

MEG:MJJ/AS  
F. # 2016R00512

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

Docket No. 16-CR-553 (S-4) (BMC)

LEONID GERSHMAN,

Defendant.

----- X

GOVERNMENT'S SENTENCING MEMORANDUM

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I. PRELIMINARY STATEMENT

Leonid Gershman was a leading member of a violent criminal enterprise (the “Syndicate”) with links to high-level members of Eastern European mafia known as Thieves-in-Law (“Thieves”). Gershman made money in the ways organized criminals often do—through illegal gambling, loansharking, extortion and drug-trafficking—and he flexed his muscle overseas, extorting a victim in Israel through the victim’s father in Russia. Gershman readily used violence to punish his enemies and protect his bottom line. Gershman’s victims were often criminals themselves. But innocent people were also caught in the crossfire—including a college student and his 12-year-old brother, who nearly burnt to death when Gershman and fellow Syndicate members decided to set their apartment building on fire. Other civilians fortunately remained bystanders, as witnesses to Gershman’s firing of a handgun one day and a brutal pistol-whipping of a victim on another, both in full public view on Ocean Parkway in Brooklyn. To protect the public from Gershman, to justly punish his years of crime, and to deter organized criminal activity in South Brooklyn, the Court should impose a Guidelines sentence of 346 to 411 months’ imprisonment.

## II. BACKGROUND

In 2016 and 2017, Gershman and ten fellow Syndicate members were indicted for racketeering and related crimes. After a three-week jury trial, in August 2018, Gershman and codefendant Aleksey Tsvetkov were convicted of all 26 counts (and all 15 racketeering acts) with which they were charged.<sup>1</sup> Gershman's convictions fall into the following categories:

1. Illegal gambling;
2. Extortionate collection of gambling debts and related violence, including the:
  - A. Extortion of Izik Shlomi (John Doe 1) and his family;
  - B. Extortion and assault of Albert Normatov (John Doe 3);
  - C. Attempt to obtain a firearm to threaten or harm a suspected cheater;
  - D. Extortion of Gennady Vinokurov (John Doe 4); and
  - E. Extortion of "Ponchik" (John Doe 5);
3. Arson of the residential-commercial building at 2220 Voorhies Avenue;
4. Extortions unrelated to gambling, including the:
  - A. Extortion and assault of Rufat Zarbailov (John Doe 9)
  - B. Extortion and assault of "JR" (John Doe 8)
  - C. Extortion and assault of Denis Dulevskiy (John Doe 2); and
  - D. Extortions of Leonid Kotovnikov (John Doe 7);
5. Trafficking more than 100 kilograms of marijuana;
6. Pistol-whipping of Misha Azaryev;

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<sup>1</sup> Codefendant Viktor Zelinger is a fugitive. Of the remaining eight defendants charged in United States v. Gershman, et al., 16-CR-553 (BMC), seven pled guilty to racketeering or racketeering conspiracy and the eighth pled guilty to illegal gambling. In addition, three defendants have pled guilty in related matters. See United States v. Parnis, et al., 16-CR-526 (BMC), and United States v. Kardon, 18-CR-005 (BMC).

7. Loansharking; and
8. Firearm Dealing.

Additionally, trial evidence revealed Gershman's participation in following uncharged criminal conduct:

9. Discharging a firearm in public;
10. Attempted assault of "Mikey Benz";
11. Car pursuit and attempted assault of Max Gurovitz;
12. Theft of cocaine and marijuana; and
13. Witness tampering.

These categories (and subcategories) of illegal conduct are described below.

1. Illegal Gambling

In January 2016, Gershman, Tsvetkov and codefendant Renat Yusufov began hosting weekly high-stakes poker games at 2375 McDonald Avenue in Brooklyn (the "McDonald Poker Spot"). Tr. 155:14-156:8. Each partner made thousands of dollars in profit from the poker games at the McDonald Poker Spot. GX600 at 22-34. Police raided the McDonald Poker Spot about six weeks after Gershman, Tsvetkov and Yusufov began holding games there, which forced them to find a new location. Tr. 157:24-158:11.

In March 2016, Gershman, Tsvetkov and Yusufov moved their gambling operation to 2663 Coney Island Avenue (the "Coney Island Poker Spot") and added three new partners: codefendants Viktor Zelinger, Igor Krugly and Vyacheslav Malkeyev (together with Gershman, Tsvetkov and Yusufov, the "Partners"). See, e.g., Tr. 158:15-22, 159:12-14. From the outside, the Coney Island Poker Spot was disguised to look like a legitimate business. GX300; Tr. 158:23-159:11. Inside, however, was a professional poker room, a video poker

machine, a players' lounge, a kitchen and other amenities for gamblers. Tr. 727:13-16; GX301-349.

Gershman was deeply involved in every aspect of the gambling operation at the Coney Island Poker Spot, including recruiting players, hiring dealers, waitresses, security and “massage girls,” collecting money from losers, and paying winners. Games were generally held twice a week—on Tuesdays and Sundays. Tr. 160:17-23; 727:3-5. They started in the early evening and frequently continued past dawn the next day. Tr. 727:8-12. Hundreds of thousands of dollars were wagered every session, with individual players sometimes winning or losing tens of thousands of dollars in a single night. See, e.g., Tr. 182:7-18 (Yusufov describing a player losing “a little over 70 grand” in one night).

The Partners profited by taking a “rake” or “chop” of the total money wagered—usually between five to ten percent of each pot. Tr. 182:19-183:9. The largest chop in a single session was over \$80,000, reflecting wagers of approximately \$800,000. Tr. 183:17-184:9; GX600 at 227. The average nightly chop was “[\$]20,000, give or take.” Tr. 183:16. Thus, assuming average returns and the weekly Sunday and Tuesday games, the Coney Island Poker Spot would produce more than \$2 million in (tax-free) annual profits for the Partners.

Because the profit potential of the poker operation was so great, Gershman and his partners went to great lengths to protect the game—including using threats of violence to collect debts from losers and using actual violence to eliminate competition.

## 2. Extortionate Collection of Gambling Debts and Related Violence

The poker games at the Coney Island Poker Spot were not cash games. Rather, they were “played on paper,” meaning losses were recorded on ledgers and subsequently collected by the Partners. See generally GX600; Tr. 201:20-202:10. While initial efforts to collect gambling losses generally did not involve threats, Tr. 206:2-25, the Partners' collection

tactics—especially those used by Gershman, Tr. 207:5-7—became increasingly aggressive when losers repeatedly missed payment deadlines or attempted to shirk debts altogether. Tr. 207:1-12. The best example of this escalation is the extortion of Izik Shlomi (John Doe 1) and his family.

A. Extortion of Izik Shlomi (John Doe 1) and his Family

Shlomi was a regular poker player at both the McDonald Poker Spot and the Coney Island Poker Spot. Tr. 211:19-212:18. In the early part of 2016, Shlomi lost thousands of dollars at the McDonald and Coney Island Poker Spots, most of which he repaid. Tr. 212:19-213:12; GX600 at 49, 51, 60, 64. But by May 2016, Shlomi had run up almost \$200,000 in gambling debts to Syndicate members and their associates. See, e.g., Tr. 213:18-214:4, 216:25-217:20.<sup>2</sup> Gershman told Shlomi that he had to repay the debt he incurred at the Coney Island Poker Spot by June 7, 2016. Tr. 214:1-7.

On May 31, 2016—one week before the payment deadline Gershman imposed—Shlomi fled the country and broke all contact with Gershman and other Syndicate members. Soon after, Gershman formulated a plan to recover Shlomi’s debt by using Thieves to locate and approach Shlomi’s family in Russia and Shlomi in Israel. See, e.g., Tr. at 739:7-741:4; 214:10-219:2. Codefendant Krugly—who allocuted to the extortion of Shlomi and was sentenced to 46 months’ imprisonment—described the plan on an intercepted call: “Because you see, this fa\*\*ot [i.e., Shlomi] is not fucking calling me. Right now we need to find him or his father, that’s it. . . . If anything, they will approach the father, the wife of the father, or to his there in Moscow.” GX2T at 4:12-23.

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<sup>2</sup> Specifically, Shlomi owed approximately \$51,000 to the Partners at the Coney Island Poker Spot, \$21,000 to codefendant Krugly individually, approximately \$45,000 to codefendant Yusif Pardilov and approximately \$80,000 to coconspirator Arthur Shaposhinkov (also known as “Bubba”) See, e.g., GX 18T, 19T; Tr. 216:25-217:20.

Around this time, codefendant Artiom Pocinoc introduced Gershman to an imprisoned Thief—referred to at trial as Zviad (“Thief Zviad”)—whom Gershman enlisted to help locate and pressure Shlomi’s father. See, e.g., Tr. at 741:5-744:13. Thief Zviad, in turn, sent a coconspirator (referred to as “Timur”) to confront Shlomi’s father in Moscow. On August 13, 2016, during a call with Krugly, Gershman explained that his efforts had borne fruit:

Artiom [Pocinoc] called me and told me that . . . Timur . . . called [Shlomi’s father]. He says to him, listen my name is so and so, maybe you don’t know me, but I know you. Do you want to talk about your son—about what he owes my relatives?

GX14T at 2:12-27.

The next day, August 14, 2016, a Thief—whom Gershman referred to as “Izya”—confronted Shlomi in Israel to settle his \$200,000 gambling debt. This confrontation prompted a flurry of calls from Gershman to Syndicate members and associates. During one call, for example, Gershman told Tsvetkov that he “was on the line with the Thieves . . . . They’re holding [Shlomi] in their hands.” GX40T at 2:7-20. On another call, after being asked whether, “Somebody found that ni\*\*a [i.e., Shlomi]?” Gershman replied, “Yes, Thieves have found him. . . . In Israel.” GX22T at 2:24-35. In addition, Gershman spoke multiple times with codefendant Yusif Pardilov and unindicted coconspirator Arthur Shaposhinkov (also known as “Bubba”) to confirm the debts Shlomi owed them. See generally GX16-GX21. Gershman also spoke with Thief Izya (respectfully addressing him as “Uncle Izya”), while Thief Izya was present with Shlomi in Israel on August 14, 2016. See generally GX26.

Gershman ultimately succeeded in extorting Shlomi. Gershman reported to a fellow Syndicate member that “the *vor* [i.e., Thief] got the money” from Shlomi and gave the money to him. Tr. 218:16-17; see also Tr. 751:5-12 (Pocinoc receiving payment for his role in the extortion).

B. Extortion and Assault of Albert Normatov (John Doe 3)

Shlomi was not the only gambler Gershman extorted. In the summer of 2016, Gershman was intercepted extorting gambling debt from Albert Normatov (John Doe 3). Normatov testified that he played poker at the Coney Island Poker spot “several times” and paid “maybe a little over [ \$ ]10,000” in gambling debt to Gershman and codefendant Krugly. Tr. 1046:6-17.

During a phone call between Normatov and Gershman at around 2:00 p.m. on Friday, August 19, 2016, Normatov agreed to pay Gershman \$6,000 by 6:00 p.m. that night. GX96 at 2:15-22, 3:47-4:1, Tr. 1048:11-1049:2, 1051:19-20. Just before the 6:00 p.m. deadline, Gershman called Normatov to check on the payment, and Normatov told Gershman that he would not be able to pay until Sunday, two days later. GX98 at 2:1-20. Gershman reacted angrily: “Brother, you either a man of your word or you simply a bullshitter. Who are you in this life, brother? A street guy or a businessman, Albert? . . . Fuck, Albert, are you a little kid?” GX98 at 3:10-25. Then Gershman threatened Normatov, telling him “we won’t all be living peacefully anymore” if Normatov did not make payment immediately:

I have a lot to say to you bro, and to others, you guys are pulling and pulling my tongue and soon it’s going to blow up, bro. And we won’t all be living peacefully anymore. We all will have, that thing, a relationship that no one needs. . . .

After making this threat, Gershman demanded that Normatov pay him “at least 5”—meaning \$5,000—“right away,” before threatening Normatov once again: “Otherwise I will become a bullshitter. I promise you, if I become a bullshitter, I won’t show my respect to anyone. I will interact with others the same way as they do it with me.” GX98 at 3:42-4:36. Normatov paid Gershman within 30 minutes of this call. Tr. 1067:6-14; GX99T.

Gershman also assaulted Normatov. In late summer of 2016, Gershman began to suspect that Normatov was involved in cheating at the Coney Island Poker Spot. See Tr. 1068:19-1070:15. So Gershman called Normatov's cell phone to arrange a meeting with him. When Normatov screened Gershman's call, Gershman decided to track down Normatov at the restaurant he co-owned on Coney Island Avenue—while accompanied by codefendant Pocinoc (a “boxer with broken ears” and a gun tattooed on his hand) and codefendant Krugly (the owner of a security business who possessed multiple firearms).

When Gershman, Pocinoc and Krugly arrived at Normatov's restaurant and saw he was not there, Gershman went behind the counter and used the restaurant's phone to call Normatov. Tr. 1068:22-1069:3. This time, presumably believing that one of his employees was calling, Normatov answered his phone. Gershman berated Normatov for not answering the phone when Gershman called earlier, and demanded that Normatov meet him near the restaurant. Tr. 1069:4-12. Normatov complied. Tr. 1069:11-12.

After Normatov arrived, Gershman—flanked by Pocinoc and Krugly—confronted Normatov and accused him of bringing a cheater to the Coney Island Poker Spot. Tr. 1069:15-1070:9. When Normatov denied the accusation, Gershman struck Normatov. Tr. 1070:21. Normatov testified that he struck Gershman back. Tr. 1070:22-23. Then Gershman took off his glasses, handed them to either Pocinoc or Krugly and reached toward his belt. Tr. 1071:1-16. Fearing that Gershman might be reaching for a weapon, Normatov tried to run away. Tr. 1071:15. In Normatov's words, “I didn't know what he had in his pants or his belt, so I started to retreat. And I started to run across the street”—that is, across six-lane Coney Island Avenue—despite the fact that “[t]here were cars everywhere.” Tr. 1071:14-16, 1072:2-3.

As he ran across the busy avenue, Normatov “felt something” on the back on his legs—something that “interfere[d] with me running forward.” Tr. 1072:10-13, 1073: 19-20. But even after being shown his grand jury testimony to refresh his recollection, see Tr. 1072:10-1073:25, Normatov refused to say whether the contact he felt on the back of his legs, which knocked him to the ground, was caused by another person. Specifically, when asked at trial whether “the thing that interfered with you . . . was . . . another person,” Normatov responded evasively: “I can’t say for certain. I did not see what was going on behind me.” Tr. 1073:22-25. (Moments later, during a sidebar, the Court accurately characterized Normatov as “obviously a reluctant and hostile witness.” Tr. 1075:1-19.)

But there is little mystery regarding what happened that night because, after the incident, Gershman bragged to a Syndicate member that “he drop kicked [Normatov]” in front of Normatov’s restaurant. Tr. 234:19-21. While lying on his back for “around ten seconds” as cars drove past, Normatov covered his face with his hands and arms to protect himself from the beating he expected from Gershman (which, fortunately, never came). Tr. 1076:3-25, 1077:5-7.

C. Efforts to Obtain a Firearm to Threaten or Harm a Suspected Cheater

Normatov was not the only suspected cheater Gershman sought to punish. He also planned to violently confront a dealer (the “Dealer”) he believed was involved in cheating at the Coney Island Poker Spot.

During an intercepted call on August 25, 2016, Gershman told coconspirator Boris Aminov that he received authorization from Thieves to harm the Dealer: “I’ll make an example [of the Dealer] . . . . Already the Thieves know about the layout. I was told to act and not be afraid of anything, brother. If anything, we’ll be sending the guys there.” GX82T at 2:22-46.

