No. ____

In the Supreme Court of the United States

MARTIN MIZRAHI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

THANH D. NGUYEN
Winston & Strawn LLP
2121 N. Pearl St., Ste. 900
Dallas, TX 75201

CHRISTOPHER D. MAN
Counsel of Record
SYDNEY HARTMAN
Winston & Strawn LLP
1901 L St. NW
Washington, DC 20036
(202) 282-5000
CMan@winston.com

Counsel for Petitioner

QUESTION PRESENTED

Five years before this Court decided *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Court stated in *Libretti v. United States*, "that the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection." 516 U.S. 29, 49 (1995). *Apprendi*, however, held that the Fifth and Sixth Amendments require "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. *Southern Union Co. v. United States*, later extended *Apprendi* by barring the "imposition of criminal fines based on judicial factfinding." 567 U.S. 343, 350 (2012). Because criminal forfeiture is a type of fine for constitutional purposes, *Southern Union*'s holding logically applies to criminal forfeiture as well. *See United States v. Bajakajian*, 524 U.S. 321, 328 (1998) ("Forfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offense."). Despite the inconsistency between *Libretti* and the Court's subsequent decisions in *Apprendi* and *Southern Union*, lower courts feel "compelled to apply *Libretti*" until this Court exercises its "'prerogative in overruling its own decisions.'" *United States v. Sigillito*, 759 F.3d 913, 935 (8th Cir. 2014) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). This Court recently explained that *Apprendi*'s principles "are so firmly entrenched that we have now overruled several decisions inconsistent with them." *Erlinger v. United States*, 602 U.S. 821, 833–34 (2024) (listing cases). *Libretti* is another pre-*Apprendi* decision that should be overruled.

The question presented is whether *Libretti* should be overruled.

RELATED PROCEEDINGS

None

PARTIES TO THE PROCEEDING

Martin Mizrahi, *Petitioner*

United States of America, *Respondent*

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

RELATED PROCEEDINGS ii

PARTIES TO THE PROCEEDING iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 2

A. Historical Background of Criminal Forfeiture in the United States 4

B. Factual Background and Trial 5

C. Sentencing 11

REASONS FOR GRANTING THE PETITION 14

I. THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER *APPRENDI* AND *SOUTHERN UNION* APPLY TO CRIMINAL FORFEITURE 16

II. THE COURT SHOULD OVERRULE *LIBRETTI* 19

A. None of the Justifications for *Libretti* Survive *Apprendi* and *Southern Union* 20

B. This Court Must Overrule *Libretti* to Correct the Constitutional Error it Produces.....24

CONCLUSION 27

APPENDIX A: Second Circuit Court of Appeals Summary Order and Judgment (*United States of America v. Mizrahi*, 24-02507 (2d Cir. November 7, 2025)) 1a

APPENDIX B: Second Circuit Court of Appeals Order Denying Rehearing (*United States of America v. Mizrahi*, 24-02507 (2d Cir. January 30, 2026)) 9a

APPENDIX C: Judgment in a Criminal Case for Martin Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 11a

APPENDIX D: Preliminary Forfeiture Order for Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 25a

APPENDIX E: Mizrahi Sentencing Transcript Excerpts (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 32a

APPENDIX F: Sentencing Memorandum on Behalf of Martin Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. July 26, 2024)) 59a

APPENDIX G: Jury Verdict (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. March 4, 2024)) 127a

APPENDIX H: Jury Charge Hearing Transcript Excerpts (*United States of*

America v. Zubaid, 1:22-cr-00650-JPO (S.D.N.Y. March 1, 2024)) 128a

APPENDIX I: Superseding Indictment (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. July 26, 2024)) 140a

APPENDIX J: U.S. Const. amend. V 157a

APPENDIX K: U.S. Cons. amend. VI 158a

APPENDIX L: 18 U.S.C. § 982(a)(1) 159a

APPENDIX M: Judgment in a Criminal Case for David Goran (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. March 17, 2025)) 164a

TABLE OF AUTHORITIES

Page(s)

Cases

Alexander v. United States,
509 U.S. 544 (1993) 17

Alleyne v. United States,
570 U.S. 99 (2013) 20, 21

Apprendi v. New Jersey,
530 U.S. 466 (2000) 2, 16, 17, 23

Austin v. United States,
509 U.S. 602 (1993) 17

Blakely v. Washington,
542 U.S. 296 (2004) 16, 25

Bourjaily v. United States,
483 U.S. 171 (1987) 9

Braun v. United States,
No. 05-599 (2005)..... 15

*Browning-Ferris Indus. of Vt., Inc. v.
Kelco Disposal, Inc.*,
492 U.S. 257 (1989) 17

Burnett v. United States,
146 S. Ct. 875 (2026) 22

Cabana v. Bullock,
474 U.S. 376 (1986) 20, 21

Calero-Toledo v. Pearson Yacht Leasing Co.,
416 U.S. 663 (1974) 4

Cunningham v. California,
549 U.S. 270 (2007) 16

Dantone, Inc. v. United States,
No. 06-71 (2006)..... 15

Dantone, Inc. v. United States,
No. 15-52 (2015)..... 15

Ellingburg v. United States,
146 S. Ct. 564 (2026) 2

Erlinger v. United States,
602 U.S. 821 (2024) 2, 14, 16, 17, 19, 20, 26

Esformes v. United States,
No. 23-95 (2023)..... 15

Greene v. Briggs,
10 F. Cas. 1135 (C.C. D. R.I. 1852)..... 19

Hale v. Petit,
75 Eng. Rep. 387 (1561) 18

Harris v. United States,
536 U.S. 545 (2002) 20, 21

Hester v. United States,
586 U.S. 1104 (2019) 22

Hill v. Quarterman,
534 F.3d 365 (5th Cir. 2008) 21

Hurst v. Florida,
577 U.S. 92 (2016) 19, 21

Leahy v. United States,
No. 06-79 (2006)..... 15

Libretti v. United States,
516 U.S. 29 (1995) 2, 15 17, 20, 21, 24, 25, 26

Luis v. United States,
578 U.S. 5 (2016) 4

McMillan v. Pennsylvania,
477 U.S. 79 (1986) 20, 21, 25

Oregon v. Ice,
555 U.S. 160 (2009) 24

Rimlawi v. United States,
145 S. Ct. 518 (2025) 19

Ring v. Arizona,
536 U.S. 584 (2002) 16, 20, 21

S. Union Co. v. United States,
567 U.S. 343, 350 (2012) 2, 16, 17, 20, 21, 23

Spaziano v. Florida,
468 U.S. 447 (1984) 20, 21

Stevenson v. United States,
No. 16-900 (2017)..... 15

Tedder v. United States,
No. 05-312 (2005)..... 15

United States v. Bajakajian,
524 U.S. 321 (1998) 2, 4, 5, 17

United States v. Booker,
543 U.S. 220 (2005) 16, 25

United States v. Corrado,
227 F.3d 543 (6th Cir. 2000) 25

United States v. Derman,
143 F.4th 1148 (10th Cir. 2025)..... 25

United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in U.S. Currency,
461 U.S. 555 (1983) 3

United States v. Fruchter,
411 F.3d 377 (2d Cir. 2005)..... 24, 25

United States v. Haymond,
588 U.S. 634 (2019) 3, 16, 21

United States v. Inadi,
475 U.S. 387 (1986) 9

United States v. Leahy,
438 F.3d 328 (3d Cir. 2006) 15, 24, 25

United States v. Phillips,
704 F.3d 754 (9th Cir. 2012) 22, 24

United States v. Sigillito,
759 F.3d 913 (8th Cir. 2014) 15, 24, 25

United States v. Vera,
278 F.3d 672 (7th Cir. 2002) 25

United States v. Visinaiz,
344 F. Supp. 2d 1310 (D. Utah 2004) 25

Walton v. Arizona,
497 U.S. 639 (1990) 20, 21

Statutes

18 U.S.C. § 371 10

18 U.S.C. § 982(a)(1) 1, 2

18 U.S.C. § 1028A(c) 10

18 U.S.C. § 1343 10

18 U.S.C. § 1344 10

18 U.S.C. § 1349 10

18 U.S.C. § 1956 1

18 U.S.C. § 1956(a)(1)(B)(i) 9

18 U.S.C. § 1956(h) 9

18 U.S.C. § 1960 10

18 U.S.C. § 3571(d) 23

28 U.S.C. § 1254(1) 1

Crimes Act of 1790, § 1, 1 Stat. 112 4

Criminal Law Act, 7&8 Geo. IV (1827) 18

Money Laundering Control Act of 1986,
Pub. L. No. 99-570, 100 Stat. 3207
(1986) 5

Other Authorities

B. Patrick Costello, Jr., Apprendi v. New Jersey*: "Who Decides What Constitutes a Crime?,"* 77 Notre Dame L. Rev. 1205 (2002) 26

Brief in Opposition, *Apprendi v. New Jersey*, No. 99-478, 1999 WL 33611431 (Oct. 20, 1999)..... 26

Brief in Opposition, *Ring v. Arizona*, No. 01-488, 2001 WL 34092072 (Nov. 5, 2001)..... 26

Brief in Opposition, *S. Union Co. v. United States*, No. 11-94, 2011 WL 5014763 (Oct. 19, 2011)..... 26

Fed. R. Crim. P. 7 18

1 Matthew Hale, *History of the Pleas of the Crown* 363 (1778 ed.)..... 19

Matthew R. Ford, *Criminal Forfeiture and the Sixth Amendment's Right to Jury Trial Post*-Booker, 101 Nw. U. L. Rev. 1371 (2007)..... 25, 26

Nancy J. King & Susan R. Klein, *Beyond* Blakeley, 16 Fed. Sent. R. 316 (2024)..... 25

Nancy J. King & Susan R. Klein, *Essential Elements*, 54 Vand. L. Rev. 1467 (2001) 26

The Office of the Clerk of Assize (1676) 19

Stefan D. Cassella, *Criminal Forfeiture Procedure: An Analysis of Development in the Law Regarding the Inclusion of a Forfeiture Judgment in the Sentence Imposed in a Criminal Case*, 32 Am. J. Crim. L. 55 (2004) 5

Thomas Dogherty, *The Crown Circuit Companion* (1799) 19

U.S. Att'ys' Annual Stat. Rep., Fiscal Year 2024 (2025)..... 3

U.S. Const. amend. V..... 1

U.S. Const. amend. VI 1

U.S. Const. art. III, § 3 4

W. Stubbs & G. Talmash, *The Crown Circuit Companion* (4th ed. 1768) 19

4 William Blackstone, *Commentaries on the Laws of England* (1769) 4

2 William Hawkins, *A Treatise of the Pleas of the Crown* 450 (1721)..... 19

PETITION FOR A WRIT OF CERTIORARI

Petitioner Martin Mizrahi respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit's decision (App.1a) is not reported but is available at 2025 WL 3120167. The district court's judgment is not reported but can be found at App.11a.

JURISDICTION

The Second Circuit entered judgment on November 7, 2025, and denied panel rehearing and rehearing en banc on January 30, 2026. App.9a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. App.157a.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ." U.S. Const. amend. VI. App.158a.

18 U.S.C. § 982(a)(1) provides that "[t]he court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." App.159a.

STATEMENT

This case presents an important, recurring question of criminal law that warrants this Court's review: whether criminal forfeiture is subject to the rule set by *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Apprendi* requires that "[v]irtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Erlinger v. United States*, 602 U.S. 821, 834 (2024) (quoting *Apprendi*, 530 U.S. at 490). In *Southern Union Co. v. United States*, this Court extended *Apprendi*'s requirement that a jury perform the fact-finding necessary to impose longer prison sentences and the death penalty to criminal fines. 567 U.S. 343, 350 (2012). Because criminal forfeiture is a type of fine for constitutional purposes, *Southern Union*'s holding logically applies to criminal forfeiture as well. *See, e.g.*, *United States v. Bajakajian*, 524 U.S. 321, 328 (1998) ("Forfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offense."); *see also Ellingburg v. United States*, 146 S. Ct. 564, 568 (2026) ("[F]orfeiture under 18 U.S.C. § 982(a)(1) . . . is criminal punishment.").

Despite *Apprendi* and *Southern Union*, however, lower courts feel bound by this Court's pre-*Apprendi* remark that "the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection." *Libretti v. United States*, 516 U.S. 29, 49 (1995). *Libretti* will continue to be followed by the lower courts until it is overruled, and only this Court can overrule it.

The issue is exceptionally important. Although criminal forfeiture was banned for most of the country's first two hundred years, the federal government now seeks criminal forfeiture in thousands of cases

each year and deprives defendants of assets worth billions of dollars in the process. According to the U.S. Department of Justice's most recent data, the federal government sought criminal forfeiture in 13,082 of its pending cases and 8,331 of its completed cases in 2024. United States Attorneys' Annual Statistical Report, Fiscal Year 2024, Table 16 (2025). In total, DOJ obtained $2,543,967,370 in criminally forfeited property in 2024. *Id.*; *see also United States v. Eight Thousand Eight Hundred and Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 567 (1983) (recognizing that criminal proceedings "often include forfeiture as part of the sentence"). The widespread use of criminal forfeiture results in harsh financial penalties that devastate the well-being of defendants and their families, which is the very reason the Founders banned it in the first place.

Restoring criminal forfeiture as punishment is Congress' prerogative, but this Court must ensure that when lower courts mete out such punishment, they do so in a manner that complies with the Fifth and Sixth Amendments. There is no principled reason why the deprivation of property through criminal forfeiture should receive any less constitutional protection than deprivations of property imposed through criminal fines. Preserving these constitutional rights is critical to our constitutional structure. *See United States v. Haymond*, 588 U.S. 634, 646 (2019) ("Nor did the absence of a jury's finding beyond a reasonable doubt only infringe the rights of the accused; it also divested the 'people at large'—the men and women who make up a jury of a defendant's peers—of their constitutional authority to set the metes and bounds of judicially administered criminal punishments.").

A. Historical Background of Criminal Forfeiture in the United States

Although criminal forfeiture is commonplace today, that was not the case during the first two hundred years of the Republic. Our Founders viewed criminal forfeiture as abhorrent. Under English law, those convicted of treason or a felony forfeited virtually all their property to the Crown or feudal lord. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974); 4 William Blackstone, *Commentaries on the Laws of England*, *381, *385–87 (1769). "That harsh penalty never caught on in America." *Luis v. United States*, 578 U.S. 5, 28 (2016) (Scalia, J., concurring).

Even as to the most serious crime of treason, the Constitution expressly limits the punishment: "The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted." U.S. Const. art. III, § 3. The First Congress, which included many who were at the Constitutional Convention, prescribed the death penalty for treason. Crimes Act of 1790, § 1, 1 Stat. 112, 112. Thus, the Constitution's Framers viewed death as an appropriate punishment for treason, but criminal forfeiture as too harsh due to its crippling financial harm to a defendant's family.

The First Congress went further and "explicitly rejected *in personam* forfeitures as punishments for federal crimes, and Congress reenacted this ban several times over the course of two centuries." *United States v. Bajakajian*, 524 U.S. 321, 332 n.7 (1998); *see* Crimes Act of 1790, § 24, 1 Stat. at 117 ("[N]o conviction or judgment for any of the offences aforesaid, shall work

corruption of blood, or any forfeiture of estate."). Consequently, this ban on forfeiture was a governing background principle of law when the states ratified the Bill of Rights nearly two years later.

"It was only in 1970 that Congress resurrected the English common law of punitive forfeiture to combat organized crime and major drug trafficking." *Bajakajian*, 524 U.S. at 332 n.7. Since then, criminal forfeiture sanctions have steadily expanded to reach more and more types of crimes. *Id.* The forfeiture for money laundering at issue in this case, for example, is of particularly recent vintage, as money laundering did not become a crime until 1986. *See* Money Laundering Control Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986). With the expansion of this sanction, "[f]ederal prosecutors have begun to make criminal forfeiture a routine part of criminal law enforcement in federal cases." Stefan D. Cassella, *Criminal Forfeiture Procedure: An Analysis of Development in the Law Regarding the Inclusion of a Forfeiture Judgment in the Sentence Imposed in a Criminal Case*, 32 Am. J. Crim. L. 55, 56 (2004). Indeed, federal prosecutors now seek criminal forfeiture in tens of thousands of criminal cases and strip defendants of assets worth several billion dollars in the process. Our Founders, who sought to protect Americans against such forfeitures, would be startled by their prevalence today, particularly for conduct like money laundering that they would not have conceived as criminal conduct.

B. Factual Background and Trial

Mizrahi became a target of two professional, lifelong conmen, Joel Zubaid and David Goran. Zubaid and Goran were involved in several criminal schemes, and they enlisted Mizrahi's help to launder their criminal proceeds into Bitcoin. Mizrahi does not dispute that

he took money from Zubaid and Goran, and that he returned it to them in the form of Bitcoin for a small fee that roughly covered transaction costs. Still, Mizrahi was a middleman. He never took ownership of the criminal proceeds, and he made little to no money when he assisted them with these transactions. Although Mizrahi does not challenge his conviction, he has steadfastly maintained that he believed that he innocently bought Bitcoin for legitimate investors.

Zubaid and Goran targeted Mizrahi because he was a successful entrepreneur. Until his incarceration, Mizrahi ran LV.Net, a successful Internet service provider that he founded in 1994 and employs roughly 115 people. Mizrahi has other business ventures, including mining Bitcoin. His mining activities helped him secure the rare ability to trade large volumes of Bitcoin on the crypto-trading platform Coinbase. Before his incarceration, Mizrahi also sought investors for a crypto real estate investment trust. Zubaid and Goran told Mizrahi that if he converted money into Bitcoin, that would help cultivate a group of interested investors.

With Mizrahi's trust secured, Zubaid and Goran sent Mizrahi money to buy Bitcoin from three sources. First, Zubaid and Goran hacked into a bank account and sent those funds to Mizrahi through LV.Net. The government charged these transactions as bank fraud. For his part, Mizrahi testified that he thought the money came from a legitimate Bitcoin investor—not a compromised bank account.

Second, Zubaid and Goran used stolen credit card numbers to make purchases at LV.Net. The government charged these credit card fraud activities as wire fraud. At trial, Mizrahi testified that he believed this money originated from legitimate Bitcoin investors too.

Third, Mizrahi received bulk cash. The government alleged that the bulk cash derived from drug trafficking and belonged to a Mexican drug cartel. But at trial, the government could not name the Mexican cartel that purportedly owned the cash or provide any direct evidence that the money was derived from drug trafficking. And when he took the stand, Mizrahi testified that he believed the money came from mom-and-pop businesses that dealt with cash. The evidence at trial corroborated Mizrahi's testimony, as it showed that Zubaid told Goran, the FBI, and others that the money came from mom-and-pop shop owners looking to invest in Bitcoin.

No one in Mizrahi's position would have rationally joined Zubaid and Goran's harebrained money laundering scheme. The bank fraud victim quickly discovered that its money was missing and had been sent to LV.Net. It did not take long for the credit card holders to discover the fraudulent charges either and see LV.Net listed as the recipient. Thus, inevitably, and with little effort, these victims would trace their losses to Mizrahi and his company. The government seized the bank fraud money from LV.Net's bank account, and the credit card charges were reversed, with Mizrahi repaying the credit card companies and losing money by paying the processing fees.

At trial, Mizrahi strenuously testified that he would have never assisted drug traffickers had he known of the bulk cash's purported source. Mizrahi has a profound hatred of drugs—drug abuse killed his brother. This loss led Mizrahi to live a sober, vegan lifestyle, in

which he fastidiously pays attention to what he puts in his body.[1]

Additionally, the government never offered direct evidence of any involvement by a supposed Mexican cartel. An FBI agent testified that drug cartels often launder bulk cash through Bitcoin but admitted that cartels launder money in a multitude of ways and that numerous others both legally and illegally purchase Bitcoin. The agent offered no testimony that the bulk cash and Bitcoin transactions carried the unique signature of a drug cartel's involvement.

The government's only other evidence was Zubaid's testimony. At trial, Zubaid claimed that he was told by the people who gave him the money that it belonged to a Mexican drug cartel. But Zubaid had no first-hand knowledge that this hearsay was true. His testimony also contradicted his statements to the FBI and others that the money came from mom-and-pop shops.

To this day, the government cannot identify which Mexican cartel it believes owned the money. Nor has it offered any evidence of what drugs this cartel supposedly sold, who sold or bought them, or where and when any drug transaction occurred. Perhaps worse still, the government *knows* who gave Zubaid the bulk cash and who supposedly told him it belonged to the cartel. Yet even though these individuals live openly in the United States, the government has neither charged nor arrested them. At trial, the government

---

[1] At sentencing, more than 130 people who knew Mizrahi well submitted letters attesting that Mizrahi detested drugs and those who sold them. They recounted numerous instances in which Mizrahi helped others obtain sobriety, including by paying for substance abusers to attend rehabilitation facilities. App.64a–65a.

offered no evidence that law enforcement had even questioned them. And none were called to testify.

Whether or not the people who gave Zubaid the bulk cash told him the money belonged to a dangerous Mexican drug cartel, there is no reason to believe that was true. Those who entrusted Zubaid with their money may have tried to scare him, so he would not run off with it. *See Bourjaily v. United States*, 483 U.S. 171, 193 n.7 (1987) (Blackmun, J., dissenting) ("The conspirator's interest is likely to lie in misleading the listener into believing the conspiracy stronger with more members (and different members) and other aims than in fact it has. It is no victory for common sense to make a belief that criminals are notorious for their veracity the basis for law.") (quoting J. Levie, *Hearsay and Conspiracy: A Reexamination of the Co-Conspirators' Exception to the Hearsay Rule*, 52 Mich. L. Rev. 1159, 1165–66 (1954)); *United States v. Inadi*, 475 U.S. 387, 404–05 (1986) (Marshall, J., dissenting) (same).

Additionally, the record strongly suggests that Zubaid knew no cartel was involved. Twice, cash was stolen from Zubaid, but he never enlisted the cartel's help to recover it. And even after Zubaid lost that money, he continued to bring Mizrahi bulk cash to purchase Bitcoin. A ruthless drug cartel is unlikely to have continued doing business with Zubaid after he proved himself unreliable and would have sent its enforcers to recover the lost money.

Ultimately, a jury convicted Mizrahi on all charges, but this petition concerns only his sentencing on Counts 4 and 5, which, respectively, charged a conspiracy to commit money laundering under 18 U.S.C. § 1956(h) and substantive money laundering under 18

U.S.C. § 1956(a)(1)(B)(i).[2] Both counts are duplicitous in that they allege Mizrahi conspired to and did commit money laundering in three different ways with respect to three different sets of funds: bank fraud proceeds, wire fraud (credit card fraud) proceeds, and the bulk cash that the government alleged was drug trafficking proceeds. The district court specifically instructed the jury that it could convict Mizrahi on Counts 4 and 5 if it found that he knowingly laundered or agreed to launder illicit proceeds from *any one* of these three allegedly unlawful sources. App.133a–34a (instructing jury the government must prove a "transaction involved the proceeds of specified unlawful activity, which here was wire fraud, bank fraud, *or* the sale and distribution of narcotics") (emphasis added); App.135a–36a ("It is not necessary for the defendant [to] know that the proceeds came from wire fraud, bank fraud or narcotics trafficking specifically. It is sufficient that the defendant knew that the proceeds came from some unlawful activity."); App.139a ("The government must prove that the defendant knew the transaction involved criminally derived property.

---

[2] Count 1 charged a conspiracy to commit bank fraud and wire fraud under 18 U.S.C. § 1349. App.140a. Count 2 charged substantive wire fraud under 18 U.S.C. § 1343, based on an alleged scheme to fraudulently charge numerous credit cards. *Id.* Count 3 charged substantive bank fraud under 18 U.S.C. § 1344, based on a separate alleged scheme to hack into a bank customer's account and transfer funds out of the account. *Id.* Count 6 charged Mizrahi with aggravated identity theft under 18 U.S.C. § 1028A(c), which concerned the conduct alleged in Counts 1–3. *Id.* Count 7 charged Mizrahi with a conspiracy under 18 U.S.C. § 371 to operate an unlicensed money transmitting business under 18 U.S.C. § 1960. *Id.*

However, the government is not required to prove that the defendant knew the particular offense from which the criminally derived property was derived."); *see* App.51a (government telling the district court that the money laundering charges are predicated on "drug activity, wire fraud, or the charged bank fraud. So as long as the money came from one of those—by a preponderance of the evidence from one of those three SUAs, it would be forfeitable as money involved in the money laundering offenses."). The general verdict reflects that the jury found Mizrahi guilty, App.127a, but the jury made no express finding as to *which* of the government's three theories of guilt it found proven beyond a reasonable doubt.[3]

Mizrahi's convictions on the bank fraud and wire fraud counts may suggest that the jury found him guilty of laundering the proceeds of either or both of those crimes too, but Mizrahi was not charged with any drug trafficking offense. Accordingly, the record contains no indication whatsoever that the jury convicted him of laundering drug trafficking proceeds.

