

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

ZALMUND ZIRKIND,

Defendant.

Case No. 19-CR-463-5-DLC

**DEFENDANT ZALMUND ZIRKIND'S SENTENCING SUBMISSION**

Neil M. Schuster  
555 N.E. 15th Street, Suite 2C  
Miami, FL 33132  
(305) 416.0324  
Fax: (305) 416.0325

Johanna S. Zapp  
550J Grand St., Suite 5F  
New York, NY 10002  
(917) 742.4953  
Fax: (917) 492.1879

*Attorneys for Defendant Zalmund Zirkind*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

I. PRELIMINARY STATEMENT ..... 1

II. BACKGROUND AND PERSONAL HISTORY ..... 2

III. SECTION 3553 FACTORS SUGGEST A LENIENT SENTENCE..... 5

    A. The Nature and Circumstances of the Defendant’s Offense ..... 5

    B. The Defendant’s History and Characteristics..... 9

    C. The need for the sentence imposed “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” and to afford adequate deterrence § 3553(a)(2)(A)-(C)..... 13

    D. With or without a substantial jail term, Mr. Zirkind has suffered and will continue to suffer punitive and just desserts for his commission of this serious crime. .... 17

    E. Pertinent policy statements favor leniency..... 20

    F. The kinds of sentences available and the sentencing ranges for similar offenses provide an opportunity for leniency and structured punishment, permitting the Defendant to work and help at home..... 21

IV. CONCLUSION ..... 25

**TABLE OF AUTHORITIES**

**SUPREME COURT CASES**

*Gall v. United States*, 552 U.S. 38 (2007) .....20, 21  
*Roberts v. United States*, 445 U.S. 552 (1980)..... 15, 18  
*United States v. Kimbrough*, 552 U.S. 85 (2007) .....21  
*Wisconsin v. Mitchell*, 508 U.S. 476, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) .....7

**CIRCUIT COURT AND DISTRICT COURT CASES**

*United States v. Alba*, 933 F.2d 1117 (2d Cir. 1991).....7  
*United States v. Fernandez*, 443 F.3d 19 (2d Cir. 2006) ..... 11, 12  
*United States v. Johnson*, 964 F.2d 124 (2d Cir. 1992)..... 11  
*United States v. Barner*, 572 F.3d 1239 (11th Cir. 2009)..... 12  
*United States v. Doe*, 398 F.3d 1254 (10th Cir. 2005) ..... 12  
*United States v. Robinson*, 741 F.3d 588 (5th Cir. 2014) ..... 12  
*United States v. Murray*, 2005 WL 1200185 (S.D.N.Y.) ..... 11  
*United States v. Adams*, 16-CR-0301 (WFK), 2017 WL 2615440 (E.D.N.Y. June 16, 2017) .....8  
*United States v. Cannon*, 2009 WL 102532 (N.D. Ind. 2009) ..... 12  
*United States v. Lapp*, 2008 WL 3981988 (E.D. Wis. 2008) ..... 12  
*United States v. Ranum*, 353 F. Supp. 2d 984 (E.D. Wis. 2005) .....7  
*United States v. Roque*, 536 F. Supp. 2d 987 (E.D. Wis. 2008) ..... 12  
*United States v. Vigil*, 476 F. Supp. 2d 1231 (D.N.M. 2007) ..... 16

**STATUTES AND GUIDELINES**

18 U.S.C. § 3553.....passim

28 U.S.C. § 994.....20

U.S.S.G. § 3E1.1.....19

U.S.S.G. § 5C1.2 .....19

U.S.S.G. § 5H1.6 .....8, 20

U.S.S.G. § 5K1.1 ..... 11, 12, 20

U.S.S.G. § 5K2.16 ..... 19

U.S.S.G. § app. C.133.....20

**OTHER AUTHORITIES**

*2019 USSC Annual Report and Sourcebook of Federal Sentencing Statistics*.....21

83 FR 30477 .....8

Daniel S. Nagin & Greg Pogarsky, *An Experimental Investigation of Deterrence: Cheating, Self-Serving Bias, and Impulsivity*, 41 *Criminology* 167 (2003) ..... 16

Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 *Crime & Just.* 1 (1998)..... 16

Harold G. Grasmick, George J. Bryjak, & Jeffrey Grogger, *Certainty v. Severity of Punishment*, 29 *Econ. Inquiry* 297 (1991)..... 15

Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 *J. Pol. Econ.* 521 (1973) ..... 15

Jack B. Weinstein, *The Effect of Sentencing on Women, Men, the Family, and the Community*, 5 *Colum. J. Gender & L.* 169 (1996)..... 8, 20

Letter from Michael Caruso, Chair, Fed. Def. Sentencing Guidelines Comm., to Hon. William H. Pryor, Jr., Acting Chair, U.S. Sentencing Comm’n (Aug. 10, 2018), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/FPD.pdf>.....20

Letter from New York Initiative for Children of Incarcerated Parents to Hon. William H. Pryor, Acting Chair, U.S. Sentencing Comm’n (Aug. 9, 2018), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/NYCIP.pdf>.....20

U.S. Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (Nov. 2004), at 56, [https://www.ussc.gov/Research/Research\\_projects/~Miscellaneous/15\\_Year\\_Study/index.cfm](https://www.ussc.gov/Research/Research_projects/~Miscellaneous/15_Year_Study/index.cfm).....23

Defendant Zalmund Zirkind, through counsel, respectfully submits this memorandum and its accompanying exhibits to assist the Court in his sentencing hearing scheduled for January 15, 2021.

### **I. PRELIMINARY STATEMENT**

We respectfully seek a mitigated sentence, well below that recommended by the Guidelines. We respectfully request that this Honorable Court show Mr. Zirkind mercy and sentence him to intermittent confinement and community-based punishment. As discussed in detail below, such an alternative sentence is sufficient, but not greater than necessary, to comply with the purposes in Title 18, United States Code, Section 3553(a)(2) and is warranted in this case due to: Mr. Zirkind's significant familial responsibilities, including serving as the primary care provider for [REDACTED]; his demonstrated commitment to rehabilitate himself; and the extraordinary deterrent effect his prosecution has already had on him and others in his community due to the loss of liberty, reputation, and ability to take care of his family since his arrest.