The next day, agents intercepted a disturbing call in which Gershman asked another coconspirator, Maxim Gurovitz, in poorly coded language, to provide him with a gun as soon as possible. GX83T at 2:3-19. Gershman specifically told Gurovitz, “I need a toy to play with bro. By Sunday, A-S-A-P.” GX83T at 2:13-14. Gershman explained, again using poorly coded language, that he needed a gun because he had thrown out his gun after using it: “It’s just that I already played with mine and threw it out.” GX83 at 2:18-19. Gurovitz responded, “I might be able to find you something, but something small, like very small.” GX83 at 2:34-36. When Gershman stated that a “very small one won’t be right, bro,” Gurovitz used age as a code for caliber stating, “I think she is like, 22 years old or 25 years old, something like that.” GX83 at 2:38-43.<sup>3</sup>

Shortly thereafter, agents learned that the Dealer was scheduled to work at the Coney Island Poker Spot on Tuesday, August 30, 2016. Tr. 1022:4-8. To mitigate the risk to the Dealer, agents decided to execute a search warrant for the Coney Island Poker Spot at the start of the Tuesday night game. Tr. 1017:7-1022:8. As expected, they found the Dealer and Gershman. Notably, Gershman was accompanied by Pocinoc and Krugly—the same Syndicate members who backed up Gershman when he assaulted Normatov.<sup>4</sup> Tr. 1029: 4-17. While no gun was found, testimony confirmed that Gershman had attempted to obtain one. Specifically, “[Gershman] told [Yusufov] that he was going to set up [the Dealer] and Zura the following

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<sup>3</sup> Notably, Gershman’s counsel conceded during summation that this call was about locating a firearm: “You guys, you heard this call during the trial. It’s plain as day that Gershman is trying to locate the gun. Right? He calls it a toy. He says do you have a toy to play with. I don’t have my toy. Can you get me this toy. She is 22, 25. Right? It’s like the worst code anyone ever heard in their life.” Tr. 1489:17-22.

<sup>4</sup> Three “massage girls” and several players were also present.

week for them to come to the spot and catch them in the act,” adding that “[Gershman] tried to get a gun.” Tr. 236:16-20.

D. Extortion of Gennady Vinokurov (John Doe 4)

Gershman threatened other players who lost money at the Coney Island Poker Spot, including Gennady Vinokurov (John Doe 4). In July 2016, Vinokurov owed over \$20,000 in gambling debt to the Coney Island Poker Spot. See, e.g., GX600 at 233. By mid-August, Vinokurov’s debt had risen to nearly \$30,000. See GX600 at 266, 268, 275. On August 15, 2016, Gershman told Vinokurov, “I need at least [\$]5,000” by the next day, before telling him to pay the balance in installments: “something should be brought little by little on a weekly basis.” GX114T at 3:1-2, 38-39. Vinokurov replied that he would pay Gershman the next day after borrowing money from an old classmate in Philadelphia. GX114T at 2:34-45, 3:44-5:7.

The next evening, Gershman called Vinokurov to check on the money, and Vinokurov told Gershman that it would not be ready for two days. GX116T at 2:5-11. Gershman responded angrily: “Fuck, is it your word or are you, are you a girl, Gena. . . . First [August] 10th, today is already [August] 16th I mean. Fuck, for me this is bullshit. For me these are not words.” GX116T at 2:33-47. Soon afterward, Vinokurov drove to Philadelphia, borrowed \$5,000 from his old friend and promptly brought the money to the Coney Island Poker Spot.

E. Extortion of “Ponchik” (John Doe 5)

While the threats against Vinokurov were implicit, the threats against “Ponchik” (John Doe 5)—leveled by Gershman’s partner, codefendant Igor Krugly—were anything but. On August 21, 2016, for example, Krugly angrily demanded to know when Ponchik would repay his debt:

Krugly: You have been playing on this money, dude. You lost it, you owed money to Gena, [U/I]. I am not [U/I].

Ponchik: That money has already been closed long time ago.

Krugly: If it has been closed out then you don't owe me, that's how it looks like.

Ponchik: No, I owe you, but [U/I]. . . .

. . .

Krugly: Ponchik, with your [U/I] stories, fuck, bless you. If you were a stranger, I swear, fuck, I would fuck you up already.

GX135T at 4:14-37.

Eight days later, with the debt still outstanding, Krugly called Ponchik and repeatedly threatened to "smash [his] face":

Krugly: Ponchik, you know what. Let me tell you one thing so you know it once and forever. Forget about that money. I am going to get it from Gena. But as soon as I see you, I will smash your fucking face, just for your words. Just remember that and be ready.

Ponchik: Why, why, all of the sudden?

Krugly: Just so that you be ready. When you see me, I will smash your fucking face.

Ponchik: "Why all of the sudden, bro?"

Krugly: Well, I am going to explain it to you after I smash it. I will explain.

Ponchik: Well, alright, alright [U/I]—

Krugly: So that you know—who you can bullshit and who you cannot.

Ponchik: Brother, nobody lied.

Krugly: So when you will see me, you will get right in the fucking face.

Ponchik: Money, money, you will get the money.

GX137T at 2:37-3:19

Krugly then abruptly hung up the phone. Ponchik hurriedly called back to offer excuses for his nonpayment, including saying another person was supposed to repay Krugly. See generally GX138T. This excuse did not satisfy Krugly, who told Ponchik that if he believed this other person was responsible for the debt, then Ponchik should use violence to collect it: “Fuck him up in his ass, and get it from him.” GX138T at 4:21-22.

3. Arson of 2220 Voorhies

The most serious act of violence stemming from the Syndicate’s illegal gambling operations was not an extortion, but rather the arson of a three-story commercial-residential building at 2220 Voorhies Avenue in Brooklyn. The fire nearly killed a 19-year-old college student Shakhzod (“Sean”) Bobokalonov and his 12-year-old brother. In addition, Firefighter Gabriel Buonincontri was permanently injured while fighting the blaze, and the four families who lived in the building lost their homes and all their possessions.

The trial evidence established that around April 2016, Gershman and other partners at the Coney Island Poker Spot came to believe that Pardilov’s poker game at 2220 Voorhies Avenue (the “Voorhies Poker Spot”) was hurting their business at the Coney Island Poker Spot.<sup>5</sup> See, e.g., 187:16-18. Gershman, Tsvetkov, Zelinger and Yusufov met with Pardilov in hopes of resolving the disagreement. Tr. 189:22-6. But the discussion went nowhere. Tr. 190:9-191:19. So Gershman, Tsvetkov, Zelinger and Yusufov (this time, accompanied by Malkeyev) convened at the Coney Island Poker Spot and sat around the poker table in a literal smoke-filled room to decide how to deal with Pardilov’s game. Tr. 191:20-192:12. At the start of the meeting, Gershman instructed everyone to shut off their phones. Tr.

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<sup>5</sup> The origins of this conflict, and the nature of the relationship between Pardilov and the Coney Island Poker Spot Partners, are described in greater detail in Section IV.5.A below.

192:14-15. Eventually, Zelinger proposed setting the Voorhies Poker Spot on fire, and the others agreed. Tr. 195:11-14; see also 195:15-198:10. After Tsvetkov asked who would set the fire, Zelinger directed Yusufov and Malkeyev to do it. Tr. 197:15-198:25.

Shortly after 1:00 a.m. on May 2, 2016, Yusufov and Malkeyev drove to the Voorhies Poker Spot, broke into the ground floor poker space with a crowbar, doused the room with lighter fluid and set it on fire. The fire quickly spread to the second and third floors of the building, which contained residential apartments that were plainly visible from the street.

Sean and his 12-year-old brother were trapped in their third-story apartment by the fire. (Sean's mother was not home because she was working a night shift. Tr. 529:7-10.) Sean testified about the traumatic and near-fatal events of that evening. After waking up in the middle of the night to the "very toxic smell of smoke," he ran to brother's room and tried to find a way to escape the apartment. Tr. 529:15-531:4. But heavy smoke prevented them from leaving through the front door and the windows. Id. Sean took off his shirt and put it over his brother to protect him from falling debris. Tr. 531:7-14. Then, having abandoned hope of escaping the burning building, he huddled with his brother near a window in an upstairs bedroom, using his body to shield the younger boy, while waiting for help to come. Tr. 531:7-17.

Fortunately, New York City Fire Department ("FDNY") firefighters arrived in time. Tr. 531:18-19. The dramatic rescue of Sean and his brother was captured on amateur video by a passerby. See GX630. The footage shows a firefighter climbing a ladder through dense smoke to pull the 12-year-old boy and Sean (who was wearing nothing but underwear) out of the window and back down the ladder to safety. Heavy smoke can be seen spilling out of the

window, so thick that, at times, it totally obscured the firefighter on the ladder. Soon after their escape, flames consumed the building.

After their rescue, Sean and his brother were taken to the hospital and treated for smoke inhalation. As Sean explained at trial, “I was just throwing up, and every time I would try to breathe it would just end up in coughs and just throwing up again, coughing, throwing up.” Tr. 535:13-15. But Sean’s physical injuries were less severe than those suffered by veteran Firefighter Gabriel Buonincontri.

Buonincontri was the engine chauffeur for Ladder 169—one of the companies that responded to the three-alarm fire. Tr. 538:1-24. When Buonincontri got to the Voorhies Poker Spot, “[t]here was smoke coming out of the first floor, second floor, third floor, and fire out of the right corner rear of the building.” Tr. 541:2-4. Buonincontri did not hesitate. He put on his oxygen mask and walked into the smoke coming from the back door of the first floor. Tr. 542:16-543:3. There was “zero visibility” inside, so Buonincontri “felt around to see if I can find . . . any kind of signs of life, anything around there.” Tr. 543:12-13. As Buonincontri felt around for potential victims in the opaque smoke, he was struck by the stream from a high-pressure 2.5-inch water hose. Tr. 543:15-24. The force of the water threw him backward onto the floor and knocked off his mask. Debris and furniture from the building crashed down on him. Tr. 544:1-12. As a result, Buonincontri suffered serious injuries to his neck and shoulder, which required multiple surgeries—specifically, a three-level fusion of vertebrae C4 through C7 and a shoulder replacement. Tr. 545:10-12. While Buonincontri remains a member of the FDNY to this day, the injuries he sustained that night have prevented him from ever fighting a fire again. Tr. 545:13-18.

4. Extortions Unrelated to Gambling

Gershman used violence and his reputation as a gangster to successfully extort numerous victims who never set foot in the Coney Island Poker Spot. As Yusufov testified,

[Gershman] was my go-to guy. My muscle. . . . If I had problems and needed to be taken care of, I would call him. . . . Anything that had to do with my cocaine business, with the streets. Anybody try to rob me or rob my workers. . . . He's a guy who takes care of these problems . . . [through] intimidation. Violence.

Tr. 68:16-69:3. Yusufov's description of Gershman's reputation was echoed by other witnesses, including several of Gershman's victims. Leonid Kotovnikov (John Doe 7)—whom Gershman extorted on two occasions—described Gershman as a “gangster,” who was “always into fights[,] always getting into trouble with somebody else.” Tr. at 1170:17-1171:3. Rufat Zarbailov (John Doe 9), whose face Gershman threatened to slash with a box cutter, described Gershman as a person with a “reputation. You don't cross a person like that.” Tr. 515:13. Denis Dulevskiy (John Doe 2)—whom Gershman assaulted and extorted—described him as a “serious guy” who was ready to inflict physical punishment or have others do it for him. Tr. 570:9-10.

The extortions and assaults of Zarbailov, “JR,” Dulevskiy and Kotovnikov are described below.

A. Extortion and Box Cutter Assault of Rufat Zarbailov (John Doe 9)

Zarbailov worked as a cocaine courier for Yusufov for several months. Tr. 69:15-16. In 2013, Zarbailov told Yusufov (in Gershman's presence) that an individual posing as a customer robbed him of the cocaine and cash he was carrying. Tr. 70:2-12. Gershman told Yusufov he would “look into it.” Tr. 70:17. Later that day, Gershman met with Yusufov in the parking garage underneath his apartment building—a location Gershman frequently held “meetings.” Tr. 70:19-73:11; GX837-842. In the underground garage, Gershman told Yusufov

that “Rufat [Zarbailov] was the one who set up the job”—meaning that Zarbailov lied about the robbery and pocketed the cocaine and cash he claimed had been stolen. Tr. 72:14-23.

Yusufov then told Zarbailov to come to the underground garage. Tr. 73:1-3.

When Zarbailov arrived, Yusufov accused him of stealing and—with Gershman at his back—began beating Zarbailov: “I started hitting [Zarbailov] and kicking him. Just beating him up.” Tr. 73:17-19. Zarbailov did not fight back. Tr. 73:20-25. After Zarbailov fell to the ground, Gershman put a blade to his face and told Yusufov that they “should make an example out of him and give him a 150”—that is, a cut across Zarbailov’s face that would require 150 stitches to close. Tr. 74:8-16. Zarbailov confirmed this: “Lenny took out a box cutter, put it to my face and asked Ronnie [Yusufov] if he should ace me . . . a cut from ear to chin.” Tr. 510:18-21.

Zarbailov begged for Gershman not to slash his face, and after Yusufov told Gershman not to go through with it, Gershman let Zarbailov leave—but not before Gershman and Yusufov demanded that he pay them \$15,000 for lying about the robbery. Tr. 74:22-75:6, 511:19-24.

B. Extortion and Assault of “JR”

Gershman (this time with Tsvetkov) also acted as “muscle” when it came to the extortion of “JR” (John Doe 8)—Yusufov’s former gambling partner, who owed him approximately \$120,000. Tr. 84:10-23. Unable to find JR, much less collect the debt, Yusufov turned to Gershman and Tsvetkov. Tr. 85:20-86:3. Tsvetkov located JR within hours. Tr. 88:12-89:1. Gershman, Tsvetkov and Yusufov then drove to meet JR in an alley behind a Queens drycleaner. Tr. 91:9-12.

When they got to the alley, Tsvetkov immediately punched JR in the face, knocking him to the ground. Tr. 91:20-24. JR got up and started running away. Tr. 92:4-7. After being coaxed into returning, JR agreed to pay the debt in installments, and Gershman

volunteered to do the collections. Tr. 92:10-21, 93:8-13. Later, Gershman told Yusufov that he “ran into JR and took everything he had.” Tr. 93:14-22.

C. Extortion and Assault of Denis Dulevskiy (John Doe 2)

Gershman’s extortion of Denis Dulevskiy (John Doe 2) exemplifies how he used violence—and his reputation for violence—to extort victims. Dulevisky borrowed approximately \$2,300 in cash from a former girlfriend, and never paid her back. Tr. 554:24-555:3, 556:8-23. The girlfriend went to codefendant Eric Bobritksy for help collecting the debt, and Bobritsky brought her to Gershman, in part, because Bobritksy correctly believed that Gershman would “get the money back” by “threatening [Dulevskiy].” Tr. 971:6-972:21.

Gershman arranged to meet Dulevskiy—a total stranger—at a neighborhood barber shop. Tr. 557:13-18. When Dulevskiy arrived, Gershman immediately hit him in the face—much in the same way Tsvetkov greeted JR in the Queens alleyway. As Dulevskiy explained,

I was standing outside the barber shop and a black BMW pulls up and [a] person named Lenny he approach me. . . . [Then] I receive a hit in the face. . . . Then he said, you rob [the girlfriend], you took money from her . . . Now you have to repay that debt to me.

Tr. 558:10-19.

But Gershman demanded much more than the few thousand dollars Dulevskiy borrowed from the girlfriend. He told Dulevskiy that he owed \$8,000 in principal, plus around \$13,000 in “juice” (*i.e.*, interest). Tr. 558:21-559:5. Gershman demanded that Dulevskiy make weekly installment payments, and when Dulevskiy did not pay on time, Gershman charged him “late fees.” Tr. 564:17; GX66 at 2:13 (Gershman to Dulevskiy on an intercepted call: “Are you fucked up? You gave me 7 [thousand] and \$2,000 twice, late fee.”). All told, Dulevskiy paid

Gershman around \$20,000 to satisfy his much smaller debt to the girlfriend. But despite collecting around \$20,000 from Dulevskiy, Gershman returned only \$2,000 to the girlfriend.

Wiretap recordings illustrate Gershman's tactics. On one call, Gershman told Dulevskiy to lie to the girlfriend if she asked how much Dulevskiy had paid Gershman: "Say you only gave me \$5,000. Got it? . . . If it will be something else, dude, I'll kick your ass. Did you understand me?" GX61T at 2:19-30. Later, Gershman told Dulevskiy, "Now you say what I told you [to say]. But if you bullshitted me, I'll break your fucking mouth." GX62T at 2:23-25. Gershman's motive for the deception was obvious: he did not want to pay the girlfriend the money he had extorted from Dulevskiy.