C. Sentencing

After the trial, it became apparent to defense counsel that Mizrahi genuinely did not understand how he was found guilty or why he should have appreciated

---

[3] The district court solved the duplicity problem through a unanimity instruction, so the conviction itself is valid. App.132a. But the jury's failure to identify the predicate offense it convicted him of committing means that the jury made no express finding as to which of the three sets of funds were laundered. Mizrahi maintains that lack of an express finding prevents the forfeiture penalty from being imposed for the alleged bank fraud and drug trafficking predicates.

the many red flags that signaled Zubaid and Goran were untrustworthy. Numerous longtime friends and family advised his counsel that Mizrahi has always been overly trusting and easy to manipulate. They made the same point in letters to the district judge for sentencing purposes. App.64a–66a. These letters detailed numerous instances in which someone had conned Mizrahi and described how Mizrahi often had to rebuild his life after being cheated out of all he owned. *Id.*

Mizrahi underwent psychological testing, which revealed a great deal of information that would have been useful before trial. The psychological evaluation revealed that Mizrahi suffers from severe autism spectrum disorder (ASD), and this condition renders him unable to understand social cues and susceptible to believe anything that anyone claims is true. *Id.* He also lives with severe learning disabilities and can barely read. Large, unexpected gaps in his memory were revealed too. For example, Mizrahi cannot remember anything before third grade, the name of his middle school, or whether he graduated high school. Mizrahi was also particularly vulnerable when he interacted with Zubaid and Goran, as he suffered from post-traumatic stress disorder following a vicious physical attack. App.66a.

Ultimately, the district court was not persuaded "that the defendant was so gullible that he lacked the criminal intent to engage in these schemes," but found that Mizrahi "has cognitive and mental health challenges, including an ASD diagnosis and learning disabilities. And related to that, many of the letters indicate that he tends to be gullible and manipulated by others relatively easily." App.55a. Accordingly, the

district court found it appropriate to take these factors into account at sentencing. *Id.*

The district court calculated a total offense level of 36, which yielded a sentencing guideline range of 188–235 months' imprisonment and $50,000–$1,000,000 in fines. The district court varied downward and sentenced Mizrahi to 60 months' imprisonment. App.56a. The district court also imposed a $50,000 fine and ordered the criminal money laundering forfeiture sought by the government: $690,000 for the alleged bank fraud proceeds and $3,855,704 for the alleged narcotics trafficking proceeds, for a cumulative criminal forfeiture of $4,545,704.[4] App.23a, 27a–28a. In doing so, the district court explained "that is based on *my finding* that $693,000 in wire fraud proceeds was involved in the offense," and, "*more likely than not*, an additional $3,854,704 was actually involved in narcotic trafficking." App.58a (emphasis added). The district court made these criminal forfeiture findings over defense counsel's *Apprendi* objection. App.47a (explaining that Mizrahi's first objection to the criminal forfeiture was "just to preserve the record. We argue that the Fifth and Sixth Amendment require the criminal forfeiture be established by a jury beyond a reasonable doubt. I appreciate that is not the current law in this circuit.").

By contrast, although Zubaid and Goran orchestrated these criminal schemes and received all the Bitcoin that they asked Mizrahi to purchase, their sentences were far lower. Zubaid died before sentencing from an apparent suicide and was not sentenced at all.

---

[4] Because Mizrahi promptly repaid the credit card companies when the fraud was reported, the government did not seek forfeiture of the alleged wire fraud proceeds.

The district court sentenced Goran to time served, imposed a $10,000 fine, and ordered forfeiture of $10,000. App.173a–176a. Thus, at the conclusion of the district court proceedings, Mizrahi's $50,000 fine was *five times* higher than Goran's, and Mizrahi's forfeiture order of $4,545,704 was *450 times* higher than Goran's—even though Zubaid and Goran were the final recipients of the supposedly laundered money.

It was not apparent that the government would merely seek a $10,000 forfeiture against Goran until two months *after* Mizrahi filed his appeal. At trial, Mizrahi knew that Goran pled guilty to the same bank fraud, wire fraud, and conspiracy to commit bank and wire fraud charges that Mizrahi had been charged with committing, and Mizrahi knew that Goran's indictment contained an equally broad forfeiture notice. So, at trial, Mizrahi was able to argue that Goran's plea agreement gave him a powerful incentive to lie in an effort to help the government. Mizrahi could have put a much finer point on that argument had he been able to show that the government would essentially give Goran a more than $4.5 million windfall for his testimony by seeking a mere $10,000 in forfeiture against him.

REASONS FOR GRANTING THE PETITION

Time after time, this Court has been clear that the Fifth and Sixth Amendments require "a unanimous jury to find every fact essential to an offender's punishment," but it has not explicitly made that requirement applicable to criminal forfeiture. *Erlinger*, 602 U.S. at 832. This case provides an ideal vehicle for the Court to decide whether the Fifth and Sixth Amendments' requirements apply to criminal forfeiture in the same way that they do for all other punishments.

Since *Apprendi*, this Court has categorically applied these requirements to all criminal punishments, and the Court recently explained that these principles "are so firmly entrenched that we have now overruled several decisions inconsistent with them." *Id.* at 833–34 (listing cases). But *dicta* in *Libretti*, a pre-*Apprendi* decision, suggested that criminal forfeiture falls outside the Fifth and Sixth Amendments' protections. And no matter how much *Libretti*'s "precedential value has been eroded," the lower courts have uniformly concluded that they do not "possess the authority to declare that the Supreme Court has implicitly overruled one of its own decisions." *United States v. Leahy*, 438 F.3d 328, 332 (3d Cir. 2006) (en banc). They insist that this Court alone has the "'prerogative in overruling its own decisions.'" *United States v. Sigillito*, 759 F.3d 913, 935 (8th Cir. 2014) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.,* 490 U.S. 477, 484 (1989)); *see Leahy*, 438 F.3d at 332. Thus, only this Court can overturn *Libretti* and prevent thousands of defendants each year from being punished through criminal forfeitures that violate the Fifth and Sixth Amendments.[5]

[5] Further demonstrating the recurring constitutional problem, this Court has repeatedly been asked to overrule *Libretti*. *See Esformes v. United States*, No. 23-95 (2023); *Stevenson v. United States*, No. 16-900 (2017); *Dantone, Inc. v. United States*, No. 15-52 (2015); *Leahy v. United States*, No. 06-79 (2006); *Dantone, Inc. v. United States*, No. 06-71 (2006); *Braun v. United States*, No. 05-599 (2005); *Tedder v. United States*, No. 05-312 (2005).

I. THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER *APPRENDI* AND *SOUTHERN UNION* APPLY TO CRIMINAL FORFEITURE

A. *Apprendi* held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. The Court has unwaveringly applied *Apprendi* to invalidate numerous longstanding sentencing practices. *See, e.g.*, *Erlinger*, 602 U.S. at 835 (requiring a jury finding that past offenses were committed on separate occasions under the Armer Career Criminal Act); *Haymond*, 588 U.S. at 637 (same, for revoking probation and imposing a mandatory minimum); *Southern Union*, 567 U.S. at 352 (same, for imposing criminal fines based on judicial factfinding); *Cunningham v. California*, 549 U.S. 270, 274 (2007) (invalidating state sentencing guideline that authorized judicial factfinding of aggravating facts); *United States v. Booker*, 543 U.S. 220 (2005) (invalidating mandatory federal sentencing guidelines); *Blakely v. Washington*, 542 U.S. 296 (2004) (invalidating mandatory state sentencing guidelines); *Ring v. Arizona*, 536 U.S. 584 (2002) (rejecting imposition of death penalty based on judicial factfinding).

In doing so, the Court repeatedly has proclaimed that *Apprendi* provides a "bright-line rule." *See, e.g.*, *Haymond*, 588 U.S. at 656 n.9; *Southern Union*, 567 U.S. at 352; *Cunningham*, 549 U.S. at 288; *Blakely*, 542 U.S. at 308. When the Court extended *Apprendi* from fact-finding used to determine eligibility for the death penalty and longer prison terms to imposing fines, the Court saw "no principled basis under *Ap-*

prendi for treating criminal fines differently." *Southern Union*, 567 U.S. at 349. Given the multitude of cases applying *Apprendi*, this Court recently explained that "there is no doubt what the Constitution requires:" "[v]irtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Erlinger*, 602 U.S. at 834; *see id.* at 850 (Thomas, J., concurring) ("[A] 'crime' includes *every fact* that is by law a basis for imposing or increasing punishment") (quoting *Apprendi*, 530 U.S. at 501 (Thomas, J., concurring) (emphasis in *Erlinger*)).

There is no reason to treat the punishment of criminal forfeiture differently. Indeed, *Southern Union*'s application of *Apprendi*'s bright-line rule to fines implicitly extends to criminal forfeiture as well. In the Eighth Amendment Excessive Fines Clause context, this Court held that an "*in personam* criminal forfeiture . . . is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'" *Alexander v. United States*, 509 U.S. 544, 558 (1993); *see Libretti*, 516 U.S. at 39 (same). Accordingly, it is now well settled that "[f]orfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offense." *Bajakajian*, 524 U.S. at 328 (finding a criminal forfeiture violated the Eighth Amendment's Excessive Fines Clause). That is because, "at the time of the drafting and ratification of the [Eighth] Amendment, the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 265 (1989); *see Austin v. United States*, 509 U.S. 602, 609–10 (1993) ("The Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind,

'as *punishment* for some offense.'"). Because the Fifth and Sixth Amendments were ratified at the same time as the Eighth Amendment, criminal forfeiture should also be treated as a fine for purposes of those Amendments.

B. And while our Founders banned *in personam* criminal forfeiture—a ban that remained in place until 1970—they would have understood criminal forfeiture to require a jury to find the facts justifying it. Even under the common law criminal forfeiture regime that the Founders found too harsh, criminal defendants had the right to have juries make the factual findings concerning criminal forfeiture. *See, e.g.*, Fed. R. Crim. P. 7 advisory committee's note to 1972 amendment ("Under the common law, in a criminal forfeiture proceeding[,] the defendant was apparently entitled to notice, trial, and a *special jury finding* on the factual issues surrounding the declaration of forfeiture which followed his criminal conviction.") (emphasis added).

Indeed, up until 1827, English common law required juries to identify the specific property a defendant had before criminal forfeiture could be ordered. *See, e.g.*, *Hale v. Petit*, 75 Eng. Rep. 387, 391–92 (1561) (empaneling twelve jurors to specifically find that a felon possessed two leaseholds, seven oxen, one heifer, one cow, five geldings, and one thousand sheep and lambs subject to forfeiture); Criminal Law Act, 7&8 Geo. IV, ch. 28, § 5 (1827) (ending this practice and instructing that "the Jury empanelled to try [a felony defendant] shall *not* be charged to enquire concerning his Lands, Tenements, or Goods") (emphasis added).

The most direct evidence of the trial jury's role comes from the standard jury charge given. English reference works from the 1600s and 1700s show that it was standard practice for courts to direct juries to make specific findings about property subject to forfeiture

upon conviction. For instance, a 1676 text instructed a jury to "enquire what Lands, Tenements, Goods, and Chattels" a defendant possessed at the time of the offense. *The Office of the Clerk of Assize* 13 (1676). A century later, in 1768, another treatise recorded an essentially identical charge. *See* W. Stubbs & G. Talmash, *The Crown Circuit Companion* 13–14, 72 (4th ed. 1768). These texts were far from anomalies. *See* 2 William Hawkins, *A Treatise of the Pleas of the Crown* 450 (1721) (reporting forfeitability "is to be left to a Jury on the whole Circumstances of the Case, and shall never be presumed by the Court where it is not expressly found"); Thomas Dogherty, *The Crown Circuit Companion* 21–22 (1799) ("Look upon the prisoner; you that are sworn, what say you, is he guilty of the felony whereof he stands indicted, or not guilty? If they say Guilty, then the clerk asks them, What lands or tenements, goods or chattels, he (the prisoner) had at the time of the felony committed, or any time since?"); 1 Matthew Hale, *History of the Pleas of the Crown* 363 (1778 ed.). Early state law left the forfeiture decision to juries as well. *Greene v. Briggs*, 10 F. Cas. 1135, 1142 (C.C. D. R.I. 1852) (Curtis, J., acting as Circuit Justice). Thus, *Apprendi*'s application to criminal forfeiture is entirely consistent with our constitutional tradition. *See also Rimlawi v. United States*, 145 S. Ct. 518, 518 (2025) (Gorsuch, J., dissenting from denial of certiorari) ("[M]ore than a little evidence suggests that, at the time of the founding, juries found the facts needed to justify criminal restitution awards.").

II. THE COURT SHOULD OVERRULE *LIBRETTI*

This Court recently explained that *Apprendi*'s principles "are so firmly entrenched that we have now overruled several decisions inconsistent with them."

Erlinger, 602 U.S. at 833–34 (first citing *Hurst v. Florida*, 577 U.S. 92, 101–102 (2016), overruling *Hildwin v. Florida*, 490 U.S. 638 (1989) (*per curiam*), and *Spaziano v. Florida*, 468 U.S. 447(1984)); and citing *Alleyne v. United States*, 570 U.S. 99, 107 (2013), overruling *Harris v. United States*, 536 U.S. 545 (2002), and *McMillan v. Pennsylvania*, 477 U.S. 79 (1986)); and then citing *Ring*, 536 U.S. at 609, overruling *Walton v. Arizona*, 497 U.S. 639 (1990)). *Libretti* lies in the same vein as these overruled cases and should be overruled as well.

A. None of the Justifications for *Libretti* Survive *Apprendi* and *Southern Union*

1. One of the surest signs that *Libretti*'s *dicta*[6] that "the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection" cannot survive *Apprendi* is that all the cases that *Libretti* cited for this proposition have been overruled. *Libretti*, 516 U.S. at 49. After making this remark, *Libretti* stated, "[o]ur cases have made abundantly clear that a defendant does not enjoy a constitutional right to a jury determination as to the appropriate sentence to be imposed," and cited three cases: (1) *McMillan v. Pennsylvania*, 477 U.S. 79 (1986); (2) *Cabana v. Bullock*, 474 U.S. 376 (1986); and (3) *Spaziano v. Florida*, 468 U.S. 447 (1984). 516 U.S. at 49. While it remains

---

[6] *Libretti* concerned the adequacy of the defendant's guilty plea, and the Court held that "Libretti's waiver of a jury determination as to the scope of forfeiture was plainly adequate." 516 U.S. at 50. Because the defendant waived all his constitutional and other rights in pleading guilty, the Court did not need to catalog each of the rights that were waived. *Id.* at 50–51.

true that judges often determine the appropriate sentence, post-*Apprendi* juries determine the maximum sentences that can be imposed.

Libretti led off by citing *McMillan* for the proposition that "there is no Sixth Amendment right to jury sentencing, even where the sentence turns on specific findings of fact." *Id.* This language has been "expressly overruled." *Haymond*, 588 U.S. at 645. The Court overruled *McMillan* and a similar ruling in *Harris v. United States*, 536 U.S. 545 (2002), in *Alleyne*, 570 U.S. at 107.

Libretti next cited *Cabana* for the proposition that "[t]he decision whether a particular punishment . . . is appropriate in any given case is not one that we have ever required to be made by a jury." *Libretti*, 516 U.S. at 49. That language has been rejected time and time again in the *Apprendi* line of cases, and was specifically rejected in *Ring*, where the Court overruled *Walton* in relying on *Cabana* for this proposition. *Ring*, 536 U.S. at 609; *see Hill v. Quarterman*, 534 F.3d 365, 385 (5th Cir. 2008) (Higginbotham, J., concurring and dissenting in part) ("*Cabana*'s core holding . . . has since been eroded" by *Apprendi* and *Ring*.).

Finally, *Libretti* cited *Spaziano*, for the proposition that there is "no right to a jury determination as to the imposition of the death penalty." *Libretti*, 516 U.S. at 49. This Court rejected that conclusion in *Ring*, but it had to "expressly overrule *Spaziano*" in *Hurst* because the lower courts felt compelled to adhere to *Spaziano* until it was expressly overruled by this Court. *Hurst*, 577 U.S. at 101. A similar need to overrule *Libretti* exists here.

2. Lower courts sometimes seek to justify *Libretti* on a different basis than *Libretti* offered, but that rationale also is foreclosed by this Court's decision in

Southern Union. Proponents of this rationale correctly note that *Apprendi* does not apply where there is no statutory maximum, but they mistakenly claim that criminal forfeiture has no statutory maximum because the property subject to forfeiture is "indeterminate and open-ended." *See, e.g.*, *United States v. Phillips*, 704 F.3d 754, 770 (9th Cir. 2012) (citing cases from the Second, Fourth, and Seventh Circuits). But a determinate statutory scheme exists because the amount of forfeiture can be no higher than the amount a jury finds is proceeds of the offense or otherwise involved in it. Thus, while the amount of proceeds or amount of property involved in an offense may be open-ended, a jury's finding of the actual amount of proceeds or property involved in an offense sets the statutory maximum.

Justice Gorsuch, joined by Justice Sotomayor, addressed the fallacy in the government's position by explaining that its "argument misunderstands the teaching of our cases. We've used the term 'statutory maximum' to refer to the harshest sentence the law allows a court to impose based on facts a jury has found or the defendant has admitted." *Hester v. United States*, 586 U.S. 1104, 1105 (2019) (Gorsuch, J., dissenting from denial of certiorari). Without a jury finding that there were proceeds or assets involved in an offense, there can be no forfeiture ordered. *Id.* at 1104 ("[A] jury must find any facts necessary to support a (nonzero) restitution order."). The jury must find the facts necessary to determine that assets are subject to forfeiture, just as it must find the facts necessary for the imposition of a fine, an enhanced prison sentence, a sentence of death, or the imposition of any other punishment. *See id.*; *see also Burnett v. United States*, 146 S. Ct. 875, 877 (2026) (Gorsuch, J., dissenting from denial of certiorari) (reiterating that imprisonment be-

yond the statutory maximum based on judicial fact-finding under a preponderance standard cannot "be squared with the Constitution").

Southern Union itself demonstrates the point made by Justices Gorsuch and Sotomayor. There, the Clean Air Act exposed the defendant to a maximum fine of $50,000 per day for its unlawful emissions, but the jury's general verdict proved only that a violation occurred on one day. 567 U.S. at 352. Because the district court imposed a $6 million fine, based on its finding by a preponderance of the evidence that the violations occurred on 762 days, *Apprendi* compelled the reversal of the fine. *Id.* at 347, 352.

Whereas the maximum criminal forfeiture here is determined by the amount of proceeds laundered and the maximum fine in *Southern Union* was based on the number of days in violation, *Apprendi* applies with equal force to Mizrahi because his jury's verdict, standing alone, could not justify the criminal forfeiture imposed. As *Southern Union* noted, a jury's finding must "peg the amount of a fine to the determination of specified facts—often, the value of damaged or stolen property." *Id.* at 354; *see also Apprendi*, 530 U.S. at 503 (Thomas, J., concurring, joined by Scalia, J.) ("Value was an element [requiring a jury finding] because punishment varied with value[.]"). The value of damaged or stolen property, like the amount of criminal proceeds laundered or number of days a violation occurred, is potentially limitless, but the requirement of a specific factual finding caps a fine or forfeiture and must be found by a jury beyond a reasonable doubt.

Southern Union reiterated this point in discussing the Alternative Fines Act, 18 U.S.C. § 3571(d), which the Court dubbed the "federal twice-the-gain-or-loss statute." 567 U.S. at 351. The Court explained, "the

amount of a fine, like the maximum term of imprisonment or eligibility for the death penalty, is often calculated by reference to particular facts," including "the defendant's gain or the victim's loss, or some other factor." *Id.* at 349–50. "In all such cases, requiring juries to find beyond a reasonable doubt facts that determine the fine's maximum amount is necessary to implement *Apprendi*'s 'animating principle': the 'preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense.'" *Id.* at 350 (quoting *Oregon v. Ice*, 555 U.S. 160, 168 (2009)); *see also id.* at 383 (Breyer, J., dissenting) (recognizing the majority's ruling applied to the Alternative Fines Act). Under the Alternative Fines Act, which pegs a fine to a defendant's gain or the victim's loss, the fine range is virtually limitless—but a factual finding as to the actual gain or loss dictates the maximum fine. The same is true here. In Mizrahi's case, the amount of proceeds from an offense is theoretically limitless, but the amount subject to criminal forfeiture is pegged to the actual amount of those proceeds.

B. This Court Must Overrule *Libretti* to Correct the Constitutional Error it Produces

1. *Libretti* will continue to dictate criminal forfeiture procedure across the country until it is formally overruled by this Court. The Second, Third, Eighth and Ninth Circuits have specifically stated that they will continue applying *Libretti*, no matter how severely it has been undercut, until this Court explicitly overrules the decision. *See Sigillito*, 759 F.3d at 935; *Leahy*, 438 F.3d at 332; *Phillips*, 704 F.3d at 769 ("Because *Libretti* has direct application in this case, we are bound by its holding even if it might appear 'to rest on reasons rejected in some other line of decisions.'") (quoting *United States v. Fruchter*, 411 F.3d 377, 380

(2d Cir. 2005)); *Fruchter*, 411 F.3d at 381 ("*Libretti* remains the law until the Supreme Court expressly overturns it[.]"); *see also United States v. Derman*, 143 F.4th 1148, 1227 (10th Cir. 2025) (following *Libretti*); *United States v. Vera*, 278 F.3d 672, 672 (7th Cir. 2002) ("Like the other circuits that have considered this question, we hold that *Apprendi* does not disturb the rule that forfeiture is constitutional when supported by the preponderance of the evidence."); *United States v. Corrado*, 227 F.3d 543, 551 (6th Cir. 2000) (following *Libretti*). Many judges find it "difficult to reconcile *Libretti* with the Court's subsequent decisions" but conclude that "any tension between *Libretti* and those cases must be resolved by the Supreme Court." *Leahy*, 438 F.3d at 339 (McKee, J., concurring, joined by Rendell, Ambro, Smith, and Becker, JJ.); *see Sigillito*, 759 F.3d at 934 (noting that *Libretti* relied on *McMillan*, which was overruled); *Leahy*, 438 F.3d at 332 (acknowledging "some tension" between *Booker* and *Libretti*); *Fruchter*, 411 F.3d at 382 (recognizing that the "conception of criminal punishment underlying the analysis in *Libretti*" is not the same as in *Apprendi* and later cases); *United States v. Visinaiz*, 344 F. Supp. 2d 1310, 1316 (D. Utah 2004) (Cassell, J.) ("But with the appearance of *Blakely,* matters such as forfeiture and restitution which had once seemed relatively straightforward, suddenly became much more complicated."). Numerous legal scholars agree that *Libretti* is no longer defensible. *See, e.g.,* Nancy J. King & Susan R. Klein, *Beyond* Blakeley, 16 Fed. Sent. R. 316, 317 (2024) (*"Blakely* has thrown into doubt those decisions authorizing judges to make findings necessary for forfeiture and restitution awards. . . . because judges may not order forfeiture of defendant's assets without specific factual findings that are not always part of the underlying conviction, these facts must be determined

by a jury beyond a reasonable doubt."); Matthew R. Ford, *Criminal Forfeiture and the Sixth Amendment's Right to Jury Trial Post*-Booker, 101 Nw. U. L. Rev. 1371, 1378 (2007) (*Libretti* "does not rest on sentencing principles that are still completely sound."); B. Patrick Costello, Jr., Apprendi v. New Jersey*: "Who Decides What Constitutes a Crime?,"* 77 Notre Dame L. Rev. 1205, 1258 n.377 (2002) ("[*Libretti*] most certainly will be overruled[.]"); Nancy J. King & Susan R. Klein, *Essential Elements*, 54 Vand. L. Rev. 1467, 1481 n.51 (2001) (finding *Apprendi* placed *Libretti*'s viability "at risk").

