IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
Plaintiff	)	
	)	
v.	)	**No. 3:26CR00031(SRU)**
	)	
MICHAEL SIMES	)	
	)	
Defendant	)	
	)	**August 31, 2026**

DEFENDANT MICHAEL SIMES' MEMORANDUM IN AID OF SENTENCING

Defendant Michael Simes, by and through undersigned counsel, submits this Memorandum in Aid of Sentencing ("Memorandum") for this Court's consideration in connection with his September 14, 2026, sentencing.

I. PRELIMINARY STATEMENT

Michael Simes willfully failed to file his federal income tax returns. In his letter to the Court, attached hereto as **Exhibit A**, Mr. Simes accepts full responsibility for repeatedly and knowingly failing to file his federal income tax returns. He acknowledges the contradiction between his conduct and his professional role as an attorney who advised clients to comply with the law. The Court must now decide whether to impose a custodial or non-custodial sentence on Mr. Simes for these misdemeanor offenses.

In deciding on the appropriate sentence in a holistic manner under 18 U.S.C. § 3553, it is important to remain mindful that Mr. Simes never broke the law before, will not break the law again, and he attempted to remedy his failures before learning of this prosecution. In January 2024—fourteen months before any federal agent contacted him—Mr. Simes set out to fix it himself. Throughout 2024, he directed his accountant to determine the full extent of his delinquency, retained tax counsel, and had every delinquent return prepared and finalized. He began voluntary disclosures with the States of Connecticut and New York in November 2024. When the Government arrived in March 2025, the returns were sitting finished on his lawyers' desk. He took steps to address his tax delinquency because it was the right thing to do, not because the government was closing in and he had no alternative. He has since paid $913,188 toward his restitution obligation. Presentence Report ("PSR") ¶¶12, 115.

Mr. Simes respectfully asks the Court to consider these factors and others detailed below in arriving at a just sentence that satisfies the goal of imposing sentences that are sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

For the reasons set forth below, Mr. Simes respectfully requests a non-incarcerative sentence of two years' probation, with restitution in full and such community service as the Court deems appropriate, and without any term of confinement. Mr. Simes pleaded guilty to three counts of failure to file a tax return under 26 U.S.C. § 7203, a misdemeanor for which the maximum term of imprisonment is one year and probation is available. 18 U.S.C. § 3561(c)(2); PSR ¶ 106. However, because the advisory range falls in Zone D of the Sentencing Table, probation is unavailable as a guidelines matter, and the requested sentence therefore requires a downward variance. USSG §5B1.1 cmt. n.2; PSR ¶108. For the reasons set out below, a non-guideline sentence is warranted.

If the Court concludes that a confinement component is necessary, Mr. Simes requests that it take the form of home confinement imposed as a condition of probation rather than a term of imprisonment. And if the Court concludes that imprisonment is required, he requests that the terms imposed on the three counts run concurrently and not exceed the one-year statutory maximum Congress attached to a single count.

The requested sentence is not a lenient one in this posture. Two years' probation would place Mr. Simes under this Court's supervision for twice as long as the maximum term of supervised release available following a custodial sentence, which is one year. 18 U.S.C. § 3583(b)(3); PSR ¶103. It would keep him working and earning the income from which restitution must be paid. This is an obligation he certainly could not satisfy from a prison cell.

A sentence within the advisory range of 24 to 30 months, by contrast, would require the Court to stack counts Congress capped at twelve months apiece, would exceed by a factor of two the median sentence imposed nationally on defendants with the same guideline range—a group composed 97 percent of felony defendants—and would be greater than necessary to serve the purposes of 18 U.S.C. § 3553(a).

Moreover, in ¶118 of the PSR, the probation officer observes that the Court "may wish to consider whether a sentence within the guidelines range is greater than necessary, given the need for incremental punishment," noting that Mr. Simes has no prior convictions and has never been arrested or incarcerated. That observation is well taken, and this Memorandum supplies the record supporting it.

II. THE OFFENSE AND MR. SIMES'S ACCEPTANCE OF RESPONSIBILITY

As noted above, Mr. Simes offers no excuse or explanation for his conduct, because he has none that would be adequate justification. He earned substantial income in each of the years charged. He caused extension requests to be filed and then did not file the returns when they came due. He knew the obligation existed and he did not meet it, year after year, all while advising clients on their own legal obligations and holding himself out as a member of the bar. The Government is entitled to say that a lawyer should have known better. Mr. Simes agrees. He did know better.