Mr. Zirkind fears alienating this Honorable Court by asking for too much leniency. He provides the following deeply personal information and argument but not to minimize his crimes for which he has already accepted full and unequivocal responsibility. Mr. Zirkind simply wishes to provide the Court with another perspective on the decisions he made to embark on his path of criminal behavior, the impact his actions have already had on his family and him, and the ramifications a lengthy custodial sentence will have on his loved ones. It is with this perspective that Mr. Zirkind prays that this Honorable Court will determine his sentence within that permitted by the statute of his conviction.

## II. BACKGROUND AND PERSONAL HISTORY

Mr. Zirkind was born and raised in Montreal, Canada, has been married for 28 years and is the father of seven beautiful children. He is also blessed with five grandchildren. Before his arrest, Mr. Zirkind rarely spent an evening away from his wife

He is a trained Rabbi, who works as a fundraiser for a Jewish charity, and before his arrest, served on the Board of Directors of the Rabbinical College of Canada, as well as other organizations. As described in letters directed to this Honorable Court, Mr. Zirkind is kind, respectful, compassionate, and given to performing many good deeds. He lives for his wife and children and to help others.

Mr. Zirkind's [REDACTED] are both in school and live at home in Montreal. S suffers from [REDACTED]

[REDACTED] (Presentence Investigation Report, ("PSR"), pp. 13-15, ¶¶ 66-70). [REDACTED]

---

<sup>1</sup> Medical and related reports filed under separate cover letter will be referred to by name or the denominated "M," with a correlating number used in that separate filing. [REDACTED]

In contrast to many men in Mr. Zirkind's Orthodox Jewish community, including his own father,<sup>2</sup> who relinquish all child-rearing responsibilities, never change diapers, grocery shop, or take their children to community outings, Mr. Zirkind proudly and fully shared home and child rearing responsibilities with his wife. Mr. Zirkind is proud of the manner in which his familial participation is more than a just a partnership in all domestic matters. (PSR, p. 15, ¶ 73, "The Defendant was responsible for taking S to school, picking her up from school, and he took S along for Sunday grocery shopping...."). Mr. Zirkind is in constant communication with S's [REDACTED] and always was—and during his home confinement remains—the "first point of contact" with S's

[REDACTED] See, M. 5, [REDACTED]  
[REDACTED]

[REDACTED] Mr. Zirkind and his wife, before his arrest, never spent an evening alone, away from S. No one else would know how to keep her safe and well.

During an interview with the United States Probation Office ("USPO"), as well as in her letter to Your Honor, the Mr. Zirkind's wife describes how her life has changed since her husband's arrest, imprisonment, and later home-confinement in Brooklyn. Now without a full-time partner, the burden on Mr. Zirkind's wife, Rochel, is borderline untenable. The PSR and her letter to the Court describes the daily challenges she faces [REDACTED]

[REDACTED]

[REDACTED]—Mr. Zirkind not only handled the majority of parental input for the

[REDACTED]

[REDACTED]  
[REDACTED]

---

<sup>2</sup> Mr. Zirkind's father worked as a Rabbi and emissary of the Lubavitch Congregation with a mandate to serve the impoverished and under educated Jewish Tunisian population in North Africa. Shortly after the Israeli-Arab Six Day War in 1967, Mr. Zirkind's father was falsely labeled an American spy and was forced to return to the United States. After a short residency in Brooklyn, Mr. Zirkind's father was assigned a Rabbinical position in Montreal.

██████████ this Defendant took care of the physical home chores, including most child-care duties. This Defendant would also fill the family car with gas, take out the garbage, pay the bills, deal with the bank, take the children to school and doctors’ appointments, and for the Sabbath, would make the “cholent,” a special meal prepared on Friday to be enjoyed on Saturday. Before Mr. Zirkind’s absence from the home, his wife, Rochel, was not required to try and “do it all” by herself, including physical restraining and caring for S.

Since being imprisoned and ordered to home-confinement in Brooklyn, Mr. Zirkind has been unable to provide his traditional partnership and love and physical support to his family. His wife goes without his help. His daughter goes without his physical and loving care, ██████████. L cries for his father in the evening. Mr. Zirkind’s absence from home is an atypical severe emotional strain on the entire family and particularly S and her mother. (PSR, p. 15-16, ¶¶ 73-74). Hours of FaceTime with his wife, hours of daily storytelling and bed-time stories told to his children are no substitute for the special love and support the Defendant otherwise brings, in person, to a ██████████ family. There simply is no substitute for the special love, help, and comfort Mr. Zirkind provides. (PSR, p. 15, ¶ 73).

COVID restrictions, two weeks of Canadian quarantine upon returning from the United States, makes family visitation more problematic. COVID has additional ill effects on ██████████ ██████████ who need the routine lost in the pandemic. In addition, ██████████ ██████████ ██████████ (PSR, p. 16, ¶74).



**III. SECTION 3553 FACTORS SUGGEST A LENIENT SENTENCE.**

As discussed below, the Title 18, United States Code, Section 3553(a) factors suggest the requested sentence in this case.

**A. The Nature and Circumstances of the Defendant's Offense**

As stated above, nothing in Mr. Zirkind's submission to this Honorable Court is meant to minimize what he has done. The PSR adequately describes Mr. Zirkind's criminal conduct. The Court heard the Defendant's direct and unequivocal admissions at the Rule 11 proceedings. Mr. Zirkind recognizes that facilitating the use of narcotics proceeds is an important part of preserving the narcotics business, and the narcotics business causes drastic and serious consequences for victims in the United States and Canada.