On another call, Gershman demanded that Dulevskiy, "[g]et my fucking money ready," while referencing Dulevskiy's mother, who was in the hospital at the time:

Listen, you are such a fucking dumb ass. I am telling you should keep your fucking mouth shut. You got it? You fucking idiot. No "dumplings," [i.e., nickname for Tsvetkov], no fucking "marusias," no "vareniki," fuck. Whatever is between me and you, fuck—god forbid it gets out somewhere, I guarantee you Denis, you'll feel worse than your mother, you got me? . . . You got it, you fucking moron, fuck? . . . Get my fucking money ready.

GX63T at 2:7-25.

D. Extortions of Leonid Kotovnikov (John Doe 7)

Gershman also used threats of violence to extort Leonid Kotovnikov (John Doe 7) on two separate occasions. Kotovnikov—a long-time cocaine dealer—testified that in approximately 2013-2014, he went to the Poconos with his wife and others, including Malkeyev and Bobritsky. Tr. 1168:10-18. There, Bobritsky expressed dissatisfaction with how he was being treated by Gershman and Malkeyev—his supposed "partners" in the marijuana business. Tr. 1168:19-21. Kotovnikov relayed Bobritsky's complaints to Malkeyev. Tr. 1168:22. Soon

after, Kotovnikov received a call from Gershman, demanding that Kotovnikov come to his house. Tr. 1168:23-25; 1169:18- 20.

Kotovnikov testified that he went to Gershman's house the next day, where Gershman "started screaming at me[,] telling me that I messed up his family, meaning, relations with Eric [Bobritsky] and Steve [Malkeyev] and because of that I got to give him \$10,000." Tr. 1169:3-7. Gershman stated "in an angry tone that, basically, if I don't want problems that I got to give him money because I fucked up his family as far as between Eric and Steve." Tr. 1170:6-8. Kotovnikov paid the \$10,000 because Gershman threatened him and his family, telling him he knew "where my wife sleeps," and because Gershman had a reputation in the neighborhood as a "gangster," who was "always into fights[,] always getting into trouble with somebody else." Tr. 1170:17-1171:3.

In 2015, Gershman extorted Kotovnikov again. Kotovnikov testified that Bobritsky came to Kotovnikov, told him that he left the marijuana business because of an argument with Gershman, and asked if he could join Kotovnikov's cocaine business. Tr. 1172:14-1173:21. Bobritsky's partnership with Kotovnikov was short-lived because Gershman called Bobritsky and the two reconciled. Tr. 1174:12-18. Gershman called Kotovnikov too, demanding a meeting. Tr. 1174:19-1175:1. Kotovnikov remembered meeting Gershman and Bobritsky on the corner of Kotovnikov's block. Tr. 1175:2-3. Gershman was not happy that Kotovnikov had hired Bobritsky and told him that "because you let him [i.e., Bobritsky] work for you for a month in the neighborhood and you made me look like a clown . . . you owe me \$2,500." Tr. 1175:3-6. Kotovnikov, still fearing Gershman, paid the money. Tr. 1176:6-10.

5. Trafficking More than 100 Kilograms of Marijuana

Gershman operated a lucrative and violent marijuana distribution business on a full-time basis for years before his November 2016 arrest. Gershman began the business with codefendants Malkeyev and Bobritsky around 2010 or 2011. Tr. 680:7-14; 931:23-932:4; 933:23-934:1. While Gershman, Malkeyev and Bobritsky called themselves “partners,” Gershman led the operation. Gershman was primarily responsible for purchasing pounds of marijuana from wholesalers (including Tsvetkov), while Malkeyev performed the tedious and time-intensive task of bagging the marijuana for retail sale, and Bobritsky delivered the marijuana throughout Brooklyn (before returning the proceeds to Gershman at week’s end). Tr. 681:1-8; 934:2-17; 935:9-14.

The business operated 12 hours per day seven days per week. Tr. 681:24-682:4; 935:4-8. When Bobritsky was unavailable to work as a courier (and after he left the business in 2015), Gershman and Malkeyev hired replacement couriers—including Stanislav Kardon (who pled guilty before in a related matter, see 18-CR-005 (BMC)) and codefendant Librado Rivera. Tr. 684:9-14. Gershman and Malkeyev supplied their couriers with a car that was specially equipped with a “trap”—a secret compartment for storing marijuana and cash. Tr. 686:5-12; 205T at 3:18-21. Gershman and Malkeyev leased multiple stash houses over the years to store their marijuana. See, e.g., Tr. 691:18-20.

Gershman and his coconspirators sold as much as five pounds of marijuana per month. Tr. 937:14-938:13; 684:6-8. Bobritsky testified that he, Gershman and Malkeyev each made approximately \$5,000 per month in profit. Tr. 938:14-16. But this understates Gershman’s profit because Gershman and Malkeyev cheated Bobritsky out of his fair share of the profits. Tr. 685:21-686:4. Significantly, Gershman reported to the Probation Department that he made as

much as \$8,000 per week selling marijuana—on top of the \$5,000 per week he made from illegal gambling. See Presentence Investigation Report (“PSR”) ¶ 248.

Thus, by his own account, during peak periods, Gershman’s combined monthly (tax-free) income from illegal gambling and marijuana trafficking was over \$50,000—a figure that does not include the thousands of dollars in illicit income he made each month from loansharking and other criminal activities.

6. Pistol Whipping of Misha Azaryev

Because Gershman’s marijuana business were so profitable, he used serious violence to protect it, as demonstrated by the public assault and pistol-whipping of Misha Azaryev.

In July 2012, Gershman, Malkeyev and Bobritsky discovered that a large amount of marijuana and several thousands of dollars had been stolen from their stash house on Ocean Avenue in Brooklyn. Tr. 691:24-693:12. After viewing surveillance footage, Gershman concluded that two members of a rival criminal organization—the “Kafkaz Crew”—had broken in to the stash house. Tr. 693:15-695:8. Gershman specifically suspected Misah Arazyev (who, incidentally, was Yusufov’s relative) of participating in the break in, and decided to punish him. Tr. 695:9-21.

Gershman asked Yusufov (who was unaware of Gershman’s plan) to arrange a meeting with Azaryev near Gershman’s Ocean Parkway apartment building, and Yusufov obliged. Tr. 695:11-14. Just before the meeting, Gershman, Tsvetkov and Malkeyev met in Gershman’s apartment, where Gershman gave Malkeyev a pistol and told him to “watch his back.” Tr. 696:16-19, 697:1-4. Gershman, Tsvetkov and Malkeyev then left Gershman’s

apartment and positioned themselves on Ocean Parkway—a broad, residential boulevard with heavy vehicle and pedestrian traffic. Tr. 698:2-8; GX862.

When Azaryev arrived, Gershman approached him and began arguing with him. Tr. 698:23-699:1. Then Gershman hit Azaryev. Tr. 699:1-3. Moments later, Malkeyev pulled out Gershman’s pistol, pointed it at Azaryev and shouted at him. Tr. 699:6-8. When Malkeyev brandished the pistol, Azaryev started running away. 699:11. Tsvetkov then yelled, “bust, bust,” which Malkeyev understood to mean “shoot,” but Malkeyev did not fire at Azaryev. Tr. 699:16-21. Gershman, Tsvetkov and Malkeyev chased Azaryev down the street in front of the two-story townhomes on Ocean Parkway. Tr. 699:11-15.

Eventually, they caught Azaryev and knocked him to the ground on the grass in front of one of the houses. Tr. 699:22-700:15; GX873. When Azaryev fell to the ground, Gershman and Tsvetkov “[s]tarted beating him . . . [p]unching, kicking him.” Tr. 700:18-20. Then Tsvtkov grabbed the pistol from Malkeyev and began pistol-whipping Azaryev. As Malkeyev testified,

Tsvetkov took [the pistol] out of my hand, hit [Azaryev] a few times with it, jammed it in his mouth, and told me something along the lines [of], [“]That’s how the fuck you do it.[”] . . . When he was hitting him with the gun, I just saw him hitting in the face with the gun. When he jammed the gun in his mouth, I saw something flying out that I thought were teeth.

Tr. 701:6-19.

The beating and pistol-whipping of Azaryev happened in public, a little after sundown, before it became dark. Tr. 695:19-21; GX873. In fact, three people were present, eating in their front yard, as Gershman, Tsvetkov and Malkeyev beat and pistol-whipped Azaryev just yards away. Tr. 701:24-702:19. The beating ended—and Gershman, Tsvetkov and Malkeyev fled the scene—only after a female onlooker began screaming. Tr. 702:23-24.

After the pistol-whipping, Gershman recovered the marijuana from the Kafkaz Crew, but allowed them to keep the stolen money. Malkeyev explained why Gershman did not take back the money: “Because we later found out that Misha [Azaryev] wasn’t the person that did it. They just used his car. He just got beat up basically for nothing.” Tr. 706:9-11.

7. Loansharking

In the years before his arrest, Gershman made six-figure profits from loansharking. The loans Gershman extended ranged from \$5,000 to \$100,000, and carried annualized interest rates between 72% and 144%. Tr. 752:5-753:16; see also GX186T at 2:40-41 (wiretap recording of Gershman and Malkeyev discussing an \$80,000 loan). Gershman stored some of his cash reserves with family members, including his sister and father, both of whom aided and abetted Gershman’s loansharking. See, e.g., Exhibits 251T-260T (containing transcripts of wiretapped recordings between Gershman and his father and Gershman and his sister).<sup>6</sup> At Gershman’s direction, Malkeyev picked up cash from Gershman’s sister, Anyeta Fuxman, “more than five” times. On one of these occasions, she gave Malkeyev \$100,000 in cash, which was stored in the bedroom she shared with her husband Arkady Fuxman.<sup>7</sup> Tr. 760:2-21.

Gershman and Malkeyev generally required borrowers to make weekly payments of principal and interest. Tr. 754:17-22. When borrowers were late making payments, Gershman and Malkeyev would “[g]ive them some more time. . . [because] it was good for

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<sup>6</sup> GX251T-260T were marked for identification but not introduced at trial.

<sup>7</sup> Arkady Fuxman, Gershman’s brother-in-law, was surveilled exiting the Coney Island Poker Spot in mid-2016. See GX510-511. In addition, Gershman, Malkeyev and Pocinoc used Arkady Fuxman’s car to stake out a local marijuana dealer’s residence as they contemplated robbing him. As explained in more detail below, Arkady Fuxman was also present with his wife when they met with Dulevskiy and asked him to falsely exculpate Gershman.

business that way so they can keep coming back.” Tr. 755:5-12. But if borrowers repeatedly failed to pay, they became increasingly aggressive in their collection efforts. Tr. 755:3-756:20.

One frequent loansharking borrower was Yusufov, who depended on Gershman’s loans to finance his multi-million dollar cocaine business, among other things. Tr. 239:3-13. In the two-to-three years before his arrest, Gershman lent Yusufov approximately \$40,000 to \$60,000 every three months at annualized interest rates between 120% and 144%. Tr. 238:19-240:16; see also GX185T (wiretap recording of Gershman and Yusufov discussing two 12-week-term loans—one for \$50,000 at an annualized rate of 120% and one for approximately \$60,000 at an even higher annualized rate). Thus, Gershman’s annual loansharking profits *from Yusufov alone* was between \$48,000 and \$86,000 per year.

8. Firearm Dealing

In addition to possessing firearms, Gershman supplied them to members of the Syndicate. In around 2007 or 2008, for example, Gershman sold Yusufov a .380 caliber handgun for approximately \$800 to \$1,000. Tr. 145:3-24. In late 2012, after that gun was stolen from Yusufov’s home, Yusufov “called Lenny [Gershman] and asked him to get me another one.” Tr. 147: 24-25. Gershman then sold Yusufov a firearm for \$600. Tr. 147:24-149:7. Gershman also sold Malkeyev his old firearm (for \$750) when Gershman decided to upgrade to a firearm with an extended clip. Tr. 708:4-21.

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In addition to the counts of conviction, Gershman has engaged in the following uncharged conduct.<sup>8</sup>

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<sup>8</sup> The subsections immediately below describe Gershman’s discharge of a firearm in public, various attempted assaults, a high-speed car chase, vandalism and drug thefts. Gershman’s witness tampering is described in Section IV.4.B.

9. Discharging a Firearm in Public

On September 1, 2012, at around noon, Gershman was in his apartment with Yusufov when he got into an argument concerning his ex-girlfriend over the telephone with an individual nicknamed “Deco.” Tr. 140:13-21. After hanging up, Gershman “went to his bedroom and he came out with a gun in his hand . . . a black handgun with like a long clip.” Tr. 141:8-143:7. Gershman then left his apartment and confronted Deco and several other people on the sidewalk in front of his Ocean Parkway apartment building. Gershman brandished the firearm and fired it, in broad daylight on a busy avenue in the presence of numerous witnesses.<sup>9</sup>

10. Attempted Assault of Mikey Benz

Several years before his arrest, Gershman and Yusufov were driving in Sheepshead Bay when Gershman spotted rival marijuana distributor “Mikey Benz” walking toward a barber shop. Tr. 137:23-138:2. Gershman told Yusufov to stop the car, and then jumped out and started chasing Benz. Tr. 138:1-4. To avoid being assaulted by Gershman, Benz ran into the barbershop and locked himself in the bathroom. Despite the fact that there were customers in the barbershop, Gershman repeatedly banged on the bathroom door, yelling for Benz to come outside. Tr. 138:5-8. Benz refused to leave and Gershman waited for him outside the bathroom for about an hour, before moving outside the barbershop. Tr. 138:9-25. Eventually the owner of the barbershop asked Gershman and Yusufov to leave, explaining that “it is hurting his business and he has clients and stuff, so if we don’t mind, take it somewhere else.” Tr. 139:3-10. Yusufov obliged, but Gershman refused to leave. Tr. 139:11-12. Later

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<sup>9</sup> The evidence that Gershman committed this shooting was overwhelming. Yusufov, Malkeyev, Bobritsky and one of Gershman’s neighbors all testified about the incident, with the neighbor stating that he saw Gershman holding a gun in the air before tucking it into the back of his pants. See, e.g., Tr. 911:8-18. In addition, police officers found a shell casing on the sidewalk soon after the shooting.

Gershman told Yusufov that he chased Benz because “Benz was selling very cheap weed,” which hurt Gershman’s marijuana sales. Tr. 139:13-20.

11. Car Pursuit and Attempted Assault of Maxim Gurovitz

Gershman also tried to assault marijuana wholesaler Maxim Gurovitz after concluding that Gurovitz was overcharging him. Tr. 133:10-12, 135:15-136:3, Tr. 716:7-14.<sup>10</sup>

While Yusufov was driving Gershman on Emmons Avenue one afternoon, Gershman spotted Gurovitz stopped at a red light in his Audi A7. Tr. 133:13-134:7. Despite the heavy traffic and the many witnesses, Gershman jumped out of Yusufov’s car, ran up to Gurovitz’s Audi, opened the front passenger door, and tried to get inside. Tr. 134:8-12. Gershman was unable to get in the Audi because a female was sitting in the front passenger seat. Tr. 134:17-20. Gurovitz then “[s]tepped on the pedal and took off, blew a couple of red lights and jumped on the highway.” Tr. 134:23-24. Gershman told Yusufov to follow Gurovitz and Yusufov obliged. Tr. 134:17-20. A dangerous high-speed pursuit ensued, through mid-afternoon traffic on the Belt Parkway. Tr. 134:25-135:9. As Yusufov explained, “It was a chase. You know, we were going through red lights, driving recklessly, going on the shoulders, switching lane to lane.” Tr. 135:4-7. The chase continued on the Belt Parkway for several miles before ending near the Verrazano Bridge. Tr. 135:10-14.

On another occasion, Gershman vandalized Gurovitz apartment and claimed that he “smacked” Gurovitz: Gershman “came to Max [Gurovitz’s] house, broke a bunch of things in his house with a baton, marble [counter], a laptop. I think I remember him saying he smacked him in his face.” Tr. 716:16-18.