Mr. Simes has written to the Court directly, and he asks that his letter be read alongside this Memorandum. **Exhibit A**. In his letter, Mr. Simes tells the Court that he made a choice, year after year, not to file. He acknowledges that he held his clients to a standard to which he did not hold himself. He does not offer the steps he took beginning in 2024 to remedy his failures as a defense, and he does not suggest that what he has already lost is punishment enough. He asks for the opportunity to keep working, to keep paying what he owes, and to keep showing up for his children. ***Id.***

And he has said so publicly. Within days of the charges becoming public, and without any obligation to do so, Mr. Simes issued a statement to his professional and personal community acknowledging the conduct, disclosing his guilty plea and his restitution obligation, and apologizing to the clients, colleagues, friends, and family whose trust he had damaged. **Exhibit B**. He did not minimize, and he did not blame. He accepted the professional and reputational cost that came with saying it in public. He is grateful for the support he has received from his family, friends, and colleagues in the wake of his plea and acceptance of responsibility.

He said the same thing privately, which in some ways was harder. He told his adult children directly what he had done. Nicole Venezia, his former wife of more than a decade and herself an attorney, writes that he was candid and direct with Grant and E.C.S., took ownership of his conduct, and explained to them what he was doing to make it right. **Exhibit C**. That account comes from someone with no reason to flatter him and every reason to have watched closely. Mr. Simes also told his younger children in age-appropriate terms about his failures and his need to make things right.

At his presentence interview Mr. Simes acknowledged his conduct and said he should have gotten on top of the matter before allowing it to get out of control. PSR ¶¶16, 128. The probation officer has recommended the full three-level reduction under USSG §3E1.1(a) and (b). The Government has filed no objection to the Presentence Report.

The probation officer's own investigation supports that account. In a corroborative interview conducted on August 10, 2026, Ms. Venezia described Mr. Simes as a great father who has always been present for his children, reported that she has never doubted he wanted what was best for them, and confirmed that the two of them co-parented for approximately fifteen years without issue. She described him as "super-responsive" with his clients and stated that he had never done anything to negatively impact a client. She said she was surprised to learn of the instant offense. PSR ¶51.

III. THE GUIDELINES CALCULATION AND THE OBJECTIONS REMAINING FOR THE COURT'S CONSIDERATION

Mr. Simes does not object to the guidelines calculation. The base offense level under USSG §2T1.1(a)(1) and §2T4.1(I) is 22. He receives a three-level reduction for acceptance of responsibility under §3E1.1(a) and (b) and a two-level reduction as a zero-point offender under §4C1.1, yielding a total offense level of 17. His criminal history category is I. The advisory range is 24 to 30 months. PSR ¶¶20–30, 95.

Two features of that range bear on the Court's analysis and are addressed below. First, each count of conviction carries a statutory maximum of one year, so any sentence exceeding twelve months can be reached only by running counts consecutively under USSG §5G1.2(d). Second, because the range falls in Zone D, simple probation is unavailable under the guidelines matter and can be reached only by variance. PSR ¶¶95, 108.

As noted above, the Government filed no objections to the Presentence Report. Mr. Simes submitted objections, clarifications, and requested additions by letter dated August 12, 2026, and the probation officer adopted most of them. Among other changes: (i) the Offense Conduct section was supplemented to describe the steps Mr. Simes took to address his tax delinquency and to clarify the status of the delinquent returns prior to learning of the criminal investigation; (ii) ¶115 was amended to reflect the $913,188 he has paid toward restitution; (iii) ¶91 was corrected to reflect that he does not own the two New York properties an automated database inquiry had associated with him; (iv) ¶127 was amended to describe his childhood more precisely; and (v) the special conditions addressing financial disclosure, asset transfers, and the restitution payment schedule were amended largely as requested. A limited set of objections remains for the Court.

A. The Assertions Recounted at Paragraph 55

Mr. Simes objected to ¶55, which recounts assertions made by his wife in letters she provided to the probation officer. She is the adverse party in a pending dissolution and custody action that Mr. Simes initiated in January 2026. She is also the subject of a restraining order issued against her on June 16, 2026 and continued on June 30, 2026 following a contested evidentiary hearing at which both parties appeared and were represented by counsel. And she indicated in writing in late July that her statements to the probation officer were made in retaliation for Mr. Simes having sought that order. PSR ¶55.

The probation officer included the paragraph together with that context and left the objection for the Court to resolve. Mr. Simes does not ask the Court to resolve the underlying dispute between the parties. That dispute belongs to the Superior Court, where it is being litigated, and it bears on no factor under 18 U.S.C. § 3553(a). Mr. Simes asks only that the Court determine, pursuant to Fed. R. Crim. P. 32(i)(3)(B), that the matters asserted in ¶55 will not be relied upon in sentencing. On the subjects that letter addresses, the Court has before it the probation officer's own corroborative interview of Mr. Simes's former wife at ¶51 and the record set out in Part IV.B below.