Mr. Zirkind admitted that he took part in substantial transactions over an extended period of time. While Mr. Zirkind's brother introduced him to this crime and he quit his criminal activity for a time, he later voluntarily continued. Over two years, he received a cumulative commission of nearly \$88,000.

Mr. Zirkind recognizes and feels tremendous remorse that the crippling difficulties his family is facing now are a consequence of his decisions and actions. [REDACTED]

[REDACTED]

However, when determining Mr. Zirkind's sentence, this Honorable Court may consider what motivated Mr. Zirkind to break the law in such a manner. It was not for riches, not for luxury purchases, not out of a sense of abject greed, but from a misdirected sense of need, and a desire to improve his children's chances for a brighter future that Mr. Zirkind made a series of horrible

decisions, resulting in critical repercussions. Those decisions include his crimes and how he went about raising the funds he felt essential for his children's [REDACTED]. The Defendant drained all his savings, including retirement, for his children's [REDACTED] spent substantial sums on [REDACTED], mostly for his [REDACTED], S. In no way do those ends justify the later means he went about raising money and the Defendant fully acknowledges this fact, albeit belatedly.

In Canada, the public social medical system requires extraordinary long waiting periods for diagnosis and [REDACTED] and there are qualitative limits to the [REDACTED] provided. Intensive [REDACTED] is unavailable, and its timeliness is very important for [REDACTED].<sup>3</sup>

Mr. Zirkind felt he could not obtain quality assistance for his children soon enough, long enough, or good enough on the Canadian [REDACTED] list to acquire the help his children seriously needed. Consequently, the Defendant spent his illegal proceeds [REDACTED] [REDACTED].

Mr. Zirkind committed crimes, laundered drug money, and acquired funds he could not otherwise legitimately earn, to provide timely and continuous [REDACTED] to assist his [REDACTED]. Mr. Zirkind spent approximately [REDACTED] Canadian monthly during the calendar years 2017-2020 for additional [REDACTED] assistance that allowed S to attend school. The [REDACTED] recommended an [REDACTED].<sup>4</sup> S's tuition also cost an additional [REDACTED] Canadian, annually.

---

<sup>3</sup> Report from the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Bold and italics added for emphasis). M1. The Defendant was advised that the most vital time, [REDACTED] [REDACTED].

<sup>4</sup> [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Mr. Zirkind knows that his crimes were morally and legally wrong, that his crimes assisted in the commission of more serious crimes, and now knows there were alternative ways to meet his children's needs. There was a degree of shame that accompanied his silence in seeking other alternatives.

The facts of this prosecution and the present plight of the Defendant's family show why a sense of financial need should never prompt criminal conduct. Beyond very clear issues of law, justice, and morality, whatever concrete problems the Zirkind family faced before this Defendant's crimes, they are monumentally greater now. Whatever he thought about the seriousness of his earlier family or financial predicament, his present family situation is much worse. And his future is far more problematic.

Yet, if there were gradations of guideline punishment for evil motive as it applies to criminal conduct, the advisory sentence the Defendant faces might be far less. A defendant who offends in order to support his family's medical needs might be considered to be less culpable and thus more deserving of leniency than one who commits crimes to finance a lavish lifestyle. "However, defendant's culpability was mitigated in that he did not act for personal gain or for improper personal gain of another. Under § 3553(a) and the decisions of the Supreme Court, a sentencing court may properly consider a defendant's motive. *Wisconsin v. Mitchell*, 508 U.S. 476, 485, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) (stating that "the defendant's motive for committing the offense is one important factor")." *United States v. Ranum*, 353 F. Supp. 2d 984, 990 (E.D. Wis. 2005). Commentators note that to distinguish between different types of defendants is not to treat the guidelines cavalierly, but to take seriously the obligation to consider all of the Section 3553(a) factors.

---

Id. at page 7 of that Report notes, M3.

During the mandatory guideline era, in *United States v. Johnson*, 964 F.2d 124, 129 (2d Cir. 1992), a case involving bribery and theft of public funds, Judge Patterson granted a 10-level downward departure to a single mother who cared for four children. This Circuit upheld the district court, citing an earlier case, *United States v. Alba*, 933 F.2d 1117 (2d Cir.1991), where, “...the special situation of this “close-knit family whose stability depends on [the defendant's] continued presence,” let stand the sentencing court's finding that “incarceration in accordance with the Guidelines might well result in the destruction of an otherwise strong family unit” and its conclusion “that these circumstances were sufficiently extraordinary in this case to support a downward departure.” *Id.* at 1122. *See also*, *United States v. Adams*, 16-CR-0301 (WFK), 2017 WL 2615440, at \*4 (E.D.N.Y. June 16, 2017) (daughter diagnosed as being developmentally disabled—mother remains her primary caregiver, as daughter cannot care for herself beyond the simplest tasks and behavioral issues make it difficult to find alternative care for her.) Mr. Zirkind is somewhat similarly situated, but his wife cannot physically handle S nor has she been able to deal with the stress of being the sole caretaker.

The Sentencing Commission recently identified, as a policy priority for the amendment cycle ending May 1, 2019, study of the operation of §5H1.6, Family Ties and Responsibilities, with respect to the loss of caretaking or financial support of minors. 83 FR 30477. *See*, U.S.S.G., §5H1.6, n. 1 (A) and (B) (iii).<sup>5</sup>

---

<sup>5</sup> “The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant’s caretaking or financial support irreplaceable to the defendant’s family.” *See* U.S.S.G. Section 5H1.6, n. 1 (B) (iii); Jack B. Weinstein, *The Effect of Sentencing on Women, Men, the Family, and the Community*, 5 *Colum. J. Gender & L.* 169, 179–81 (1996) (observing the harmful effects of incarceration on inmates’ families and arguing that family circumstances must not be disregarded while describing the alternatives to imprisonment). *See also* “For children ranging in age from 6 to 17 years old, parental incarceration was also significantly associated with the number of additional “adverse childhood experiences,” or “ACEs.” Research has shown that ACEs, especially when they are cumulative, often cause childhood trauma...” Letter from Ronald H. Lne, Esq., Chair, and Knut S. Johnson, Esq., Vice Chair, Practitioners Advisory Group to Hon. William H. Pryor, Acting Chair, U.S. Sentencing Comm’n (Aug. 10, 2018) 25-26, <https://www.ussc.gov/sites/>

Mr. Zirkind's family needs require more than one parent, his wife, can provide. The medical and school reports, as well as portions of the PSR, emphasize this point. Respectfully, Mr. Zirkind and his family ask for the grace of a lenient sentence.