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<sup>10</sup> Gershman and Gurovitz later reconciled. As noted above, months before his arrest, Gershman was intercepted asking Gurovitz to supply him with an illegal firearm.

12. Theft of Cocaine and Marijuana

Gershman used his reputation for violence to steal drugs from Benz and a cocaine dealer named “Danny.”

Gershman and Yusufov met Danny at a Brooklyn restaurant, where Danny provided them with a brick kilogram of cocaine (with a retail street value of \$150,000). Tr. 80:1-11. Gershman told Danny that he would take the cocaine on consignment and pay Danny \$40,000 when it was sold. Tr. 81:5-15. At Gershman’s direction, Yusufov then sold the cocaine to a wholesaler for \$40,000. Tr. 81:16-22. Yusufov gave the \$40,000 to Gershman, and Gershman paid Yusufov \$13,000. Tr. 81:23-82:3. Gershman never paid Danny for the cocaine. Tr. 82:8-19.

Gershman and Yusufov also stole marijuana from Benz (before the barbershop incident described above). Tr. 109:17-23. Gershman planned the theft, and enlisted Yusufov’s help because Benz knew and trusted Yusufov. Tr. 110:10-14. At Gershman’s direction, Yusufov called Benz and asked to buy marijuana from him on credit. Tr. 110:15-18. Benz then gave Yusufov four pounds of marijuana on consignment. Tr. 110:16-111:2. After taking the four pounds of marijuana, Yusufov brought it to Gershman, who paid Yusufov \$5,000 for it. Tr. 111:3-8. Gershman then called Benz and told him that if he wanted the money for the marijuana, he would have to “come and meet [Gershman]” and that, if Benz did come, Gershman would hurt him. Tr. 111:11-16. Benz never showed up, and Gershman never paid him for the marijuana.

### III. APPLICABLE LAW

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” Gall v. United States, 552 U.S. 38, 49 (2007) (citation omitted); see also United States v. Booker, 125 S. Ct. 738, 743 (2005) (although the Guidelines are advisory, district courts are still “require[d] . . . to consider Guidelines ranges” in determining a sentence).

Next, courts should “consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [it] may not presume that the Guidelines range is reasonable. [It] must make an individualized assessment based on the facts presented.” Gall, 552 U.S. at 50 (citation and footnote omitted). Section 3553(a) requires courts to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes of [18 U.S.C. § 3553(a)(2)].” The factors courts shall consider in imposing sentence include “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1), as well as 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[.]

18 U.S.C. § 3553(a)(2).

In addition, 18 U.S.C. § 3661 provides that, “No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an

offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”

#### IV. THE GUIDELINES AND THE PSR

The Probation Office (“Probation”) calculated Gershman’s Guidelines range to be 168 to 210 months—based on a total offense level of 35 and a criminal history category of I—with an 84-month mandatory consecutive term to follow. PSR ¶ 262. The government, respectfully submits that the correct guidelines range is 262 to 327 months—based on an offense level of 39 and a criminal history category of I—with an 84-month mandatory consecutive term to follow, resulting in an effective range of 346 to 411 months. The government’s Guidelines range is higher than Probation’s because it includes two additional enhancements: (1) a two-level enhancement based on Gershman’s “maintain[ence of] a premises for the purposes of . . . distributing [marijuana]”; and (2) a two-level enhancement based on Gershman’s “commi[ssion of] the [marijuana distribution offenses] as part of a pattern of criminal conduct engaged in as a livelihood,” U.S.S.G. §§ 2D1.1(b)(12) and (b)(16)(E).

##### 1. The Premises Enhancement

Guidelines § 2D1.1(b)(12) provides for a two-level enhancement for “maintain[ing] a premises for the purpose of manufacturing or distributing a controlled substance.” Application Note 17 to § 2D1.1, makes clear that § 2D1.1(b)(12) applies to stash houses: “Subsection (b)(12) applies to a defendant who knowingly maintains a premises (*i.e.*, a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.”

(Emphasis added.)

Trial evidence established that Gershman and Malkeyev rented apartments specifically for the purposes of storing marijuana. When asked, for example, where he and Gershman stored marijuana, Malkeyev explained, “At one point Eric [Bobritsky] had it in his house, I had it in my house. Then we would rent apartments, sort of like stash houses.” Tr. 691:16-20. There was extensive trial testimony related to the stash house Gershman and Malkeyev controlled on Ocean Avenue and Avenue O because the burglary of that stash house led to the charged pistol-whipping of Misha Azaryev. See, e.g., Tr. 691:24-701:19. Wiretap recordings confirmed the existence of a second stash house that Gershman and Malkeyev used years later. See, e.g., GX209 at 4:33-37; Tr. 713:22-714:6.

2. The Criminal Livelihood Enhancement

Guidelines § 2D1.1(b)(16)(E) provides for a two-level enhancement for offenses committed as a part of a pattern of criminal conduct engaged in as a livelihood. Application Note 20 to § 2D1.1, states that “[f]or purposes of subsection (b)(16)(E)” the terms “pattern of criminal conduct” and “engaged in as a livelihood” have the meaning set forth in U.S.S.G. § 4B1.3. Application Note 1 to U.S.S.G. § 4B1.3, in turn, provides that a “pattern of criminal conduct means planned criminal acts occurring over a substantial period of time. Such acts may involve a single course of conduct or independent offenses.” Application Note 2 of U.S.S.G. § 4B1.4 defines “engaged in as a livelihood” to require that:

(A) the defendant derived income from the pattern of criminal conduct that in any twelve month period exceeded 2,000 times the then existing hourly minimum wage under federal law; and

(B) the totality of circumstances shows that such criminal conduct was the defendant’s primary occupation in that twelve-month period . . . .

The trial evidence established that Gershman made substantially more than the income threshold of \$14,500 (i.e., 2,000 times then-prevailing federal minimum wage of \$7.25).

For example, Bobritsky testified that he, Gershman and Malkeyev each earned monthly profits of \$5,000 (although Bobritsky was unaware that Gershman and Malkeyev were cheating him of out of his fair share). Tr. 938:14-16, 685:21-686:4. Gershman told Yusufov that the business made \$2,000 per day, Tr. 104:21-22, and Gershman told Probation that he could earn as much as \$8,000 in a single week, PSR ¶ 248. Even the couriers Gershman and Malkeyev employed made between \$80 and \$150 per day—significantly more than \$14,500 per year. See, e.g. Tr. 685:15. Likewise, there is no doubt, based on the totality of the trial evidence, that criminal conduct—including illegal gambling, extortionate debt collection, marijuana trafficking—was Gershman’s primary occupation in the year before his arrest.

3. Amended Guidelines

The inclusion of the two-level premises enhancement and two-level criminal livelihood enhancement increases the adjusted offense level for Group 11 (i.e., the “marijuana trafficking group”) from 30 to 34:

Base Offense Level (§§ 2D1.1(a) and 2D1.1(c)(7))	24
Plus: Premises Maintained (§ 2D1.1(b)(12))	+2
Plus: Criminal Livelihood (§ 2D1.1(b)(16)(E))	+2
Plus: Leader or Organizer (§ 3B1.1(a))	+4
Plus: Obstructing Justice (§ 3C1.1)	<u>+2</u>
Total:	<u>34</u>

As a result of this four-level increase, the units associated with other groups of closely related counts change as described in the right column of the following chart. Cf PSR ¶¶ 210-215.

Groups	Counts or Racketeering Acts	Adjusted Offense Level	Units
1	CT 1, RA 1(a)/CT 1, RA14/CTs 2, 3, 24, and 25A; CT 1, RA, 2(a) and (b)/CTs 4 and 5	26	.5
2	CT 1, RA 1(a)/CT 1, RA14/CTs 2, 3, 24, and 25B; CT 1, RA 3(a) and 3(b)/CTs 6 and 7	26	.5
3	CT 1, RA 1(a)/CT 1, RA14/CTs 2, 3, 24, and 25C; CT 1, RA 4(a) and 4(b)/CTs 8 and 9	26	.5
4	CT 1, RA 1(a)/CT 1, RA14/CTs 2, 3, 24, and 25D; CT 1, RA 5(a) and 5(b)/CTs 10 and 11	26	.5
5	CT 1, RA 1(a)/CT 1, RA14/CTs 2, 3, 24, and 25E; CT 1, RA 6(a) and 6(b)/CT 12	26	.5
6	CT 1, RA 1(b)A; CT 1, RA 8 and 9; and CTs 13 and 14	26	.5
7	CT 1, RA 1(b)B; and CT 1, RA 10	24	0
8	CT 1, RA 1(b)C; and CT 1, RA 11	29	.5
9	CT 1, RA 13; and CTs 17 and 18	30	1
10	CT 1, RA 15; and CTs 15 and 16	25	0
11	CT 1, RA 16; and CTs 19, 20, 22, and 23	34	1
			5.5

Because 5.5 units results in an increase of five levels pursuant to U.S.S.G.

§ 3D1.4, the total offense level is 39, which results in a Guidelines range of 262 to 327 months (with an 84-month mandatory consecutive term to follow, netting the 346-to-411 range mentioned above). Cf. PSR ¶ 262.

#### 4. Gershman's Objections to the Guidelines Calculations

Gershman raises two objections to Probation's Guidelines computations—specifically, to Probation's determination that (1) he was an “organizer or leader” of the criminal activity charged in the indictment, U.S.S.G. § 3B1.1(a); and (2) that he obstructed justice, U.S.S.G. § 3C1.1. Both objections are meritless.

A. Gershman Organized and Led the Syndicate's Criminal Activities

The trial evidence established that Gershman (along with Tsvetkov and Zelinger) were leading members of the Syndicate, involved in nearly all of the Syndicate's criminal activities. Gershman's arguments to the contrary are unpersuasive.

Gershman draws on the Court's observation—prior to the government's summation—that it had a “nagging doubt” about the government's racketeering theory, which the Court invited the defendant to explore in post-trial motions. See Defendant's Sentencing Letter (“Def. Ltr.”) at 13 (citing Tr. 1321). The government's closing addressed the Court's concerns by highlighting, among other things, the “common benefit[s],” Tr. 1321:10-14, that Syndicate members shared in their crimes, including crimes in which individual members did not participate yet were still paid by their associates—a hallmark of a racketeering enterprise. But content to take the Court's preliminary observation to the Second Circuit, without giving the Court the opportunity to reflect on the evidence at trial, the defendant filed a Rule 33 motion that focused on a different issue.<sup>11</sup> Now, he wants to add to this record; he wants the Court to find that the Syndicate was so loosely organized that even its most violent and feared man could not have been its leader. The evidence tells a different story.

i. Gershman's Role in Illegal Gambling

Gershman claims that he could not have been an organizer or leader of the Coney Island Poker Spot because “a ‘manager’ ran the . . . spot on a day-to-day basis.” Defendant's

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<sup>11</sup> See ECF No. 358 (motion for new trial on Racketeering Act Nine and Count Fourteen, both relating to an extortion of Kotovnikov); ECF No. 367 (denying the motion).

March 6, 2019 Letter Objecting to the PSR (“Def. Obj.”)<sup>12</sup> at 2 (citing Tr. 232). To begin with, Gershman (along with Tsvetkov) came up with the idea of founding a weekly poker game at the McDonald Poker Spot. Tr. 155:23-156:3. After the McDonald Poker Spot was raided, Gershman became a founding partner of the Coney Island Poker Spot. Tr. 158:9-18. Gershman’s responsibilities at the Coney Island Poker Spot included hiring and paying staff, recruiting players, collecting money from losers and paying out winners.

Gershman also neglects to mention that the “manger”—an individual named “Senya,” Tr. 225:25-226:1—was his employee and that Senya reported directly to Gershman. On the evening of Sunday July 12, 2016, for example, Senya called Gershman to report that he was running late for the game because he overslept:

Senya: Hi Lyonchik.

Gershman: Hi.

Senya: I overslept.

Gershman: Come on, come on, brother. The stuff is not quite rolling as of right now.

Senya: Ok, alright, I gonna wash my face and I’m coming. Fucking overslept.

Gershman: Alright, come on.

Draft Transcript of Session 1194 (attached as Sent. Ex. B).

Gershman was also captured on dozens of wiretap recordings giving orders to various subordinates. Tr. 175:20-21. On Sunday, June 21, 2016, for example, Gershman berated

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<sup>12</sup> This letter is attached as Sentencing Exhibit (“Sent. Ex.”) A. The Sentencing Exhibits, which are enclosed in a separate compendium, include material not marked for identification or admitted as trial exhibits.

a lower-level Syndicate member—codefendant Isok Aronov<sup>13</sup>—for arriving late to a game at which Gershman expected him to work as a dealer. In the diatribe, Gershman called Aronov a “fucking moron” and told him, in no uncertain terms, that “You work for me. You got that?” Draft Transcript of Session 225 (attached as Sent. Ex. C).<sup>14</sup> In response, Aronov told Gershman, “I’ve been very loyal to you and your house.”

Gershman berated a waitress in the same fashion, scolding “Nastya” for not coming to clean his poker spot, “I have told you - always at 6 [p.m.]. There’s no need to ask anybody. You have your own key, you should be here at 6 and don’t ask anybody. We never told Katya [i.e., a different waitress] what time to come here. She always came at six like clock-work.” Draft Transcript of Session 1076 (attached as Sent Ex. D).

Gershman also claims that he was not an organizer or leader of the illegal gambling activity because his ownership stake in the Coney Island Poker Spot was smaller than those held by his partners. But this argument ignores that Gershman’s 25% founding stake in the Coney Island Poker Spot was larger than the stakes held by Tsvetkov (20%), Krugly (20%), Yusufov (20%) and Zelinger (15%) at the time Gershman opted to sell half of his share to

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<sup>13</sup> Aronov pled guilty on May 17, 2017 to collecting unlawful debt as part of a racketeering conspiracy. ECF No. 94.

<sup>14</sup> In relevant part, Gershman stated the following:

Isok. Listen to me. You don’t work for yourself, you work for me. You got that? And if you not lucky [U/I]. Don’t interrupt me, you idiot. If you called Igor [Krugly] and he didn’t pick up the phone, then you have Ronik’s [Yusufov’s] phone number and mine. If you have something to sell or buy or do some business, you know how to find me. When the game is supposed to start at 7 and you tell me that you aren’t gonna be there until 10:30, then they will tell you you are piece of shit and shouldn’t come back. Do you get it you, fucking moron? People don’t act like this when people give you a chance to make money.

Malkeyev. Tr. 165:11-13. It also ignores that Malkeyev remained subordinate to Gershman despite the fact that Malkeyev was nominally a coequal partner with Gershman. For example, Malkeyev's responsibilities at the Coney Island Poker Spot included "tak[ing] the waitresses [to] do grocery shopping, buy[ing] liquor, cigarettes, food." Tr. 725:12-25. Notably, it was Gershman (along with Tsvetkov and Krugly) who assigned Malkeyev these menial tasks. Tr. 726:5-7.

Gershman also claims he was not a leader or organizer of the Coney Island Poker Spot because "[t]he partners shared responsibility for collecting debts" from players. Def. Obj. at 4 (citing Tr. 181, 212-13). But as witness testimony and numerous wiretap recordings established, Gershman played an extensive role in collections. See, e.g., Tr. 205:8-13 (noting that Gershman collected debt from "Izik [Shlomi], Boryz, [and] a lot of others"). Moreover, Gershman's collection efforts were the most rough and threatening of all the Partners. Tr. 207:5-7.

ii. Example of Gershman's Role in Debt Collection and Extortion

As demonstrated by dozens of intercepted telephone calls in the summer of 2016, Gershman spearheaded the effort to collect Shlomi's debt. In particular, on August 14, 2016—the day Shlomi was confronted in Israel—Gershman acted like a switchboard operator, speaking to nearly every person involved, including Shlomi's creditors, Thief Izya and Shlomi himself. After recovering the debt, Gershman doled it out to lower-level members of the Syndicate. For example, Gershman gave \$12,500 to Yusufov. Tr. 218:7-21. Gershman also paid out those who helped locate and extort Shlomi. As Yusufov explained, "[h]e had to pay a lot of people. He had to pay people in Russia, the *vor*, he had to pay them for finding [Shlomi's] father, he had to pay the guys in Israel." Tr. 218:22-25.