B. The Conditions of Supervision

The probation officer noted that the conditions listed at ¶122 are discretionary, that their inclusion in the report is not a recommendation, and that Mr. Simes's objections to them "remain for the Court to resolve at the time of sentencing." Those objections, and three narrower questions concerning the special conditions at ¶124, are addressed in Part IV.G below.

IV. SECTION 3553(a) FACTORS SUPPORT THE REQUESTED SENTENCE

The advisory range is the starting point and not the end of the analysis. *Gall v. United States*, 552 U.S. 38, 49–50 (2007); *United States v. Booker*, 543 U.S. 220 (2005). The Court's obligation is to impose a sentence sufficient, but not greater than necessary, to serve the purposes of § 3553(a)(2), after an individualized assessment of the defendant before it. *Gall*, 552 U.S. at 50.

A. The History and Characteristics of the Defendant — 18 U.S.C. § 3553(a)(1)

i. <u>Mr. Simes began correcting the delinquency before learning of the criminal investigation</u>.

When Mr. Simes left his firm at the end of 2022 and formed Simes Law, P.C., he became directly responsible for his own tax obligations for the first time in more than twenty years of practice. Before the new entity had earned any income, he engaged an accountant to advise him on what those obligations would be and how to meet them. He has filed a return for every year since, and the tax shown due on each has been paid in full.[1]

In January 2024, a passport renewal application in Mr. Simes's household was denied on account of an outstanding federal tax liability. That was the moment the full scope of the earlier problem became concrete. Mr. Simes did not wait to see whether anyone would notice. He directed his accountant to determine the full state of his federal filings and balances, which identified the

[1] Mr. Simes timely filed extensions for 2025 both personally and for his business and will file final returns by their respective deadlines.

unpaid balances for 2012, 2014, and 2015 and the absence of returns for 2013 and 2016 through 2022.

What followed is well documented. He engaged his accountant to prepare every delinquent federal and state return. Initial drafts were completed in November 2024. In October 2024 he retained Hodgson Russ LLP to handle the submission of the delinquent returns. A power of attorney was filed on or about October 8, 2024. On counsel's advice the returns were restructured on a married-filing-separate basis. The revised returns were finalized at the end of December 2024. Voluntary disclosure processes had already been initiated with the States of Connecticut and New York in November 2024.[2] Counsel was in the process of evaluating submission under the Internal Revenue Service's Criminal Voluntary Disclosure Practice. The delay was attributable to determining whether Mr. Simes's uneven litigation income could support full payment within the collection period, which that program requires. The Special Agent did not contact Mr. Simes until March 2025.

Mr. Simes does not offer this chronology to qualify his plea. He was willfully delinquent for years before January 2024. Nothing he did afterward undoes that. He offers it because § 3553(a) asks the Court to assess the man it is sentencing, and one of the questions that assessment turns on is whether this defendant required the machinery of federal criminal enforcement to stop. He did not. He had retained counsel, prepared every return, and begun disclosing to two state taxing authorities before he knew of the criminal investigation.

[2] The PSR states, in error, that Mr. Simes initiated voluntary disclosures in the States of New York and Connecticut in November 2025. This reference to 2025 is a typographical error that Mr. Simes and counsel did not notice until after submitting his objections. The correct date of these submissions, in November 2024, is not disputed and can be substantiated by counsel upon request.

ii. Mr. Simes has spent his career giving away work he could have billed.

The character letters submitted with this Memorandum come from people who know Mr. Simes in different capacities and who were told plainly why they were being asked to write. These letters describe Mr. Simes in varying contexts, but their characterizations of Mr. Simes and his character independently converge.

Ryan F. Zackon, the former Chief Executive Officer of Nano Hearing Aids, retained Mr. Simes during a period when the company faced scrutiny from state Attorneys General on serious consumer protection matters. Mr. Zackon writes that Mr. Simes counseled the company toward transparency, accountability, and constructive engagement with its regulators rather than toward legal positioning, and that he was the steady voice in the room in difficult decisions. **Exhibit D**.

The Court may find that account difficult to square with the offense. Mr. Simes does not ask the Court to resolve the tension by discounting the offense. He asks the Court to consider when the conduct Mr. Zackon describes occurred: during the very years in which Mr. Simes was failing his own obligations. Whatever explains the failure, it was not a general indifference to whether obligations get met. During that same period, when a customer of Mr. Zackon's company was owed a refund the company's systems could not deliver, Mr. Simes offered to pay it out of his own pocket so that a consumer he had never met would be made whole. No one asked him to, and no one was watching.

He also continued to represent the company after its account with him had fallen into arrears of over $200,000. He did so in part out of loyalty to a client, but also because of who would have borne the cost if he left: (i) the company's customers, who depended on complaints being answered promptly; and (2) the state Attorneys General, to whom commitments of transparency had been made that someone had to go on honoring. The work he had done had changed how that company dealt with the people it answered to, leading to tangible benefits to those customers, and he was unwilling to let it revert.

iii. Pro bono and reduced-fee representation.

