deemed inadmissible if he were to leave the country and attempt to return. This means, of course, that he cannot pursue work in Canada, as he had before, and it makes it virtually impossible for him to visit his native Austria and expect to return to his family. As will be discussed more fully below, Dr. Neumeister may nevertheless return to Austria in order to attempt to reinstate his medical license so that he can provide financial support to his children, but his conviction has forced a painful choice: give up on his lifelong passion for medicine – and his only realistic livelihood – or permanently separate himself from his family, in order to be able to provide some measure of economic comfort to them.

The pain wrought by Dr. Neumeister's conduct –and in particular the impact it will have on his wife and three children – is poignantly summarized in the letter of his wife, Veronique. She notes that while they have long lived “romantically separate lives,” they are “one family,” with Dr. Neumeister playing a crucial role: “We celebrate feasts and holidays together, we also

spend family vacations together. Alex is an important and core part of our lives. We do not have any family here in the USA, therefore our family bond is very strong.” Exhibit A, Letter of Veronique Neumeister. She adds:

We heavily rely on each other’s support, love and presence. Our oldest is in college already, our second one is college bound this fall and our youngest is in high school. The three of them grew up here and this is their home. We are their family. *Alex’s deportation would tear the family apart and he would have to leave his family and kids behind. We would lose the father, friend and family member we have in him.*

*Id.* (emphasis added).

Dr. Neumeister’s two older children attend college close to home and maintain a strong relationship with him. His younger son is still in high school and relies on Dr. Neumeister as a parent on a daily basis. Beyond being a source of financial support, Dr. Neumeister is a caring father invested and active in his children’s lives.

B. Incarceration is Not Needed to Promote Respect for the Law, or Achieve Deterrence and Rehabilitation

Dr. Neumeister has already paid a steep price for his mistakes, and we respectfully submit that no incarceration is needed to achieve the goals of sentencing. He is nearly four years into a long process of losing his position, his grants, and his professional reputation. He has described feeling “radioactive” in his field. The instigation of this criminal case has caused him to lose the job he was finally able to obtain after his resignation from NYU, and with it the prospect of any future career in science. He will face substantial collateral consequences, all of which are part of the punishment for his offense, no matter the outcome of the sentencing. *See United States v. Nesbeth*, 188 F. Supp. 3d 179, 188 (E.D.N.Y. 2016) (noting that under Second

Circuit law, collateral consequences may be considered as bearing on just punishment, and accordingly factoring such consequences into § 3553(a) analysis).

The end of Dr. Neumeister's career, the destruction of his reputation, and the likely separation of his family are all factors that will make Dr. Neumeister's penance for his offense long and difficult. No further punishment is necessary to promote respect for the law or provide general deterrence. The publicity surrounding his arrest, the experience of pretrial supervision, and the certain fate of sentencing and permanent criminal record are all far more significant factors for specific deterrence than the marginal additional impact of a prison sentence. *See* Dep't of Justice, National Institute of Justice, "Five Things About Deterrence," <https://nij.gov/five-things/pages/deterrence.aspx> (noting that the certainty of being caught is a "vastly more powerful deterrent than punishment"). Finally, as discussed above, Dr. Neumeister has been working steadily toward rehabilitation, and will continue to do so either under the guidance of ██████ or with a therapist in Austria. Accordingly, many of the purposes of sentencing have already been served in this case, and further punishment in the form of imprisonment is simply not necessary to effectuate the purposes of § 3553(a).

### **III. The Court Should Impose No More than 3 Months' Location Monitoring**

Finally, while we concur with the Probation Department's recommendation of probation, we respectfully request that if the Court is inclined also to impose location monitoring, which we do not believe is necessary,<sup>6</sup> that it limit such monitoring to no more than 3 months. The reason for this is as follows: As noted above, if Dr. Neumeister cannot find gainful employment in the United States, he may ultimately be forced to return to Austria and seek to have his medical

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<sup>6</sup> As noted in the PSR, Dr. Neumeister has been fully compliant with all terms of his pretrial supervision and there is no reason to believe that location monitoring is necessary to assure compliance with the terms of probation.

license reinstated in order to earn a living and be able to support his children, two of whom are now in college (the third will be applying next year). We have consulted with Georg Kodek, a judge on the Austrian Supreme Court and Professor of Law at Wirtschaftsuniversitat Wein, the Vienna University of Economic and Business, who has advised that, under Austrian law, the *Tilgungsgesetz*, which translates as “Repayment Act,” provides that courts and police departments keep a record of all criminal convictions, but that sentences under 3 months are not automatically accessible by the public. The board that would consider Dr. Neumeister’s readmission to the practice of medicine would consider his criminal conviction and its underlying conduct as part of its evaluation of his “*Vertrauenswürdigkeit*,” or trustworthiness. According to Professor Kodek, however, the board would be extremely unlikely to recommend reinstatement if Dr. Neumeister receives a sentence of more than 3 months’ imprisonment because of concerns that he would likely be unemployable. In other words, the board with relevant expertise would render its own judgment on whether Dr. Neumeister should be readmitted to the practice of medicine, but if the sentence in this case exceeds 3 months’ imprisonment, it will simply deny Dr. Neumeister’s application. This is further reason to adopt the Probation Department’s recommendation of a non-incarceratory sentence.

Because of the Austrian legal framework, we also request that location monitoring be limited to 3 months, if included at all, because location monitoring is only used in the Austrian criminal justice system as part of a suspended prison term, not for probation. Consequently, Professor Kodek advises that any Austrian law enforcement authority may conclude that the location monitoring is equivalent to a term of imprisonment. Accordingly, to allow a possibility that Dr. Neumeister might be able to have his medical license reinstated after the medical board’s

full consideration of his background and all relevant facts, the Court should either decline to include a condition of location monitoring or limit its duration to no more than 3 months.

### CONCLUSION

In short, we respectfully request that this Court extend the full extent of its mercy to Dr. Neumeister and impose a sentence of probation with any corresponding period of location monitoring not to exceed three months. Under the circumstances of this case, such a sentence will be sufficient to satisfy all the purposes of sentencing and is appropriate under 18 U.S.C. § 3553(a).

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