**B. The Defendant's History and Characteristics**

Mr. Zirkind's history and characteristics also counsel in favor of requested leniency. As discussed above, Mr. Zirkind has dedicated his life to his family and to help others. And although his own horrendous decisions have put his family in a far worse place had he never committed his crimes, Mr. Zirkind places their interest as paramount. Few decisions demonstrate Mr. Zirkind's commitment to making up for what he has done like his early decision to plead guilty and effort to show complete cooperation in this case.

Whether from guilt, contrition, a hope for redemption, or prayer for spiritual or physical freedom, the Defendant [REDACTED] [REDACTED] while he was still jailed in the NDNY, before he physically reached this District, in July 2020.

Soon after his arrest, Mr. Zirkind expressed to the Government his intention to plead guilty. For his serious criminal conduct, Mr. Zirkind showed repentance at the earliest moments in his prosecution.

To that end, shortly after he was released from jail, Mr. Zirkind instructed [REDACTED] [REDACTED] [REDACTED].

---

default/files/pdf/amendment-process/public-comment/20180810/PAG.pdf (in response to request for public comment by U.S. Sentencing Comm'n, 83 Fed. Reg. 30,477).

█ Those conversations led to █  
in August 2020, in advance of discovery.

█ before receiving discovery, attorney Zapp spent a number of days with the Defendant discussing the factual background of his crimes █

█  
This Honorable Court may note that on August 7, 2020, in response to its Orders of August 5 and 6 setting trial for December 2020, *see* DE 74 and 76, the Defendant responded that he did not intend to go forward to trial.

More than merely voicing an early intention to plead guilty, in August 2020, the Defendant █  
█. At the Rule 11 proceedings, Mr. Zirkind addressed a plea agreement dated September 4, 2020 and executed thereafter.

Often in drug related prosecutions, when a supplier cooperates, the Government has less need for similar assistance from distributors. The PSR and discovery reflect a money supplier's cooperation with the Government long before this Defendant's July 2020 arrest.

█  
█. It is a testament to the comprehensive investigation performed by the Government, which included obtaining the cooperation from a person who supplied Mr. Zirkind with the illicit funds, a full two years preceding Mr. Zirkind's 2020 arrest, that there was no continuing need for █  
█. Perhaps if other conspirators known to Mr. Zirkind likewise chose to plead guilty, █.

The Government learned of Mr. Zirkind's criminal conduct in 2018. [REDACTED]

[REDACTED] Recognizing the unbridled discretion vested in the Government, if Mr. Zirkind had been provided the same opportunity [REDACTED], Mr. Zirkind might be facing a lower sentence or guideline range. The Government made well calibrated decisions, given that others may have been dealing directly with drug offenders while Mr. Zirkind was not. (PSR, p. 8, ¶ 18) (“...in January, 2018, BAEZ provided approximately \$350,000 in narcotic proceeds to a co-conspirator who later agreed to cooperate with law-enforcement (“CS- 1”) in New York City...”).

In the exercise of its informed discretion, the Government continued to allow Mr. Zirkind to deal with others after he was identified as a money transmitter. Suffice to say, had the Government chosen to arrest Mr. Zirkind in 2018 and [REDACTED]

[REDACTED] Admittedly, the Defendant continued to voluntarily engage after CS-1 [REDACTED]

The lack of a substantial assistance motion does not diminish the significance of the Defendant's more positive recent conduct, which the criminal justice system, as well as our sense of morality, seek to promote. Each seeks contrition, repentance, remorse, and affirmative acts to prove rehabilitative, as well as reparative type conduct. While the decision to go forward [REDACTED]

Often, [REDACTED]

[REDACTED] That is not the case here.

This Circuit, long before most, recognized that efforts to cooperate are significant to consideration of the Section 3553 factors, and particularly “personal background.” *United States v. Fernandez*, 443 F.3d 19, 33 (2d Cir. 2006). Similarly, *United States v. Murray*, 2005 WL 1200185, 3 (S.D.N.Y.) suggests the sentencing judge consider “the history and characteristics of the defendant” within the meaning of 18 U.S.C. § 3553 (a)(1), as well as the other factors enumerated in § 3553(a), include arguments such as a defendant’s efforts to cooperate, even if those efforts did not yield a Government motion for a downward departure pursuant to U.S.S.G. § 5K1.1 (“Prior to sentencing, Murray entered into a Cooperation Agreement.... However, the Government determined that Murray had not been completely truthful in the information he supplied and concluded against moving under § 5K1.1. But the court felt Defendant should receive a variance benefit for the good evidence he provided and ordered a resentencing.”).

Other Circuits, some sooner than others, joined the same sentencing perspective announced by the Second Circuit in *Fernandez*.<sup>6</sup> Years later, the Fifth Circuit noted that there is nothing in the text of § 3553(a) that suggests a §5K1.1 motion should be the exclusive means for considering cooperation. *United States v. Robinson*, 741 F.3d 588 (5th Cir. 2014).