Mr. Simes has consistently made his practice available to people who could not pay for it. He served as pro bono counsel in immigration proceedings and secured asylum for two clients—one a national of the People's Republic of China and the other a national of Mauritania—in matters carrying the highest stakes a client can face and generating no fee. He also supervised associates on numerous asylum and domestic violence matters through Columbia Law School's asylum clinic and Sanctuary for Families. He served as pro bono counsel to the Western Junior Colonials Youth Hockey Association, a youth sports organization that could not otherwise have afforded counsel. And he has routinely represented individual clients at rates well below his own or on terms he knew might never be honored.

And he has not stopped. In the past two months, he has represented an employee who was terminated from his position after seeking an accommodation under the ADA and, through quick negotiation, secured additional severance and benefits for his client who was facing financial hardship. He is presently serving as pro bono counsel to a family in need defending a debt collection action—a category of case in which the party being sued almost never has a lawyer. He is doing this while himself drawing only $1,000 per month from his practice, preparing for this sentencing, and enduring a marriage dissolution and custody dispute.

This bears on § 3553(a)(1) in a specific way. The general theme in a case of this kind is that a lawyer who took an oath treated the law as optional when it applied to himself. The answer is not that Mr. Simes is a good lawyer. The answer is that the same years produced a consistent, uncompensated record of using his license for people who had no other access to one, even when he was suffering financial and personal hardships of his own. Both are true. Only the Court can decide what weight the second deserves, but it should not be absent from the scale.

iv. Coaching and the local community.

Mr. Simes is a certified USA Hockey coach and has coached youth hockey, including for the Wonderland Wizards Youth Hockey Organization in Bridgeport. PSR ¶¶77, 87. A family from a team he coached has written to the Court in support of Mr. Simes. Another family provided a contemporaneous account of what Mr. Simes meant to their family and others during a time when Mr. Simes was undergoing multiple personal crises. **Exhibits E & F**.

[redacted] write about their ten-year-old son, about a coach who worked with him individually until he felt confident, and a coach who made every player on the roster feel that he or she belonged there. They write about a coach who kept calling with encouragement after he was no longer the coach and remained available to provide guidance after the season ended. **Exhibit E**. [redacted], another parent from the same season, wrote to Mr. Simes at the time—not for this proceeding, and with no notion that it would ever be read by a court—to say that his son had loved being part of that team and that the environment Mr. Simes built had made a lasting impression. **Exhibit F**.

Frank J. Gavel, Jr., who owns and operates a Raymond James Financial Services office in Bethel and has worked in the area since 1993. He has known Mr. Simes both professionally and personally for ten years. **Exhibit G**. He writes from a position of some familiarity with the subject matter, and he does not minimize it. He states plainly that he understands the gravity of the charges and that he does not condone Mr. Simes's conduct. He speaks to what he has observed. He has discussed the matter with Mr. Simes directly and believes his remorse to be genuine. He understands that Mr. Simes had engaged a tax professional and begun working toward a resolution with the Internal Revenue Service before any charges were filed. That last observation comes from outside the record and corroborates the chronology set out in Part IV.A.1 above. He describes a man who is unwavering in his dedication to his children, and who is as likely to be found driving them to practices, college visits, and friends' houses as anywhere else.

Mike Spicci, who has known Mr. Simes for nearly a decade, describes a man who is unfailingly present for his children and who has been a loyal and unselfish friend. **Exhibit H**. Similarly, Mike Johnson, who has known Mr. Simes for approximately eight years, describes him as the kind of friend you "want by your side during the best as well as the toughest times" and an "amazing father." **Exhibit I.**

B. The Care of Two Children with Special Needs, and What a Custodial Sentence Would Cost Them

Mr. Simes has four children. Grant Patrick Simes, now twenty [redacted]. Today, Grant is a full-time student at [redacted] on a Presidential Scholarship. PSR ¶55. E.C.S., age seventeen, divides her time between her parents' homes. Both are the children of Mr. Simes's first marriage, and their mother has written to the Court about the co-parenting relationship the two of them built and maintained across fifteen years. **Exhibit C**.

The two younger children are D.L.S., age twelve, [redacted], and H.L.S., age seven, [redacted]. PSR ¶54.