2. Just as this Court has granted certiorari to overrule numerous pre-*Apprendi* decisions in *Apprendi*'s wake, it should overrule *Libretti* too. Because lower courts view *Libretti* as controlling, it is no surprise that there is no split among the lower courts. Indeed, that was the situation with *Apprendi* itself and several of the cases that followed where the Court granted certiorari to overrule a pre-*Apprendi* decision. *See, e.g.*, *Erlinger*, 602 U.S. at 853 (Kavanaugh, J., dissenting) (explaining the Court's decision "rejects the unanimous conclusion of the 12 Courts of Appeals"); Br. in Opp'n at 9, *Southern Union Co. v. United States*, No. 11-94, 2011 WL 5014763 (Oct. 19, 2011) ("This case therefore does not present any circuit conflict that warrants this Court's review . . . ."); Br. in Opp'n at 6, *Ring v. Arizona*, No. 01-488, 2001 WL 34092072 (Nov. 5, 2001) ("No conflict exists between the Arizona Supreme Court's decision and any decision of a United States court of appeals."); Br. in Opp'n at 9 n.4, *Apprendi v. New Jersey*, No. 99-478, 1999 WL 33611431 (Oct. 20, 1999) (observing that the decision below "d[id] not conflict with any decision of any other state

court of last resort or of a United States court of appeals"). *Libretti* prevents any further percolation of this issue among the lower courts. Without this Court's intervention, the Fifth and Sixth Amendment rights of thousands of defendants will be compromised each year at sentencings, with devastating financial consequences for defendants and their families.

CONCLUSION

The petition should be granted.

Respectfully submitted.

April 27, 2026

/s/ *Christopher D. Man*

THANH D. NGUYEN
Winston & Strawn LLP
2121 N. Pearl St., Ste 900
Dallas, TX 75201

CHRISTOPHER D. MAN
Counsel of Record
SYDNEY HARTMAN
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
(202) 282-5000
CMan@winston.com

Counsel for Petitioner

APPENDIX

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A: Second Circuit Court of Appeals Summary Order and Judgment (*United States of America v. Mizrahi*, 24-02507 (2d Cir. November 7, 2025)) 1a

APPENDIX B: Second Circuit Court of Appeals Order Denying Rehearing (*United States of America v. Mizrahi*, 24-02507 (2d Cir. January 30, 2026)) 9a

APPENDIX C: Judgment in a Criminal Case for Martin Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 11a

APPENDIX D: Preliminary Forfeiture Order for Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 25a

APPENDIX E: Mizrahi Sentencing Hearing Transcript Excerpts (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. September 10, 2024)) 32a

APPENDIX F: Sentencing Memorandum on Behalf of Martin Mizrahi (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. July 26, 2024)) 59a

APPENDIX G: Jury Verdict (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. March 4, 2024) 127a

APPENDIX H: Jury Charge Hearing Transcript Excerpts (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. March 1, 2024)) 128a

APPENDIX I: Superseding Indictment (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. December 19, 2023)) ... 140a

APPENDIX J: U.S. Const. amend. V 157a

APPENDIX K: U.S. Const. amend. VI..... 158a

APPENDIX L: 18 U.S.C § 982(a)(1)..... 159a

APPENDIX M: Judgment in a Criminal Case for David Goran (*United States of America v. Zubaid*, 1:22-cr-00650-JPO (S.D.N.Y. March 17, 2025)) 164a

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

24-2507-cr

United States v. Mizrahi

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of November, two thousand twenty-five.

PRESENT:
AMALYA L. KEARSE,
DENNIS JACOBS,
MARIA ARALJJO KAHN,
Circuit Judges.

24-2507-cr

UNITED STATES OF AMERICA,
Appellee,

v.

MARTIN MIZRAHI, AKA MARTY MIZRAHI,

Defendant-Appellant,

JOEL ZUBAID, DAVID GORAN,
JULIAN REBIGA, AKA IULIAN REBIGA,

Defendants.[*]

FOR DEFENDANT-APPELLANT:
CHRISTOPHER D. MAN,
Winston & Strawn LLP, Washington, D.C.

FOR APPELLEE:
BENJAMIN D. KLEIN
(Emily Deininger and Olga I. Zverovich, *on the brief*),
Assistant United States Attorneys, *for* Matthew Podolsky, Acting United States Attorney for the Southern District of New York, New York, NY.

---

[*] The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

Appeal from a September 11, 2024 judgment of the United States District Court for the Southern District of New York (J. Paul Oetken, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment is **AFFIRMED**.

Defendant-Appellant Martin Mizrahi ("Mizrahi") and his codefendants, Joel Zubaid ("Zubaid"), David Goran ("Goran"), and Julian Rebiga ("Rebiga"), participated in a conspiracy to defraud banks, credit card companies, and other entities and launder money obtained from those schemes, as well as drug-trafficking proceeds. One of the fraud schemes Mizrahi was convicted of involved the unauthorized access and use of the email account of the chief financial officer of Brownsville Community Development Corporation, a nonprofit organization, to wire millions of dollars of that organization's funds to bank accounts controlled by, among others, Zubaid and Goran. Zubaid and Goran obtained $1.57 million from this fraud and provided approximately $690,000 to Mizrahi to launder using cryptocurrency. As a part of their scheme to launder narcotics-trafficking proceeds, Zubaid and Goran regularly picked up hundreds of thousands of dollars from sources linked to a Mexican drug cartel. Zubaid and Goran then delivered this cash in bulk to Mizrahi, who wired that money through his wholly owned company, LV.Net LLC, converted it to Bitcoin, and remitted it to cryptocurrency wallets provided to him by Zubaid. In exchange, Mizrahi received a commission.

Mizrahi, Zubaid, Goran, and Rebiga were charged for their respective roles in the conspiracy and underlying fraud schemes. The superseding indictment included a forfeiture allegation that sought to

forfeit all property that constituted or was derived from proceeds traceable to the commission of the offenses. Zubaid and Goran pleaded guilty and testified against Mizrahi. After an eleven-day trial, a jury found Mizrahi guilty of conspiracy to commit wire fraud and bank fraud, wire fraud, bank fraud, conspiracy to commit money laundering, money laundering, aggravated identity theft, and conspiracy to operate an unlicensed money transmitting business.

On September 10, 2024, after finding an applicable guideline range of 212 to 259 months, the district court sentenced Mizrahi to a term of imprisonment of 60 months and imposed a $50,000 fine. The district court also ordered the forfeiture of $4,545,704,[1] finding by a preponderance of the evidence that Mizrahi laundered $3,855,704 in narcotics-trafficking proceeds and $690,000 in wire-fraud proceeds. On appeal, Mizrahi urges us to vacate the district court's sentence, forfeiture order, and fine, arguing that (1) the facts relating to forfeiture must be proven to a jury beyond a reasonable doubt, rather than determined by the court; (2) the jury did not specifically convict him of laundering the proceeds of narcotics trafficking; (3) he did not knowingly launder narcotics-trafficking proceeds; and (4) the forfeiture order and fine violate the Eighth Amendment's Excessive Fines Clause. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

---

[1] This amount included the specific forfeiture of $690,000 in a bank account in the name of LV.Net and $81,284.03 in an IOLTA trust account.

DISCUSSION

When a forfeiture order is challenged on appeal, we review the district court's legal conclusions *de novo* and its factual findings for clear error. *United States v. Treacy*, 639 F.3d 32, 47 (2d Cir. 2011).

As Mizrahi concedes, the law in this Circuit is clear that the factual predicate for and the amount of proceeds subject to criminal forfeiture need not be submitted to a jury and proven beyond a reasonable doubt. *See Libretti v. United States*, 516 U.S. 29, 49 (1995); *United States v. Fruchter*, 411 F.3d 377, 380–82 (2d Cir. 2005); *United States v. Stevenson*, 834 F.3d 80, 86 (2d Cir. 2016); *see also United States v. Pastore*, No. 18-2482, 2022 WL 2068434, at *5 (2d Cir. June 8, 2022) (summary order); *United States v. McIntosh*, No. 14-1908, 2023 WL 382945, at *3 (2d Cir. Jan. 25, 2023) (summary order). Because criminal forfeiture does not implicate the Fifth and Sixth Amendments, a district court is only required to determine, by a preponderance of the evidence, *see United States v. Capoccia*, 503 F.3d 103, 116 (2d Cir. 2007) (Sotomayor, *J.*), whether property subject to forfeiture bears the "requisite nexus" to the offense of conviction, Fed. R. Crim. P. 32.2(b)(1)(A). If a district court finds that the property at issue bears the "requisite nexus" to the offense of conviction, the operative statute requires that the district court "shall order" the forfeiture of "any property, real or personal, involved in such offense, or any property traceable to such property." 18 U.S.C. § 982(a)(1). Because a specific jury finding is not required, we also reject Mizrahi's claim of error based on the jury instruction given in this case that the predicate offense for his money laundering conviction could be either bank fraud, wire fraud, or drug trafficking.

The forfeiture order at issue here bears the requisite nexus to the underlying money-laundering scheme. Although Mizrahi disputes that he knowingly laundered drug-trafficking proceeds, the record establishes an adequate factual basis to support the district court's forfeiture order. Zubaid and Goran testified that Zubaid told Mizrahi that he was laundering drug-trafficking proceeds on behalf of the cartel. Pictures of large stacks of cash were taken in Mizrahi's residence. The government introduced screenshots of communications between Zubaid and a member of the cartel that Zubaid forwarded to Mizrahi. And when an associate of Mizrahi's stole some of the narcotics-trafficking proceeds Mizrahi was to launder, Zubaid told Mizrahi that the individuals on behalf of whom they were laundering money "wanted to come to you[r] home or your office. I protected you Marty[.]" App'x at 1929. Mizrahi then successfully recovered the stolen money. Notwithstanding Mizrahi's testimony that he "tend[s] not to do anything illegal in [his] business or in [his] personal life," App'x at 1947, the jury and the district court credited the government's witnesses and corroborating evidence to the contrary. *See United States v. Weissman*, 195 F.3d 96, 99 (2d Cir. 1999) (providing that credibility determinations are entitled to "great deference" (quoting *Donato v. Plainview-Old Bethpage Cent. Sch. Dist.*, 96 F.3d 623, 634 (2d Cir. 1996))). Thus, the district court did not err in finding that Mizrahi knowingly laundered drug-trafficking proceeds.[2]

[2] To the extent that Mizrahi challenges sentencing enhancements related to the district court's factual findings, that challenge fails for the reasons stated above.

Finally, Mizrahi's claim that the forfeiture and fine amounts violate the Eighth Amendment's Excessive Fines Clause is unpersuasive. We review a forfeiture order's "excessiveness *de novo*, bound by the district court's factual findings unless clearly erroneous." *von Hofe v. United States*, 492 F.3d 175, 181 (2d Cir. 2007). "A forfeiture is unconstitutionally excessive 'if it is grossly disproportional to the gravity of a defendant's offense.'" *United States v. Viloski*, 814 F.3d 104, 110 (2d Cir. 2016) (quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)). To assess gross disproportionality, *Bajakajian* requires us to consider four factors:

> (1) the essence of the crime of the defendant and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct.

Id. (quoting *United States v. George*, 779 F.3d 113, 122 (2d Cir. 2015)).

Given the nature of the criminal activity and harm caused by Mizrahi's conduct, the district court's forfeiture order and fine are not unconstitutionally excessive. During the conspiracy, Mizrahi laundered millions of dollars and engaged in multiple schemes involving wire and bank fraud. *See id.* at 113 (forfeiture order supported by lengthy conspiracy involving repeated instances of money laundering and related mail and wire fraud). By seeking "to conceal or disguise the nature of the proceeds of the fraud," Mizrahi is among the class of persons for whom the money-laundering statute was principally designed.

Id. at 114. Mizrahi was ordered to forfeit an amount well below the over $9,000,000 statutory maximum. *See* 18 U.S.C § 1956(a)(1) (providing that an individual convicted of money laundering can be ordered to forfeit up to "twice the value of the property involved in the transaction"). The final factor also weighs in favor of the forfeiture amount because Mizrahi's conversion of cash drug-trafficking proceeds to Bitcoin facilitated the concealment of "the sources of these funds . . . from police investigation." *See United States v. Napoli*, 179 F.3d 1, 8 (2d Cir. 1999). As such, the forfeiture order and fine imposed by the district court do not violate the Eighth Amendment.

* * *

We have considered Mizrahi's remaining arguments and conclude that they are without merit. For the reasons set forth above, the judgment of the district court is

AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court
/s/Catherine O'Hagan Wolfe

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No: 24-2507

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of January, two thousand twenty-six.

UNITED STATES OF AMERICA,

Appellee,

v.

MARTIN MIZRAHI, AKA MARTY MIZRAHI,

Defendant-Appellant,

JOEL ZUBAID, DAVID GORAN,
JULIAN REBIGA, AKA IULIAN REBIGA,

Defendants.

ORDER

Appellant, Martin Mizrahi, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/Catherine O'Hagan Wolfe

APPENDIX C

UNITED STATES DISTRICT COURT
Southern District of New York

UNITED STATES OF AMERICA
v.
MARTIN MIZRAHI

JUDGMENT IN A CRIMINAL CASE

Case Number: S2 22 Cr. 650-4 (JPO)
USM Number: 35464-510
Richard A. Portale, Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) which was accepted by the court. _____

☒ was found guilty on count(s) 1, 2, 3, 4, 5, 6 and 7 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud and Bank Fraud	6/30/2021	1
18 U.S.C. § 1343	Wire Fraud	6/30/2021	2
18 U.S.C. § 1344	Bank Fraud	6/30/2021	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) G Count(s)

☒ all open ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/10/2024
Date of Imposition of Judgment

/s/ J. Paul Oetken
J. PAUL OETKEN
United States District Judge

9/11/2024
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1956(h)	Conspiracy to Commit Money Laundering	6/30/2021	4
18 U.S.C. § 1956(a)(1)	Money Laundering	6/30/2021	5
18 U.S.C. § 1028A	Aggravated Identity Theft	6/30/2021	6
18 U.S.C. § 371	Conspiracy to Operate	6/30/2021	7

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

60 months, comprising 36 months on counts 1, 2, 3, 4, 5 and 7 to run concurrently with each other, and 24 months on Count 6 to run consecutive to the 36 months on counts 1, 2, 3, 4, 5 and 7.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be housed at the FCI Lompoc in order to facilitate familial visits.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____☒ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 12/2/2024

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

2 years on all counts 1, 2, 3, 4, 5 and 7, and 1 year on count 6, all to run concurrent with each other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must

notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

If the probation officer determines, based on your criminal record, personal history or characteristics, that you pose a risk to another person (including an organization), the probation officer, with the prior approval of the Court, may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

You shall provide the Probation Officer with access to any requested financial information.

You shall not incur any new credit charges or open additional lines of credit without the approval of the Probation Officer unless you are in compliance with the installment payment schedule.

You shall report to the nearest Probation Office within 72 hours of release. You shall be supervised by the District of your residence.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	TOTALS
Assessment	$ 700.00
Restitution	$ 0.00
Fine	$ 50,000.00
AVAA Assessment*	$ 0.00
JVTA Assessment**	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

---

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Name of Payee:

Total Loss[***]:

Restitution Ordered:

Priority or Percentage:

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

[***] Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 700.00 due immediately, balance due

☐ not later than _____, or

☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☒ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Financial penalties shall be paid in monthly installments of at least 10% of gross monthly income beginning 30 days after release from imprisonment.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*:

Total Amount:

Joint and Several Amount:

Corresponding Payee, if appropriate:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

$4,545,704. See order of forfeiture.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S2 22 Cr. 650 (JPO)

UNITED STATES OF AMERICA

- v. -

MARTIN MIZRAHI,
a/k/a "Marty Mizrahi,"

Defendant.

PRELIMINARY ORDER OF FORFEITURE AS TO SPECIFIC PROPERTY/MONEY JUDGMENT

WHEREAS, on or about December 19, 2023, MARTIN MIZRAHI (the "Defendant"), among others, was charged in a seven-count Superseding Indictment, S2 22 Cr. 650 (JPO) (the "Indictment"), with conspiracy to commit wire fraud and bank fraud, in violation of Title 18, United States Code, Section 1349 (Count One); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Two); bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2 (Count Three); conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h) (Count Four); money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(b)(i) and (2) (Count Five); aggravated identity theft. in violation of Title 18, United States Code, Sections 1028A and 2 (Count Six); and conspiracy to operate

an unlicensed money transmitting business, in violation of Title 18. United States Code, Section 371 (Count Seven);

WHEREAS, the Indictment included a forfeiture allegation as to Counts One through Three of the Indictment seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) 982(a)(2)(A) and Title 28, United States Code. Section 2461(c), of any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses charged in Counts One through Three of the Indictment, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of the offenses charged in Counts One through Three of the Indictment and the following specific property:

a. $690,000.00 in United States currency formerly on deposit in Bank of America, N.A. Account Number XXXXXXXX2359 held in the name of LV.Net LLC LV Net (the "LV Net Funds");

b. $81.284.03 in United States currency formerly on deposit in Bank of America, N.A. Account Number XXXXXXXX2488 held in the name of California Iolta Trust Accounts Madaen Law Inc.;

(the "Indictment Property");

WHEREAS, the Indictment included forfeiture allegations as to Counts Four and Five of the Indictment, seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), of any and all property, real and personal, involved in the commission of the offenses charged in

Counts Four and Five of the Indictment, including but not limited to a sum of money in United States currency representing the amount of property involved in the offenses in Counts Four and Five of the Indictment and the Indictment Property;

WHEREAS, on or about January 12, 2022, the Government filed a Verified Complaint for Forfeiture, 22 Civ. 266 (PMH), seeking the forfeiture of the Indictment Property;

WHEREAS, on or about March 4, 2024, following a jury trial, the Defendant was found guilty of Counts One through Seven of the Indictment;

WHEREAS, the Government asserts that $4,545,704.00 in United States currency represents: $690,000 in wire fraud proceeds involved in the offenses charged in Counts Four and Five of the Indictment *(i.e.,* the LV Net Funds), and an additional $3,855,704 in narcotics trafficking proceeds involved in the offenses charged in Counts Four and Five of the Indictment;

WHEREAS, the Government seeks the entry of a money judgment in the amount of $4,545,704.00 in United States currency, which represents the amount of property involved in the offenses charged in Counts Four and Five of the Indictment;

WHEREAS, the Government also seeks the forfeiture of all of the Defendant's right, title and interest in the LV Net Funds, which constitutes property involved in the offenses charged in Counts Four and Five of the Indictment (the "Specific Property");

WHEREAS, the Court finds that, as a result of acts and/or omissions of the Defendant, the proceeds

traceable to the offenses charged in Counts One through Three of the Indictment that the Defendant personally obtained, and the property involved in the offenses charged in Counts Four and Five of the Indictment, cannot be located upon the exercise of due diligence, with the exception of the Specific Property; and

WHEREAS, pursuant to Title 21, United States Code, Section 853(g), and Rules 32.2(b)(3), and 32.2(b)(6) of the Federal Rules of Criminal Procedure, the Government is now entitled, pending any assertion of third-party claims, to reduce the Specific Property to its possession and to notify any and all persons who reasonably appear to be a potential claimant of their interest herein:

NOW, THEREFORE. IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offenses charged in Counts One through Five of the Indictment, to which the Defendant was found guilty, a money judgment in the amount of $4,545,704.00 in United States currency (the "Money Judgment") shall be entered against the Defendant.

2. As a result of the offenses charged in Counts Four and Five of the Indictment, to which the Defendant was found guilty, all of the Defendant's right, title and interest in the Specific Property is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of Title 21, United States Code, Section 853.

3. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture as to Specific Property/Money Judgment is final as to the Defendant, MARTIN MIZRAHI, and

shall be deemed part of the sentence of the Defendant and shall be included in the judgment of conviction therewith.

4. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable to the United States Marshals Service, and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Illicit Finance and Money Laundering Unit, 26 Federal Plaza, 38th Floor, New York, New York 10278 and shall indicate the Defendant's name and case number.

5. The United States Marshals Service is authorized to deposit the payments on the Money Judgment into the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

6. Upon entry of this Preliminary Order of Forfeiture as to Specific Property/Money Judgment, the United States (or its designee) is hereby authorized to take possession of the Specific Property and to hold such property in its secure custody and control.

7. Pursuant to Title 21, United States Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States is permitted to publish forfeiture notices on the government internet site, www.forfeit ure.gov. This site incorporates the forfeiture notices that have been traditionally published in newspapers. The United States forthwith shall publish the Internet ad for at least thirty (30) consecutive days.

Any person, other than the Defendant, claiming interest in the Specific Property must file a Petition within sixty (60) days from the first day of publication of the Notice on this official government internet web site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

8. The published notice of forfeiture shall state that the petition (i) shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Property, (ii) shall be signed by the petitioner under penalty of perjury, and (iii) shall set forth the nature and extent of the petitioner's right, title or interest in the Specific Property, the time and circumstances of the petitioner's acquisition of the right, title and interest in the Specific Property, any additional facts supporting the petitioner's claim. and the relief sought, pursuant to Title 21, United States Code, Section 853(n).

9. Pursuant to 32.2 (b)(6)(A) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

10. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Specific Property pursuant to Title 21, United States Code, Section 853(n), in which all interests will be addressed. All Specific Property forfeited to the United States under a Final Order of Forfeiture shall be applied towards the satisfaction of the Money Judgment.

11. Pursuant to Title 21, United States Code, Section 853(p), the United States is authorized to

seek forfeiture of substitute assets of the Defendant up to the uncollected amount of the Money Judgment.

12. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas.

13. The Court shall retain jurisdiction to enforce this Preliminary Order of Forfeiture as to Specific Property/Money Judgment, and to amend it as necessary, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

SO ORDERED:

Dated: September 10, 2024,
New York, New York

/s/J. Paul Oetken
J. PAUL OETKEN
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

———

New York, N.Y.
September 10, 2024
3:00 p.m.

———

22 Cr. 650 (JPO)

———

UNITED STATES OF AMERICA,

v.

MARTIN MIZRAHI,

Defendant.

———

Sentence

———

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
EMILY DEININGER
BENJAMIN KLEIN
Assistant United States Attorney

WINSTON & STRAWN LLP.

BY: CHRISTOPHER D. MAN
-and-
PORTALE RANDAZZO LLP

BY: RICHARD PORTALE
CHAD MAIR
Attorneys for Defendant

Also Present:

Sonny Hillyard, Special Agent FBI

[2]

(Case called)

THE DEPUTY CLERK: Starting with the government, counsel please state your name for the record.

MR. KLEIN: Good afternoon, your Honor.

Ben Klein and Emily Deininger for the government. And with us at counsel table is Special Agent Sonny Hillyard of the FBI.

THE COURT: Good afternoon.

MR. MAN: Good morning, your Honor.

Chris Man. I represent Mr. Mizrahi, who is with me to my right. The rest of us should do it for themselves.

MR. PORTALE: Richard Portale and Chad Mair on behalf of Mr. Mizrahi.

Good to see you again, Judge.

THE COURT: Good afternoon. Please be seated.

Welcome, everyone. We're here for sentencing in this case. Mr. Mizrahi was convicted by a jury on March 4 of this year on Counts One through Seven. I

want to start by making sure I've received and reviewed everything I should have.

In preparation for today, I reviewed the presentence report with an addendum and sentencing recommendation by the probation department; defense counsel submission dated July 26, with letters, many letters from family members and friends and members of the community, as well as from Mr. Mizrahi and his partner, Ms. Davis, parents, children, many other members of [3] the community, friends, all of which I've read.

Also attached to the defense submission is the report of the psychologist, Dr. Richard Romanoff, and the letter and attached information from Dr. Rozalin Banafsheian, and other attached case related documents. And then I've reviewed the submission by the government dated August 27, as well as video submissions that were submitted to the Court, and proposed forfeiture order submitted on September 4. And then I also received and reviewed the defense reply submission dated September 6 with an attached letter from Dr. Kim.

Do I have everything I should have from the government?

MR. KLEIN: Yes, your Honor.

THE COURT: And from the defense?

MR. MAN: Yes, your Honor.

The one issue we haven't addressed yet is the forfeiture issue. So we'd like a minute at some point, but we definitely don't need to do it now.

THE COURT: Sure.

Mr. Man, have you read the presentence report and discussed it with Mr. Mizrahi?

MR. MAN: Yes, sir, I have.

THE COURT: Mr. Mizrahi, have you also read the presentence report?

THE DEFENDANT: Yes, I have.

[4]

THE COURT: And Mr. Klein, have you read the presentence report?

MR. KLEIN: Yes, your Honor.