---

<sup>6</sup> See also *U.S. v. Roque*, 536 F. Supp. 2d 987 (E.D. Wis. 2008) (District Court “may under 18 U.S.C. § 3553(a)(1) consider cooperation as a sign of positive character development and as indicative of a desire to obey the law and live a better life in the future under § 3553(a)(2)(B) & (C)); *U.S. v. Lapp*, 2008 WL 3981988, \*2 (E.D. Wis. 2008) (defendant who “took full responsibility for her conduct and attempted to cooperate with the government...demonstrate[ed] a further commitment to better behavior in the future”); *U.S. v. Cannon*, 2009 WL 102532, \*4 (N.D. Ind. 2009) (“the Third Circuit has agreed that the guidelines’ provisions on acceptance of responsibility do not preclude a district court from factoring a defendants’ acceptance and cooperation as part of its § 3553(a) analysis”); *U.S. v. Doe*, 398 F.3d 1254, 1260-61 (10th Cir. 2005) (concluding that “a defendant’s assistance should be fully considered by a district court at sentencing even if that assistance is not presented to the court in the form of a § 5K1.1 motion”); *U.S. v. Barner*, 572 F.3d 1239, 1249-50 (11th Cir. 2009) (relying on *Fernandez*); *U.S. v. Robinson*, 741 F.3d 588 (5th Cir. 2014) (“We now join our sister circuits in expressly holding that a sentencing court has the power to consider a defendant’s cooperation under §3553(a), irrespective of whether the Government files a §5K1.1 motion. We further join our sister circuits in holding that a sentencing court’s failure to recognize its discretion to consider a defendant’s cooperation under § 3553(a)(1) is a significant procedural error.”).



Like he did at his Rule 11 hearing, Mr. Zirkind timely disclosed his criminal conduct, did not diminish his culpability, [REDACTED]

[REDACTED] The facts unfolded in a particular way and [REDACTED]  
[REDACTED]

That fate includes an exemplary federal investigatory effort in which the Government acquired the cooperation of a conspirator who provided Mr. Zirkind with “dirty” funds two years before this Defendant’s arrest. But that quality investigation also allowed an assessment that Mr. Zirkind was truthful in his post-arrest admissions.

**C. The need for the sentence imposed “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense,” and to afford adequate deterrence § 3553(a)(2)(A)-(C)**

The Defendant committed his crimes because of a sense of desperation, a real and visceral fear for the [REDACTED], their futures, and a sense of need to do more. Like others who have acted upon similar feelings of family desperation, Mr. Zirkind has learned that family separation is much worse than a sense of unfulfilled financial need. A lengthy sentence is not necessary to send the Defendant and others similarly situated a message of deterrence.

Significant punishment has been imposed. The Defendant well knows of his [REDACTED] [REDACTED] in his absence and at whose feet fault lies. Medical and school reports show the practical result of the Defendant’s absence from home. *See* [REDACTED]  
[REDACTED]

[REDACTED] M5 at 5.

Prior to Mr. Zirkind's arrest, S was showing tremendous signs of progress. First, we acknowledge the positive descriptions [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That Report observes, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

After Mr. Zirkind's arrest, the [REDACTED]. With knowledge of the Defendant's conduct as the root cause, we respectfully invite the Court to consider, under the Section 3553 factors, the description of S's more [REDACTED] during her father's absence. The [REDACTED]

[REDACTED], M5,

describes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] M5, p. 5.

By December 2020, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] M5, p. 2. [REDACTED]

[REDACTED]

[REDACTED] M5, p. 3.-

With reason, Mr. Zirkind feels profound responsibility [REDACTED] and strong guilt for not being present. If leniency is to be considered, we recognize that it is the Zirkind family, rather than the Defendant, where this Honorable Court may view its merit.

The Defendant was locked up in a county jail in the NDNY for weeks, then transferred to another county jail before arriving at the MCC New York, where he was released on stringent conditions after being imprisoned for several more days. The Defendant knows what it means to be jailed and what it means to live in a form of very limited liberty.

The Court well knows that home confinement served over an extended time comes with its own penalties, which in this case includes family and Nation separation.

The Defendant's daily preoccupation with his family, as well as his prospective punishment, is part of his consuming thoughts and fears. These events deter him from any future similar conduct. The Defendant need not be locked up for a substantial time period to deter him from again doing wrong.

Those who know the facts of this case learn the heavy price to be paid for criminality.

*Roberts v. United States* addresses the issue of specific deterrence and a criminal's cooperation and confession in the sentencing context:

This deeply rooted social obligation is not diminished when the witness to crime is involved in illicit activities himself. Unless his silence is protected by the privilege against self-incrimination, *see 445 U. S. infra*, the criminal defendant, no less than any other citizen, is obliged to assist the authorities. .... **Moreover, petitioner's refusal to cooperate protected his former partners in crime, thereby preserving his ability to resume criminal activities upon release. Few facts available to a sentencing judge are more relevant to "the likelihood that [a defendant] will transgress no more, the hope that he may respond to rehabilitative efforts to assist with a lawful future career, [and] the degree to which he does or does not deem himself at war with his society.'**

*Roberts v. United States*, 445 U.S. 552, 556 (1980) (emphasis added). [REDACTED]

[REDACTED]

████████████████████. He will transgress no more. Whether unknown others, with unknown motives, perhaps greed, might be more deterred if a particular sentence is imposed on Zalmund Zirkind, is a questionable supposition.<sup>7</sup>

Mr. Zirkind's arrest, jailing, conditional pre-trial release, admissions of drug money laundering, and conviction have been made public in his community and featured in blogs and gossip. He is portrayed as a horrible example to others because of his criminal actions. Someone maliciously recorded the Rule 11 proceedings and disseminated it.

As described here, a well-earned lifelong reputation can be destroyed, a livelihood can be diminished, a family can be placed in severe pain, and all for others in the community to see and they do see. The Defendant was removed from several charitable boards.

Significant deterrence is shown throughout the Defendant's social and religious community. The Defendant was formerly known as a Shliach, an emissary of Rabbi Schneerson. A Shliach has a very particular and special honored status in the Jewish Chasidic community. The Defendant learned he was removed from the official list of emissaries of Rabbi Schneerson. This shameful fact is well known in his Orthodox community to be a result of Mr. Zirkind's crimes. Beyond judicial and penal sanctions, this shameful fact, resulting from the Defendant's crimes, is a substantial deterrence known to many others in his community.