As discussed throughout this memorandum, Gershman took the lead role in nearly every extortion charged in the indictment.

iii. Gershman's Role in the Arson

Gershman was also an active participant in the discussions that led to the decision to burn the Voorhies Poker Spot. Gershman (along with Tsvetkov, Zelinger and Yusufov) was present at the meeting at the Coney Island Poker Spot during which Pardilov denied hosting a Wednesday night game. Tr. 190:4-13. Gershman was also present for the critical meeting during which Syndicate members settled on arson as the solution to their Voorhies problem. Tellingly, it was Gershman who directed everyone to turn their phones off before the criminal discussion began. Tr. 192:13-15. And although Gershman did not come up with the idea of burning Voorhies—that was Zelinger—he was the first to propose using violence to eliminate Pardilov's game. Tr. 192:25-193:4.

iv. Gershman Role in Marijuana Trafficking

With respect to the marijuana trafficking operation, Gershman claims that he is not a leader or organizer because he, Malkeyev and Bobritsky were “equal partners in the venture.” Def. Obj. at 4. In making this claim, Gershman ignores the inequitable but predictable division of labor between the nominal “partners.” For example, Malkeyev performed the time-consuming and tedious task of weighing and filling thousands of retail marijuana baggies, while Bobritsky spent 12 hours per day delivering those baggies to customers. Tr. 934:9-17, 681:12-23. Gershman's primary responsibilities, on the other hand, included those commensurate with the status of a leader in almost any drug conspiracy: purchasing bulk quantities of marijuana from wholesalers, hiring couriers and determining their salaries. Tr. 934:9-17, 681:12-23; GX203T at 2:43-45 (Gershman revoking courier Rivera's salary).

Bobritsky's low standing in the organization's hierarchy was also reflected in the menial tasks Bobritsky performed for Gershman. For example, Gershman directed Bobritsky to "[g]ive him rides. Pick up money for him. Pick up breakfast for him," Tr. 947:19-21, but Gershman never ran similar errands for Bobritsky, Tr. 947:22-23.<sup>15</sup> The fact that Gershman and Malkeyev cheated Bobritsky out of his fair share of the profits further underscores his placement in the organization's hierarchy. Tr. 685:21-686:4.

Gershman's leadership role was also reflected in his discussions about salary with one of the couriers he hired, Librado Rivera. On one recorded call, Gershman became angry at Rivera for not paying parking tickets and told him, "for the next week, you're not gonna take salary for a few days." Tr. 203T at 2:42-44. When Rivera began to speak openly about the marijuana business over the telephone, Gershman scolded him (much in the same way he scolded dealer Aronov and waitress Nastya): "Mach, [U/I] fucking speak like that bro. . . . Come on, bro. You, you, you thinking or what's up? . . . No but just speak like a fucking adult. What are you a little kid, bro?" Tr. 203T at 3:34-47.

Similarly, Gershman's leadership role was reflected in the series of communications that occurred immediately after agents pulled over Rivera and seized his marijuana supply on July 26, 2016. Rivera promptly reported the incident to Malkeyev, see Tr. 717:10-18, and Malkeyev, in turn, promptly reported it up the chain to Gershman, see GX204T. Gershman then took charge. He told Malkeyev to "meet in the office," GX204T at 3:11—meaning the stash house—and then immediately called Rivera and ordered him to take additional

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<sup>15</sup> Even if Malkeyev is considered a "co-equal partner" with Gershman, "there can, of course, be more than one person who qualifies as a leader or organizer of a criminal association." See, e.g., United States v. Castillo, 277 F. App'x. 77, 81 (2d Cir. 2008) (quoting U.S.S.G. § 3B1.1 Application Note 4).

precautions: “If anybody calls [the marijuana phone] just say listen, you know, we are not going to be doing anything tonight, you know, just call back tomorrow,” GX205T at 5:23-27.

Other evidence demonstrates that, while Malkeyev occupied a higher place in the hierarchy than Bobritsky and Rivera, he remained subordinate to Gershman. In addition to the differences in their responsibilities, Malkeyev’s subservience to Gershman was reflected in the way Gershman introduced Malkeyev to respected organized criminals. For example, Gershman introduced Malkeyev as his “little brother” to both Zelinger and Thief Zviad. Tr. 725:2-8, 741:15-17.

v. Gershman’s Role in the Loansharking Operation

With respect to his loansharking operation, Gershman claims he was not a leader or organizer because that “[t]here is no evidence that Gershman ever ‘direct[ed]’ Malkeyev, Bobritsky or Mrs. Fuxman [i.e., Gershman’s sister] to ‘give out loans.’” Def. Obj. at 4. That is not true. There is substantial evidence that Gershman directed the loansharking operation, and that Malkeyev, Anyeta Fuxman and Bobritsky were subordinate to him.

For example, wiretap interceptions captured Gershman discussing Malkeyev’s fee for referring him a loansharking customer—\$1,000 on an \$80,000 loan. See GX186 at 4:22-26 (Gershman telling Malkeyev “instead of 800, you making 1000”); see also Tr. 759:6-7. On the same call, Gershman made clear that he would determine how much profit his sister would earn from the transaction: “I already told Anyeta that she is making, whatchamacallit, 3,400.” GX186T at 3:4-6.

Gershman also directed Malkeyev to pick up loansharking money that he stored with family members—including from his sister Anyeta “more than five” times and from

Gershman's father on multiple occasions. Tr. 761:1-10. And, as noted previously, Bobritsky, too, picked up money from Gershman at his direction. Tr. 947:20-21.

vi. Gershman's Role in Retaliating for Theft of Syndicate's Marijuana

Gershman also orchestrated the pistol-whipping of Misha Azaryev. After his stash house was burglarized, Gershman formulated the plan to take vengeance on Azaryev. Tr. 695:9-12; 942:2-8. Gershman used an unsuspecting Yusufov to lure Azaryev to a meeting on the sidewalk outside Gershman's apartment building. Tr. 124:15-125:12. Just before that meeting, Gershman met with Tsvetkov and Malkeyev in his apartment, where he gave Malkeyev his pistol, and told Malkeyev to "watch his back." Tr. 696:16-697:9. When Azaryev arrived at the meeting spot, Gershman approached him one-on-one and attacked him. Tr. 128:5-15, 698:19-699:1.

It would be unthinkable for Yusufov or Malkeyev to have done the same—for them to trick Gershman into luring his friend or cousin to a beating. Nor is it conceivable that Yusufov or Malkeyev would ever hand Gershman a handgun and direct him to watch their backs. This dynamic among the Syndicate members is consistent across virtually every criminal act in which they engaged.

vii. Other Indications of Gershman's Leadership

A tangible symbol of Gershman's (and Tsvetkov's) elevated stature in the Syndicate were the gifts they received from subordinate Syndicate members. For example, both Yusufov and Malkeyev contributed money (as much as a \$1,000 by Yusufov) to buy Gershman a luxury watch. Tr. 172:19-24, 751:24-1. Likewise, both Yusufov and Malkeyev gave between \$500 and \$1,000 to purchase Tsvetkov a motorcycle (which was wrapped in a giant bow). See GX477; Tr. 751:13-21. Unsurprisingly, both Yusufov and Malkeyev testified that—with the

exception of Gershman and Tsvetkov—they had never spent \$500 to \$1,000 for a gift for a male friend. Tr. 173:20-22; 751:24-752:1.

Gershman’s standing in the Syndicate was also reflected in the compensation he doled out to lower-level members. For example, he paid Pocinoc \$1,500 for assisting in the extortion of Shlomi, Tr. 751:12; he paid Malkeyev \$1,000 for referring him a loanshark customer, GX186T; and he paid Bobritsky \$1,000 for assisting in the extortion of Kotovnikov, Tr. 957:7-12. The payments were not negotiated in advance; Gershman set them unilaterally.

Other times, Gershman would simply share profits from “jobs”—i.e., extortions or other criminal acts—for no reason other than membership in the Syndicate. For example, after extorting \$10,000 from Kotovnikov, Gershman gave \$500 of the proceeds to Yusufov, even though Yusufov had nothing to do with the extortion. When asked what prompted this payment, Yusufov explained, “we make sure everybody – everybody ate,” meaning that members of the Syndicate benefited financially from each other’s seemingly independent criminal conduct: “if people made money, you know, we took care of each other.” Tr. 150:12-151:20.<sup>16</sup>

Gershman was also a disciplinarian. For instance, he once assaulted Yusufov when Yusufov refused to pay Gershman money he believed he was owed. Tr.247:12-248:4. Yusufov had no recourse. He did not fight back against Gershman and ultimately paid Gershman the money he demanded, explaining “I didn’t want no problems with him.” Tr. 248:21.

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<sup>16</sup> Gershman would also stiff lower-level Syndicate members. See, e.g. Tr. 974:12-14 (failing to pay Bobritsky \$1,000 for bringing him “business”—that is, the opportunity to extort Dulevskiy).

viii. Gershman Was Effectively One of the Bosses

Gershman might not have had a formal title in the Syndicate. But he functioned not much differently than a boss—he had the lead role in most of the Syndicate’s profit-making criminal activities (high-stakes poker, marijuana trafficking, extortions/debt-collection, loansharking), was a decision-maker with other leaders (deciding to burn down a rival poker spot, and making sure the meeting was not recorded), and through his standing in the Syndicate and reputation in the community, he commanded expensive gifts, respect and fear.

B. Gershman Obstructed Justice

There is something else Gershman would like to take for his appeal. Despite the Court’s ruling to permit the government to elicit evidence about Gershman’s witness tampering, see ECF No. 277, at 3, Gershman invites the Court to now say, for the related inquiry under the Guidelines, that he did not even attempt to tamper with a witness. See Def. Ltr. at 9. He asserts that he cannot be tied to any attempted obstruction, which, in any event, was not even obstruction but just a continuation of a “friendly” relationship between Gershman and Denis Dulevskiy (John Doe 2)—a man he once extorted and assaulted. Def. Ltr. at 9. He adds that his attorney may have simply seen in Dulveskiy a potential defense witness who could truthfully describe Gershman not as a violent extorter but as a “bombast.” Id.

Gershman also argues that, even if he attempted to tamper with a witness, the obstruction enhancement should be applied to just some of his crimes. Id. at 10-11. Both arguments are meritless.

i. Gershman’s Conduct Rises to the Level of Obstruction

Gershman attempted to tamper with Dulevskiy on two occasions. At the time of Gershman’s arrest in November 2016, the government disclosed wiretap communications of

threats Gershman made to Dulevskiy. Afterward, Pocinoc contacted Dulevskiy and told him that Gershman's sister (and loansharking coconspirator) Anyeta Fuxman wanted to meet with him. Tr. 596:14-22. Dulevskiy eventually met with Anyeta, accompanied by her husband Arkady Fuxman, who, like his wife, was aware of Gershman's criminal activities. Tr. 596:19-24.

At this meeting, Anyeta Fuxman asked Dulevskiy to "meet with the lawyer [i.e., Gershman's prior counsel] . . . and keep my mouth [sic] and say where all the conversation that I had with Lenny was just like a friends kind of talk." Tr. 596:24-597:5. Of course, Dulevskiy did not consider Gershman's threats of violence to be "friends kind of talk," especially given that Gershman had assaulted Dulevskiy the first time they met. See, e.g., Tr. 597:7-8 (Question: "Did you take what Lenny said to you as a threat?" Answer: "Yes.")

Dulevskiy did not meet with Gershman's prior lawyer. Tr. 597:9-10. Instead, to prevent Gershman and those working on his behalf from contacting him in the future, Dulevskiy changed his phone number. Tr. 597:16-17. As he described in a quiet, halting voice from the witness stand, "I don't want to get involved with anything. . . . I don't remember how I feel [after the encounter with Anyeta Fuxman], but definitely don't want to get involved with anything." Tr. 597:15-19. That "anything" was Gershman, whom Dulevskiy described as a "serious guy" and not one to "joke." Tr. 570:9-10.

That was not the last time Gershman, through his associates, attempted to procure false statements from Dulevskiy. In September 2017—ten months after Gershman's arrest and just days before Pocinoc's arrest—Gershman asked his girlfriend Lorena Arnal to ask Pocinoc to meet with Dulevskiy and get a letter from him. The following text message exchange between Arnal and Pocinoc was introduced at trial:

Arnal: Hello Artiom. OMG.... I wanted to talk to you. Lenny asked for a favor.

Pocinoc: What favor?

Arnal: [I]f dennis [Dulevskiy] could write a letter.

Pocinoc: I got it.

Arnal: What do you think?

Pocinoc: You know I can talk to him and we'll meet with you and you'll tell me what to say but I think he's such a cowardly guy so I do not think he'll agree.

GX650B (consecutive text messages separated by periods).

Gershman's argument that "[t]he facts do not support an obstruction of justice enhancement" is based on a cherry-picked set of facts. For example, Gershman notes that "Mrs. Fuxman [i.e., Gershman's sister] asked Dulevskiy to tell Mr. Gershman's lawyer that his intercepted conversations with Lenny were merely 'friends kind of talk.' Tr. 597." Def. Obj. at 5. But Gershman neglects to mention that (1) Gershman punched Dulevskiy in the face the very first time they met; (2) immediately after punching Dulevskiy, Gershman demanded that Dulevskiy pay him approximately \$20,000, which comprised mostly "juice"—that is, usurious interest; (3) this "friends kind of talk" included Gershman (i) calling Dulevskiy a "fucking idiot," (ii) demanding that Dulevskiy, "get my fucking money ready," (iii) telling Dulevskiy "if you bullshitted me, I'll break your fucking mouth," (iv) and threatening to make Dulevskiy "feel worse than [his] mother," who was hospitalized at the time, see GX62T and 63T; and (4) the meeting between Dulevskiy and Gershman's sister was arranged by Pocinoc—the professional wrestler with a handgun and thief symbol tattooed on his hand—who had previously collected

money from Dulevskiy for Gershman,<sup>17</sup> and whom Gershman described to Dulevskiy as a “boxer with broken ears,” GX67T at 2.

To diminish Dulevskiy’s fear, Gershman characterizes the meeting between Dulevskiy, Anyeta Fuxman and Arkady Fuxman as involving “a middle-aged mother of two asking a potential witness to speak to a defense attorney.” Def. Obj. at 5. In reality, Gershman’s sister was a full-fledged coconspirator in his illegal loansharking operation—a “middle-aged mother” who just happened to store \$100,000 cash in her bedroom.

Gershman acknowledges that Dulevskiy changed his phone number after this meeting, but suggests that he did so merely to avoid the inconvenience of being contacted by Gershman’s sister in the future. But as Dulevskiy’s trial testimony (and demeanor) made clear, he changed his number because he was afraid: “I don’t want to get involved with anything. . . .” Tr. 597:15-19.

Gershman also argues that the obstruction enhancement should not apply because “[o]n cross-examination, Mr. Dulevskiy reluctantly acknowledged that he had been ‘friendly’ with Gershman. Tr. 612.” Def. Obj. at 5. That is an incomplete characterization of the testimony. Gershman introduced a video of Dulevskiy smoking marijuana at Gershman’s house and attempted to use that video to show that Dulevskiy and Gershman were “friends,” or, in defense counsel’s words, to show that Dulevskiy “has, at least, exaggerated the extent that he was afraid of Lenny.” Tr. 604:6-8.

On cross-examination, defense counsel asked Dulevskiy, “Denis, the truth is that you became friends with Gershman, isn’t it?” Tr. 611:18-19. Dulevskiy responded, “I wouldn’t

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<sup>17</sup> In his cell phone, Pocinoc saved Denis Dulevskiy’s number under the name “Dennis denigi.” “Denigi” is the Russian word for money.

call it friendship . . . it was just for me to make money.” Tr. 611:20-22. A minute later, counsel asked a similar question, and, after Dulevskiy began his answer in the affirmative, counsel abruptly cut him off when he tried to elaborate to explain the nature of this “friendship”:

Question: You had friendly conversations about your personal lives?

Dulevskiy: We did. I –

Question: That’s enough.

Tr. 612: 8-10.