THE COURT: Now, I know there's a number of objections to the presentence report, some with respect to the factual recitation and some with respect to the guidelines issues. And I'm prepared to rule on those objections, I believe. And then if you'd like, you can state additional objections for the record. But I have read everything, and any objection that you've stated in writing of course is preserved.

First of all, I am sustaining in part the defense objection with respect to paragraphs 24 through 26 of the presentence report, which relate to the use of violence. As I'll explain, in a little bit, I find that the threats of violence and use of violence I find to be too tangential in terms of the evidence for me to make a finding with respect to violence.

And in connection with that, I'm revising the presentence report, specifically paragraphs 24 and 25 of the final version, so that on paragraph 24, the third line will stop with "third parties," and then the section including "through the potential use of force," and the final sentence, "during the course of the investigation, it was learned that Mizrahi was inv-

olved in collecting money through violence or threats of violence" will be deleted.

[5]

On paragraph 25, in the fifth line down, I'm deleting the phrase "including through force."

So with those changes, I'm sustaining in part the objection with respect to those references to violence and threats of violence.

I'm also sustaining the defendant's objection to not including a two-point reduction for zero-point offenders under Section 4C1.1. I'll explain that shortly.

Otherwise, I overrule the objections except insofar as they will be taken into consideration in applying a variance to the guidelines under the factors in 18 U.S.C. Section 3553(a), which again I'll explain later.

Subject to those revisions, I intend to adopt the facts set forth in the presentence report as my findings of fact. But if anyone wants to state any objections or highlight anything in particular, you're welcome to do that.

MR. KLEIN: Your Honor, we don't have any objections to the factual recitation in the PSR.

THE COURT: Okay.

MR. MAN: Your Honor, we have no additional objections.

THE COURT: Okay. So we'll start with the sentencing guidelines. As you all know, the sentencing guidelines are the starting point for sentencing in the federal system. They're advisory. I'm not required to follow them, but I am required [6] to start with an accurate calculation of the sentencing guidelines.

So I'm going to go through the guideline calculation, which you all have made some objections to. And I think you'll both disagree in parts with the guideline calculation, but this is the guidelines as I find them. I apply the November 1, 2023 edition of the sentencing guidelines.

First of all, I find that Counts One, Two, and Three are grouped. This is consistent with the government's memorandum. And that will be the fraud group. Counts Four, Five, and Seven are grouped, and that's the money laundering group.

The offense level for the fraud group startings with a base offense level of seven under 2X1.1, and 2B1.1(a)(1). There's an 18-level enhancement based on the intended loss, which was $7.9 million in fraudulent credit card charges, and 690,000 from the Brownsville email compromise scheme under 2B1.1(b)(1)(J). And I do find that because there are conspiracy charges here, the intended loss is the proper measure under the guidelines.

There's a two-level enhancement based on the use of sophisticated means, including the creation of fraudulent invoices and documentation under section 2B1.1(b)(10), so the total offense level for the fraud group is 27.

Then the offense level for the money laundering group [7] is 26 because the value of the funds laundered was more than $3.5 million, but less than $9.5 million, and that's under 2S1.1(a)(2) and 2B1.1(b)(1)(J). There's a six-level enhancement because the defendant knew or believed that a portion of the funds laundered were derived from the distribution of controlled substances under 2S1.1(b)(1). And there's a four-level enhancement

because the defendant was in the business of laundering funds under 2S1.1(b)(1). The total offense level for the money laundering group is 36.

And then the grouping analysis, because the higher money laundering group applies, the fraud group offense is disregarded because the latter is nine fewer points under 3B1.4. Two levels are added for obstruction of justice, because I find, as I'll explain, that the defendant gave false testimony.

There's a two-level reduction for being a zero-point offender under 4C1.1. I sustain the defendant's objection to the presentence report and government guideline calculation on the application of 4C1.1. While the reduction does not apply where the defendant "used violence or credible threats of violence in connection with the offense," there was no direct evidence that he did so.

The evidence was based on hearsay. It was vague as to what exactly the circumstances of a threat were, and it was not sufficient to warrant a finding by a preponderance of the [8] evidence that any such threat or violence was, in fact, in connection with the offense of conviction here. And therefore, I do apply the zero-point offender reduction. So the total offense level is 36 on Counts One through Five and Seven.

The defendant has zero history points, so he's in Criminal History Category I. The guideline range for all but Count Six is 188 months to 235 months' imprisonment. And on Count Six, the guidelines sentence is also the mandatory minimum statutory sentence of 24 months. So there is a mandatory minimum of two years in this case.

So in addition to the mandatory consecutive 24-month sentence on Count Six for aggravated identity

theft, the total guidelines range becomes 212 months to 259 months.

Now, starting with the objections regarding the guidelines, I reject the defendant's argument that his Fifth and Sixth Amendment rights are violated by the offense level enhancements because they're based on findings by the Court and not the jury. This is not a situation in which acquitted conduct is being used to enhance a sentence, nor are the enhancements outside the parameters of the charged conduct in the case are otherwise unfair or unjust as applied.

Consistent with Second Circuit precedent, I do find by at least a preponderance of the evidence from trial that each of the enhancements applies, and I'm comfortable that these findings are consistent with the jury's findings based on the [9] evidence.

I overruled the defendant's objection to the six-point enhancement based on the finding that he knew or believed that a portion of the funds he laundered were derived from illicit drug sales. Two witnesses testified that the defendant was told this was drug money. There were communications with the defendant showing texts with the cartel representative. There was also circumstantial evidence, including Zubaid's expression of fear for his safety and stolen money, supporting a reasonable inference that drug money was involved in the bags of cash he was providing to the defendant to be converted into cryptocurrency.

I will note that while I find the six-point enhancement applies based on a correct application of the guidelines, that is not to say that the same enhancement represents a reasonable and justified increase in the sentence based on the 3553(a) factors under 18

U.S.C. 3553. And I believe this is one of several grounds that warrant variance because it is not at all clear to me that laundering drug money is significantly more culpable than other laundering proceeds of other specified unlawful activities such as bribery, fraud, murder, kidnapping, and other covered crimes, as opposed to an enhancement that was added as part of the so-called war on drugs in the 1980s and '90s.

The defendant's objection to the 18-point enhancement [10] for the value of laundered funds is also overruled. The defendant made more than $3.5 million in Bitcoin transfers to crypto wallets associated with Negra, a cartel representative. And the trial evidence showed that she was a cartel representative. Again, while the enhancement applies under the guidelines, I also conclude that the extent to which the guidelines are driven by the amount of funds, because it is quantifiable, is not a fully accurate measure of culpability, and I will take this into account as a variance.

I also overrule the defendant's objection to the four-point enhancement for being in the business of laundering funds. Given the trial evidence on the number of laundering transactions, the quantity of funds involved, the defendant's charging of significant fees, and the evidence of the identities of the parties involved, I find that the defendant was in the business of laundering funds for purposes of section 2S1.1.

Again, however, I note that this was conduct that occurred over a few months in 2021. And there's people being in the business over years, and there's people being in the business over a few months. And I don't think this necessarily is an on/off switch, so I

will take this into account also in considering the 3553(a) factors, which will result in a variance below the guidelines.

I also finds that the defendant intentionally gave [11] false testimony as to material matters at trial. And for that reason, the two points for obstruction do apply.

As to the Brownsville fraud, the defendant testified that he had no idea where the money came from. I believe that this was false, as the jury found. Regarding the credit card fraud, he testified that he believed the money was from legitimate investors. I believe this was false, and the jury so found.

And regarding laundering the millions of dollars in cash, he said, I had no idea of any illegal money. And I find that that testimony was false.

There were other specific examples. For example, he testified that he did not know that Khan was receiving about half of the credit card fraud proceeds. But the defendant's own spreadsheet ultimately forced him to tell an implausible story about learning of Khan's cut only on the date of the spreadsheet. And the trial evidence, including the defendant's texts with Zubaid, showed that this testimony was false.

He also testified that he "didn't look at" multiple documents that were obviously fraudulent and that he personally received. I find that this was intentionally false testimony, particularly in light of Mr. Pyatkov's testimony that no one but he and the defendant were involved in these transactions

Again, I sustain the defendant's objection with respect to the zero-point offender reduction under 4C1.1.

[12]

And finally, the defendant requested a departure under *United States v. Lauersen* based on overlapping enhancements. Although I do not believe that a departure is warranted per se, I do believe that the application of certain of the enhancements results in a guideline range that is greater than necessary to comply with the purposes of sentencing, and therefore a variance is justified, as I will explain further

That constitutes my rulings on the objections. I'd like to give each of you an opportunity to speak. And I'll note that I have read all the submissions including all the attached letters. I note there are a number of people here in support of Mr. Mizrahi, and I know he appreciates your being here. And I'll start with the government in terms of anything you'd like to highlight today

MR. KLEIN: Thank you, your Honor.

* * *

THE COURT: Mr. Man?

MR. MAN: Yes, your Honor. There was a lot there. I'll respond to just a few points.

The government is still asking for 12 years in prison for a nonviolent offense. I think there's sort of an unfortunate tendency with the sentencing guidelines to view this as an accounting game where we're just adding numbers here and there. We shouldn't lose sight of the fact that every month you impose is

30 days of Mr. Mizrahi's life he spends wasting away in prison.

[26]

If you think about something like a 12-year sentence, even in the context of your own life, if you were to go back 12 years and erase everything from there forward and imagine yourself having done none of those things but sitting in a prison, that's a pretty punitive sentence, and there's really not much of a need for that. I think the two-year minimum that would be imposed here is very punitive. And the Court can certainly go beyond that in other ways, but what would he gain?

Mr. Mizrahi, despite the government's protest, you know, has this autism spectrum disorder. And they want to treat it as though it's something new, but it's not. It's a disorder that's fairly newly identified even in the science, but it goes back to his childhood. You have 130 letters from people, many of them have been childhood friends that have talked about how Mr. Mizrahi has been taken advantage of over the entirety of his entire life.

You've got evidence showing that he had issues in school, with his educational background at the earliest levels. All of this is consistent with what the other psychologists who have evaluated him have found. Again, the reason he was seeing one of the doctors, Banafsheian, was for therapy. She was there to treat him. She was not there to diagnose him.

He was suffering from PTSD. This was something that happened at the time. These are contemporaneous records showing that the PTSD that existed was real. The government, I [27] don't understand

their point with a lot of the video. We showed you the screenshots in which he is being choked.

He has medical issues. We submitted a new letter from the doctor now because Mr. Mizrahi has got ongoing medical issues, and it looks like he probably is going to need to have shoulder surgery at some point. They keep giving him injections and hoping these will make things better, but it hasn't worked out yet. These have been lasting physical injuries.

None of this may go to the fact that we've used the word "duped" and so forth. Court's obviously found that he's guilty. The jury found that he is guilty. But at the very minimum, it shows a propensity for people with these disorders to be manipulated and taken advantage of.

And the government seems to be fond of going back to convictions that Mr. Mizrahi obtained as a teenager, but I think a lot of that can be reflected by the same diagnosis. People can take advantage of kids. They can enlist them in things they that maybe shouldn't have gotten involved in. And maybe that's the most that the government has been able to show.

The government also -- just briefly, they want to talk about other incidents in which Mr. Mizrahi has engaged in what they find to be bad behavior with respect to Core Scientific and this *Cheetah* litigation. But remember, with respect to [28] Core Scientific, the emails we showed established that Marty wasn't just somebody on a payroll. He had been offered shares. That's what he was being promised. He was an investor in the company. He was someone who was helping to get it up and off the ground. And again, when that imploded because his friends stole the equipment, as the government explained, that's

not on Mr. Mizrahi. That was someone else's misconduct.

And the *Cheetah Wireless* litigation is under appeal. I know there's going to be any number of bad things said as people throw things back and forth in civil litigation. But this Court really should adjudicate based on the facts before it and the case before it. And I don't think -- given the fact that it's under appeal, it should not be given that much weight.

What I think should be given weight, though, is however bad the Court may find Mr. Mizrahi's conduct in this case — and I appreciate the significance of it — but the Court doesn't just sentence for the crime. The Court sentences the offender. And the 130 letters that we submitted to the Court, I think they were pretty powerful to show who this man is. And I think it's a bit disingenuous for the government to suggest that somehow they know him better than people who have known him his whole life.

The issue of why would he have done these things, the letters demonstrate that Mr. Mizrahi's about the least greedy [29] person that there is. He takes his money and he gives it away. And the letters, also, I think are impressive, and they demonstrate that he does a lot more than just write checks. People describe his house as basically a battered women's shelter, he takes so many people in.

You've seen the opportunities he's given to people that are homeless. He can't you tell you how many people he has paid to go to drug rehabilitation because that's something that he's passionate about. The effort he spends to help people, the time he spends helping train people in the gym when they need to get back in shape or sitting by someone's

hospital bed when they go into a coma, I mean, a true measure of friendship, I think, is who is there for you when you really need it, and Mr. Mizrahi has been there for people time after time after time.

So it's not to say that he's a man without flaws, and it's not to blame it on ASD or PTSD. But when you look at him as a man, however flawed he is, he's done a number of rather extraordinary things. I don't think a 12-year sentence is something that is necessary to teach him how to be a better person.

In the meantime, he has two elderly parents who wish they could be here today, but they're unable to because they're in poor health. Mr. Mizrahi continues to provide for his family, and they need him; there's any number of people who do.

[30]

You've gotten letters from people who are outside his family but who think of him as family, people who describe Mr. Mizrahi as the only father they've ever known. And these are people who still need his guidance, still need his assistance.

So while we certainly appreciate the Court must punish Mr. Mizrahi, we don't believe it needs to send him to jail for such an extensive period of time.

THE COURT: Thank you.

Mr. Mizrahi, you're not required to speak. I did read your letter, which I appreciate. If there's anything you'd like to say, you're welcome to.

THE DEFENDANT: Not at this time. Thank you, your Honor.

THE COURT: Thank you.

Is there any reason sentence may not be imposed at this time?

MR. KLEIN: No, your Honor.

MR. MAN: Your Honor, I did want to address the forfeiture issue briefly, if we may.

We really have three objections, and the first one is really just to preserve the record. We argue that the Fifth and Sixth Amendment require the criminal forfeiture be established by a jury beyond a reasonable doubt. I appreciate that is not the current law in this circuit.

You may have noticed lower courts have been a little [31] confused by the Supreme Court's decision in *Southern Union*, and there's been followup opinions, dissents from the denial of certiorari in *Leonard v. Texas* by Justice Thomas, and again in *Hester v. United States* by Justice Gorsuch that kind of cast doubt on existing precedent. So as long as those issues are at play, we'd just like to preserve the objection.

The second objection we make is that under Criminal Rule 23.2, which does allow the Court to make findings of forfeiture, it still has to make the finding that the property in question has the requisite nexus to the offense charged. And here, the government is arguing that is drug-related money.

Now, I appreciate the Court made a conclusion on the other guideline issues based on what Mr. Mizrahi believed, based on what he was allegedly told about it being drug money, but there is no evidence that this actually was drug money. You know, the Court referenced that there were texts with Negra, who was

a cartel member, but there's no evidence that actually establishes that she is.

And to the contrary, the best we can tell, she's never been indicted, and no one else has been either. Negra was only identified to Mr. Mizrahi as Mr. Zubaid's client and when you look at the evidence, all we have is that a large value of dollars was exchanged for Bitcoin. But there's literally hundreds of different predicates for money laundering. This could come from any number of things.

[32]

Mr. Zubaid initially told the government it was for mom and pop shops that were dealing with cash. Mr. Goran told the FBI that that's what Mr. Zubaid told him. That's what Mr. Mizrahi testified he was told. That's what Daniel Saffron testified that Mr. Zubaid claimed when he was at Mr. Mizrahi's house.

But beyond all of that, the whole purpose of these money laundering cases is not that people spend money; it's to go after the people generating criminal activity. And here, there have been no prosecutions of any cartel related. To this day, we don't know what cartel this supposedly was. We don't know what drugs were supposedly trafficking — marijuana, meth, cocaine. We don't know who was selling it. We don't know who was buying it. We don't know when.

Typically in these kind of cases you can see people go up the ladder, and you see, like, an attempt that was made here where they do identify Negra as the supposed cartel member. But again, there's been no action taken against her. No action beyond Negra to any sort of kingpin. As best we can tell, this is all just in Mr. Zubaid's mind. Maybe he believed it or not, but there's no evidence that is actually true.

So we don't believe that requisite nexus has been shown for at least the $3.8 million of forfeiture from drug money.

And then our third and final argument is that we think [33] the total forfeiture amount would violate the Eighth Amendment under Supreme Court's case of *Bajakajian*. The Supreme Court held that criminal forfeitures can violate the Eighth Amendment when they're disproportionate. And here, the criminal government the government seek is over four and a half million dollars, while the fine range is 50,000 to a million dollars.

And so it strikes me that a criminal forfeiture that would be four and a half times what a reasonable fine would be under the guidelines is excessive. And so I think we've made our record on that point. And unless the Court has any question, I think we conclude.

THE COURT: Ms. Deininger or Mr. Klein, would you like to address the forfeiture issue?

MS. DEININGER: Yes, just quickly, to respond to those three points.

I think on the first point, the law in this circuit is clear that a criminal forfeiture finding does not have to be made by the jury. It can be found by the Court at sentencing.

As to whether there's a sufficient nexus, I think, as your Honor has already addressed now multiple times, there was sufficient evidence to show that at least the 3.8 million was narcotics proceeds. So I'm not going to reiterate that.

Just to address the final objection, which is whether or not here the forfeiture number would be

an excessive fine that would be a violation of the Eighth Amendment, that is not [34] supported at all by the case law. Under *Bajakajian* and its progeny, a forfeiture amount is not unconstitutional unless it is grossly disproportionate to the offense.

And there are a number of factors that go into that including the seriousness of the offense, the defendant's role, the potential fine, the maximum sentence, the guidelines range, which I would note here was, again, extremely high, the statutory maximum sentence, all of these factors that indicate that here it was an extremely serious offense, and therefore a large forfeiture amount would not be grossly disproportionate.

But most tellingly, there is not a single case in this circuit — I can say for certain, and I think I'm fairly certain in any federal court — that has ever found that the money a defendant received from a crime is grossly disproportionate, if ordered as forfeiture. And this was recently addressed by the Second Circuit in *U.S. v. Akhavan* where they specifically said we have never found that gross proceeds can be grossly disproportionate.

Now, there's not case law out there saying that proceeds are never grossly disproportionate, but there are no cases out there that I am aware of having litigated this issue that ever found that a comparable amount — that is, the amount that a defendant actually received as part of money laundering activity would be grossly disproportionate as a forfeiture order.

[35]

THE COURT: Let me ask briefly about the nexus point. What is the standard? Is it preponderance?

What kind of finding needs to be made for the forfeiture on the nexus? In other words, does the Court have to find by a preponderance that this was proceeds of drug activity?

MS. DEININGER: I think you have to have a finding my understanding is by preponderance that it is property involved in the money laundering offense. Here, there were two SUAs charged. Obviously, that was drug activity -- or sorry, three SUAs charged, the drug activity, wire fraud, or the charged bank fraud. So as long as the money came from one of those - by a preponderance of the evidence from one of those three SUAs, it would be forfeitable as money involved in the money laundering offenses.

THE COURT: But here, the amount is -- the largest portion is the drug proceeds. So what I would have to find to get the three-point-whatever million would be that more likely than not that that was drug proceeds.

MS. DEININGER: I believe that is correct.

THE COURT: Understood. Anything further?

MR. MAN: Well, your Honor, I guess the only other point I would add is there's been an interesting issue unfolding with how the Supreme Court views forfeiture. I made reference to Justice Thomas' opinion in *Leonard v. Texas*, a dissent from the denial of certiorari that relies a lot on [36] Justice Scalia's opinion in *Austin v. United States* as well.

And they explain that the forfeiture laws have sort of evolved where the forfeiture was sort of viewed as this exception to the rule, but it was only applied to instrumentalities of the crime itself or contraband. It did not apply to proceeds of the crime. And so they

take the view that in terms of this being a jury trial, right, but also the burden of proof, it should be higher, if the Court is going to view this. It's essentially becoming a criminal sanction at this point that forfeiture is the proceeds of crime.

So the current rule under Rule 23.2 is to view this under a preponderance of the evidence, but I think the Court could constitutionally apply a higher burden.

THE COURT: So just to be clear, the 3.8 million is --well, it's not Mr. Mizrahi's property. That's the amount that he actually -- cash he received and then laundered and kept a portion, 7 percent or whatever it was; is that right?

MS. DEININGER: That's right. It is what we believe is a conservative estimate of the drug proceeds that he physically received and laundered. The statute for forfeiture from money laundering offense is specifically that the Court shall order forfeiture of any property involved in the offense. It's not --

THE COURT: Even if it's property that wasn't his profit?

[37]

MS. DEININGER: That's right. It's not --

THE COURT: In other words, he didn't profit to the amount. He kept only 7 percent of that or whatever?

MS. DEININGER: That's right. The word "proceeds" does not come up in that part of the statute. It applies to the portion of the forfeiture statute that deals with other offenses.

And the only thing I want to note is that, to the extent that the defendant wanted the jury to find a criminal forfeiture. He had the right to ask for one at any point before, during, or even at the end of trial. That is something that I think recently happened in this district. It is not something that he requested.

MR. MAN: Your Honor, if I may, it's the government's burden to prove that its entitled to forfeiture. It's not our obligation for us to create a basis for them to seek forfeiture against our client.

MS. DEININGER: We're not walking away from our burden. Our point is we have met our burden, but the defendant did have a right to request a jury finding.

THE COURT: Understood. Thank you.

Is there any reason sentence may not be imposed at this time?

MR. KLEIN: No, your Honor.

MR. MAN: No, your Honor.

[38]

THE COURT: In preparing to sentence the defendant, I've considered the presentence report, probation's recommendation, the written and oral statements of defense counsel and the defendant and the government, and all of the letters and other information submitted on behalf of the defendant, including his own letter, family letters, friends' letters, lot of letters and other information.

I'm required to consider all the factors in the statute, including the nature and circumstances of the crime, the defendant's history and characteristics, and the purposes of sentencing, which include

the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment, to afford adequate deterrence to criminal conduct, to protect the public, and to provide any needed training or treatment in the most effective manner.

I'm of course required to consider the sentencing guidelines, which we've discussed, as well as avoiding disparities among similarly situated defendants. In the end, I'm required to impose a sentence that is sufficient, but not greater than necessary, to comply with the purposes in the statute.

The jury found the defendant guilty of participating in criminal schemes during 2021 over the course of a few months, a scheme to launder bulk cash proceeds from narcotics trafficking by converting those proceeds into cryptocurrency, a [39] scheme to launder proceeds from an email compromise fraud scheme that victimized a nonprofit organization, and a credit card fraud scheme in which Mr. Mizrahi used his company LV.Net, to run dozens of fraudulent credit cards, and had phoney contracts and invoices created to cover up the scheme.

This obviously was serious conduct, and it's conduct that needs to be deterred and needs to be punished to send a message that it won't be treated lightly with a slap on the wrist.

There are a number of mitigating factors, as well, that are laid out by the defense. The numerous letters obviously testified to the positive sides of Mr. Mizrahi. He has shown generosity toward others. He's someone who is loved by his family. Obviously his family will suffer as a result of an extended period of incarceration.

It is also true, I believe, that he has cognitive and mental health challenges, including an ASD diagnosis and learning disabilities. And related to that, many of the letters indicate that he tends to be gullible and manipulated by others relatively easily. And it is appropriate to take these considerations into account in determining an appropriate sentence, which I am doing.

I'm not persuaded, however, that the defendant was so gullible that he lacked the criminal intent to engage in these schemes. I believe that he did understand what he was doing [40] and that he knew he was engaging in fraud and money laundering. And while the defendant may suffer from a form of ASD, it is also true that he was an extremely successful businessperson, a social person, people person, someone with many friends and business associates, and ultimately, a person who knew what he was doing. And that's based on my observation of all the evidence at trial, his own testimony included.

These considerations have to be balanced against the seriousness of the criminal conduct here, the need to promote respect for the law and provide just punishment, the need for adequate deterrence, and the need to protect the public from criminal conduct.

These were brazen schemes, they were sophisticated in a sense. Aspects of them were not that sophisticated, but they were complex. They used the defendant's company in ways to avoid detection. They involved lies, fake documents, and they involved millions of dollars in fraud and money laundering. This is the sort of conduct that can be hard to detect, but is seriously harmful to victims and to society. And the sentence must reflect the seriousness.