---

<sup>7</sup> An avalanche of criminological studies have determined that this theoretical symmetry between severity of punishment and certainty of detection does not exist in the real world. See Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. Pol. Econ. 521, 544-47 (1973) (finding that the certainty of punishment was a more important indicator than severity in deterring murder, rape, and robbery); Harold G. Grasmick, George J. Bryjak, & Jeffrey Grogger, *Certainty v. Severity of Punishment*, 29 Econ. Inquiry 297, 304 (1991) (studying California arrestees and concluding that "increased certainty of punishment provides a much more effective deterrent than increased severity"); Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 Crime & Just. 1, 13 (1998) (reviewing the literature and concluding that "cross-sectional and scenario-based studies have consistently found that perceptions of the risk of detection and punishment have negative, deterrent-like associations with self-reported offending or intentions to offend"); Daniel S. Nagin & Greg Pogarsky, *An Experimental Investigation of Deterrence: Cheating, Self-Serving Bias, and Impulsivity*, 41 Criminology 167 (2003) (testing whether students would cheat on a trivia quiz to earn a cash bonus and finding that cheating decreased when the certainty of detection was higher but not when the perceived severity of punishment increased).

Some courts have acknowledged this stigma as a type of punishment that may deserve consideration in imposing a just sentence. *See United States v. Vigil*, 476 F. Supp. 2d 1231, 1315 (D.N.M. 2007) (in conferring sentence, taking into account “the incalculable damage to [the defendant’s] personal and professional reputation” as a result of the case’s public coverage). Those in the Defendant’s community know his shame and this, too, serves as a deterrent.

**D. With or without a substantial jail term, Mr. Zirkind has suffered and will continue to suffer punitive and just desserts for his commission of this serious crime.**

The Defendant suffers substantial punishment as a result of the criminal conduct he described at his Rule 11 proceedings and detailed in his PSR. The Defendant knows he has no right to complain about the bed he made for himself. He waived his right to participate in bond proceedings when he was arrested in the NDNY and spent weeks jailed before he was released. Since his pre-trial release, as agreed, the Defendant remains under strict home confinement in a small sub-basement in Brooklyn, New York. Intended societal retribution for the Defendant’s commission of this crime can be seen in his daily existence.

Mr. Zirkind suffers appropriate guilt and heartbreak for functionally abandoning his home, his wife, his young son, and 12-year-old daughter, [REDACTED]

The reactions from people in the Defendant’s community upon learning of his crime include scorn, ridicule and ostracism. Even some family members no longer want to have anything to do with the Defendant. Others in the community, who received the benefit of Mr. Zirkind’s kindness or charitable deeds, still value the better part of the Defendant’s character and recognizes there remains deep decency and good in his soul, not reflected in his crimes. Some have written to Your Honor expressing appreciation for acts of kindness such as intervening to assist a young

man to put away his written suicide plan, helping to acquire experimental cancer treatment to extend another's life, and assistance in all types of family and personal emergencies.

Though now of marriage age, the Defendant's son appears to be ostracized by the matchmakers and mothers in his community. Before the Defendant's arrest, mothers and matchmakers were promoting others marriage to his oldest son. Before his arrest, a marriage was on the short horizon. The Zirkind family, now shamed in the community by the Defendant's sins, indictment and plea of guilt, the heretofore imminent marriage appears as a black hole in that young man's future.

Financially, the Defendant's career as a fund raiser for a Jewish charity is problematic, at best. As a practical matter, Mr. Zirkind understands that few want to donate funds to charity through a man known to have laundered drug monies. He will have to rebuild the trust of his community for anyone to return his phone calls or work with him. Mr. Zirkind intends to work hard for a hopeful future and knows he has a difficult road ahead. The beginning of that road includes the more recent and positive steps taken.

The Defendant hopes to find a new focus, to earn a living, and also to provide needed charitable services to others. Over the last decade, Mr. Zirkind proudly served as a volunteer on the board of the Rabbinical College of Canada. The school, educating 300 children ranging from Pre-Kindergarten to the 8<sup>th</sup> grade, serves the Montreal Chabad community, the largest Jewish Orthodox community outside of New York. Mr. Zirkind assisted the school with administrative decisions, including hiring, the direction of the school, its finances, and anything that was needed to make the school a positive experience for its students.<sup>8</sup> This was a prestigious position in the

---

<sup>8</sup> Letter from Mordechai Nelken, Executive Director, Rabbinical College of Canada, to Hon. Denise L. Cote, (Oct. 12, 2020) ("Zalman was instrumental in creating and maintaining our scholarship program for needy families which has allowed us to maintain a policy of never turning away a student because of financial need. . . . Another project

Montreal Chabad community, and as a result of his arrest, the Defendant was removed. Those in the Rabbinical College social and educational community well know of the Defendant's crimes.

Formerly an active member of his religious Montreal Chabad community, formerly attending services three times daily, formerly a respected member of the boards of various charitable organizations, formerly a Shliach (a Rabbinical emissary), the Defendant now finds himself in a subbasement, alone, except for attendance at religious services as may be permitted or an occasional family visit. During the Defendant's incarceration and home confinement, he missed his daughter's Bat Mitzvah and his grandson's bris, he cannot attend the traditional Mikvah (Jewish cleansing bath), misses other services, and continues to suffer the guilt of not being at the side of his wife as she deals with his family responsibilities and hers. While praying, the Defendant's attention drifts to his family, his guilt, his prosecution, the clock, and worry he might become lost in prayer and be late under his restrictions.

Financially, the Defendant and his family are devastated, in debt, while striving to pay New York and Montreal rents, and other expenses. Socially, to some, the Defendant and his family are pariahs. The social opprobrium connected with the public notoriety of the Defendant's crime in the Chasidic community is extraordinarily painful. Being ignored by many at prayer service is extremely hurtful. Emotionally, the Defendant is guilt-ridden.