In any event, the fact that Dulevskiy had “friendly conversations” with Gershman on this occasion,<sup>18</sup> does not mean he was friends with Gershman, as defense counsel suggests. Nor does it change the fact that Gershman had previously assaulted, threatened and extorted Dulevskiy—and then asked Dulevskiy (through associates) to lie about it.

Gershman claims that it would be “impossible” to conclude without additional evidence that the letter Gershman sought from Dulevskiy in September 2017 (via Arnal and Pocinoc) would have contained false information. Def. Obj. at 5. But logic and the trial record make it unreasonable to conclude otherwise. Gershman wanted Dulevskiy to make the same false statement in September 2017 that he wanted Dulevskiy to make months earlier—i.e., that the threats on the recordings were just “friends talk.”

Notably, unlike defense counsel, Pocinoc had no trouble understanding exactly what Gershman wanted Dulevskiy to write in that letter. Indeed, Gershman’s purpose was so obvious that Pocinoc agreed to try to obtain it without asking Arnal what the letter should

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<sup>18</sup> These conversations occurred during a meeting in which Gershman “want[ed] to discuss if [Dulevskiy] could get some phone to sell over the sea [i.e., overseas], if I could get deals on iPhones, sell over the sea.” Tr. 609:5-8. Because Gershman was trying to join a business venture with Dulevskiy, it makes sense that he used a less violent approach.

contain. Gershman is also wrong that this effort did not constitute a “substantial step” toward the goal. Def. Obj. at 5 (citing United States v. Shoulberg, 895 F.2d 882, 885 (2d Cir. 1990)). As a result of Gershman’s incarceration, he could not have taken a more substantial step toward procuring this letter than asking his associates on the outside to obtain it for him. A wrestler with “broken ears” and menacing tattoos—who was still at liberty—was the perfect choice to intimidate Dulevskiy.

Gershman’s conduct easily qualifies as obstruction under the Guidelines. See U.S.S.G. § 3C1.1 cmt. n.4 (A) (providing as an example of conduct, “threatening, intimidating, or otherwise unlawfully influencing a . . . witness . . . directly or indirectly, or attempting to do so); United States v. Larson, 978 F.2d 1021, 1025 (8th Cir. 1992) (affirming application of the enhancement where defendant wrote a letter to a friend, so that the friend could contact a potential witness to provide favorable testimony; dismissing argument that this was just an attempt to contact a potential defense witness); id. at 1026 (observing that solicitation of false testimony is sufficient, even if there is no threat to a witness).

ii. The Obstruction Enhancement Applies to the Racketeering Conviction

In his sentencing submission, Gershman devises a different way to neutralize the obstruction enhancement. Def. Ltr. at 10-11. If it applies only to the Dulevskiy-specific counts of conviction, he reasons, then his Guidelines range would be entirely unaffected by the obstruction through the application of the grouping rules. But even if the Guidelines allowed such a narrow application of the enhancement, the nature of Gershman’s obstruction makes it improper in this case. The enhancement must be applied against Gershman’s racketeering conviction, which in practical terms means the enhancement must be applied to all of his convictions, as all the racketeering acts are grouped with their substantive counterparts.

To understand the absurdity of Gershman's proposition, the timeline is important. When Gershman was arrested in November 2016, the government filed a memorandum seeking a permanent order of detention based, in part, on threats he made to Dulevskiy on the wiretap. See ECF No. 42, at 4-5 (identifying Dulevskiy as "Victim 2"). At that time, Gershman had not been specifically charged with extorting Dulevskiy. And he was not publicly charged with extorting Dulevskiy until the Second Superseding Indictment (the "S2 Indictment") was unsealed on September 6, 2017. See ECF No. 180. Thus, Gershman's efforts to tamper with Dulevskiy began *before* he was specifically charged with extorting Dulevskiy and were likely driven by the belief that a perjurious "this-is-just-friends-talk" affidavit from Dulevskiy would impair the government's case as a whole.

As noted above, after Gershman's first attempt to tamper with Dulevskiy (through this sister) failed, Gershman directed his girlfriend to ask Pociroc (his "boxer") to contact Dulevskiy directly. But this second attempt failed as well because Pociroc was arrested two days after Gershman's girlfriend sought his help. In fact, Pociroc was arrested on September 5, 2017—one day before the Dulevskiy-specific extortion charges were unsealed for the first time in the S2 Indictment. See ECF No. 168 (filing of S-2 Indictment), 180 (presentment of Pociroc, and unsealing of S-2 Indictment).

Under Gershman's view, he could not have been subjected to the obstruction enhancement for tampering with Dulevskiy unless and until he was charged with Dulevskiy-specific crimes. According to this logic, if Gershman had succeeded in his scheme—that is, if he managed to procure from Dulevskiy a false affidavit that prevented the government from charging Dulevskiy-specific crimes, or resulted in the dismissal of other extortion-related charges, or forced the government into offering a favorable plea agreement (to illegal gambling

only, for example)—Gershman would not have been subject to the obstruction enhancement.

“Nonsense” is Gershman’s ironic dismissal of the Probation Department’s disagreement with his preposterous position, which would serve to incentivize witness tampering in many cases. Def. Ltr. at 10.

The objective of Gershman efforts to procure a false statement from Dulevskiy was not simply to secure an acquittal on the Dulevskiy-specific charges—which, as noted, had not even been unsealed at the time the obstruction occurred. Gershman’s objective was to impede the government’s investigation and prosecution of him—that is, to increase his chances of obtaining a more favorable outcome by eliminating or tarnishing a witness who could testify about a range of Gershman’s crimes, including racketeering, extortion, illegal gambling and marijuana distribution.

Indeed, by focusing his argument exclusively on Gershman’s extortion of Dulevskiy, Gershman’s counsel ignores that Dulevskiy had firsthand knowledge of Gershman’s other racketeering offenses, including illegal gambling, loansharking and marijuana distribution. For example, on cross-examination, Dulevskiy testified that he consumed marijuana at Gershman’s apartment, and that Gershman asked Dulevskiy, “You want to try one of my products?” Tr. 609:10-13 (emphasis added).<sup>19</sup>

5. Gershman’s Additional Objections to the PSR

Gershman raises other objections to the PSR that do not impact the Guidelines calculations. Those objections are addressed below.

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<sup>19</sup> It is irrelevant that the government did not elicit testimony from Dulevskiy about Gershman’s marijuana business on direct-examination. The government had abundant evidence to support this charge, which was basically conceded by Gershman in his opening. The point is that neutralizing Dulevskiy as a potential government witness did more than help him with the yet-to-be-charged counts.

A. Paragraph 55

Gershman objects to Probation's inclusion of codefendant Yusif Pardilov in the Syndicate. Def. Obj. at 1. He argues that Pardilov "was not a member of the enterprise; he was the competition . . . [because] Pardilov's poker games – particularly those at 2220 Voorhies Avenue before May 2016 – drew players and profits away from the [Coney Island] poker spot." Def. Obj. at 1. In other words, Gershman claims that he and Pardilov could not have been members of the same enterprise because they also competed with one another. This argument fails for multiple reasons.

First, internal rivalries among members of racketeering enterprises—especially organized criminal groups—are common. As the Second Circuit stated in United States v. Orena, for example, "violent infights, internal disputes, and membership changes d[o] not negate [the] ongoing existence of [a] RICO enterprise." 32 F.3d 704, (2d Cir. 1994) (citing United States v. Coonan, 938 F.2d 1553, 1560-61 (2d Cir. 1991)). Second, as described below, the trial evidence established that Pardilov associated with Gershman and other Syndicate members through a pattern of racketeering activity—namely illegal gambling and extortion—both before and after the arson of the Voorhies Poker Spot.

Pardilov first became acquainted with Syndicate members in approximately 2013 when he began playing in their illegal poker games. Tr. 1345:14-1346:17. Pardilov began hosting illegal poker games of his own around the same time. Tr. 1349:2-23. In 2015, Pardilov began paying Tsvetkov for the right to host weekly poker games at the McDonald Poker Spot—a venue Tsvetkov controlled. Tr. 156:14-18. Pardilov hosted games at the McDonald Poker Spot on Saturday nights, while Gershman, Tsvetkov and Yusufov held their weekly game on Sunday

nights. Tsvetkov rented the McDonald Poker Spot to others as well, including Arthur Shaposhnikov (also known as “Bubba”) on Thursday nights. Tr.156:14-18.

As Yusufov testified, this arrangement worked because “everybody stayed in, in their lane [and] . . . respected one another.” Tr. 180:6-9. In other words, the arrangement worked because Pardilov, Tsvetkov, Gershman, Yusufov and Shaposhnikov colluded with one another to limit competition and share the supply of regular poker players. According to Yusufov, everyone got “along great” at McDonald Avenue; “everything just worked smoothly.” Tr. 186:14-18. Tsvetkov, Gershman and Yusufov benefited from Pardilov’s game directly (through the rent payments Pardilov made) and indirectly (by artificially limiting competition and making the McDonald Poker Spot a more popular gambling venue).

This arrangement fell apart in early 2016 when police raided the McDonald Poker Spot and Syndicate members were no longer able to host games there. In March 2016, Tsvetkov, Gershman, Yusufov—now joined by Zelinger, Krugly and Malkeyev—opened the Coney Island Poker Spot. But Pardilov did not join them there. Instead, he found a new spot for his Saturday night games—the Voorhies Poker Spot. Tr. 158:2-8.

While Pardilov’s involvement in illegal gambling at the McDonald Poker Spot benefited fellow Syndicate members, his games at the Voorhies Poker Spot had the opposite effect. See Tr. 187:16-189:4. As Yusufov explained at trial, after leaving the McDonald Poker Spot, Pardilov began extending large amounts of credit to the regular poker players, increasing their indebtedness and reducing their ability (or willingness) to play elsewhere. Tr. 188:23-189:4. In addition, Pardilov’s Saturday night games sometimes ran late, which interfered with the start of the Sunday night games at the Coney Island Poker Spot. Tr. 187:20-24. Finally, Pardilov began bankrolling a second weekly game—on Wednesday nights at the Voorhies Poker

Spot, Tr. 189:5-9—and the Coney Island Poker Spot partners bristled at this unauthorized expansion: “We were pissed . . . because there’s six of us, you know, we got to share. He was by himself.” Tr. 189:10-16.

So the Coney Island Partners met to discuss how to deal with Pardilov. Tsvetkov proposed reprising the old McDonald Avenue arrangement—that is, convincing Pardilov to rent Saturday night poker space at Coney Island Poker Spot. But the Coney Island Partners believed it unlikely that Pardilov would walk away from his arrangement at the Voorhies Poker Spot. To force this move, the Partners decided to eliminate the alternate venue, by setting the Voorhies Poker Spot on fire. Tr. 190:17-196:11.

This plan failed. Pardilov did not bring his Saturday game to the Coney Island Poker Spot after the Voorhies Poker Spot was destroyed. But because the Coney Island Partners were careful not to reveal their involvement in the fire, Pardilov’s criminal association with Syndicate members continued uninterrupted. Indeed, within weeks of the arson, Pardilov, Gershman, Tsvetkov, Zelinger and Yusufov began conspiring to collect nearly \$200,000 of debt from Shlomi.

On June 24, 2016, for example—less than two months after Zelinger directed Yusufov and Malkeyev to burn the Voorhies Poker Spot—Zelinger called Pardilov for a favor: “can you find me that Isaak [Shlomi]’s father’s phone number, Yosik. . . . Find it for me, please. I will send it to guys in Moscow, so they could meet and talk.” GX3T at 2:30-37. Zelinger continued:

[Shlomi] doesn’t pick up anyone’s calls. He is in Israel. . . . He owes me money also. And Bubba asked me, and one more person, you know, I wanted too—there is a guy who will come over to the father. He is the same age as the father and he is also Georgian. He is telling me just to give him the phone number, he will come

and talk to him. He owes you as well, right? . . . Well, he would talk for everyone and that's it.

GX 3T at 3:1-31. Later in the call, Zelinger stated that he would work to recover Shlomi's \$50,000 debt to Pardilov.

Gershman and Pardilov spoke frequently regarding Shlomi's debt. On August 13, 2014, for example, Gershman told Pardilov, "The Thieves are asking if you told [Shlomi's father] the whole rundown about us and Bubba and how much he owes everyone?" GX13T at 2:19-21. On August 14, 2016—the day Shlomi was located in Israel—Gershman called Pardilov to confirm that Pardilov wanted Gershman to recover his debt. After Gershman told Pardilov that Thief Zviad was involved in the collection effort, Pardilov stated, "Okay, let them speak [for me] . . . . Just tell them he owes to me, he owes to Yusif [Pardilov]." GX16T at 2:6-41. Soon after, Gershman called Pardilov to assure him that, "it will all get paid before October" and that both of their debts would be recovered: "Thief goes like, he is telling me that he will give it to you before October. I was like, what do you mean to me? We got older brother, Yosik [Pardilov], uncle Yosik, he knows about him." GX19T at 2:7-12; see also GX21T (Pardilov telling Gershman that Shlomi owes him \$45,400).

Tellingly, Gershman cites no testimony from Pardilov—whom Gershman called as a defense witness at trial—to support his claim that Pardilov and Gershman were not members of the same criminal enterprise. It is telling because part of the narrative advanced by Gershman during the trial was that the Syndicate was a figment of the government's imagination, see, e.g., Tr. 1492:24 (counsel arguing in summation, "The Syndicate[?] [P]lease."), yet not even Gershman's own witness supported this contention.

B. Paragraph 63

Gershman objects to the fact that he and other defendants extortionately collected or attempted to collect debt “worth millions of dollars.” Def. Obj. at 1-2 (claiming that “the top three enterprise debtors – John Doe #1, John Doe #8 and John Doe #10 – owed \$60,000, \$40,000 and \$120,000, respectively”).<sup>20</sup> This objection is meritless for several reasons.

First, Gershman miscounts the debt owed by John Doe 1 (i.e., Shlomi). Shlomi owed \$51,000 to the Partners at the Coney Island Poker Spot, \$21,000 to Krugly individually, approximately \$45,000 to Pardilov (which Gershman agreed to collect), and approximately \$80,000 to Shaposhnikov (which Gershman agreed to collect). Thus, Shlomi owed a total of approximately \$200,000—more than three times the \$60,000 figure Gershman cites.

Second, Gershman simply ignores collections from others, including named victims. For example, Gershman extortionately collected (or attempted to collect) more than \$20,000 from Dulevskiy (John Doe 2), \$12,500 from Kotovnikov (John Doe 7) and \$15,000 from Zarbailov (John Doe 9). Meanwhile, the gambling ledgers from the Coney Island Poker Spot recorded the following debts, among many others: \$43,250 owed by “Borya” (GX600 at 251); \$38,650 owed by “Gena” (GX600 at 241); \$28,700 owed by “Albert” (GX600 at 251); \$23,800 owed by “Sergey” (GX600 at 235); \$22,275 owed by “Zura” (GX600 at 235); and \$11,100 owed by “Slava” (GX600 at 241). The gambling ledgers from the McDonald Poker Spot recorded tens of thousands of dollars of additional debt.

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<sup>20</sup> It is unclear who Gershman believes John Doe 8 and John Doe 10 are. John Doe 8 is “JR,” from whom Gershman attempted to extort \$120,000, John Doe 9 is “Zarbailov,” from whom Gershman attempted to extort \$15,000, and John Doe 10 is Vadim Abramov, from whom Tsvetkov attempted to extort approximately \$40,000.

Third, Gershman ignores the hundreds of thousands of dollars in loanshark debts—both principal and interest—that he and other defendants collected in the years before his arrest. As noted above, Gershman regularly made large, short term loans—as high as \$100,000—at annual interest rates exceeding 100%. Yusufov, for example, estimated that he borrowed between \$40,000 and \$60,000 from Gershman, usually four times a year, at monthly interest rates of 10% to 12%. Thus, Gershman collected approximately \$200,000 to \$300,000 in principal and interest just from Yusufov every year, and Yusufov was far from Gershman’s only borrower.