I do think, as I've often said, that certain elements of the guidelines calculation overstate culpability in this and other cases, and including particularly the extent to which it is driven by dollar amounts and the enhancement for laundering for drug distribution. Ultimately, I must make an overall [41] assessment of what punishment is sufficient, but not greater than necessary, to comply with the purposes of sentencing. That's not easy, it's not pleasant, but I have to do it.

I ultimately agree with the defense that a sentence of the guidelines range, which is close to 20 years, or even the government's request of 12 years, is greater than necessary to comply with the purposes of sentencing.

Balancing all these considerations, I ultimately determine that a sentence of the mandatory minimum two years plus 36 months on the other counts is sufficient. That's a total of 60 months. That is a sentence of five years, and I believe that that is sufficient to serve the purposes of sentencing. That is obviously a significant variance below the guidelines, but that is what I believe is necessary to balance those considerations.

I intend to impose a sentence of two years' supervised release following that prison sentence, and I intend to impose a fine of $50,000, which is the bottom of the guideline range.

I'd like to ask counsel for each side if you'd like to state any legal objection before I impose sentence.

MR. KLEIN: No, your Honor.

MR. MAN: No, your Honor.

THE COURT: Mr. Mizrahi, you are committed to the custody of the Bureau of Prisons for a period of 36 months on Counts One, Two, Three, Four, Five, and Seven, all concurrent [42] with each other, plus a consecutive term of 24 months on Count Seven, for a total of 60 months.

Following release, you'll be placed on supervised release for a period of two years in total, one year on Count Six concurrent with two years on Counts One through Five and Seven, also concurrent, with the following conditions:

You will not commit another federal, state, or local crime. You will not possess or use an illegal controlled substance. The mandatory drug testing condition is waived because I find the defendant poses a low risk of substance abuse. You will cooperate in the collection of DNA, as directed by probation.

The standard conditions are imposed with the following special conditions: You shall submit your person, any property, residence, vehicle, papers, computer and electronic communications, data storage devices, cloud storage or media and effects to a search by any United States probation officer and if needed with the assistance of law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to search on this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

[43]

Second, if the probation officer determines, based on your criminal record, personal history, or characteristics, that you pose a risk to any other person, including an organization, the probation officer, with prior approval of the Court, may require you to notify the person about the risk, and you must comply with that instruction. The probation officer may contact the person to confirm you have notified the person about the risk.

You shall provide the probation officer with access to any requested financial information. You shall not incur any new credit card charges or open additional lines of credit without the approval of the probation officer, unless you are in compliance with the payment schedule. You shall report to the newest probation office within 72 hours of release, and you will be supervised by the district of your residence.

A fine is hereby imposed in the amount of $50,000. I do find that forfeiture is warranted in the amount of $4,545,704. And that is based on my finding that $693,000 in wire fraud proceeds was involved in the offense charged in Counts Four and Five. And more likely than not, an additional $3,854,704 was actually involved in narcotic trafficking, being proceeds of narcotic trafficking and involved in the money laundering charges, as charged in Counts Four and Five of the indictment, and I am signing the forfeiture order in that amount.

* * *

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 22-cr-650 (JPO)

UNITED STATES OF AMERICA,

v.

MARTIN MIZRAHI,

Defendant.

Judge J. Paul Oetken

SENTENCING MEMORANDUM ON
BEHALF OF MARTIN MIZRAHI

Richard A. Portale
Chad Mair
PORTALE RANDAZZO LLP
245 Main Street, Suite 605
White Plains, N.Y. 10601
rportale@portalerandazzo.com
cmair@portalerandazzo.com
(914) 359-2400

Richard Weber
WINSTON & STRAWN LLP
200 Park Avenue
New York, N.Y. 10166
rweber@winston.com
(212) 294-1718

Christopher D. Man (pro hac vice pending)
WINSTON & STRAWN LLP
1901 L Street, N.W.
Washington, D.C. 20036
cman@winston.com
(202) 282-5622

Counsel for Martin Mizrahi

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 4

I. THE RECOMMENDED PSR SENTENCE VIOLATES THE FIFTH AND SIXTH AMENDMENTS 6

II. THE PSR'S DRUG-RELATED ENHANCEMENTS ARE NOT WARRANTED 9

A. Mr. Mizrahi Was Not Convicted Of Any Drug-Related Offenses 9

B. The 6-Level Enhancement For Knowingly Laundering Drug Money Is Inapplicable 15

C. The 18-Level Enhancement For the Amount Of Money Laundered Is Excessive 15

III. THE 4-LEVEL ENHANCEMENT FOR BEING IN THE BUSINESS OF MONEY LAUNDERING IS INAPPLICABLE 16

IV. MR. MIZRAHI DID NOT OBSTRUCT JUSTICE 17

V. MR. MIZRAHI IS ENTITLED TO THE ZERO-POINT OFFENDER REDUCTION 19

VI. A *LAUERSEN* DEPARTURE IS WARRANTED 21

VII. MR. MIZRAHI'S HISTORY AND CHARACTERISTICS WARRANT A DOWNWARD VARIANCE 22

A. Mr. Mizrahi's ASD And Developmental Disorders 24

B. Mr. Mizrahi Is Devoted To His Family 38

C. Mr. Mizrahi Has Demonstrated Extraordinary Kindness And Generosity 43

CONCLUSION 49

TABLE OF AUTHORITIES

Page(s)

Cases

Atkins v. Virginia,
536 U.S. 304 (2002) 37

Blakely v. Washington,
542 U.S. 296 (2004) 7

Cunningham v. California,
549 U.S. 270 (2007) 7

Erlinger v. United States,
2024 WL 3074427 (U.S. June 21, 2024) 7

Gall v. United States,
552 U.S. 38 (2007) 8, 42, 49

Graham v. Floria,
560 U.S. 48 (2010) 36

Jackson v. Virginia,
443 U.S. 307 (1979) 11

Koon v. United States,
518 U.S. 81 (1996) 22, 23, 37

Loper Bright Enterp. v. Raimondo,
2024 WL 3208360 (U.S. June 28, 2024)..... 6

Pepper v. United States,
562 U.S. 476 (2011) 22, 23, 49

Rita v. United States,
551 U.S. 338 (2007) 8

Roper v. Simons,
543 U.S. 551 (2005) 36, 37

Thompson v. City of Louisville,
362 U.S. 199 (1960) 11

United States v. Abiodun,
536 F.3d 162 (2d Cir. 2008) 21

United States v. Banks,
55 F.4th 246 (3d Cir. 2022)..... 5

United States v. Bisanti,
414 F.3d 168 (1st Cir. 2005) 48

United States v. Blanco,
102 F.4th 1153 (11th Cir. 2024) 36

United States v. Booker,
543 U.S. 220 (2005) 7, 8

United States v. Catano-Alzate,
62 F.3d 41 (2d Cir. 1995) 18

United States v. Chandler,
732 F.3d 434 (5th Cir. 2013)..... 8

United States v. Cruz-Valdivia,
526 F. App'x 735 (9th Cir. 2013)..... 8

United States v. Delgado,
608 F. App'x 230 (5th Cir. 2015)..... 17

United States v. Gamez,
1 F. Supp. 2d 176 (E.D.N.Y. 1998)..... 12, 16

United States v. Garcia,
413 F.3d 201 (2d Cir. 2005) 48

United States v. Gigante,
94 F.3d 53 (2d Cir. 1996) 21

United States v. Green,
480 F.3d 627 (2d. Cir. 2007) 15

United States v. Jackson,
346 F.3d 22 (2d Cir. 2003) 21, 22, 46

United States v. Lauersen,
348 F.3d 329 (2d Cir. 2003) 21, 22

United States v. Lucarell,
2023 WL 3756191 (6th Cir. 2023)..... 36

United States v. Mitchell,
613 F.3d 862 (8th Cir. 2010)..... 16, 17

United States v. Nelluml,
2005 WL 300073 (N.D. Ind. Feb. 3, 2005)..... 48

United States v. Paul,
561 F.3d 970 (9th Cir. 2009) 8

United States v. Quarshie,
2007 WL 107754 (S.D.N.Y. Jan. 16, 2007)..... 17

United States v. Rosario,
988 F.3d 630 (2d Cir. 2021) 18

United States v. Shonubi,
998 F.2d 84 (2d Cir. 1993) 16

United States v. Shore,
2020 WL 3791550 (E.D. Penn. July 7, 2020) 36, 37

United States v. Singh,
877 F.3d 107 (2d Cir. 2017) 8

United States v. Taffaro,
919 F.3d 947 (5th Cir. 2019)..... 48

Statutes

18 U.S.C. § 3553(a)..... 1, 16

28 U.S.C. § 994(j)..... 1

U.S.S.G. app. C, amend. 634, C-736 (2009) 11

U.S.S.G. § 2A1.3 3

U.S.S.G. § 2A3.1 3

U.S.S.G. § 2B1.1(b)(1) 11

U.S.S.G. § 2S1.1(b)(2)(C), Comment, n.4..... 12

U.S.S.G. § 4C1.1(a)(3) 13

INTRODUCTION

A criminal trial provides the Court with an introduction to a human being that examines a moment in that person's life when that person typically has made a serious mistake in judgment or worse, but that snapshot in time rarely tells the whole story about the man and his character. There may be no other case that comes before the Court where the difference between the person depicted at trial and his true character is more stark than it is here, with Martin Mizrahi. Although he was depicted at trial as a fraudster and some sort of violent enforcer for a drug-trafficking cartel, an avalanche of letters from those who know him best describe him as a man with

no history of violence and who is honest to a fault. (Ex. A (collection of letters).) His lifelong friends describe him as someone who is "loved and adored by everyone." (S. Tabibian, Esq. Ltr.; *see also* G. Khalil Ltr. at 1 ("Marty helps everyone and expects nothing in return.").) And the acts of kindness they describe demonstrate more than that he is a nice guy, but someone whose acts of charity border on saintly.[1]

The good that Mr. Mizrahi has done throughout his life is a reflection of his positive point of view that

---

[1] Because Mr. Mizrahi is so well known for his honesty and goodwill, many people who know him best find the allegations against him shockingly inconsistent with the ethical man they know him to be. His friend of thirty years and his longtime business lawyer Sigal Chattah illustrates the sentiment, explaining: "When Marty was charged with the underlying indictment, not only was I baffled professionally as a lawyer, but also as his friend. Nobody who has known Marty actually believed that this indictment was for real." (S. Chattah Ltr. at 2.) His family lawyer Rachel Jacobson finds it "truly difficult, and rather impossible," for her to connect Mr. Mizrahi to the charges as they "seem completely uncharacteristic of the Marty I have known for over twenty years." (R. Jacobson Ltr.; *see also* R. Cook Ltr. (former Nevada Senator: "I was surprised at the indictment; this event is so uncharacteristic of Marty that I know and have known for over 30 years."); M. Segal Esq. Ltr. (lifelong friend finding it hard to wrap her "head around the fact that his character is even in question"); P. Taheri, Esq. Ltr. (friend of 30-plus years explaining the charges are "very inconsistent with who Marty is as a person"); S. Tabibian, Esq. Ltr. (lifelong friend noting "[t]his stark contrast between the charges and my friend who has been a figure of immense integrity and generosity throughout his life"); S. Tallard Ltr. (a friend of twenty years explains: "It is unimaginable to think he would have committed these offenses, its completely not like him and goes against everything I have come to know about his character. . . .").) Unfortunately, the jury did not hear from character witnesses who consistently voice that opinion with the Court now at sentencing.

people are innately good and that we all should strive to help one another, but it is the naivety in his belief that everyone else believes and acts the same way that is the reason he is before this Court. Mr. Mizrahi has found great success in life, but he has done it with a blind spot created by his Autism Spectrum Disorder (ASD) and related developmental and learning disabilities. (*See* Dr. Romanoff Report (Ex. B).) In short, Mr. Mizrahi is overly trusting and gullible, and the Court will hear that has led to him being conned and exploited throughout his life. Joel Zubaid and David Goran are merely the most recent in a long line of nefarious people to have taken advantage of him. (*See, e.g.*, *id.* ("One of Marty's most commendable yet vulnerable traits is his unwavering trust in others. This trust, while a sign of his generous and open heart, has made him susceptible to exploitation. Sadly, it is this aspect of his character that has led to his current legal predicament. It is very important to recognize that Marty's involvement stems more from being deceived by these individuals than from any criminal intent on his part.").) And Mr. Zubaid and Mr. Goran entered Mr. Mizrahi's life while he was further mentally compromised by a debilitating Post-Traumatic Stress Disorder (PTSD), and experiencing brain fog and memory loss, following a violent attack, for which he was receiving weekly treatment from Dr. Rozalin Banafsheian. (Dr. Banafsheian Report (Ex. C).)

To be sure, Mr. Mizrahi comes before the Court as a convicted man and he must be sentenced. It is unfortunate that Mr. Mizrahi's trial counsel did not have the evidence at the time of trial to put forth a defense at trial based on his ASD, PTSD, and related disabilities, as that would have helped the jury contextualize why he failed to perceive the numerous red flags in this case for what they were in evaluating

whether he was willfully blind to them. Had defense counsel offered a defense based on Mr. Mizrahi's impaired mental state, it would have been powerful.[2] Unfortunately, the full extent of Mr. Mizrahi's psychological deficits was not apparent to his counsel until after trial.

After spending numerous hours with Mr. Mizrahi, interviewing those who know him best, and reviewing his medical history, Dr. Richard Romanoff concluded his forensic examination of Mr. Mizrahi's ASD diagnosis on the facts of this case:

> The following thoughts are my own personal thoughts, and are being offered respectfully to the Court. They are being offered as I enter my fortieth year of practice as a forensic psychologist, who has evaluated approximately 3000 defendants ranging from homeless individuals who stole food to individuals involved in death penalty cases. I am aware of the seriousness and importance Courts attach to guilty verdicts, especially when made by a jury. It is also my personal experience that in almost all cases, a guilty verdict is the product of an accurate assessment of that guilt. However, occasionally a guilty verdict, even

[2] It is not clear that the jury was unanimous in genuinely believing that Mr. Mizrahi was guilty. One juror contacted Ms. Davis after the trial and explained that, in violation of the Court's instructions, he researched her on social media during the trial. He told her that "I don't feel right about the whole thing. I am not convinced" of Mr. Mizrahi's guilt. He says he wanted to give Mr. Mizrahi the "benefit of doubt" and found "a lack of support and evidence" in the government's case, but apparently went along with other jurors who voted to find Mr. Mizrahi guilty. (Davis Ltr. at 7; *see* Ex. D (screen shots of text messages from juror).)

> by a jury, can be in error. Based on my evaluation of Mr. Martin Mizrahi, as summarized in this report, and for all of the reasons summarized in this report, I believe consideration should be given to the possibility this guilty verdict may be one of those rare ones made in error. I have never before written a paragraph like this, as I have never before been as concerned about the possibility of this type of error in an evaluation I have personally conducted. I also want to note I have not been asked to provide this final paragraph, and the thoughts contained in it on my own, and should not be held against anyone other than me.

(Dr. Romanoff Ltr. at 28.)[3]

Although Mr. Mizrahi's ASD, PTSD, and developmental disorders were not offered at trial to help prove his innocence, the Court should consider them at sentencing both because his condition is mitigating as to his culpability and because it would make a prison sentence especially difficult for him. Given that Mr. Mizrahi is subject to a two-year mandatory minimum under 18 U.S.C. § 1028A, Mr. Mizrahi asks the Court to sentence him to imprisonment for two years, followed by supervised release for three years with the

---

[3] Similarly, Mr. Mizrahi's counsel at sentencing would not normally include this point by Dr. Romanoff or the many letters from friends and family questioning a defendant's guilt at the sentencing stage, but this case proves an exception to the rule. Given Dr. Romanoff's evaluation and the overwhelming evidence that Mr. Mizrahi has been taken advantage of so consistently over his life, it is difficult to escape the sense that there has been a miscarriage of justice in that evidence not being presented to the jury.

conditions that he be subject to home confinement and receive treatment for his ASD.

ARGUMENT

Following a conviction, prosecutors and probation have a tendency to scour the Sentencing Guidelines for every possible sentencing enhancement in an effort to maximize punishment, so it is important for the Court to remain mindful that Congress did not direct this Court to adopt such a maximalist approach. Rather, the Court's instruction from Congress is to "impose a sentence sufficient, but not greater than necessary" to achieve justice. 18 U.S.C. § 3553(a). In doing so, Congress recognized "the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense." 28 U.S.C. § 994(j).

To be sure, Mr. Mizrahi stands convicted of serious offenses, but the PSR's call for a 235-month sentence—effectively a life sentence—[4]and a sentence that is

[4] Mr. Mizrahi is 53 years old. The average life expectancy for an American male is 74.8 years. *See* https://www.cdc.gov/nchs/fastats/life-expectancy.html. Mass incarceration in the United States coupled with the adverse impact of incarceration on a person's lifespan is so detrimental, that it knocks the national average down by about two years. Emily Widra, *Incarceration Shortens Life Expectancy*, Prison Policy Initiative (June 26, 2017), https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/. Studies suggest that every year in prison reduces life expectancy of the inmate by two years. Evelyn Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State*, 1989-2003, 103 Am. J. Pub. Health 523 (Mar. 2013). A recent analysis of younger inmates shows that most will lose five years off their life expectancy by age 40, raising a concern that incarcerated persons over age 45, like Mr. Mizrahi, "could experience the brunt of excess mortality risk." Sebastian Daza et al., *The Consequences of*

entirely disproportionate to the offense. Even the government recognizes that such a heavy sentence is unnecessary, as it offered Mr. Mizrahi a plea deal with a recommended Sentencing Guideline range of 33–41 months. Mr. Mizrahi is a first-time offender[5] who did not engage in a violent crime. Mr. Mizrahi's culpability also is substantially mitigated, as explained in more detail below, because he suffers from ASD and PTSD that has rendered him extremely gullible and too often has allowed nefarious people, including Mr. Zubaid, to manipulate him. Additionally, as 130 letters from friends and family attest, Mr. Mizrahi is a man of good character and he has done an extraordinary amount of good over his lifetime. His family needs him at home, particularly as he is the only source of support for his elderly parents who have long lived with him. And while the law calls for him to be punished, there is no need to strip him of his liberty for the remainder of his life.

The PSR treats the Sentencing Guideline calculation as though the base calculation is a naked Christmas tree looking to be adorned with sentencing enhancements, but the facts found by the jury beyond a reasonable doubt establish no more than the base offense level of 8. In piling on, the PSR first asks the Court—not the jury—to find under a mere preponderance of the evidence, rather than under the beyond a reasonable doubt standard, that somewhere between $3.5 and $9.5 million was laundered and

---

Incarceration on Mortality in the United States, Demography (Apr. 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7710643/.

[5] Mr. Mizrahi was involved in petty offenses as a teenager, but the PSR recognizes him as a zero-point offender because these offenses "were sustained approximately 30 years ago." PSR at 36.

impose an 18-level enhancement.[6] Second, the PSR asks the Court to add 6 more levels by finding Mr. Mizrahi knew he was laundering funds from the distribution of controlled substances under Section 2S1.1(b)(1)(A)(B)(i). Third, the PSR asks the Court to find Mr. Mizrahi was in the business of money laundering and add 4 more levels under Section 2S1.1(b)(2)(C). Fourth, the PSR asks the Court to find Mr. Mizrahi perjured himself and add 2 more levels for obstruction of justice, apparently under the view that defendants should be penalized in this manner whenever they testify in their defense and are convicted as a sort of penalty for testifying. The cumulative result is a sentence that is disproportionate to the offense: level 38 with a recommended 235–293 months of incarceration. Mr. Mizrahi could face less jail time if he had committed more serious offenses, including rape (U.S.S.G. § 2A3.1, base offense 30 plus 4-level rape enhancement = level 34 (151–188 months)) or a voluntary murder (U.S.S.G. § 2A1.3, base offense 29 (87–108 months)).

---

[6] Although the PSR relies upon the money laundering guideline to determine Mr. Mizrahi's sentencing recommendation, it suggests he would face a 20-level enhancement under the fraud guideline based on "intended loss." PSR ¶43. The Third Circuit recently found that loss should be calculated based on actual loss, and that the Sentencing Commission's interpretation of loss to include intended loss was unreasonable. *United States v. Banks*, 55 F.4th 246, 257 (3d Cir. 2022). The Supreme Court's recent decision overturning *Chevron* deference further demonstrates that the Sentencing Commission's interpretation should not receive any deference. *Loper Bright Enterp. v. Raimondo*, 2024 WL 3208360, at *21 (U.S. June 28, 2024). Some charges were disputed, and everyone got their money back. The only losses were Mr. Mizrahi's in paying the merchant fees. Mr. Mizrahi refunded the bulk of the rest of the charges before any disputes were made, so there was no actual loss.

I. THE RECOMMENDED PSR SENTENCE VIOLATES THE FIFTH AND SIXTH AMENDMENTS

The PSR's Guideline calculation is largely driven by facts it asks this Court to find by a preponderance of the evidence, rather than facts found by the jury beyond a reasonable doubt as the Fifth and Sixth Amendments require. The PSR recognizes that the base offense level for the offense is 8 under the Sentencing Guideline for money laundering in Section 2S1.1(a)(2), which corresponds to a sentence of 0–6 months and allows for a non-custodial sentence. This is the only Guideline calculation supported by the jury's findings. Nevertheless, the PSR asks the Court to find many facts that the jury did not, which would dramatically raise Mr. Mizrahi's total offense level to 38, corresponding to a sentencing range of 235–293 months of incarceration. Here, that is a difference between a potential noncustodial sentence and imprisonment for nearly 25 years, a sentence that would likely mean that Mr. Mizrahi would die in prison. *See supra* n.4. Such a disparate outcome cannot constitutionally rest upon judge-found facts under a mere preponderance of the evidence standard.

The PSR's approach trivializes the jury right enshrined in the Sixth Amendment and would make judge-found facts, reached under a lower standard of review, the driving force behind Mr. Mizrahi's sentence. The punishment inflicted on Mr. Mizrahi would rest almost entirely upon judge-found facts, rather than anything the jury found that he had done wrong. That is not how sentencing should work.

Pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), "under the Sixth Amendment, any fact that exposes a defendant to a

greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely a preponderance of the evidence." *Cunningham v. California*, 549 U.S. 270, 281 (2007). The Supreme Court recently reiterated that "the Fifth and Sixth Amendments sought to ensure that a judge's power to punish would 'deriv[e] wholly' from, and remain always 'control[led]' by, the jury and its verdict." *Erlinger v. United States*, 2024 WL 3074427, at *6 (U.S. June 21, 2024) (quoting *Blakely v. Washington*, 542 U.S. 296, 306 (2004)). This traditional role for the jury "guaranteed that a judge could not 'swell the penalty above what the law . . . provided for the acts' found by a jury of the defendant's peers." *Id.* (citation omitted). "By requiring a unanimous jury to find every fact essential to an offender's punishment, those amendments similarly seek to constrain the Judicial Branch, ensuring that the punishments courts issue are not the result of a judicial 'inquisition' but are premised on laws adopted by the people's elected representatives and facts found by members of the community." *Id.*

By eliminating the mandatory nature of the Guidelines, *Booker* remedied—but did not eliminate—a significant constitutional flaw in the Guidelines. Under the mandatory Guideline regime, the Guideline score dictated a mandatory sentencing range, such that every sentencing enhancement that would raise that score would have to be found by the jury. Finding that is not the result Congress intended through the Sentencing Guidelines, the *Booker* majority severed the requirement that the Guidelines be mandatory. Because judge-found sentencing enhancements would not necessarily raise the sentence that the judge would impose, the Fifth and Sixth Amendments would not

necessarily be violated through such judicial fact finding.

But *Booker* did not create a free-for-all where a judge can sentence a defendant anywhere from nothing to the statutory maximum based on a general verdict of conviction. Rather, post-mandatory Sentencing Guidelines, appellate courts "consider the substantive reasonableness of the sentence imposed." *Gall v. United States*, 552 U.S. 38, 51 (2007). Thus, unreasonable sentences are invalidated even when they are below the statutory maximum. *See, e.g.*, *United States v. Singh*, 877 F.3d 107, 116–17 (2d Cir. 2017); *United States v. Chandler*, 732 F.3d 434, 437, 440 (5th Cir. 2013); *United States v. Cruz-Valdivia*, 526 F. App'x 735, 737 (9th Cir. 2013); *United States v. Paul*, 561 F.3d 970, 973–75 (9th Cir. 2009) (per curiam). A sentence that rests heavily upon judicial fact-finding may still be deemed unconstitutional. *See, e.g.*, *Gall*, 552 U.S. at 60 (Scalia, J., concurring) ("The door ... remains open for a defendant to demonstrate that his sentence, whether inside or outside the advisory Guidelines range, would not have been upheld but for the existence of a fact found by the sentencing judge and not by the jury."); *Rita v. United States*, 551 U.S. 338, 375 (2007) (Scalia, J., concurring) (explaining that the Court's opinion "does not rule out as-applied Sixth Amendment challenges to sentences that would not have been upheld as reasonable on the facts encompassed by the jury verdict or guilty plea").