H.L.S.'s care has required sustained advocacy [redacted]

[redacted]

For long stretches of their lives, Mr. Simes has been responsible for coordinating care for both boys. He identified and engaged most of their providers. [redacted]. For the past three years he has also been the parent who made D.L.S.'s travel hockey and lacrosse possible, including the registration, equipment, fees, practices, games, and travel that go with them. For a twelve-year-old [redacted], that structure is not recreation. It is among the most effective forms of regulation available to him, and it depends on an adult willing to do the unglamorous work of getting him there, week after week, in season and out. Mr. Simes has been the nearly-exclusive provider of support for these activities.

Mr. Simes did not confine that dedication to his own son. He is a certified USA Hockey coach and helped coach the team on which D.L.S. played. PSR ¶¶77, 87. When financial difficulties in 2025 threatened the family's ability to pay tuition for D.L.S. to continue playing for the 2025-2026 season, Mr. Simes offered to fill an opening to coach another team within the same organization in order to pay for D.L.S.'s tuition and provide coaching and mentoring to other youth hockey players. As discussed previously, two families from that team have written independently, neither aware of the other's letter, describing the same thing observed from outside the family. **Exhibits E & F**.

The circumstances in which these children are now being raised are before the Court in the Presentence Report. [redacted] PSR ¶50.

The Presentence Report also records Mr. Simes's account of the marriage. [redacted] PSR ¶53.

[redacted]

[redacted]

Effective November 1, 2025, the Sentencing Commission deleted the policy statements in Chapter Five, Part H, including the provision that had previously treated family ties and responsibilities as not ordinarily relevant in determining whether a departure was warranted. USSG App. C, amend. 836. The Commission explained that the amendment was intended to be outcome neutral, and that judges who would previously have relied on facts identified in those policy statements as a basis for departure retain the authority to rely on the same facts in imposing a sentence outside the applicable range as a variance under 18 U.S.C. § 3553(a). Mr. Simes's family circumstances are accordingly presented here not as a variance ground but as part of the individualized assessment that § 3553(a)(1) requires. *Gall*, 552 U.S. at 49–50.

The loss of financial support warrants the same consideration as the loss of caretaking. Mr. Simes's household has one income and it is his. The children's mother has not been employed outside the home since the birth of their first son. PSR ¶51. He also contributes to the support of his two older children. A custodial sentence would remove the household's only source of income at the same moment it disrupted the management of the children's care.

It would also work directly against the Court's own restitution order. Mr. Simes owes the United States $1,958,488 on the restitution obligation after payments already made, and that balance can be satisfied only out of what he earns. PSR ¶115. He has no meaningful liquid assets against which it can be collected, and his equity in the family home is subject to future marital distribution by the family court. Incarcerating him does not make the United States more likely to be repaid. It makes it less likely, and it does so in a category of case where the victim's interest is purely financial and is recoverable only if the defendant is left able to work.

C. Section 3553 Sentencing Factors Support a Probationary Sentence

The sentence imposed by this Court must reflect the offense's seriousness, deter criminal conduct, protect the public, and provide the defendant with needed training, medical care, or correctional treatment. However, the Court may also consider the collateral consequences of Mr. Simes's conduct which are significant and ongoing. First, he has paid $913,188 toward his restitution obligation, leaving an unpaid balance of $1,958,488. PSR ¶115. That figure includes payment, on December 1, 2025, of the tax due for the 2019 through 2022 tax years. He timely filed his 2023 and 2024 returns and timely paid the 2023 liability, and he has timely filed extensions for 2025 for himself and his firm. He has complied fully with every condition of pretrial release and appeared at every proceeding. PSR ¶¶4, 12.

The delinquent returns for 2016 through 2022 were prepared and ready to file in 2024. They remain unfiled for a reason outside Mr. Simes's control: the Internal Revenue Service will ordinarily not process a return once a criminal investigation has been opened. Mr. Simes has asked the United States Attorney's Office to confirm, in consultation with the assigned agent, what process should be followed for the prepared but unfiled returns, and he will file them as soon as he is permitted to do so. PSR ¶12. The work was finished before the Government arrived. What stopped it was the investigation, not the defendant.

The professional consequences have been swift and severe. Mr. Simes was a partner at Moses & Singer LLP earning $250,000 annually, and he was terminated as a direct consequence of this prosecution. PSR ¶82. He now practices alone and draws $1,000 per month from his firm. PSR ¶81. He faces current and future disciplinary proceedings in the jurisdictions where he is admitted, with the loss of the license he has held since 2001 a realistic possibility.