These are consequences Mr. Zirkind experiences, in addition to the daily worry about how he will take care of his family. He fears and understands the likelihood a custodial term will be imposed. He hopes this Honorable Court will find that an alternative to prison is possible.

---

that was very dear to Zalman's heart was the lunch program that he established to aid children from needy families.").

**E. Pertinent policy statements favor leniency.**

There are multiple “pertinent policy statement[s]” that favor a grant of leniency. 18 U.S.C. § 3553(a)(5). Congress and the Commission, through statutes and policy statements, promote many facets of Mr. Zirkind’s most recent conduct. Policy statements allow this Court to consider a more lenient sentence.

First, applicable to Title 46 and Title 21 offenses, but applicable only by analogy to this Defendant’s Title 18 violation, is the “safety valve” (U.S.S.G. § 5C1.2), which provides for a lower sentence and provides jurisdiction to avoid mandatory minimum sentences. The Defendant’s full statement, ~~proffers~~, and Rule 11 admission about his “drug related” crime is the functional equivalent of meeting a predicate requirement for the safety valve. A greater degree of leniency is promoted by Congress and the Commission for those who fully admit what they did wrong.

Second, timely acceptance of responsibility, a timely plea, and a government motion (U.S.S.G. § 3E1.1) provide for 3 levels lower. [REDACTED]

[REDACTED]

[REDACTED] As the first Defendant to announce an intention to plead or as the first conspirator within the Indictment whose plea was accepted by this Court, his prompt admissions furthered the policy goal of the efficient administration of criminal justice saving prosecutorial resources for other matters.

[REDACTED]

[REDACTED] has long been recognized, in practice, by statute, by precedent such as *Roberts*, 455 U.S. at 556, and by policy statement, as a sentence-mitigating factor. Promoting that same policy consideration, Mr. Zirkind timely, truthfully, [REDACTED]



\_\_\_\_\_

\_\_\_\_\_ Prior to 1990, the wording of § U.S.S.G. 5K1.1 was slightly different. At that time, the section read: “Upon motion of the government stating that the defendant has made a good faith effort to provide substantial assistance ....”. 18 U.S.C. § 3553(b) (1988); § 5K1.1, p.s. U.S.S.G., § app. C.133 (1987). This Defendant has made a good faith effort. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Finally, family issues are a Section 3553 and policy consideration. Even during the mandatory guideline regime this Circuit provided departure consideration for parents \_\_\_\_\_

\_\_\_\_\_ The Court may choose to consider under Section 3553 factors, that U.S.S.G. Section 5H1.6, n. 1 (A) and (B) (iii) suggest a policy departure under these facts.<sup>9</sup>

**F. The kinds of sentences available and the sentencing ranges for similar offenses provide an opportunity for leniency and structured punishment, permitting the Defendant to work and help at home.**

Under Section 3553(a)(3), Your Honor is asked to consider the types of sentences available, and counsel has the obligation to recommend a particular punishment. The Supreme Court and Congress set “just punishment” as somewhere between probation and 20 years’

<sup>9</sup> See Weinstein, *supra* note 3; Letter from New York Initiative for Children of Incarcerated Parents to Hon. William H. Pryor, Acting Chair, U.S. Sentencing Comm’n (Aug. 9, 2018), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/NYCIP.pdf> (in response to request for public comment by the U.S. Sentencing Comm’n, 83 Fed. Reg. 30,477) (“Early trends suggest that family-focused alternatives to incarceration have been successful.”); Letter from Michael Caruso, Chair, Fed. Def. Sentencing Guidelines Comm., to Hon. William H. Pryor, Jr., Acting Chair, U.S. Sentencing Comm’n (Aug. 10, 2018), p. 17, <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20180810/FPD.pdf> (in response to request for public comment by U.S. Sentencing Comm’n, 83 Fed. Reg. 30,477) (“[O]ver the past decade a growing number of courts have cited family ties and responsibilities as a reason for sentences below the guideline range, rising to above 3000 times in FY 2016.”).

imprisonment, along with substantial financial penalties, a forfeiture judgment in the sum of \$87,938, and a possible fine. (PSR, p. 21, ¶ 100 “The defendant is eligible for not less than one no more than five years’ probation....”).

A review of the 2019 USSC *Annual Report and Sourcebook of Federal Sentencing Statistics* reveals there were 1,177 nation-wide money laundering sentences ending fiscal year 2019. *Id.*, at Table 15. Most received jail time. A total of 103 US citizen money laundering offenders did not receive prison sentences. *Id.*, Table 19.

Congress has authorized the penalty of probation and the Supreme Court has written to affirm the vitality of probation as a sentence. *See Gall v. United States*, 552 U.S. 38, 44–45 (2007) (“Moreover, quantifying the variance as a certain percentage of the maximum, minimum, or median prison sentence recommended by the Guidelines gives no weight to the “substantial restriction of freedom” involved in a term of supervised release or probation.”) We recognize its rare application.

The Defendant proposes restrictive conditional limited liberty, along with a form of intermittent or home confinement to include substantial conditions that will serve to, (1) preserve his family, (2) allow him to participate as needed on behalf of his minor children and wife, (3) earn a livelihood, and (4) help others in his community. We propose a punishment combined with community service that recognizes both the crime and the social, educational, and family problems experienced by autistic children and their parents. It is no great epiphany to acknowledge the societal drug problem and the practical realities of having children [REDACTED], which often stresses the fiber of the family. Along with home or intermittent confinement, the Defendant proposes a form of community service through Friendship Circle, an organization that assists families and autistic children, and drug counseling, through Smart Recovery, for hours each week.