This is such a case. The PSR's sentence of 235–293 months of incarceration simply is *not* reasonable in the absence of judge-found sentencing enhancements. The Guidelines themselves make that clear in recommending a sentence of 0–6 months as the base offense, based solely on the jury's verdict alone. If that is a

substantively reasonable sentence, a 253–293-month sentence based on the same facts cannot be. The difference in sentencing ranges can be lost on no one. A 293-month sentence is nearly *50 times* higher than a 6-month sentence. There is a massive difference in a sentence of 6 months or less and one exceeding 20 years. As a practical matter, that is the difference between Mr. Mizrahi being able to build a life for himself with his family and a future where Mr. Mizrahi gives up hope of ever leaving prison due to a non-violent offense. Because the PSR's recommended 235-month sentence is not reasonable without further fact-finding, and no such fact-finding was conducted by the jury, such a sentence—or any sentence approaching it—violates the Fifth and Sixth Amendments.

II. THE PSR'S DRUG-RELATED ENHANCEMENTS ARE NOT WARRANTED

A. Mr. Mizrahi Was Not Convicted Of Any Drug-Related Offenses

This case is unusual in that the government alleges that money from illicit drug sales was laundered, but no evidence was offered at trial (or since then) that any of the money involved in this case was derived from illicit drug sales. Normally, the point of these prosecutions is to target those who sell drugs, primarily by charging those on the front-end who engage in drug transactions. The whole point of the money laundering charges on the back-end is to discourage drug trafficking by making it unprofitable. Nevertheless, the government has offered no evidence tracing the money at issue to drug trafficking and no one has been charged with any drug-trafficking offense.

That result is all the more remarkable because the government has cooperating witnesses in Mr. Zubaid

and Mr. Goran, who claim they received money from a Mexican cartel engaged in drug trafficking. Despite that cooperation, however, they apparently have not led the government to charge, arrest or even identify anyone in this supposed cartel. Nor has the government apparently uncovered any evidence of a single drug transaction that generated any of the money at issue in this case.

That result is best explained by the fact that Mr. Zubaid and Mr. Goran are well seasoned con men with over twenty years' worth of experience in running fraudulent schemes, who simply lied about the involvement of a drug cartel after they were caught to make their cooperation appear more meaningful. Mr. Zubaid claimed he was dealing with the "Chino" cartel (Tr. 361), which does not appear to exist. Even the government's expert, Alfred Hernandez, had never heard of this "Chino" cartel. (Tr. 701). The government certainly offered no evidence that there is such a cartel, and—even with the cooperation of Mr. Zubaid and Mr. Goran—there does not appear to be any evidence that any such cartel exists or engaged in drug trafficking. The government may want headlines declaring a victory over Mexican cartels and tout this to be such a victory, but there is no evidence that is true beyond Mr. Zubaid's unsubstantiated and self-serving statements in seeking cooperation credit that he thought it was true. *See* U.S. Atty's Office, S.D.N.Y., Press Release, *Chief Executive Officer Of A Las Vegas-Based Company Convicted For Multimillion-Dollar Fraud And Money Laundering Scheme* (Mar. 4, 2024), https://www.justice.gov/usao-sdny/pr/chief-executive-officer-las-vegas-based-company-convicted-multimillion-dollar-fraud (claiming the conviction was for "launder[ing] more than $4 million in fraud and illegal narcotics proceeds"—less than the PSR estimates—for "a

Mexican-based cartel," which notably goes unnamed in the press release).

Importantly, while Mr. Zubaid and Mr. Goran claimed it was cartel money, neither claimed to have witnessed any drug sales by this cartel or otherwise had any first-hand knowledge of how the money was generated. Mr. Goran claimed the only reason he believed the money was cartel money was that this is simply what Mr. Zubaid told him. (Tr. 1031.) Their testimony was admitted to establish their mental state, not to prove that the money actually was derived from drug trafficking. *See* Fed. R. Evid. 602 (testimony must be based on personal knowledge).

The jury's convictions are not to the contrary. Mr. Mizrahi was convicted of the substantive offenses of wire fraud and bank fraud, but there was no charge that he had anything to do with selling illicit drugs. Count 5 charged Mr. Mizrahi with a substantive money laundering offense, but only for laundering the proceeds of fraud. There was no substantive money laundering charge for laundering drug trafficking proceeds, presumably because the government knew it could not prove that had occurred. Counts 4 did charge Mr. Mizrahi with a money laundering conspiracy based on laundering the proceeds of wire fraud, bank fraud, and illicit drug sales, but the Court expressly told the jury it could convict on the money laundering charge if it found money laundering concerning *any* of these specified unlawful activities. (Tr. 2238, 2242.) The jury did not need to find drug money was laundered to convict. The jury's convictions on the wire fraud and bank fraud counts would support the money laundering convictions on Counts 4 and 5. Thus, the jury's convictions on those counts do not reflect that the jury found any drug money was laundered.

Moreover, no conviction on laundering drug trafficking proceeds could be upheld, even if that were what the jury intended, because there is no evidence of drug trafficking. *See Thompson v. City of Louisville*, 362 U.S. 199, 206 (1960) (a conviction rendered with no evidence in support of a conviction violates due process), *overruled*, *Jackson v. Virginia*, 443 U.S. 307, 316 (1979) (holding *Thompson* did not go far enough and that even convictions resting on some evidence may violate due process). Criminal organizations often are involved in activities aside from narcotics sales and it is difficult to prove that those who launder money know the precise source of the money when they were not involved in the underlying transactions. *United States v. Gamez*, 1 F. Supp. 2d 176, 182 (E.D.N.Y. 1998). Additionally, Mr. Zubaid and Mr. Goran claiming to have some kind of understanding that they were dealing in cartel-related drug trafficking is not evidence that they actually were. To the contrary, Mr. Zubaid's own experience in being robbed twice shows precisely why someone may lie about their money belonging to a dangerous cartel as a way to discourage such theft. And, as noted above, they may claim they were laundering drug money for a cartel now to make their cooperation appear more valuable to the government as part of a plea agreement.

In dealing with Mr. Mizrahi, however, neither man told him he would be laundering drug money for a cartel because they knew he would not have helped them if that was the case. Mr. Mizrahi abhors illicit drug use, which plagued his brother and led to his death, and he has a long history of helping people get into drug recovery programs. Mr. Mizrahi's overt hostility toward illicit drug use is well known, as is the drug-free, vegan lifestyle he adheres to, and many friends note that he would never support drug-

trafficking in any way. (*See, e.g.*, J. Horvitz Ltr. (explaining Mr. Mizrahi would have nothing to do with aiding drug traffickers because "Marty hates anything and everything to do with Drugs. He has a deep disdain for dealers and drugs, as he has seen them ruin the lives of so many, some even very close to him, most notably his brother, who had issues with drugs his whole life and died as a result of it."); R. Wasserman Ltr. at 2 ("Marty has never touched a drug. He hates anything drug related and even does not allow people to smoke near him. His brother died young only a few years ago because of drug overdose. The mere fact that the current charges were, to my understanding, related to drug money is another sign that he had no knowledge of the source of any cash. Based upon his hatred of anything related to drugs, he would have stayed far away from anything directly or indirectly related to drugs, especially in a way to assist drug organizations.").)

Nevertheless, Mr. Zubaid claimed that he had told Mr. Mizrahi that he was in debt to this cartel (Tr. 151, 161, 637) and that Mr. Zubaid believed the source of the money that he was moving was from selling drugs in the United States (Tr. 142, 145, 159, 638), but that testimony is simply not credible and contradicts statements Mr. Zubaid previously made to the government. Mr. Mizrahi, by contrast, testified that Mr. Zubaid never told him he was in trouble with the cartel. (Tr. 1730.) Mr. Mizrahi credibly testified that he would never have done business with a dangerous cartel, especially out of his home where he lived with his daughters and parents. (Tr. 1736–37, 1851.) Rather, Mr. Zubaid portrayed himself as a successful businessman who needed Mr. Mizrahi's help in buying Bitcoin for his investors. (Tr. 1659 (Saffron), 1703 (Mizrahi).) Believing these transactions were legitimate, Mr.

Mizrahi had photos of the cash to be taken in his home in front of pictures of his family (Tr. 1736-37, 1851, 1909) and even reported the income on his taxes. (Tr. 1532, 1575.) These are not the sort of things people do when they believe they are illegally laundering money for a drug cartel. (*See* Tr. 700–01 (Agent Hernandez testifying money launderers typically do not report money laundering income on their taxes).)

And the Court has text messages between Mr. Mizrahi to Mr. Zubaid to back that up. When Mr. Mizrahi was not getting a satisfying explanation from Mr. Zubaid, Mr. Mizrahi texted Mr. Zubaid that he would go to the police—something no one would do if they believed they were engaged in wrongdoing. (Tr. 1777; Ex. G33.) Later, Mr. Mizrahi texts Mr. Zubaid saying, "I can't believe I let you and your people con me for that much money." (Tr. 1833). Mr. Zubaid claimed in response, "we got conned." (*Id.*) Mr. Mizrahi accused Mr. Zubaid of lying to him about the source of funds. (*Id.*) If, as Mr. Zubaid testified, he had told Mr. Mizrahi they were working together to launder drug money for the cartel or doing anything illegal, Mr. Zubaid would not have responded to Mr. Mizrahi's claims of innocence by claiming he "got conned" too. Mr. Zubaid would have told Mr. Mizrahi that he had not lied, and Mr. Mizrahi knew exactly what he had gotten himself into. Mr. Zubaid would have warned him that he would get himself in trouble by going to the police. Instead of saying anything like that, Mr. Zubaid continued the con on Mr. Mizrahi.

Again, there is no jury finding to the contrary. The jury's verdict does not reflect a finding that Mr. Mizrahi laundered drug money. Nor does the jury's verdict reflect that it rejected Mr. Mizrahi's claims that Mr. Zubaid repeatedly gave him innocent explanations

in an effort to con him. The Court gave the jury a conscious avoidance instruction (Tr. 2256), and the jury likely convicted Mr. Mizrahi because it believed that red flags must have alerted him to a high probability that Mr. Zubaid had led him into an unlawful scheme, even if Mr. Zubaid had told him otherwise.

The testimony of a con man about a sensational Mexican drug cartel conspiracy in the hope of a reduced sentence for his cooperation does not undermine Mr. Mizrahi's testimony, particularly when Mr. Zubaid is relying upon a fictional cartel and there is no evidence that any cartel or drug activity was involved. Daniel Saffron was present at meetings between Mr. Zubaid and Mr. Mizrahi as well, and he recalls Mr. Zubaid explaining the money was from his investors looking to buy Bitcoin and with no mention of cartels or drug trafficking—something that Mr. Saffron surely would have remembered if it had been said. (Tr. 1659.) That is the same explanation that Mr. Zubaid told the government he had been told by Sergio Knight. (2/28/23 Zubaid proffer at 2 (Zubaid "thought [the money] came from small mom and pop people," and "Z had suspicion money was from drug money, but SK said small mom and pop.") (Ex. E).) Even Mr. Goran told the government that Mr. Zubaid had initially told him that the money was from "mom and pop stores with cash." (3/8/23 FBI 302 at 2 (Ex. F); *see also* 12/20/22 FBI 302 at 3 (claiming he was told the money was from "shop owners who wanted Bitcoin") (Ex. G).) And remember that Mr. Zubaid admitted in the conversation recorded at Denny's that Mr. Mizrahi was not in on the scheme. (Trial Ex. XX1.) More than Mr. Zubaid's testimony is warranted before locking Mr. Mizrahi up for the remainder of his life for drug-

related money laundering that there is no evidence actually occurred.

B. The 6-Level Enhancement For Knowingly Laundering Drug Money Is Inapplicable

The burden is on the government to prove a sentencing enhancement, and there is no evidence to support the 6-level enhancement for knowingly laundering drug money in Section 2S1.1(b)(1)(A)(B)(i). *United States v. Green*, 480 F.3d 627, 635 (2d. Cir. 2007). As explained above, there is no evidence that Mr. Mizrahi actually laundered illicit drug sales proceeds or believed that is what he was doing, and the jury's verdict is not to the contrary. Therefore, this enhancement is inapplicable.

C. The 18-Level Enhancement For the Amount Of Money Laundered Is Excessive

Likewise, the government has failed to meet its burden in justifying an 18-level enhancement based on between $3.5 million to $9.5 million being laundered under Section 2S1.1(a)(2). The PSR calculates the amount of money laundered from drug offenses as $5.2 million (PSR ¶22) and an additional $690,000 from the fraud offenses (PSR ¶30). But, as explained above, the government has failed to establish the $5.2 million it attributes to the laundering of illicit drug sales proceeds was in fact the proceeds of illicit drug sales, so this amount should not be considered in the calculation.[7] The Second Circuit will reverse where

[7] The origins of this money remain unknown. It is not clear if the money is the proceeds of any criminal conduct at all or, more particularly for the purposes of the money laundering statute, the proceeds of anything defined as "specified unlawful activity." In any event, the only specified unlawful activity charged by the grand jury and that the government claimed at trial was drug

quantity-related assessments rest on "surmise and conjecture," and that is all we have here—Mr. Zubaid's purported understanding of the origins of the money that is not based on any first-hand knowledge. *United States v. Shonubi*, 998 F.2d 84, 90 (2d Cir. 1993). Criminal organizations often are involved in activities aside from narcotics sales and it is difficult to prove that those who launder money know the precise source of the money when they were not involved in the underlying transactions. *Gamez*, 1 F. Supp. 2d at 182. Thus, even if only the amount of fraud-related money laundering was proven (and no quantity was found by the jury beyond a reasonable doubt), there should be a 14-level enhancement for the laundering of the fraud proceeds of between $550,000 and $1.5 million, rather than an 18-level enhancement. *See* U.S.S.G. § 2B1.1(b)(1).

III. THE 4-LEVEL ENHANCEMENT FOR BEING IN THE BUSINESS OF MONEY LAUNDERING IS INAPPLICABLE

The 4-level enhancement in Section 2S1.1(b)(2)(C) for a defendant "in the business of laundering funds" is meant to apply to someone operating similarly "to a professional 'fence,'" something Mr. Mizrahi did not do. *United States v. Mitchell*, 613 F.3d 862, 869 (8th Cir. 2010) (quoting U.S.S.G. app. C, amend. 634, C-736 (2009)). Mr. Mizrahi founded LV.Net decades ago (founded business in 1994, registered name in 2010 (Tr. 1688)), but the PSR itself identifies the alleged money laundering as occurring over only a few months between February 2021 to May 2021. PSR ¶17. Moreover, the alleged money laundering took place with the same people each time. Nor did Mr. Mizrahi

---

trafficking. There is no basis for the Court to conclude the money was derived from any other specified unlawful activity.

profit from this activity. Thus, he was not operating like a professional fence, regularly providing his services to the underworld. *See Mitchell*, 613 F.3d at 869 (reversing application of enhancement for defendant who engaged in 45 transactions over 16-18 months for the same person); *United States v. Quarshie*, 2007 WL 107754, at *3 (S.D.N.Y. Jan. 16, 2007) (declining to apply enhancement because conduct did not occur over an extended period of time); *see also United States v. Delgado*, 608 F. App'x 230, 236 (5th Cir. 2015) (reversing application where defendant boasted about his money laundering business, but the evidence did not show he actually laundered money).

This enhancement is not meant to reach everyone who launders money through a business, but only defendants who operate a money laundering business. Application Note 4 to Section 2S1.1(b)(2)(C) instructs courts to "consider the totality of the circumstances" and provides a non-exhaustive list of factors "that may indicate the defendant was in the business of laundering funds," including whether: (i) the defendant regularly engaged in laundering funds; (ii) the defendant engaged in laundering funds for an extended period of time; (iii) the defendant engaged in laundering funds from multiple sources; (iv) the defendant generated a substantial amount of revenue in return for laundering funds; (v) the defendant had one or more previous convictions for money laundering-related offenses; and (vi) during the course of an undercover investigation, the defendant made statements that she engaged in any of the conduct indicating that she was in the business of laundering money. U.S.S.G. § 2S1.1(b)(2)(C), Cmt., n.4. Absolutely none of these factors are present. Not one.

IV. MR. MIZRAHI DID NOT OBSTRUCT JUSTICE

Mr. Mizrahi should not be penalized for testifying in his own defense. While it is true that the jury must have concluded that some of his testimony was inaccurate, that does not mean that this Court should find that he lied. Courts should "not automatically enhance sentences whenever the accused takes the stand and is thereafter found guilty." *United States v. Rosario*, 988 F.3d 630, 632 (2d Cir. 2021) (*quoting United States v. Catano-Alzate*, 62 F.3d 41, 42 (2d Cir. 1995)). Mr. Mizrahi has ASD, significant learning disabilities and comprehension deficits, and he was clearly flustered and stressed when he took the witness stand. It would be unfair to conclude that he took the stand and intentionally lied.

Nor does the jury's verdict reflect that the jury thought he lied. Again, the Court gave the jury a conscious avoidance instruction (Tr. 2256), which explains why the jury could convict Mr. Mizrahi without finding that Mr. Mizrahi had lied in maintaining that he did not knowingly engage in wrongdoing. The jury could have concluded that Mr. Mizrahi accurately denied having such knowledge but concluded that he consciously avoided learning the truth.

As explained in more detail below, Mr. Mizrahi's ASD may have contributed to misinterpretation of his testimony. "Unusual or maladaptive behaviors either demonstrated during offending or in court by a defendant with ASD may be misinterpreted, which may skew dispositional outcomes or potentially lead to prejudicial impressions." Colleen M. Berryessa, *Defendants With Autism Spectrum Disorder In Federal Court: A Judge's Toolkit*, 13 Drexel L. Rev. 841, 845 (2021). People with ASD who testify "may take a long

time to answer questions, which may appear evasive." *Id.* at 851. "They may also misinterpret or nit-pick questions asked of them during questioning or cross-examination. For instance, defendants may fail to pick up on cues which signal the end of a line of questioning, or attempt to shift the conversation to a topic of their interest. Such behavior may be misunderstood as the defendant being 'cagey,' or unwilling to discuss a particular area or answer questions" and they may instigate arguments with prosecutors. *Id.* Regrettably, Mr. Mizrahi demonstrated all these behaviors when testifying. Again, that reflects that he has ASD, not that he was lying.

IV. MR. MIZRAHI IS ENTITLED TO THE ZERO-POINT OFFENDER REDUCTION

The Sentencing Commission recently adopted a Guideline amendment that calls for a 2 level reduction for zero-point offenders, like Mr. Mizrahi, in Section 4C1.1. Amendment 821 became effective on November 1, 2023, reflecting that zero-point offenders are less likely to recidivate.

The PSR erroneously rejected the application of this adjustment under an exception where the defendant used "violence or credible threats of violence in connection with the offense." U.S.S.G. § 4C1.1(a)(3). The PSR looked to its allegations in Paragraphs 24 and 25 to make this claim. PSR at 33. Those paragraphs, and Paragraph 26, identify only two incidents and neither involved actual violence or threats of violence, and neither was in any way "in connection with the offense[s]" of wire fraud, bank fraud, or money laundering that were charged. Moreover, the government never called anyone to testify who was threatened by Mr. Mizrahi or witnessed any supposed threats being made.

In both incidents, Mr. Zubaid urged Mr. Mizrahi to help him collect money that was owed to him. Mr. Zubaid may have wanted Mr. Mizrahi to do whatever he could to help him collect the money, including use violence or threats of violence, but there is no allegation that Mr. Mizrahi used violence or made any threats. The first incident involved Andrew Demaio, but the evidence is only that Mr. Mizrahi called him and tried to arrange a meeting that apparently never happened. Mr. Zubaid testified that he never collected from Mr. Demaio (Tr. at 363), nevertheless, Mr. Mizrahi clearly never threatened or harmed Mr. Demaio. While Mr. Demaio did claim he was threatened, he claimed those threats came from "Joel Zubaid," who "kept calling" him and that he never even heard Mr. Mizrahi's name. (1/19/24 FBI Interview Notes; Ex. H.)

Mr. Demaio never testified to being threatened or harmed by Mr. Mizrahi, and he told an investigator that he does not even remember Mr. Mizrahi or ever hearing his name. (Tr. 8.) Even the prosecution acknowledged that Mr. Demaio told the government that he does not know who Mr. Mizrahi is. (Tr. 13.) It is not surprising that Mr. Demaio cannot remember Mr. Mizrahi, as Mr. Mizrahi testified they spoke only once briefly by phone about doing business. (Tr. 1731–32.) He also testified that he told Mr. Zubaid that there was not much he could do to help him get his money back because he did not know Mr. Demaio. (*Id.*)

The second incident involved Anthony Anderson, who Mr. Zubaid met at Mr. Mizrahi's house. Mr. Anderson later took $500,000 from Mr. Zubaid in exchange for Bitcoin from the Bellagio, but he did not provide the Bitcoin. Mr. Mizrahi testified that he called Mr. Anderson's girlfriend and told her what happened, and that she talked Mr. Anderson into giving the

money back. (Tr. 2025–26.) There was no violence or threats of violence. Neither Mr. Anderson nor his girlfriend testified otherwise. Thus, there is no evidence of violence or threats of violence in this instance either.

Both incidents also undercut Mr. Zubaid's claim that this money belonged to a Mexican cartel that was dangerous and would kill anyone who crossed them. If that were true, why would Mr. Zubaid need the help of a 5'9", middle-aged, vegan, tech guy with no history of violence to help him recover the money? If cartel money was stolen by such a ruthless cartel, as Mr. Zubaid claims, surely the cartel could send someone to more credibly deliver threats of violence than Mr. Mizrahi.

V. A *LAUERSEN* DEPARTURE IS WARRANTED

Guideline complications arise when the multiple sentencing enhancements are applied in the same case, bringing about a cumulative impact that is beyond what the Sentencing Commission could have contemplated. "[T]he cumulation of . . . substantially overlapping enhancements, when imposed upon a defendant whose adjusted offense level translates to a high sentencing range, presents a circumstance that is present to a degree not adequately considered by the Commission and therefore permits a sentencing judge to make a downward departure." *United States v. Abiodun*, 536 F.3d 162, 170 (2d Cir. 2008) (quoting *United States v. Lauersen,* 348 F.3d 329, 344 (2d Cir. 2003) (citations omitted); *see United States v. Jackson*, 346 F.3d 22, 26 (2d Cir. 2003) ("an accumulation of somewhat overlapping enhancements, even if not amounting to double counting, can justify a downward departure"). Additionally, as significant enhancements come into play, the Court should apply more rigorous

scrutiny in determining whether they have been proven. *United States v. Gigante*, 94 F.3d 53, 56 (2d Cir. 1996) ("In our view, the preponderance standards no more than a *threshold* basis for adjustments and departures, and the weight of the evidence, at some point along a continuum of sentence severity, should be considered with regard to both upward adjustments and upward departures. With regard to upward adjustments, a sentencing judge should require that the weight of the factual record justify a sentence within the adjusted Guidelines range. In doing so, the Court may examine whether the conduct underlying multiple upward adjustments was proven by a standard greater than that of preponderance, such as clear and convincing or even beyond reasonable doubt where appropriate. Where a higher standard, appropriate to a substantially enhanced sentence range, is not met, the court should depart downwardly.").

In *Lauersen*, for example, a downward departure was available because a 13-level increase for the amount of loss applied in conjunction with an overlapping 4-level increase for a loss of more than $1 million to a financial institution. 348 F.3d at 344. Such losses would be rare absent the involvement of a financial institution. Similarly in *Jackson*, the Second Circuit identified a cumulative impact from applying a substantial loss enhancement and enhancements for an extensive scheme, involving careful planning and sophisticated means, as all those enhancements would seem triggered by the same conduct. 346 F.3d at 26.