The Court need not treat those consequences as Government-imposed punishment to consider them under § 3553(a)(2)(B). The question is what quantum of additional sanction is necessary to deter this defendant from ever doing this again. A fifty-one-year-old man with no prior contact with the criminal justice system, who began fixing the problem before he was caught, who has lost his partnership and may lose his profession, and who owes the United States $2.87 million he can repay only by working, is not a candidate for recidivism. See *Pepper v. United States*, 562 U.S. 476, 491 (2011). Moreover, the Court need not accept Mr. Simes' own assessment of his contrition in weighing the risk of recidivism. The Court also should consider the statements of Amy Telesco, the licensed professional counselor, with whom Mr. Simes has been working since June 2025. Ms. Telesco's letter to this Court notes that he demonstrates "insight, self-reflection, and a willingness to identify areas for growth." **Exhibit J**. Further, she states that his attendance is "exemplary" and that he consistently demonstrates "reliability, accountability and responsibility in managing treatment commitments." *Id.*

General deterrence is a genuine interest in tax cases, and Mr. Simes does not suggest otherwise. But the deterrent message here is already comprehensive and public: an established lawyer with no prior record was prosecuted, convicted, publicly identified, terminated from his firm, made to pay $2.87 million, and placed under the supervision of this Court. And Mr. Simes' commitment to taking responsibility and growing from this incident is undeniable. The marginal deterrent value of adding incarceration here is small relative to its cost.

D. National and District Sentencing Practice in This Guideline Cell— § 3553(a)(6)

The Sentencing Commission's own data, set out at ¶97 of the Presentence Report, shows how courts across the country typically sentence defendants at Mr. Simes's guideline position. Over the last five fiscal years, 129 defendants were sentenced under §2T1.1 with a final offense level of 17 and criminal history category I. This number excludes those who received substantial assistance departures. Of those 129, 99 (77%) received a term of imprisonment in whole or in part, with an average and median of 15 months. Across all 129, the average sentence imposed was 13 months and the median was 12 months. PSR ¶97.

Because the JSIN platform reports only the primary guideline, the final offense level, and the criminal history category, ¶97 does not disclose what those 129 defendants were convicted of, how their sentences related to the advisory range, or what form those sentences took. Counsel has reconstructed the missing information from the Commission's published Individual Offender Datafiles for fiscal years 2021 through 2025. The reconstruction reproduces each figure stated at ¶97 exactly—the number of defendants, the proportion imprisoned, and both measures of sentence length. It establishes four things.

First, the comparison group is comprised almost entirely of felony defendants. Of the 129 defendants in the comparison group, 125 (97 percent) were convicted of at least one felony. The most frequent offenses of conviction were 26 U.S.C. §7201, felony tax evasion (54 defendants), and 26 U.S.C. §7206(1), filing a false return (41 defendants). Only four of the 129 were convicted, as Mr. Simes was, solely of misdemeanor offenses. The typical defendant in this guideline range faced a statutory maximum of three or five years on a single count, and a sentence of 24 to 30 months was therefore available to the sentencing court as a matter of course. Mr. Simes faces a statutory maximum of one year per count, and a multi-year sentence is available only if this Court directs that his counts run consecutively.

Second, courts sentencing in this range overwhelmingly go below the range. One hundred of the 129 defendants (78 percent) received a sentence below the advisory guideline range. Twenty-nine were sentenced within it. Not one received a sentence above it. Defendants sentenced within the range averaged 24.9 months of confinement; those sentenced below it averaged 9.4 months. A within-range sentence is not the norm. It is the minority outcome, imposed only in roughly twenty percent of cases.

Third, courts reach those sentences by variance rather than by departure. Of the 100 below-range sentences, only five were downward departures. Seventy-four were downward variances not sponsored by the Government, and 21 were government-sponsored variances. Courts sentencing §2T1.1 defendants at this offense level are not locating Guidelines-authorized grounds to leave the range; they are calculating the range, setting it beside the factors in 18 U.S.C. § 3553(a), and concluding in a strong majority of cases that the range overstates what the case requires. That is precisely the exercise Mr. Simes asks this Court to undertake.

Fourth, non-custodial and partially-custodial sentences are a regular feature of practice in this cell. Thirty of the 129 defendants received no term of imprisonment at all. Seventeen received probation alone; twelve received probation with a confinement condition, averaging just under eleven months; one received a fine only. Nine further defendants received split sentences combining a short prison term with alternative confinement. The sentence Mr. Simes requests, and the home-confinement alternative he offers should the Court find a confinement component necessary, are both dispositions that courts have repeatedly imposed on defendants at this offense level. The great majority of these defendants were, unlike Mr. Simes, convicted of felonies.

Indeed, the experience of misdemeanor defendants sentenced under this guideline confirms the point. During the same five years (2021-2025), 78 defendants were sentenced under §2T1.1 on misdemeanor convictions alone, at any offense level. Of those 78, 54 received no term of imprisonment, and 46 received no confinement of any kind. In other words, of all misdemeanor defendants sentenced under the guidelines over the past five years, nearly 60% received no confinement at all. Thirty-six of those defendants required a variance to reach that result and received one. Among defendants with a final offense level of 15 and above, where the advisory range requires a term of confinement, eighteen defendants nonetheless received sentences of no confinement, every one of them by variance.