C. Paragraphs 64

Gershman objects to the statement that Shlomi owed approximately \$200,000 to the enterprise and those associated with it. This objection fails for the reasons set forth in Section II.2.A, above. Specifically, Shlomi owed \$51,000 to the Coney Island Poker Spot, \$21,000 to Krugly individually, approximately \$45,000 to Pardilov and approximately \$80,000 to Shaposhinkov—all of which Gershman attempted to collect. Gershman also asks Probation to add that Shlomi owed gambling debts to Razhden Shulaya. Gershman cites no evidence supporting this claim, and the government objects to its inclusion.

D. Paragraph 65

Gershman proposes several modifications to Paragraph 65. First, he claims that he, Zelinger and Pardilov merely “negotiated” with Shlomi’s father concerning repayment of his gambling debt. But as the trial evidence demonstrated, what Gershman calls a “negotiat[ion]” was actually an extortion involving Thieves. See, e.g., GX40T at 2:7-20 (wiretap recording of Gershman telling Tsvetkov that he “was on the line with the Thieves . . . . They’re holding

[Shlomi] in their hands.”); see also GX22T at 2:27-35 (wiretap recording of Gershman stating that “Thieves have found [Shlomi] . . . In Israel.”)

Relatedly, Gershman seeks the addition of language suggesting that “Izya” was an associate of Shlomi’s father who “intervened in the debt collection effort on John Doe 1’s behalf.” Def. Obj. at 2. But the wiretap recordings and witness testimony belie the notion that Izya was a friendly figure who intervened to help Shlomi. Notably, instead of relying on evidence to support this claim, Gershman cites a post-indictment conversation between Shlomi and Pocinoc’s lawyer, Walter Mack—and then provides Mr. Mack’s number (presumably to facilitate a telephone call from the Court to Mr. Mack). Def. Obj. at 2 n.2.

E. Paragraph 69

Gershman also proposes several changes to this paragraph. First, Gershman seeks to replace the phrase “came to believe” with the verb “ascertained,” presumably to support his claim that cheating occurred at the Coney Island Poker Spot. But while trial evidence established that Gershman “came to believe” such cheating occurred, there is no evidence definitively establishing its occurrence. Indeed, defense counsel was unable to establish this fact during his cross-examination of Albert Normatov. See, e.g., Tr. 1090:1-7.

Gershman prefers the neutral phrase “arranged to meet John Doe 3” instead of “tracked down John Doe 3.” The latter is more accurate. Shortly before he assaulted Normatov, Gershman tried calling him to arrange a meeting. Tr. 1068:19-1069:12. When Normatov failed to answer his phone, Gershman tried to track down Normatov at the restaurant Normatov co-owned. Tr. 1069:4-6. But Normatov was not there, so Gershman used a ruse—he went behind the counter and used the restaurant’s phone to call Normatov. Tr. 1068:22-24. Normatov picked

up the phone, but instead of an employee on the other end, Gershman was there, angrily demanding to meet Normatov.

Gershman also seeks to add the word “frustrated,” before the sentence, “Gershman slapped John Doe 3 in the face.” This modification is unwarranted because it implies that the assault resulted from a momentary lack of composure caused by events beyond Gershman’s control.

The government does not object to the following modifications: replacing the word “hit” with “slapped”; replacing “John Doe 3” with “an individual who had accompanied John Doe 3”; and adding, “Eventually, Gershman came to believe that a mutual acquaintance, Zura Dzhnanashvili, had instructed John Doe 3 to introduce the [suspected] cheater into the spot” (provided that the bracketed word “suspected” is included).

F. Paragraph 72

While Gershman is correct that Bobritsky identified himself as one of Gershman’s “partners” in the marijuana business, as discussed above, Bobritsky was subordinate to Gershman in the business. Tr. 932:3-4, 685:21-686:4. When asked about the partners’ roles, Bobritsky explained that “Lenny [Gershman] and Bart [Malkeyev] picked up the marijuana. I believe at first Lenny supplied the money and then they split it between each other, and Bart bagged out the marijuana. . . . [My role was] delivering it.” Tr. 934:11-15. Malkeyev generally confirmed this division of labor. Tr. 681:1-23. Bobritsky also testified that he performed menial tasks at Gershman’s request, including “[g]iv[ing] him [i.e., Gershman] rides. Pick[ing] up money for him. Pick[ing] up breakfast for him.” Tr. 947:19-21; see also id. at 947:22-23 (Bobritsky testifying that Gershman never ran these sort of errands for him).

To support his position that Bobritsky was a co-equal partner in the marijuana distribution business, Gershman cites Bobritsky's testimony that they shared equally in the proceeds. Def. Obj. at 3. Gershman also claims that "Malkeyev confirm[ed] the three-way split." Def. Obj. at 3 (citing Tr. 685). This is wrong. Malkeyev testified that he and Gershman *told* Bobritsky that the profits were evenly divided, while cheating him out of his fair share. Tr. 685:25-686:4 (The profit shares "were even, but we were telling Eric [Bobritsky] that the marijuana cost us more than it did, so we could have more profit.").

G. Paragraph 76

Gershman objects to the statement that "Gershman's sister, Anyeta Fuxman, also loaned money to people for Gershman." Def. Obj. 3. He claims that the "trial testimony" established only that "Mrs. Fuxman '[a]t times' supplied Gershman and his partner, Vyacheslav Malkeyev, with 'money' for loans." Def. Obj. 3 (citing Tr. 759).

This is an incomplete summary of the evidence concerning Anyeta Fuxman's role in Gershman's loansharking business. Malkeyev testified that he picked up loansharking money from Fuxman, at Gershman's direction "more than five" times, and that on one of these occasions, she gave him \$100,000 in cash from her bedroom. In addition, wiretap recordings—including between Gershman and Anyeta Fuxman—confirmed that she was involved in the loansharking operation, and that she profited from it. See, e.g., GX186 at 3:4-6 (Gershman stating that Anyeta would make \$3,400 on an \$80,000 loan).

Gershman is correct there is no evidence that Anyeta Fuxman physically handed loans to borrowers on Gershman's behalf. Accordingly, the government does not object to removing the phrase "Gershman's sister, Anyeta Fuxman, also loaned money to people for

Gershman,” and replacing it with, “Gershman’s sister, Anyeta Fuxman, assisted in Gershman’s loansharking operation.”

H. Remaining Objections

- **Paragraph 90.** Gershman again objects to the amount of Shlomi’s debt. As explained in Section II.A.2 above, Shlomi owed the Syndicate and those associated with it approximately \$200,000, which is the amount Gershman sought to collect from him.
- **Paragraph 92.** The government does not object to changing “punched” to “slapped.”
- **Paragraph 116.** The objection is addressed in Section II.A.2 above.
- **Paragraph 120.** Gershman again objects to the amount of Shlomi’s debt. As explained in Section II.A.2 above, Shlomi owed the Syndicate and those associated with it approximately \$200,000, which is the amount Gershman sought to collect from him.
- **Paragraphs 136-138.** This objection is addressed in Section IV.4.B above.
- **Paragraph 235.** The government does not object to the inclusion of this information.
- **Paragraph 248 (referred to as Paragraph 258 in Gershman’s letter).** According to the PSR, Gershman told Probation that, “at the peak of the marijuana distribution scheme, he earned approximately \$8,000 weekly”—which would equate to an annual (tax-free) salary of more than \$400,000. Gershman also told Yusufov that the business brought in as much as \$2,000 per day. Tr. 104:21-24. While Bobritsky testified that he, Gershman and Malkeyev each earned about \$5,000 per month, Tr. 938:16, Gershman and Malkeyev lied to Bobritsky about the operation’s profitability and cheated him out of his fair share of the profits. Tr. 685:21-686:4. Thus, Gershman and Malkeyev made more than the \$5,000 monthly profit Bobritsky believed they made.
- **Paragraph 250.** Gershman also contends that he made up to \$5,000 per week from illegal gambling as a player in 2014-2015—not as an operator. While the government does not object to this modification, it objects to Gershman’s unverified claim that he worked as a flower delivery man during this period—especially given that he was earning up to \$13,000 per week from illegal gambling and marijuana distribution at this time.
- **Paragraphs 252-53.** The government does not object to removing the assertion that Gershman worked as an “unlicensed optician.”
- **Paragraph 256.** The trial evidence established that he leased a 2015 BMW M5 for around \$1,100 or \$1,200 per month, Tr. 686:13-21. Thus, Gershman’s annual lease payment on that vehicle alone was more than double the amount of income Gershman reported on his tax returns in 2014, 2015 and 2016. PSR ¶ 235. Thus, the government does not object to replacing the word “owned” with “leased,” so long as the information about the lease payments is also included.

V. ARGUMENT

The Court must sentence Gershman to at least 14 years' imprisonment because of his convictions on Count 17 (arson resulting in injuries) and Count 21 (brandishing a firearm). The seven-year term required by the conviction on Count 21 must be imposed consecutively to any other punishment. For the reasons set forth below, the government respectfully submits that a total sentence between 346 to 411 months' imprisonment, which represents the Guidelines range, is necessary to protect the public, deter Gershman, promote respect for the law, provide appropriate punishment, and discourage others from committing similar crimes.

1. Nature and Circumstances of the Offenses

A Guidelines sentence appropriately reflects Gershman's role in the widespread criminal activity he and his associates in the Syndicate carried out for years. See 18 U.S.C. §§ 3553(a)(1).

Gershman is a professional criminal with a well-earned reputation for violence, which allowed him make substantial sums of money from drug-trafficking, illegal gambling, extortion and other criminal ventures. The trial showcased many of the acts of violence Gershman committed. Among other things, Gershman:

- lured Misha Azaryev to a meeting and beat him viciously before Tsvetkov knocked Azaryev's teeth out with the butt of Gershman's pistol;
- held a box cutter to Rufat Zarbailov's face and threatened to "ace" or "150" him—that is, filet Zarbailov's checks from ear-to-ear in a manner that would require 150 stitches to suture;
- agreed to burn down a rival poker house that was hurting business at the Coney Island Poker Spot;
- sent Thieves to track down the family of a debtor;
- fired a gun in broad daylight on the sidewalk of Ocean Parkway—one of Brooklyn's busiest avenues—during a confrontation with an adversary;

- punched Dulevskiy in the face moments after meeting him and moments before demanding payment of \$20,000;
- threatened Kotovnikov (implying that his wife was also in danger) on two separate occasions;
- hit Normatov, chased him across traffic on Coney Island Avenue and “drop kicked” him in the middle of the street;
- tried to get an illegal firearm to threaten or harm a dealer he suspected of cheating;
- chased a rival marijuana dealer into hiding in the bathroom of a barbershop; and
- started a dangerous high-speed car chase with a marijuana wholesaler, broke into his apartment and vandalized it with a baton.

These acts of intimidation and violence reveal several important things about Gershman. They show, for example, that Gershman used violence as a tool to achieve his goals, that this tool worked, and that Gershman’s victims feared him. They also demonstrate Gershman’s callous disregard for the consequences of violence on the community. While Gershman committed many acts of violence outside the public’s view—for example, the box-cutter assault of Zarbailov in his underground parking garage—he did so not out of concern for the public, but to avoid detection by law enforcement. And on many occasions, Gershman’s violence spilled into public view.

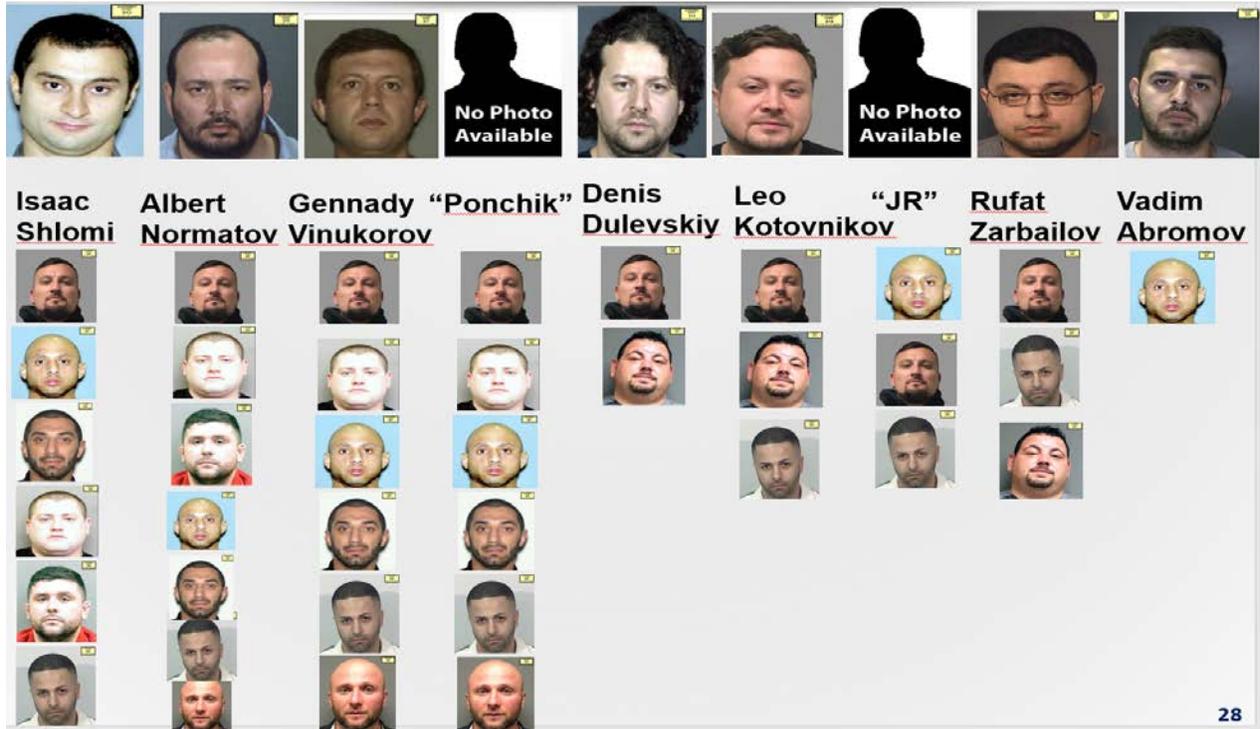
While the repeated assaults committed by Gershman are reprehensible, his central role in the Syndicate’s illegal gambling, debt collection and loansharking operations is just as significant. As explained above, on at least one occasion, total wagers at the Coney Island Poker Spot exceeded \$800,000 in a single session, with Gershman and his partners collecting 10% as profit. The tax-free profits flowed into the partners’ pockets, so long as the players kept returning and paying. Running this underground poker operation, fueled by cash and threats of violence to generate and collect debt, by itself warrants significant punishment.

In a parallel racketeering case, United States v. Giallanzo et al., 17-CR-155 (DLI), Chief Judge Irizarry imposed a sentence of 144 months (greater than the 97 months sought by the government, and consecutive to a two-year term for violating supervised release), on a member of the Bonanno crime family, for his role in illegal gambling, and his related efforts to extend and collect credit as part of the racketeering conspiracy. The harm, Judge Irizarry explained in sentencing that defendant and others, is not in the poker game itself, but in the creation of customers who were forced to pay off thousands of dollars in debt or face violence or threats of violence.

Another remarkable feature of Gershman's conduct was the central role he played in virtually every crime carried out by the Syndicate. The following graphic illustrates Gershman's omnipresence for extortions alone—which excludes, among other crimes, Gershman's involvement in the arson, loansharking and firearm dealing:<sup>21</sup>

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<sup>21</sup> The graphic shows most, but not all, of the Syndicate members and associates who were involved in each of the extortions, profited from them, or both.



The Syndicate may not have had formal titles, but there was no mistake of who was its most central figure: Gershman.

Although Gershman was not present for Tsvetkov’s extortion and assault of Vadim Abramov—which took place right outside Tsvetkov’s autobody shop—Tsvetkov called Gershman 40 minutes after the beating and bragged about it, to Gershman’s obvious delight. See GX163T. The substance of that wiretapped call, excerpted below, makes clear that Gershman understood exactly why Tsvetkov beat Abramov.

Tsvetkov: Just put this idiot Vadim [Abramov] to sleep here, fuck.

Gershman: That’s the right thing.

Tsvetkov: He called the cops, fucker, shit.

Gershman: Well, we didn’t doubt it.

...

Gershman: Well, did you fuck him up good?