The same sort of overlap exists here. An 18-level enhancement for laundering more than $3.5 million overlaps with the 4-level enhancement for someone in the business of laundering money. The same is true of the 6-level enhancement for knowingly laundering

drug proceeds, it is commonly drug trafficking that yields such high volumes of money laundering. Cumulatively, that is a 28-level enhancement for largely overlapping conduct and it transforms an already serious sentence into one with the practical effect of being a life sentence. The Court should grant a substantial downward departure to prevent the stacking effect of cumulative sentencing enhancements from yielding a disproportionate sentence that will move past punishing Mr. Mizrahi to instead destroying his life and his family.

VI. MR. MIZRAHI'S HISTORY AND CHARACTERISTICS WARRANT A DOWNWARD VARIANCE

"There is a longstanding tradition in American law, dating back to the dawn of the Republic, that a judge at sentencing considers the whole person before him or her 'as an individual.'" *Concepcion v. United States*, 597 U.S. 481, 496 (2022) (quoting *Koon v. United States*, 518 U.S. 81, 113 (1996)). "Underlying this tradition is the principle that 'the punishment should fit the offender and not merely the crime.'" *Pepper v. United States*, 562 U.S. 476, 487–88 (2011) (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)); *see also id.* ("For the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.") (quoting *Pennsylvania ex rel. Sullivan v. Ashe*, 302 U.S. 51, 55 (1937)). "Indeed, '[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes

mitigate, sometimes magnify, the crime and the punishment to ensue.'" *Concepcion*, 597 U.S. at 492 (quoting *Koon*, 518 U.S. at 113). A careful consideration of a defendant's history and characteristics "ensures that the punishment will suit not merely the offense but the defendant." *Pepper*, 562 U.S. at 488 (quoting *Wasman v. United States,* 468 U.S. 559, 564 (1984)). Today, that requirement is embodied in 18 U.S.C. § 3553(a), which instructs the Court to consider "the history and characteristics of the defendant" and "impose a sentence sufficient, but not greater than necessary," to serve the ends of justice.

Viewed through that lens, Mr. Mizrahi should face minimal punishment. Mr. Mizrahi's culpability for his offenses is mitigated by his ASD, concurrent PTSD that was being treated at the time, and his learning and developmental disabilities that have throughout his life allowed people like Mr. Zubaid to take advantage of him. A mountain of letters to the Court demonstrate that Mr. Mizrahi is a good person who is filled with kindness, but someone who is hopelessly naïve and gullible and an easy mark for those who would take advantage of him. Society does not need Mr. Mizrahi to be imprisoned for its protection, and prison is no place for Mr. Mizrahi to find a healthy way to live with his ASD. To the contrary, prison would be torturous for a person with Mr. Mizrahi's ASD.

A. Mr. Mizrahi's ASD And Developmental Disorders

Ashley Davis describes her boyfriend, Mr. Mizrahi as "the Smartest Stupidest person I've ever known," and that sentiment captures what may seem enigmatic about him. (A. Davis Ltr. at 3.) Mr. Mizrahi has been successful in building many businesses and he has succeeded in cultivating a supportive network of

friends and family, but those closest to him express amazement at his gullibility and the numerous times people have taken advantage of him and swindled him. His gullibility is so pronounced that those close to him find a need to try to protect him and confront the frustration that Mr. Mizrahi typically refuses to accept the possibility that anyone who he thinks of as a friend would lie to him or cheat him. Too often though, that is exactly what happens.

We now recognize Mr. Mizrahi as suffering from ASD, an umbrella label for persons who do not check all the boxes for a more specific developmental disorder, such as autism, but who nevertheless are afflicted with symptoms along the same spectrum of those disorders. (Dr. Romanoff Ltr.) The difficulties of Mr. Mizrahi's ASD are compounded by his lifelong and severe learning disabilities, which particularly impact his reading comprehension, ability to write and his spelling. His mental acuity is limited. For example, he has never read a book. More recently, Mr. Mizrahi also has been diagnosed with prosopagnosia, a difficulty in recognizing people's faces, and dysnomia, a sense that words may be on the tip of his tongue but that he is unable to recall. (M. Mizrahi Ltr. at 1.) His memory also has significant deficits in which he is unable to remember anything before the third grade and a surprising inability to recall a host of things that we would expect him to remember, including the name of his middle school and whether he graduated from high school.

Given his learning disabilities, Mr. Mizrahi learned to play to his strengths. He found that he did not have to be the smartest guy in the room. He learned that if you show people kindness and that you have a strong work ethic—as everyone will attest that he does—

people would give him a chance. Despite his poor performance in school, Mr. Mizrahi was quite smart when it came to figuring out how machinery and technology worked. When he was 14, he brought his computer into a repair shop. Unable to pay the cost of repairs, Mr. Mizrahi worked in exchange for the repairs. (B. Toubian Ltr.) In high school, he taught himself how to build his first car and he started a computer repair business right after he left high school. (M. Mizrahi Ltr. at 1–2.) He became fixated on technology. People gave him a chance to prove himself and he did so, over and over again, most notably through LV.Net, his highly successful internet service provider company.

Mr. Mizrahi's work history is consistent with his ASD. This technology field is well-suited for someone with ASD because "computer technology [is] an area of knowledge devoid of any need to understand feelings or to possess capacities for meaningful emotional empathy." (Dr. Romanoff Ltr. at 26.) Similarly, Mr. Mizrahi's history of rarely getting much sleep and working virtually non-stop is consistent with the need for many people with ASD to engage in repetitive behaviors. (*Id.* at 23–24.) The fact that this repetitive behavior was constructive and facilitated his success does not diminish that it is an ASD trait. (*Id.* at 24.)

Mr. Mizrahi also has difficulty understanding social interactions. Unlike many with ASD, Mr. Mizrahi has been quite successful in forming social connections with other people, but he does not seem to grasp the nuances of his relationships. He is quick to assume that all people who display kindness toward him are his friends, and he has a rigid belief in an overly idealistic view of friendship in which friends do not lie or cheat one another. The rigidity of this view is so

strong that when he is warned that someone is lying or taking advantage of him, Mr. Mizrahi has great difficulty in accepting that possibility. He has difficulty conceptualizing a world in which people who appear to be his friends do not adhere to the same code of friendship that he does. For him, the existence of such people just does not compute, and he does not know how to navigate in a world with such people in it. Mr. Mizrahi does not seem to give the word of a close, lifelong friend any more weight than the word of a stranger. He assumes that whatever he is told is literally true.

One of the beautiful things about Mr. Mizrahi is that he is perpetually positive and lives his life by the golden rule, trying to treat others as he would like for them to treat him. This is not a personal philosophy for him, but something he believes all people innately do. He assumes that others will reciprocate the same kindness to him that he shows others. And they often do.

This has been the backbone of Mr. Mizrahi's success in life. People see in him someone who is kind, who does not lie, who does what he says he will do, and who will go well out of his way to help his friends. Coupled with his hard work ethic and knowledge of technology, Mr. Mizrahi is the sort of business partner most people want to work with. In this sense, his success is not surprising.

But Mr. Mizrahi's assumption that everyone operates under the same world view that he does is rather naïve, and his gullibility has repeatedly led to him being taken advantage of in serious ways. Throughout his life, there have been nefarious people who view Mr. Mizrahi as an easy mark due to his naivete. *See also* Colleen M. Berryessa, *Defendants*

With Autism Spectrum Disorder In Federal Court: A Judge's Toolkit, 13 Drexel L. Rev. 841 (2021) (explaining people with ASD "may mistake malevolent intentions with friendship, leading to their risk of exploitation"). Everyone who knows him well views this as Mr. Mizrahi's Achilles' heel and they all have stories of him falling for the most incredible of lies. Those close to him find a need to help protect him, and express frustration in Mr. Mizrahi's refusal to accept that someone who he thinks of as a friend would take advantage of him. Mr. Mizrahi sees no need for contracts—which he struggles to read and make sense of anyway—because he feels he can trust in a handshake or a verbal agreement. He ignores the advice of his lawyers and others who advocate risk mitigation strategies because he assumes people will resolve any difficulties that may arise in good faith. No matter how many times he has been cheated, he has had difficulty changing his view of the world.

While Mr. Mizrahi's learning disabilities were diagnosed when he was quite young, it has only been in the last few years that Mr. Mizrahi has been seeing a psychologist and his other developmental disabilities have been diagnosed. Mr. Mizrahi began receiving counseling after he was the victim of a violent attack in October 2020, shortly before he began doing business with Mr. Zubaid. (M. Mizrahi Ltr.) One of Mr. Mizrahi's employees was involved in a minor car accident at the Cosmopolitan Hotel and called Mr. Mizrahi for help. Mr. Mizrahi drove to the hotel and attempted to resolve the situation, but he was unsuccessful and attempted to walk away. At that point, four security guards violently attacked him as he was walking away and choked him out. This was the first violent encounter or fight of Mr. Mizrahi's life and he feared they would kill him. (*Id.*; Dr. Romanoff

Ltr. at 15.)[8] The experience was jarring for Mr. Mizrahi, particularly given his nonviolent nature and inability to process a world in which people would act as the security guards did. He began therapy and was subsequently diagnosed with PTSD, anxiety, and depression related to this incident, but other developmental disabilities became apparent, and he was diagnosed with prosopagnosia (difficulty in recognizing people's faces) and dysnomia (inability to recall words). (Dr. Banafsheian Report; M. Mizrahi Ltr. at 1.)

Mr. Mizrahi received weekly therapy from Dr. Rozalin Banafsheian from December 2020 through the end of February 2022. (Dr. Banafsheian Report at 4–6.) The charges in this case concern Mr. Mizrahi's interactions with Mr. Zubaid from February to June 2021, while he was in therapy. (PSR ¶16.) Dr. Banafsheian explains that she was treating Mr. Mizrahi for "his symptoms of posttraumatic stress, anxiety, depression, and panic attacks." (Dr. Banafsheian Report at 1.) She notes: "Martin was experiencing severe daily headaches, nightmares, wakefulness, recurring flashbacks, low energy, tension in his neck and shoulders, difficulty concentrating, memory issues, anxiety, and moments of panic attacks. Martin described 'not feeling at ease' and 'mentally messed up.'" (*Id.*) Additionally, "[t]he recurring flashbacks he experiences are very intrusive and disruptive and at times lead to panic attacks. Martin explained that the flashbacks usually occur in the middle of night and disrupt his sleep." (*Id.*) Mr.

[8] Security at the Cosmopolitan Hotel has a history of engaging in such abuses. *See, e.g.*, *New York Man Wins $160.5m In Lawsuit Against Vegas Casino*, AP (Apr. 28, 2017), The https://apnews.com/general-news-658ebb543b0f4db9b702452308209bc0 (addressing brain injury caused by Cosmopolitan Hotel security guards throwing a patron to the ground and beating him).

Mizrahi told her "that he 'thinks about it all the time' and often feels sleepy and achy when he wakes up; doesn't have quality sleep from the nightmares and flashbacks." (*Id.*)

Dr. Banafsheian's Report continues:

> A very troubling symptom for Martin is also the memory issues he is experiencing. He would describe that his memory is 'not all there' and at times his talking isn't normal. Martin explains that prior to the incident, he wouldn't forget things and had no trouble remembering appointments etc. For example, after the incident, he explains that he couldn't remember that he saw his doctor two days prior and thought he missed the appointment so he called to reschedule an appointment he had attended. This kind of behavior was very unusual for him and a common symptom of posttraumatic stress disorder and depression.

(*Id.* at 1–2.)

After Mr. Mizrahi was indicted, it was apparent that Mr. Mizrahi did not recognize the many warning signs that Mr. Zubaid was lying to him, and that he was struggling to even comprehend that case the government brought against him. For example, Robert Wasserman explains:

> The night before closing arguments in March 2024, I was with Marty in his lawyer's office. I witnessed Marty reading the charges out loud. He could not fully read them. So his daughter read them for him. He struggled to understand the concepts behind each charge. He asked how his actions were remotely related to the specifics of the charges. All of us

> in the room were downtrodden because we realized that this is just an extension of his years of trusting others without real knowledge of the broader situation. His friends and I often joke that we can't figure out how he built a business without understanding so many basic educational concepts.

(R. Wasserman Ltr. at 2.) Even now, with numerous people explaining to him why there were so many red flags that Mr. Zubaid was lying, Mr. Mizrahi seems to accept that he should have figured the lies out sooner because others would have done so, but he also seems to struggle to understand how he could have figured it out. The fact that Mr. Zubaid always had an innocent explanation seems to shut down any reason for Mr. Mizrahi to question whether he was being lied to.

Mr. Mizrahi underwent an extensive forensic psychological evaluation by Dr. Richard Romanoff. (Dr. Romanoff Ltr. at 1.) It was Dr. Romanoff who diagnosed Mr. Mizrahi's ASD, explaining "Mr. Mizrahi has since his childhood years met the criteria for an autism spectrum disorder." (*Id.* at 18.) Dr. Romanoff noted "that language impairments, including specific learning disorders, such as reading and reading comprehension disorders frequently co-occur with an autism spectrum disorder, as appears to be the case for Mr. Mizrahi." (*Id.* at 17.)

Dr. Romanoff explains that Mr. Mizrahi's "autism spectrum disorder undermined his ability to accurately read Mr. Zubaid, or to recognize the possibility he was being fooled by someone with a collection of skills for which he had no meaningful psychological defense." (*Id.* at 26.) Dr. Romanoff elaborates:

> Robbed of the ability to have access to the kinds of feelings that would have enabled him to better detect deceitfulness, or to question more actively the growing number of red flags that began to emerge, as a direct consequence of his disorder, he rigidly persisted in moving forward beyond a point that any other individual not on the autism spectrum, but with the same level of intelligence and business success, would ever have done.

(*Id.* at 26–27.)

Those ASD-related deficits were compounded by the trauma Mr. Mizrahi suffered after the Cosmopolitan incident. Dr. Romanoff explained:

> Making matters worse, the additional deterioration generated by his more recent psychiatric difficulties - stemming from his traumatic encounter with security officers at the Cosmopolitan Hotel - then further undermined both his abilities to more quickly recognize the situation he was in, or to effectively extricate himself from it, by generating a collection of additional physical and psychiatric symptoms. Now combined together, this considerable collection of serious mental health difficulties became psychologically overwhelming in relation to his available coping resources, creating a kind of perfect storm of difficulties that I believe directly led to the particular behaviors that have now led to his current conviction.

(*Id.* at 27.)

Although it was clear that Mr. Mizrahi had demonstrated ASD symptoms throughout his life, it is

not surprising that he was not diagnosed earlier because ASD, as it is understood today, is a relatively new diagnosis. The criteria for diagnosing ASD was not adopted by the American Psychological Association until 2013 in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). (*See* Dr. Romanoff Ltr. at 23 ("This is by no means unusual, especially for older individuals, who were exhibiting these symptoms prior to the heightened levels of awareness for this condition that now prevails.").) Dr. Romanoff found a striking historical pattern of Mr. Mizrahi's interpersonal naivete and rigidity. (*Id.* at 18–19.)

> Mr. Mizrahi is an individual with a wide gap in how he views himself relative to how those closest to him view him. . . . [T[he gap is at its widest in regard to the difference between Mr. Mizrahi's perception of his ability to accurately judge others relative to the perception those closest to him have in his ability to accurately judge others, especially when it comes to detecting deceitfulness or disingenuousness. I view this as an extremely consequential example of a deficit in social communication and social interaction possessed by Mr. Mizrahi.

(Dr. Romanoff Ltr. at 26.)

Additionally, based on interviews of Mr. Mizrahi's closest friends and in reviewing the letters from a multitude of others submitted on Mr. Mizrahi's behalf to the Court, Dr. Romanoff explains that many

> noted their repeated efforts to warn Mr. Mizrahi about errors they perceived he was about to make, as a direct consequence of his misperception of himself. They reported

> providing these warnings over decades of time and dozens of examples. Many of these examples led to considerable pain and loss for Mr. Mizrahi, both interpersonally and financially. And yet, no matter how often anyone warned him, and no matter how much suffering he experienced as a consequence of this lack of awareness, he continued to follow the same rules of trusting others, and giving second and even third chances to them. He continued to treat both new people he was meeting and even previously met people who had taken advantage of him in exactly the same fashion as before, with no evidence of any change in his pattern of behavior. I view this as precisely the type of rigidity regularly witnessed in individuals with an autism spectrum disorder.

(*Id.* at 26.)

Mr. Mizrahi's mother explains that being exploited by others has been a constant problem for Mr. Mizrahi throughout his life, writing:

> I saw him get taken advantage of and conned by many people in his life, which led to him losing a lot of money but it never stopped him. He just kept going forward and did the best he could do. As a mother, it kills me that sometimes his kindness puts him in some awkward situations. I wish I could have protected him from the people who didn't have his best interest at heard, but as a mother, I could only do so much. He trusts the wrong people and gets taken advantage of personally and financially.

(E. Mizrahi Ltr.) Morris Mizrahi, Mr. Mizrahi's father, echoes that sentiment: "the Marty I know wouldn't do the things he's accused of. Marty is too honest and from his past too trusting." (Morris Mizrahi Ltr.) Mr. Mizrahi's daughter Kylee similarly explains: "One of the faults is that he trusts too easily and people tend to take advantage of his trust. His blind trust has led to many people screwing him over." (K. Mizrahi Ltr.) With the benefit of hindsight, Mr. Mizrahi realizes that he is often exploited. He writes: "Unfortunately, I have been taken advantage of many times in my life. My mistake was that I continue to believe in people blindly. I always give people the benefit of the doubt." (M. Mizrahi Ltr. at 3.)

Friends who learn of Mr. Mizrahi's ASD diagnosis are not surprised. His close friend of twenty-five years, Ginger Michele, agrees, "I can unequivocally state that Marty has telltale symptoms of ASD. Unlike Karl Marx, Marty can't distinguish between the bourgeoisie or the proletariat. Socially, Marty would interact with the Pope or Oprah in the exact manner that he does the janitor in his office or a beggar in the street." (G. Michele Ltr. at 1.) She explains: "Marty is an enigmatic individual, so often misjudged by others. A person who doesn't know Marty, might find his demeanor arrogant or haughty. Marty is neither, quite the contrary. Marty's a bit eccentric but his aberrant behavior doesn't stem from any superiority complex, Marty's brain just doesn't function like anyone else's." (*Id.*)

This gap in Mr. Mizrahi's ability to identify when people are scamming him has long been a source of concern to others who are close to him. Mr. Mizrahi's close friend since grade school Ammar Kubba explained, "[h]e's not a good judge of character, in fact he's a terrible judge of character." (Dr. Romanoff Ltr. at 11.)

His friend since childhood, Toan Ludac, explains that he questions Mr. Mizrahi's judgment because he was "always trusting" new acquaintances "and was easily influenced by these individuals." (T. Ludac Ltr.). Mr. Mizrahi's cousin, Susie Romano, writes, "I believe that he operates in a way whereby he expects people to behave the way he does – in a straightforward, honest, law abiding and respectable manner." (S. Romano Ltr.) Employee Richard Tyler explains, "Marty is so generous and kind that people often take advantage of him. . . . They know he rarely says no and trusts everyone easily." (R. Tyler Ltr.) Lifelong friend Richard Wasserman writes that Mr. Mizrahi "lacks any sort of education and struggles with language skills that impairs his ability to coherently write and his comprehension of even basic reading materials," he cannot "understand normal social cues," and lacks the ability to evaluate "the negative characters of those around him." (R. Wasserman Ltr.) His friend of twenty years, Monique Garcia, insists that Mr. Mizrahi would never intentionally have committed the crimes charges, but writes that "[i]t is also not surprising how he could have ended up in a situation of this nature, solely because of his trusting nature and seeing the best in people." (M. Garcia Ltr.)

Mr. Mizrahi's difficulty with reading comprehension has added to his ASD difficulties. His employee, Jennifer Levin, explains: "Marty has a very difficult time comprehending information. It was on the regular that he would have me read contracts, emails etc. and explain to him in layman's terms." (J. Levin Ltr.) Mr. Mizrahi has avoided the use of contracts because of his inability to comprehend their contents, instead trusting his counterpart to deal fairly. Ron Cook writes that Mr. Mizrahi "has always been a 'handshake' person. . . . He has a habit of trusting

people, not documenting the business arraignment, and not properly managing their activities." (R. Cook Ltr.) Bart Watts echoed this sentiment, writing, "[h]e always did business with a simple handshake." (B. Watts Ltr.)

Throughout his professional life, bad actors have taken advantage of Mr. Mizrahi because he was overly trusting. Mr. Mizrahi's lifelong close friend Geoff Silver explains, "Marty is too generous and gets taken advantage of many times in his life." (G. Silver Ltr. at 1.) When Mr. Mizrahi left school, he began what became a successful internet business with a high school friend with a handshake agreement. (M. Mizrahi Ltr.) "Marty paid for everything," but his partner stole the business out from under him. (G. Silver Ltr. at 1–2; *see also* E. Mizrahi Ltr.; Morris Mizrahi Ltr.) Mr. Silver explains that Mr. Mizrahi's business partner

> completely took advantage of Marty and the business ended up in a lawsuit. [His business partner] ended up paying Marty a fraction of what Marty lost. I was there during the entire situation, and I kept telling [the business partner] to do the right thing and pay him back, but he never did. Marty had to start over from the bottom and has built the company to what it is today. Unfortunately, this has been a common occurrence for Marty. Marty has always been a generous friend and has been taken advantage of more times than I can count.

(G. Silver Ltr. at 1–2.) Without Mr. Mizrahi, the prior business failed, and Mr. Mizrahi's new business, LV.Net, became much more successful with 115 employees and multiple offices.

But Mr. Mizrahi continued to be scammed in the same manner. He set up another company called Core Scientific with a business partner based on another handshake deal, and Mr. Mizrahi explains "he screwed me out of my shares since we had no contract or paperwork. I lost a lot of money and time on this project and Core Scientific shortly after became a billion dollar publicly traded company. This resulted in a lawsuit in which I eventually 'won' a little compensation." (M. Mizrahi Ltr. at 4.)

Another example of Mr. Mizrahi being taken advantage of is when he hired a live-in assistant from a Craigslist advertisement. (Dr. Romanoff Ltr at 19). Two close friends, Ammar Kubba and Sean Tabibian, describe how they immediately expressed concerns to Mr. Mizrahi about this assistant, but "Marty didn't see it, and he should have, but he didn't." (*Id*. at 20.) This assistant, who Mr. Mizrahi's daughter described as "like a big brother to my sister and me" (A. Mizrahi Ltr.), ended up stealing millions of dollars of computer equipment from Mr. Mizrahi and his partner, causing the partner to sever all business ties with Mr. Mizrahi. (Dr. Romanoff Ltr. at 20.)

Another notable example occurred in 2019, when Mr. Mizrahi invested in a car dealership. Ms. Davis explains:

> I started asking Marty questions thinking things were off with the amounts [Mr. Mizrahi's business partner] was giving him, and what he was telling Marty in return. . . . When I raised a lot of concerns I had, Marty immediately told me Well there must be an explanation . . . the owner of the car lot would never screw me over. I said stuff wasn't adding up. Turns out, as I suspected, it was

> all lies he wasn't buying cars with Marty's money, he was living lavish spending money at jewelry stores, vacations, shopping, etc. Marty was almost ready to give him another $500k when I caught this. He still wanted to believe [the business partner] didn't have bad intentions, when I told him he needed to prosecute. The guy tried to steal Marty's vehicles and it just went downhill from there and Marty lost about $1 million.

(A. Davis Ltr.)

Daniel Saffron writes the Court as a painful witness to two members of his family taking advantage of Mr. Mizrahi. He explains, "I believe people take Marty's kindness for weakness and take advantage of that." (D. Saffron Ltr.) Mr. Saffron explains that Mr. Mizrahi lost over $200,000 investing in his father's business when his father misspent the money on personal expenses. Nevertheless, he writes that Mr. Mizrahi took care of him and his brother, even allowing them to stay with him in his home. Then, his brother stole Mr. Mizrahi's credit card and ran up a $40,000 bill while under the influence of drugs. Mr. Mizrahi did not report the crime and instead tried to help his brother get into a rehabilitation program. Despite all his family put Mr. Mizrahi through, Mr. Saffron says Mr. Mizrahi never held a grudge against him and continues to look out for him. Mr. Saffron explains that he has "anxiety/ panic attacks" and can "get in a really bad mental space," and "Marty has been the one to help me through them when no one else could." (*Id.*)

Mr. Mizrahi's former business partner, Charles Sattler, has glowing things to say about working with Mr. Mizrahi, but complained that "Marty rarely ever fired an employee, even for gross negligence. On

numerous occasions, we caught employees stealing red-handed, but he still wouldn't let them go." (C. Sattler Ltr.) Mr. Sattler found it "very difficult to run a business with people you cannot trust or rely on," and this became a point of contention between Mr. Sattler and Mr. Mizrahi because Mr. Mizrahi did not share that view. (*Id.*) Echoing the observations of others, Mr. Sattler explains that Mr. Mizrahi "trusts everyone at face value and either doesn't know how to identify red flags in deals or just wants to believe in people so much that he overlooks the dangers." (*Id.*)

Similarly, Ginger Michele explains:

> I've watched employees lie to him, steal from him and take advantage of him. Marty never punished those employees, he didn't fire them, berate them or even threaten them. Instead, he provided them another opportunity to do better. The same employees would show up in Marty's office, time and again, they'd offer the same sob story and still, Marty would offer the same opportunity. I never understood why Marty allowed this behavior. More often than not, the same employees would show up in Marty's office, months later, desperate in some other circumstance in their lives. Marty would, of course, come to their aid.