Two of those eighteen sat at Mr. Simes's exact offense level. One was sentenced in 2025 in the Eastern District of Missouri on a five-count §7203 conviction. The other was sentenced in 2021 in this District, on a three-count §7203 conviction—the identical charging structure Mr. Simes faces—and received probation with no term of confinement, by a non-government-sponsored downward variance.

The overall practice of this District confirms the trend. Over the same five fiscal years, seven defendants were sentenced in the District of Connecticut under §2T1.1 at final offense level 17 in criminal history category I. Every one of the seven received a sentence below the advisory guideline range. Three of the seven received no term of imprisonment. The mean total confinement imposed was 7.6 months and the median was 6 months against an advisory range of 24 to 30 months, and against a national median of 12 months in the same range. No defendant in this District and in Mr. Simes's guideline position has been sentenced within the range in the past five years.

The pattern holds across this District's tax docket generally. Of the 32 defendants sentenced here under §2T1.1 during that period, excluding substantial assistance cases, 26 received below-range sentences, five were sentenced within the range, and none above it.

Mr. Simes does not suggest that these figures constrain the Court's discretion, and he recognizes that the sample size here is small. He offers this analysis because § 3553(a)(6) seeks to avoid unwarranted disparity, and the most direct measure of whether a sentence is out of step is what this District has done with defendants standing where he stands.

Section 3553(a)(6) directs the Court to consider the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct. The advisory range here begins at 24 months. That would be double the median imposed on a comparison group composed almost exclusively of felony defendants. A guidelines sentence would also be more than 2.5 times the average imposed on those in that group who received the below-range sentences that are the norm. To sentence Mr. Simes within the range would place a first-offender misdemeanant, who began remediating before learning of the criminal investigation, and who has agreed to pay $2,871,676 in restitution, above the typical felony defendant in his own guideline range. That would create an unwarranted disparity that courts strive to avoid.

E. A Within-Range Sentence Would Require Stacking Counts Congress Capped at One Year

Mr. Simes's primary request is for probation. This section is addressed to the alternative. Congress set the maximum penalty for willful failure to file at one year. 26 U.S.C. § 7203. The advisory range exceeds that maximum and can be reached only if the counts run consecutively. USSG §5G1.2(d); PSR ¶95.

Section 5G1.2(d) directs that counts run consecutively to the extent necessary to produce a combined sentence equal to the total punishment. That instruction, like the rest of the Guidelines, is advisory. *Booker*, 543 U.S. at 245. The Court is not obliged to stack, and the judgment Congress made that a single violation warrants no more than twelve months, is a relevant consideration under § 3553(a)(2)(A) and (a)(4). Mr. Simes's conduct consisted of the same omission repeated across successive years, and the tax loss driving the guidelines range aggregates all of it, including $1,294,959 in interest, penalties, and fees on returns he did file. PSR ¶12. The counts are not separate schemes. They are the same failure, counted annually.

F. A Fine Should Not Be Imposed

The guidelines fine range is $10,000 to $95,000. PSR ¶113. The probation officer, having now received and reviewed Mr. Simes's completed Personal Financial Statement, has concluded that "given the priority of restitution, it does not appear Mr. Simes would have the ability to pay a guideline fine, in addition to any restitution that may be ordered by the Court." PSR ¶93. Mr. Simes respectfully submits that the Court should adopt that assessment.

Mr. Simes owes the Internal Revenue Service $1,958,488 after the payments he has already made. His firm pays him $1,000 per month, his partnership income is gone, and he carries $33,963 in outstanding credit card debt. PSR ¶¶81, 82, 92, 115. Every dollar directed to a fine is a dollar not directed to restitution, and 18 U.S.C. § 3572(b) instructs the Court to consider precisely that. Mr. Simes requests that no fine be imposed and that his resources, as they become available again, be applied to restitution.

G. Conditions of Supervision

The PSR notes that the conditions listed at ¶122 are discretionary, that their inclusion in the report is not a recommendation, and that Mr. Simes's objections to them remain for the Court to resolve. The PSR was amended for three of the special conditions at ¶124 in response to Mr. Simes's objections. Three narrower questions under ¶124 remain. We address the substantive requests first and the narrow ones second.