See Letter to Hon. Denise Cote from Levi Shemtov, Friendship Circle (describing needs of the Friendship Circle and the role the Defendant can play to help others).<sup>10</sup> Key in this community service is empathy. [REDACTED]

[REDACTED]

Moreover, recognizing the Defendant's crime involves the drug trade, Mr. Zirkind also proposes to spend a number of hours providing drug counseling. While on home confinement, the Defendant completed a 40-hour drug counseling training program and seeks the opportunity to continue to participate, as he has done, to provide telephone counseling as another condition of limited liberty through Smart Recovery Organization.<sup>11</sup>

The retributivist approach, advocated by the advisory guideline range, stresses just desserts. This Court has broad discretion in applying and deciding punishment. A more tailored sentence is permitted by, (1) Section 3553 factors, (2) the low-end statutory penalty, probation, and (3) Supreme Court precedent, even in drug related cases, noting that lenient and probationary punishment is justified by its beneficent consequences. *Gall v. United States*, 552 U.S. 38, 48 (2007) (custodial sentences are qualitatively more severe than probationary sentences ... Offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty".)

Because the guideline range is inconsistent with the Commission's well known institutional role, *United States v. Kimbrough*, 552 U.S. 85, 109 (2007), and these guidelines

---

<sup>10</sup> "...which we now do not have include: a hotline service that parents can call for emotional support, resources to marriage counseling for couples struggling through their child's diagnosis, a step by step practical guide on what to do following a diagnosis, guidance on getting government assistance and funding, and marshalling or creating additional web resources on methods of learning, therapies, schools, equipment useful for children with autism, and psychological and emotional support for siblings of children with autism. There truly is an unlimited need..."

<sup>11</sup> Online Volunteering with SMART Recovery, <https://www.smartrecovery.org/online-volunteering/> (last visited Nov. 13, 2020). See also, Training Program, Zirkind Certificate of Completion.

“depart from past practices,”<sup>12</sup> this Court may choose to disagree.<sup>13</sup> The severity of the advisory guideline range results not from the Commission’s traditional role, past practices and empirical evidence, but from a political decision that too many “white collar” offenders in the past, a label of questionable application here, received probation.

Mr. Zirkind fears alienating the Court by asking for “too much” leniency. He asks for this form of merciful punishment on behalf of the family he constructively abandoned because of his crimes. The Defendant is not unmindful of the more punitive statistical sentencing history of “money launderers” compared to the 100 or so last year who received sentences other than jail.

But we recall the rare moment when some offenders are truly given a second chance to return to their families and given the opportunity to work harder, longer, and contribute more to society than would be possible while incarcerated. We recognize this Court has its distinct sentencing philosophy and may weigh the individual § 3553(a) factors differently; noting every sentencing decision involves its own set of facts and circumstances regarding the offense and the offender.

---

<sup>12</sup> U.S. Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (Nov. 2004), at 56, [https://www.ussc.gov/Research/Research\\_projects/~Miscellaneous/15\\_Year\\_Study/index.cfm](https://www.ussc.gov/Research/Research_projects/~Miscellaneous/15_Year_Study/index.cfm).

<sup>13</sup> The 18 level upward guideline adjustment for the amount laundered (PSR, p. 10, ¶ 39), exceeds the advisory punishment of; the 12 level enhancement for obstruction of justice related to terrorism (2J1.2(b)(1)(C)); 12 levels for a felony involving or intending to promote terrorism (3A1.3(a)); 15 levels for willfully boarding an aircraft with a dangerous weapon or material without regard for the safety of human life (2K1.5(b)(1)); 15 levels of trafficking, receiving or possessing a portable rocket, missile, or launcher (2K2.1(b)(3)(A)); 16 levels for unlawfully entering or remaining in the United States after being convicted of certain major felonies (2L1.2(b)(1)(A)); and 16 levels for bid-rigging or price fixing, if commerce volume exceeds \$1.5 billion (2R1.1(b)(2)(H)).

#### IV. CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Honorable Court impose the following tailored non-custodial sentence that will allow his return to his family in Canada, participate in substantial community service, and provide punishment which will be sufficient, but not greater than necessary, to comply with the sentencing goals set forth in 18 U.S.C. § 3553 (a):

Time served, with five years' probation, with the following special conditions:

1. Intermittent Confinement. Upon notice from the USPO SDNY that the COVID epidemic is no longer a present danger, intermittent confinement at the FCI Otisville two days, each week, excluding the Sabbath and holidays, for a period of 3 years, as follows: "Defendant must serve a total of 312 days of intermittent confinement. The intermittent confinement shall be served for 156 consecutive weeks at the FCI Otisville facility beginning on Sundays at 2:00 p.m. and ending on Tuesdays at 2:00 p.m., when ordered to commence doing so by the Court or his supervising United States Probation Officer. Defendant must follow the rules and regulations of the FCI Otisville facility."
2. Report as directed to the SDNY United States Probation Office with proof of community service.
3. Community service requirement of 25 hours weekly, to include service to the Friendship Circle or drug counseling through the Smart Recovery Organization.
4. Disgorgement of profits in the amount of \$87,938, payable to the OUSA SDNY over the term of probation.

The Defendant respectfully requests that this Honorable Court find that the foregoing sentence serves the statutory sentencing purposes of deterrence, public protection, and

rehabilitation in accordance with 18 U.S.C. § 3553 (a)(2)(B)-(D); that probation, with special conditions, serves the statutory purposes of reflecting the seriousness of the offense, promoting respect for the law, and providing just punishment for the offense in accordance with 18 U.S.C. § 3553 (a)(2)(A); and find that under the circumstances, intermittent confinement will permit the Defendant to maintain employment, perform community service, and allow the Defendant to avoid the complete removal from his role of provider and caretaker for his dependents and family, as would result from a traditional term of incarceration.

Dated: January 5, 2021

Respectfully submitted,

NEIL M. SCHUSTER  
JOHANNA S. ZAPP

/s/ Neil M. Schuster  
Neil M. Schuster  
555 N.E. 15th Street, Suite 2C  
Miami, FL 33132  
(305) 416.0324  
Fax: (305) 416.0325

/s/ Johanna S. Zapp  
Johanna S. Zapp  
550J Grand St., Suite 5F  
New York, NY 10002  
(917) 742.4953  
Fax: (917) 492.1879

*Attorneys for Defendant Zalmund Zirkind*