Tsvetkov: Yes, fucking gave him a few punches, didn't want to punch the face, because I knew what that can lead to, fuck?

Gershman: You put him to [U/I]?

Tsvetkov: Yes. [U/I]

Gershman. You chained the ni\*\*a?

Tsvetkov: Yes. [Laughing]

Gershman: [Laughing] [U/I], I love you. [Laughing] Oh, what a pretty boy you are.

GX163T at 2:7-3:46

Finally, unlike in traditional organized crime cases, Gershman's hands-on involvement in extortions and debt collection by no means indicates a low rank in the enterprise. See generally Tr. 647:2-9 (expert testimony regarding the difference between the structure of traditional and nontraditional organized crime groups). He was both the muscle and a leader. It was precisely Gershman's bravado, recklessness and utter disregard for the law—and not any formal title in the organization—that earned him the well-deserved reputation in the community as a “gangster,” and a “serious guy,” who was not to be “cross[ed].” Tr. at 515:13; 570:9-10; and 1170:17-1171:3.

## 2. The Need to Protect the Public

The public must be protected from the 35-year old Gershman as he remains in the prime years of his criminal career. Gershman poses a threat to the community with his fists, his knives, his guns, and his contempt for the law. That was demonstrated at trial by: the beating and pistol-whipping of Azaryev, which occurred on a busy avenue around dusk; Gershman's firing of his handgun on the same busy avenue in broad daylight; Gershman's chase of Normatov across Coney Island Avenue in full public view; and his repeated pursuits, including a car chase

with Gurovitz, in which he blew past red lights and weaved through traffic on the Belt Parkway. Although not introduced at trial, Gershman even admitted on a telephone call that he has stabbed a person. See ECF No. 248, at 21 (quoting Gershman stating, “I stabbed that guy twice you idiot, why do you open your mouth?”). That statement was hardly surprising—the Court already learned during trial that Gershman was not shy about using a box cutter, and that he was ready to permanently disfigure Zarbailov in his garage.

Of course the biggest danger Gershman poses to the community is in his ability (along with Zelinger and Tsvetkov) to command other criminals. The result of that power was introduced at trial as GX541—the complete destruction of a building by the Syndicate, almost killing a 12-year-old boy and his 19-year-old brother, permanently injuring an FDNY firefighter, and destroying the homes and possessions of four families.



If the Court imposes sentence at the low end of the Guidelines, assuming the accumulation of good-time credit, Gershman would be released from prison around age 57. He will still be a danger to the community, but his power to hurt people—be it on the streets of Brooklyn, in public view, or down in his garage—will be diminished.

Unfortunately, as Tsvetkov's prior incarceration for racketeering demonstrates, federal prison will likely enhance Gershman's reputation among criminals. See also Tr. 667:10-15 (expert in Russian organized crime explaining on cross-examination that, traditionally, convictions and incarceration have been linked to enhanced status in criminal underworld). There will likely be no shortage of organized criminals recruiting Gershman to join their ranks when his incarceration ends, in the same way that Tsvetkov was recruited after he left prison. The fact that Gershman was a member of the Latin Kings in his youth, Tr. 483:1-9—no small feat given his Eastern European descent—demonstrates his lifelong affinity for violent crime and further suggests that he will return to a life of crime upon his release from prison. Tr. 483:6-9; see also Sent. Ex. E (containing shirtless photographs of Gershman on which Latin King crowns are visible.) A Guidelines sentence will at least protect the public from Gershman's violence during what would have been prime decades in his criminal career. See 18 U.S.C. § 3553(a)(2)(C).

3. Need to Promote Respect for the Law and Specific Deterrence

Gershman's willingness to commit violent crimes in full public view also underscores his lack of respect for the law and the need to deter him. See 18 U.S.C. § 3553(a)(2)(A), (B). Simply put, for years before his federal arrest in November 2016, Gershman acted as if he was above the law. During this period, he committed crimes on a near

daily basis—including loansharking, drug trafficking, illegal gambling and extortions. He owned several guns, and profited from selling guns to others.

Gershman’s lack of respect for the law is also reflected in his efforts to defraud the government. According to the PSR, Gershman has reported less than \$7,000 per year on his last few tax returns—that is, less than one week’s income from his marijuana business alone. PSR ¶ 255.<sup>22</sup> Gershman has also received free medical insurance through Medicaid his entire adult life, despite the significant profits he made over the years from criminal activities—profits that enabled him to drive luxury vehicles, wear Kanye West “Yeezy” sneakers that cost more than \$1,000, spend \$1,500 on a Hermes belt buckle, and run a virtual street bank out of his sister and father’s homes. See, e.g., Tr. 169:6-25.

Although this has been Gershman’s first period of incarceration, there are indications that incapacitation is the only means of deterring Gershman from committing more crimes. As discussed above, apparently unshaken by his federal arrest for racketeering, he recruited his girlfriend and eventual codefendant Pocinoc to tamper with a government witness. His intercepted conversations during the investigation are also revealing. As noted above, for example, Gershman laughed with Tsvetkov about Tsvetkov’s assault of Vadim Abramov and Tsvetkov’s subsequent lies to the police about that assault. Gershman commended Tsvetkov for “punch[ing][Vadim] correctly” so as not to leave a noticeable marks—Vadim can be seen on video laying on the ground as Tsvetkov continued to kick him—and added that Tsvetkov should tell the police, “He walked into the wall, what you can’t see? Look at him.” GX163T, 4:1-14.

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<sup>22</sup> Because the government is not in possession of these returns, it is unable to determine whether Gershman received a tax refund—from the child tax credit, for example—that was greater than the amount of taxes he owed (if any).

4. Need to Avoid Unwarranted Sentence Disparities

A Guidelines sentence of 364 to 411 months for racketeering, arson, firearm brandishing, extortions, loansharking, firearm dealing, illegal gambling, and large-scale marijuana-trafficking would protect against unwarranted disparities in sentencings. See 18 U.S.C. § 3553(a)(6); United States v. Wills, 476 F.3d 103, 109 (2d Cir. 2007) (“[T]he primary purpose of the provision was to reduce unwarranted sentence disparities nationwide.”).

According to the latest statistics available from the U.S. Sentencing Commission,<sup>23</sup> the average sentence resulting from a conviction in which extortion in the racketeering context is the “primary offense category” is 85 months; the average sentence when arson is the “primary offense category” is 81 months; the average sentence when drug-trafficking is the “primary offense category” is 76 months; and the average sentence when a firearms-related crime is the “primary offense category” is 71 months.

Gershman did not just commit one or two of these crimes. He led members of a racketeering enterprise in the commission of *all* of them—and many others—over an extended period of time. Moreover, the crimes in this case were particularly violent, extensive or otherwise reprehensible: the arson was of a residential building and resulted in injuries and near deaths; the firearm crimes involved a brutal pistol-whipping; the extortion involved the transnational targeting of the victim’s family, which the Guidelines recognizes as particularly abhorrent, see U.S.S.G. § 2B3.2 App. Note 8 (“If the [extortion] offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.”); and the drug-trafficking spanned approximately seven years, involved a huge

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<sup>23</sup> Available at, [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC\\_Quarter\\_Report\\_3rd\\_FY18.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC_Quarter_Report_3rd_FY18.pdf)

quantity of marijuana, and spawned public violence. In light of the number and nature of these offenses, and Gershman's many other crimes—including loansharking, illegal gambling, firearm sales and the public discharge of a firearm—a Guidelines sentence would guard against unwarranted disparities.

For another useful comparison, the Court need look no further than to the case repeatedly cited by Gershman throughout this proceeding, United States v. Shulaya, 17-CR-350 (S.D.N.Y.). Gershman's counterpart in that case, lead defendant Razhden Shulaya, carried the title of Thief but functioned much the same way Gershman had: together with his associates, running a nearby poker spot, collecting unlawful debt, and assaulting (or relying on others to assault) individuals who disrespected him. But unlike Gershman, Shulaya was not convicted of participating in an arson, nor was there evidence that, like Gershman, he shot a handgun. Shulaya faced a Guidelines sentence of life based on the intended loss amount that was driven in large part by his profiting from the sale of untaxed cigarettes. December 19, 2018 Transcript of the Sentencing of Razhden Shulaya ("Shulaya Tr."), at 20:15-21:15 (attached as Sent. Ex. F). The Honorable Loretta A. Preska sentenced Shulaya—who apparently will be deported, Shulaya Tr. 29:5-8—to a total term of 45 years.

There are striking similarities between the defendants and their sentencing arguments. For example, arguing for a sentence of 15 years, Shulaya's counsel asserted that despite "scattered . . . acts of violence," the case was about "contraband, casinos, and cargo . . . . [I]t's not about murders. It's not about kilos of cocaine and drugs and narcotics. It's not about guns." Shulaya Tr. 16:7-14. His second attorney stated that Shulaya was "nobody but a showboat who thought that he may be a mafia boss, but he is nothing to that effect." Shulaya Tr. 30:19-20. Similarly, Gershman claims that, far from being a leader of the Syndicate, he "was

something of an outsider.” Defendant’s Sentencing Memorandum (“Def. Mem.”) at 13. Like Gershman, Shulaya was in Criminal History Category I because he had not been convicted of a crime before. But as with Gershman, Judge Preska noted, “there was no opportunity for crime that Mr. Shulaya did not embrace.” Shulaya Tr. 37:17-18.

And while Shulaya held himself out as a Thief, Gershman was not impressed. He considered Shulaya an “herb” and a “nobody,” even telling codefendant Isok Aronov on a wiretapped call that Shulaya could “go fuck himself:

Aronov: Razhden [Shulaya] came [to the poker game], uh, uh, Yosik was there, Adolf, Zura and Sasha.

...

Gershman: What did Razhden say? Did Razhden say anything?

Aronov: No. I’m just saying he was there.

Gershman: Ah.

Aronov: [U/I] bro, he looks like, ah, I don’t know.

Gershman: Ni\*\*a’s a herb.

Aronov: Oh everybody’s talking about him like he’s a [U/I] and I look at him I’m like [U/I] that guy doesn’t look like--

Gershman: He’s nobody.

Aronov: I don’t know well I know. I don’t know, I don’t know.

Gershman: He’s nobody.

Aronov: I’ve seen, I’ve seen some real serious gangsters where you fucking know, fucking what’s up, this guy looks, like, I don’t know bro.

Gershman: I’m saying you can’t judge book by a cover, but—

Aronov: I can, no, no. I’m not saying anything. What I’m saying is by looks-wise he doesn’t look like that.

Gershman: He’s not.

Aronov: But I don't know, you know, bro, I never even [U/I] I barely even say hello.

Gershman: He can go fuck himself, dude, what do you care, bro?

Aronov: [U/I] I don't give a fuck.

Gershman: That's all.

GX102T at 3:4-4:30.

In short, both a national and local comparison of similar cases shows that a sentence within the Guidelines range in this case is fair for a defendant who was at the top of a violent racketeering enterprise.

5. Need to Deter Future Crimes

In sentencing Gershman (and when it sentences Tsvetkov), the Court has the opportunity to send a powerful message to criminals in the South Brooklyn community where Gershman operated. Many of these people have seen Gershman and his associates flaunting their wealth and power while committing acts of intimidation and violence with apparent impunity. Many believe that this criminal behavior is worth the risk—especially in light of the perception that local arrests rarely lead to convictions (much less significant sentences) and that even federal sentences are tolerable. For example, instead of being deported or destitute after his seven-year racketeering sentence, Tsvetkov emerged from prison as a respected criminal and used that reputation to quickly amass wealth and power. This case has received significant attention in local media—especially in Russian language newspapers and radio after the unsealing of arson charges in 2017—and Gershman's sentence is likely to be reported widely. The Court's sentence should convince those listening that the rewards of crimes like those Gershman committed are not worth the risks.

6. Gershman's Arguments for a Lenient Sentence Are Unpersuasive

The thrust of Gershman's argument is that he was a confused young adult who fell prey to his "co-defendants' criminality" because of his need to belong, his addiction to painkillers, and his gambling debts. Def. Ltr. 2-5. This downturn, according to Gershman, was precipitated by a 2011 motorcycle accident, which conveniently coincides with the beginning of the charged racketeering period. Def. Ltr. 5.

The notion that it was the malleable Gershman who followed his codefendants' criminal ways is refuted by hundreds of intercepted calls and three-weeks of testimony presented to this Court. It was Gershman—more than any other defendant—who was the driving force behind almost every crime in the 26-count indictment. And while the evidence showed that at least as far back as 2012 Gershman was firing a gun outside of his apartment, and participating in the brutal beating of Azaryev, the four- or five-year period of constant criminal activity likely understates Gershman's commitment to a life of crime. As discussed above, a younger Gershman managed to be invited to join the Latin Kings, despite not having Hispanic heritage.

In 2006, as the Court learned during his detention hearing, Gershman was also arrested for pistol-whipping a neighbor. See Transcript of November 22, 2016 Detention Hearing Appealing Judge's Reyes' Decision, at 10:16-11:13 (describing the arrest, unsealed by a state court judge, in which victim had an L-shaped, bleeding knot on his forehead); ECF No. 64, Transcript of Detention Hearing Before Judge Reyes, at 17:1-13 (Judge Reyes observing that a reluctant witness was the potential reason for this case not being prosecuted). Regardless of whether Gershman actually committed this crime, it shows that as early as 2006, he had

interaction with the criminal justice system, and for the ensuing years he brushed it aside as he extorted and assaulted victims and committed other crimes.<sup>24</sup>

Gershman does not compare favorably to Shulaya, either in the violence he has committed (which, unlike Shulaya’s crimes, included firearm discharge and arson) or in the mitigating circumstances (Shulaya, among other things, lost his father to a brutal beating inside his family’s apartment building and is going to be deported, Shulaya Tr. 24:10-24; 29:5-6). Gershman also points to his clean record—just as Shulaya’s counsel did—which is already reflected in the Guidelines by placing Gershman in Criminal History Category I. But like Judge Preska, this Court should weigh this record against the many crimes that Gershman has committed over the years. There was “no opportunity for crime” that Gershman did not “embrace.” Shulaya Tr. 37:17-18. If Gershman had broken the law once or twice, then the argument about aberrant behavior or isolated mistake would hold sway—but not for a racketeer who almost every day, for many years, chose to commit crimes over and over again.<sup>25</sup>

The government is not seeking a 45-year sentence in this case, but Gershman has offered no compelling reason why a downward variance or departure is warranted. A sentence

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<sup>24</sup> The Court may consider the fact that Gershman was arrested in 2006 without necessarily finding whether Gershman committed the conduct for which he was arrested. See, e.g., United States v. Bean, 368 F. App’x 260, 262 (2d Cir. 2010) (rejecting the argument that a district improperly relied on defendant’s arrest records); see also United States v. Harty, 930 F.2d 1257, 1267-68 (7th Cir. 1991) (finding court had latitude to consider “defendant’s entire criminal pattern of behavior” including arrests “when determining the defendant’s character and propensity toward crime” in order to fashion a sentence that protects society).

<sup>25</sup> Shulaya held himself out as a thief (and apparently was a thief), much like Tsvetkov. In fact, in Shulaya’s trial, there was testimony elicited suggesting that Tsvetkov was a thief too. See, e.g. Transcript of Shulaya’s Trial, at 948:24-949:5 (describing Shulaya’s statement that he received a crossbow gift from a thief; other evidence at that trial showed that Tsvetkov gave the crossbow gift to Shulaya). Although this status for Shulaya and Tsvetkov is further proof of a commitment to a life of crime and was used to intimidate victims, the evidence showed that Gershman maintained his reputation (as a “serious” guy and a “gangster” who could not be crossed) without relying on any label or formal status.

within the Guidelines range of 346 to 411 months is sufficient but not greater than necessary to accomplish the objectives of 18 U.S.C. § 3553.

VI. CONCLUSION

For the reasons above, the Court should impose a sentence within the Guidelines range of 346 to 411 months. The Court should also award restitution to the victims of the May 2, 2016 arson to compensate them for the losses they sustained. If the Probation Department receives statements of losses from these victims, the government may seek up to 90 days after sentencing to determine those losses. 18 U.S.C. § 3664(d)(5).

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April 21, 2019

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