A discretionary condition must be reasonably related to the factors in 18 U.S.C. § 3553(a)(1) and (a)(2)(B)–(D), must involve no greater deprivation of liberty than is reasonably necessary to serve those purposes, and must be consistent with the Commission's policy statements. 18 U.S.C. § 3583(d); USSG §5B1.3. Mr. Simes submits that four of the general conditions do not meet that standard as applied to a non-violent failure-to-file offense committed by a practicing attorney.

i. Association with Persons Known to Have Felony Convictions – ¶122(8)

Mr. Simes practices commercial litigation, employment law, and (at times) bankruptcy litigation. Contact with individuals who have felony convictions may be unavoidable in that work. Debtors and the principals of debtor entities, adverse parties, deponents, witnesses, and prospective clients, whose records are often unknown until a matter is underway, may be involved in one way or another with Mr. Simes's practice of law. As drafted, the condition can be read to require advance permission before an initial client consultation, a deposition, or a call with the principal of an adverse party. Such a condition will be difficult to administer, may intrude on an attorney-client relationship, and it may place Mr. Simes in tension with his confidentiality obligations under relevant rules of professional conduct. Mr. Simes requests that the condition exclude contact occurring within his practice of law, incidental contact, and contact with family members.

ii. Confidential Informants - ¶122(11)

This condition addresses a risk associated with defendants whose offenses arise from ongoing criminal enterprises. Mr. Simes failed to file his own tax returns. There are no co-defendants, no related cases, and no investigation in which he could be enlisted. The condition bears no relationship to the offense or to his history and characteristics.

iii. Firearms - ¶122(10)

Each count carries a maximum term of one year, and the offenses are accordingly Class A misdemeanors. PSR ¶¶94–105. A conviction punishable by no more than one year does not make a defendant a prohibited person under 18 U.S.C. § 922(g)(1), which reaches only convictions punishable by more than one year. The condition would impose through supervision a firearms disability Congress did not attach to this offense. The conduct involved no violence, no threat of violence, and no weapon, and Mr. Simes has no prior arrests or convictions. PSR ¶¶32, 126.

iv. Travel Restrictions - ¶122(3)

Mr. Simes is admitted in New York and devotes most of his practice to work within the Southern District of New York and New York Commercial Division. PSR ¶¶78, 81. His clients and the courts before which he appears are predominantly in New York. Mr. Simes requests standing authorization to travel throughout New York for professional purposes, subject to such reporting as the probation officer may reasonably require.

v. Asset Transfers - ¶124(3)

The probation officer amended this condition to exclude transfers pursuant to order of the Connecticut Superior Court, transfers made to satisfy restitution, and household expenditures. Mr. Simes appreciates those amendments and does not seek anything broader than the practical problem requires. He had also asked that ordinary-course transactions be excluded, and the probation officer declined on the ground that the phrase is vague. The officer's concern is well taken. Mr. Simes therefore proposes a narrower formulation that the objection was meant to capture: that the condition exclude ordinary-course business transactions of Simes Law, P.C. conducted in the regular operation of the practice. So limited, the condition reaches the dissipation of personal assets but would not require him to seek permission before paying, for example, a court reporter or an expert witness.

vi. Restitution Payment Schedule - ¶124(4)

The probation officer amended this condition to define monthly income as net income after ordinary and necessary business expenses, which resolves the substance of Mr. Simes's objection. As to the remaining point, the probation officer reads the condition as already requiring the Court's approval before any payment schedule is set. Mr. Simes agrees with that reading, and on that understanding there is no disagreement between the parties.

vii. Mental Health Treatment - ¶124(5)

Mr. Simes has been in continuous, voluntary mental health treatment since 2010. He is presently under the care of both a psychiatrist and a therapist. He has never failed to comply with his treatment, and he intends to continue. PSR ¶65. The probation officer acknowledges that history of compliance and recommends the condition to permit monitoring and to preserve access to referrals should circumstances change. Mr. Simes does not quarrel with either purpose. He asks only that continued treatment with his existing providers be deemed to satisfy the condition. Neither monitoring nor referral access requires disturbing a treatment relationship that has been in place and has worked.

Mr. Simes submits that these modifications to the proposed conditions of release are appropriately limited.

V. CONCLUSION

Mr. Simes committed a serious offense over a long period. He does not pretend otherwise, and he does not ask the Court to do so. He asks the Court to sentence the whole man: the one who failed for years to do something he knew perfectly well he was required to do, and also the one who set about fixing it before anyone made him, who has already paid $913,188 of what he owes, who told his children and his community the truth about it, who has given away his professional services to asylum seekers and youth organizations and clients who could not pay, and who shares the daily care of two children who depend on him.

A sentence of two years' probation, conditioned on full restitution and such community service as the Court deems appropriate, would reflect the seriousness of the offense, provide just punishment, deter Mr. Simes and others, and hold him under this Court's supervision for longer than any custodial sentence lawfully could. It would also permit him to work, to repay the amounts he owes the United States, and to raise his children. It would be sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a).

Respectfully submitted,

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CERTIFICATION

I hereby certify that on August 31 2026, a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Kathleen E. Dion
Kathleen E. Dion