(G. Michele Ltr. at 2.)

Mr. Mizrahi's inability to detect lies is further demonstrated through his interactions with Mr. Zubaid. Ms. Davis explains that she "was suspicious of Joel [Zubaid]," but Mr. Mizrahi "soaked up every word Joel said to him, and nothing could have made him believe different at the time." (A. Davis Ltr.) With the

benefit of hindsight, Mr. Mizrahi can now acknowledge, "I didn't see the signs with Joel, I overlooked things, I didn't read things through or question things I should have." (M. Mizrahi Ltr. at 5.) He explains: "I worked hard for over 30 years building LV.Net and I allowed my involvement with Joel to destroy all of it. In the end, it's my fault. I should have known better." (*Id.* at 1.)

Mr. Mizrahi's ASD is relevant to this Court at sentencing for two reasons: (1) it mitigates his culpability and (2) it would make prison a particularly miserable experience for him. A defendant's "ASD is a component of the culpability analysis. It bears on his perspective and appreciation of the wrongfulness of his offense conduct. It goes to his intent. Thus, we look at how ASD played a role in [Defendant's] conduct." *United States v. Shore*, 2020 WL 3791550, at *4 (E.D. Penn. July 7, 2020); *see also United States v. Blanco*, 102 F.4th 1153, 1162 (11th Cir. 2024) (affirming substantial downward variance); *United States v. Lucarell*, 2023 WL 3756191, at *2 (6th Cir. 2023) (recognizing autism as a mitigating factor). Courts regularly consider limitations on a defendant's ability to understand their culpability in setting sentences in other contexts. *See, e.g.*, *Graham v. Florida*, 560 U.S. 48 (2010) (sentencing juveniles); *Roper v. Simmons*, 543 U.S. 551 (2005) (sentencing mentally disabled); *Atkins v. Virginia*, 536 U.S. 304 (2002) (sentencing juveniles).

Mr. Mizrahi's ASD would make the prison environment exceptionally difficult for him. In *Koon v. United States*, the Supreme Court blessed the district court's consideration of the fact that the petitioners were "particularly likely to be targets of abuse during their incarceration" in granting a downward departure. 518 U.S. 81, 112 (1996). Courts have recognized that

individuals with ASD are particularly vulnerable in a prison environment. *See Shore*, 2020 WL 3791550, at *2 (defendant's "ASD further renders him particularly vulnerable to bullying and worse injury in a prison environment"). Additionally, a study that interviewed a cohort of judges about their attitudes toward ASD found that the judges "believed that the prison environment may be toxic and potentially useless for defendants with ASD, and that they would likely attempt to prioritize alternatives to incarceration for defendants with ASD." Berryessa at 855.

Experts caution:

> Judges should also consider the potential impact of a prison or jail sentence on a defendant with ASD. Prison or jail settings can cause anxiety, acting out, and reactive aggression in response to stressors, while social naïveté may increase defendants' likelihood to be victimized, exploited, or manipulated by other prisoners. Misinterpretation of unwritten social cues and rules may cause conflict between defendants with ASD and other prisoners, and potentially result in physical injuries. Further, communication deficits associated with ASD may hinder interactions with prison staff, security staff, and other inmates.

Id. at 861–62. "As incarceration may increase the risk of a defendant with ASD being exploited, physically harmed, or socially isolated, this vulnerability should be considered when weighing whether prison is appropriate for a defendant." *Id.* at 867. Rather, "judges should consider whether defendants with ASD may be more likely to benefit from alternative, non-incarceration-based sentences with more holistic, and

less retributive, objectives." *Id.* "For individuals with ASD, non-incarceration-based sentences may be more effective to rehabilitate the defendant, whereas incarceration may be more taxing and toxic for defendants with ASD as compared to other prisoners." *Id.*

In Mr. Mizrahi's case, he is subject to a mandatory minimum of two years' imprisonment under Section 1028A, but he should be sentenced to no more imprisonment than that. Prison is excessively punitive for someone with ASD and more good would be done by following the mandatory minimum with supervised release conditioned upon Mr. Mizrahi's home confinement and being subject to therapy for his ASD. Not only would Mr. Mizrahi's treatment benefit by him being in a supportive family environment, it would allow him to care for his family as well.

B. Mr. Mizrahi Is Devoted To His Family

A multitude of letters to the Court demonstrate that Mr. Mizrahi is a kind man with an especially strong devotion to his family and his many friends. He provides critical support to his family. His elderly parents have lived with him for the past 30 years, and he provides for them financially and otherwise. His father is 80 years old, and his mother is 78 years old. His mother was recently diagnosed with cancer and is currently undergoing chemotherapy. (E. Mizrahi Ltr.) Mr. Mizrahi has played a central role in her treatment and recovery, as his elderly father suffers from the effects of a heart attack, gout, and diabetes. (Morris Mizrahi Ltr.) Mr. Mizrahi is the only source of support for them, as Mr. Mizrahi's older brother Gary died following a difficult life of drug abuse and several prison stints. (*See also* I. Alonzo Ltr. (explaining that her brother, like Gary, suffered from mental illness and drug abuse and "Marty was the only person who

consistently opened his doors and heart to [her] brother" and they shared in the pain of his suicide).)

Mr. Mizrahi showed the same kindness to his Aunt Lorraine. He moved her into his house, where she lived for three years, financially and emotionally supporting her as she went through a difficult divorce. (L. Hop Ltr.; D. Mizrahi Ltr.; J. Levin Ltr.) And when Mr. Mizrahi's brother died, Mr. Mizrahi had Gary's daughter Jaymie come live with him and he treated her as his own daughter. (E. Mizrahi Ltr.; *see also* J. Monastirsky Ltr. (praising her uncle).)

Mr. Mizrahi also has taken extraordinary steps to care for his two daughters. Many people with ASD have difficulty establishing healthy romantic relationships and that has certainly been true of Mr. Mizrahi. His two daughters have separate mothers, and both mothers have struggled with alcoholism and other issues that made them difficult romantic partners and unfit mothers. Mr. Mizrahi was awarded full custody of both his daughters.

Mr. Mizrahi's daughters are his world. In 2003, Mr. Mizrahi's first daughter—Autumn—was born. (M. Mizrahi Ltr.) Mr. Mizrahi took full custody of Autumn as a result of her mother's years-long struggle with alcoholism. (A. Mizrahi Ltr.) Mr. Mizrahi has continued to try to help Autumn's mother get sober. (E. Garza Ltr.) Mr. Mizrahi is Autumn's only stable parent. Despite his work schedule, he was and, continues to be, an extremely engaged father. Autumn writes:

> Even with his busy schedule, we would still go to trampoline parks, the lake, Lazer tag, roller skating, ice skating, adventure dome, shopping, go karting, events, trips, dinner, casino pools, shows, parties, and more. We had

> so much fun, he was on his phone a lot for work but he knew how to work and still live in the moment. Some parents would bring their kids to these places and just watch as they have fun, my dad would have fun with us.

(A. Mizrahi Ltr.) Autumn, now twenty, recently passed her real estate exam and is beginning her career as a real estate agent. (M. Mizrahi Ltr.)

In 2005, Mr. Mizrahi's second daughter—Kylee—was born. (M. Mizrahi Ltr.) Kylee's mother also struggles with alcoholism, which led to much instability in Kylee's life. (M. Mizrahi Ltr.; S. Mendoza Ltr.) When Kylee was 8-months old, her mother pushed Mr. Mizrahi while he was holding Kylee and he fell to the floor and almost hit Kylee's head. (M. Mizrahi Ltr.) This incident caused Mr. Mizrahi to end his relationship with Kylee's mother, and Mr. Mizrahi gained full custody after lengthy court proceedings. (Dr. Romanoff Ltr. at 12.) When Kylee was 13, she moved in full time with her father, sister, and grandparents due to health issues being exacerbated by her mother's struggles. (M. Mizrahi Ltr.) Kylee just finished her first year of college in Reno, Nevada, where Mr. Mizrahi visits her frequently. (*Id.*)

As a single parent of two daughters, Ms. Davis explains that Mr. Mizrahi should win "awards for dad of the year" and Mr. Mizrahi's children echo that sentiment. (A. Davis at 2; *see also* S. Link Ltr. ("Marty is also a great Dad! One of the most remarkable aspects of Marty's character is his dedication to his two daughters, Autumn and Kylie."); Y. Ripoll Ltr. ("as a dad he was amazing").) Even his children's friends write about him being a supportive influence on them and helping them through important life struggles.

(*See, e.g.*, V. Del Muro Ltr. ("Marty is an excellent father to his children. He has always prioritized them and their needs as much as a father should. He is the person that keeps his family together and grounded."); Y. Noor Ltr. (describing Mr. Mizrahi as "like a second dad to me"); Y. Ripoll Ltr. (explaining that when she came out as a lesbian in high school that she found acceptance in Mr. Mizrahi and he helped her reconcile with her less-accepting family).)

The concept of family extends beyond bloodlines for Mr. Mizrahi. When employee Jennifer Levin had to move due to an unhealthy situation, Mr. Mizrahi moved her and her son, Tyler Prosky, into his home. He provided them with cars and financial assistance, and gave Ms. Levin a job. (J. Levin Ltr.) Eighteen-year-old Tyler writes "Marty is like a father to me" and "[h]e treats me like his own son." (T. Prosky Ltr.) Tyler explains that his own father is not in his life, that his mother has struggled with alcohol, and he "had a lot of behavioral problems" when he met Mr. Mizrahi. (*Id.*) He writes: "Marty has done so much for my mom and me. He gives us a place to live, cars to drive and pays for our utilities, along with 100s of other things." (*Id.*) Tyler went from not seeing a future for himself to now being able to say that "because of Marty I could honestly say I have a shot in life." Mr. Mizrahi provided Tyler with guidance and taught him skills. Tyler explains that "[t]hrough a lot of tough love, Marty fixed me." (*Id.*) He concludes his letter by explaining that Mr. Mizrahi "is the best and only father I have ever known," and pleads with the Court: "Please don't take him away from us." (*Id.*)

Mr. Mizrahi's daughter, Kylee, explains the impact his incarceration would have on their family:

> As a college student I can't imagine walking down the aisle as a graduate and not seeing my dads face as I complete one of my biggest achievements. As a daughter who could potentially lose her everything, please, please take mercy on him. My sister and I really need our dad in our lives and my grandparents and his employees and all the people he helps.

(K. Mizrahi Ltr.) Mr. Mizrahi's uncle, David Mizrahi, agrees that "[i]ncarcerating Marty would devastate our family and countless others who rely on him." (D. Mizrahi Ltr.)

In 2019, Mr. Mizrahi met his partner of four years, Ashley Davis. When she and Mr. Mizrahi met by chance at a small Mexican restaurant by their respective jobs, they became fast friends. (A. Davis Ltr.) At the time, Ms. Davis was in an abusive relationship, which she was able to escape with the help of Mr. Mizrahi. (*Id.*) They later began a romantic relationship and have been each other's rock ever since. Ms. Davis writes:

> He is truly my best friend. He is the most reliable man I've ever known to everyone. His word is gold. He is my confident, who I go to for advice, my problem solver, my personal accountant, my fix it man, my dog's dad, my father's son he never had, my emotional support, my therapist, and I genuinely have no idea what I am going to do without him, and it breaks my heart into pieces to think of that future.

(A. Davis Ltr.)

As Mr. Mizrahi and Ms. Davis both describe in their letters to the Court, they have undergone a great tragedy in recent weeks. The bright spot in this difficult time for them had been that Ms. Davis was pregnant with their child, and they were both very excited about that.

Unfortunately, Ms. Davis lost the baby in her seventh month of pregnancy and had to give birth to a four-pound stillborn child. They described the difficulty of enduring childbirth only to walk out of the maternity ward childless, and returning to a home with a finished nursery that is hauntingly empty. Ms. Davis' brain knew she lost the baby, but it has taken her body longer to learn that there was no baby to nurse.

Every family faces hardship and this is theirs, but families cope with hardships together and help one another through them. This is the time when they need one another, and prison would shatter that support system. As John Martin, former U.S. Attorney and later District Judge in this District observed in retiring from the bench:

> Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant's incarceration. For a judge to be deprived of the ability to consider all the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been a hallmark of the American justice system.

John S. Martin, Jr., *Let Judges Do Their Jobs*, N.Y. Times, June 24, 2003, at A31. Here, the Court may sentence Mr. Mizrahi to prison, but others will feel the

brunt of that punishment—Mr. Mizrahi's elderly parents who he cares for, his partner Ms. Davis who is suffering, and his children who need his guidance. (*See, e.g.*, R. Barry Ltr. ("Sending him to prison will be an extreme hardship for not only his daughters, but his parents who he has always supported (emotionally and financially)."); G. Silver Ltr. at 2 ("I believe that an extended prison term will serve as a tremendous hardship for his elderly mother and father, his daughters and all the employees and people that he helps.").)

The Court should downwardly depart or provide a downward variance to shield Mr. Mizrahi's family from the damage that would be done by incarcerating him long term. In *Gall*, even the government conceded that a probationary sentence would be appropriate if "there are compelling family circumstances where individuals will be very badly hurt in the defendant's family if no one is available to take care of them." 552 U.S. at 59. Many courts have applied Section 3553 to reduce sentences for defendants similar to Mr. Mizrahi, who are relied upon to support their families, as well as others. *See, e.g.*, *United States v. Smith*, 359 F. Supp. 2d 771, 776–782 (E.D. Wisc. 2005) (reducing defendant's sentence by half, even after a 15-level downward departure on other grounds—because he had been married several years, supports his children, cares for his mother and obtained letters as to his good character from members of his community); *United States v. Beamon*, 373 F. Supp. 2d 878, 887 (E.D. Wisc. 2005) (considering "Defendant's admirable service as a mentor to young men, his assistance to his ill father, and his positive influence on younger family members merited some consideration").

C. Mr. Mizrahi Has Demonstrated Extraordinary Kindness And Generosity

Mr. Mizrahi's kindness and generosity extends beyond his family. Ben Toubian who has known Mr. Mizrahi most of his life and gave him the first job making computer repairs explains, "I have seen him in action helping needy people, giving them jobs and saving many families during his lifetime, even during the Covid era, he has saved many families from going under." (B. Toubian Ltr.)

Among other notable acts of generosity, his lifelong friend Melanie Segal writes that "Marty is somewhat of a crusader against domestic violence. He literally shelters women and their children needing to escape abuse." (M. Segal Ltr. at 1.) She explains that it is a crapshoot as to whether Mr. Mizrahi has room for her to stay with him when she visits because extra rooms are so often in use by "someone staying there until they can get on their feet." (*Id.*). Numerous people in need who were taken by Mr. Mizrahi have written the Court, many of their letters are addressed below. (*See, e.g.*, L. Gray Ltr. ("After I was kicked out of my parents house he offered me shelter and a job, he allowed me in his home and took me in as a family where I got to feel and be part of the family for a few years!").)

Sigal Chattah, Mr. Mizrahi's friend of thirty years, jokes that she calls Mr. Mizrahi's home "Marty's kibbutz of the fallen." (S. Challah Ltr.) She explains: "Marty would never miss an opportunity to give someone who has fallen on his luck, a chance to bounce back. Marty is the king of facilitating people's comebacks. There was always some broken person Marty was trying to fix and launch a new career for. That's the magic of Marty." (*Id.*) Being so generous, it is not surprising but still disappointing that she

reports having seen many people "take advantage of" Mr. Mizrahi's support. (*Id.*)[9]

Mr. Mizrahi also is known for treating his employees like family. (*See* W. Porter Ltr., A. Miller Ltr.; T. Rodda Ltr.; T. George Ltr.; M. Abdolqader Ltr.; Z. Kaplan Ltr.; A. Christensen Ltr.; D. Lofton Ltr.; A. Monday Ltr.; C. Hinojal Ltr.; J. Morgan Ltr.) When Richard Tyler and his brother needed a place to stay, Mr. Mizrahi got them a place to stay rent free and later put down half the money for them to buy a house of their own. (R. Tyler Ltr. at 2.) Maria Labrado, one of Mr. Mizrahi's former employees, explained that when she could not afford childcare, Mr. Mizrahi allowed her to bring her three young children to the office, even allowing the kids to play in his own office. (M. Labrado Ltr.) When Carlos David Tunubala, another employee, arrived in the United States from his home in Colombia, Mr. Mizrahi personally picked him up from the airport, gave him a sim card with internet so he could speak to his family back home, and invited him to spend holidays with the Mizrahi family so he would not have to be alone. (C. Tunbala Ltr.) When Carol Hatcher lost her 16-year-old son at the hands of a drunk driver, Mr. Mizrahi paid her rent, allowing her to focus on rebuilding her life. (C. Hatcher Ltr.) Ms. Davis explains:

---

[9] Mr. Mizrahi has been taken advantage of by women seeking romantic relationships as well. Mr. Kubba and Mr. Tabibian describe how several women facing personal problems had come to view Mr. Mizrahi as someone they could exploit for personal gain. (Dr. Romanoff Ltr. at 14.) They described confronting Mr. Mizrahi about their concerns on numerous occasions, and Mr. Mizrahi was unwilling or unable to take their concerns seriously. (*Id.*)

> I have seen him throughout the years help so many of his employees with their personal lives. Whether it's a customer service employee who needs surgery and doesn't have coverage. An employee who is behind on rent and bills. If an employee wants to lose weight, he'll give them a gym membership and hire a personal trainer and teach them how to eat clean. When his employees want to venture out and try new things, Marty always hears them out, and gives them advice. People who aren't afforded many opportunities such as people who have struggled with addiction or criminal backgrounds, he'll give them a job with no judgement.

(A. Davis Ltr. at 3.) She gives the example of Phil Olague. She explains that Mr. Olague struggles with drug addiction and had been in and out of jail, but Mr. Mizrahi hired him anyway. Many times, "Marty put him through detoxes and rehabs (along with countless other people)." *Id.* Mr. Mizrahi continued to help Phil, "even after he was caught stealing[.] Marty made him pay him back and then Marty started helping Phil get custody of his kids back, bailing him out of jail, buying him a car, giving him and his kids a place to live. Marty always saw so much potential in Phil, he kept giving him more chances." (*Id.*; *see* T. George Ltr. ("When our coworker Phil Olague was having a tough time and kept relapsing on drugs and alcohol, Marty did everything he could to help. Even though Phil had ongoing problems, Marty gave him and his family a place to live at one of our buildings. When it was clear Phil couldn't get his life on track, Marty sadly had to let him go due to being in the middle of his trial and being unavailable. Marty isn't the type of person who would throw anyone on the street, so he found Phil and

his family an apartment, paid their insurance, rent, credit card bills, and phone bills, and even rented storage units for them. He continued to pay for three months. Marty was a huge support for Phil during his hardest times, showing how committed he is to helping others, even when it cost him personally.").)

Often, Mr. Mizrahi gives jobs to those in need. Scotlan Hutcherson, for example, explains that Mr. Mizrahi hired him knowing he had just had a kidney transplant and had a long recovery ahead of him, but he desperately needed a job. (S. Hutcherson Ltr.) Similarly in need, Tekino George explains:

> He gave me a job opportunity when I needed it most, loaned me money many times, and even provided a place for me and my family to stay. He gave me an auto loan and once flew me back to Alabama for a family emergency while he was out of the country. Marty has provided my children with clothes, shoes, food, and medical care. He also helped me with legal counsel for a situation I was in. Additionally, he has paid off bills for me when I was in a jam, showing his generosity and willingness to support those in need.

(T. George Ltr.)

Ms. Davis recounts that Mr. Mizrahi has a habit of hiring and assisting many homeless people. She explains, "I've seen him give them cellphones, clothes from his closet, and always meals and waters on his way back in the office." (*Id*). She discusses a long-time employee named Lonnie Jackson who Mr. Mizrahi took in off the street and explains that Mr. Mizrahi "treats that man the same exact way he treats the COO of his company, with kindness and respect. I think Marty

single handedly brought a spark back in this man's life and it's a beautiful thing to witness." (*Id.*) She adds that Mr. Mizrahi "gives people chances, some probably that he shouldn't in my opinion. He loves to help people and he says that all the time. I know that sounds cheesy, but it's the truth. He truly enjoys and goes out of his way to do whatever he can to help people, even if he doesn't know them, he'll go the extra mile." (*Id.*)

Wendall "Smokey" Porter writes that he is such a person. He is sixty-eight years old and suffered a stroke seven years ago, which severely limits his ability to work, but Mr. Mizrahi still finds work for him and provides for his family. (W. Porter Ltr.) After his stroke, Mr. Mizrahi provided housing for him and his family, and helped him get a car and insurance. (*Id.*) Mr. Porter wonders how he would get by without Mr. Mizrahi's assistance. (*Id.*) He notes that Mr. Mizrahi was always "hir[ing] people off the streets, homeless etc.. to help people and give them another chance." (*Id.*; *see also* S. Estrada Ltr. ("he gives homeless people jobs to put a little money in their pockets" and he "has helped people go to rehab to get off the streets"); T. George Ltr. ("He has hired many of my friends who were in desperate need of a job, giving them a chance to turn their lives around. Marty has also hired homeless people, offering them an opportunity to get back on their feet and reintegrate into society."); T. Rodda Ltr. (explaining Mr. Mizrahi gave him a chance with a job as a convicted felon that others would not give him and helped him turn his life around); M. Wilson Ltr. (explaining Mr. Mizrahi facilitated his early release from prison by hiring him through a jail work program).) Like Mr. Porter, Darrell Lofton writes that Mr. Mizrahi kept him employed even after he had

a stroke and could no longer work, just so Mr. Lofton could support his family. (D. Lofton Ltr.)

Mr. Mizrahi was especially close to his assistant of fifteen years, Rachel Wilson, who died of breast cancer in 2020,[10] around the same time that Mr. Mizrahi's brother died, and Mr. Mizrahi started doing business with Mr. Zubaid. After her cancer diagnosis, Mr. Mizrahi put a down payment on a home for her to alleviate financial and emotional stress. (A. Akerman Ltr.)

Ms. Davis tells an anecdote about an encounter at a holiday party. "A guy named Tony [Caporicci] and his wife came up to Marty and I and began thanking Marty with tears in their eyes, they explained to me 'Marty saved my husband's life.'" (A. Davis Ltr. at 3.) They explained that "Tony was extremely sick and unhealthy in and out of the hospital. Marty got him insurance that he didn't have and intervened, forced Tony to quit smoking cigarettes, and worked with him daily about his diet, went to the gym with him, and trained him." (*Id.*) Tony told her that he was alive today because of Marty's intervention. (*Id.*) Ms. Davis adds, "I could tell you 100 more stories of people I have encountered throughout the years with Marty that he has done the most beautiful things for." (*Id.*)

---

[10] Ms. Wilson was a crucial support system for Mr. Mizrahi. She was keenly aware of his shortcomings and would protect him from making mistakes. Mr. Mizrahi explains, "[i]t was really hard for me to function normally without her double-checking my work and crossing the T's and dotting the I's." (M. Mizrahi Ltr. at 4.) "[S]he literally helped him with everything. She was Marty's right hand in his business and personal life." (A. Davis Ltr. at 4.) Had Ms. Wilson lived, there is reason to speculate that she could have helped Mr. Mizrahi avoid getting deeply entangled in Mr. Zubaid's lies.

Many people who have submitted letters to this Court tell those stories in their own words. Simon Winthrop, a close friend, explains how after a recent heart attack which resulted in a two-week-long coma, Mr. Mizrahi stayed by his side in the hospital and handled his affairs. (S. Winthrop Ltr.) Sonya Duarte, a close employee, explains that when she had excessive medical bills that insurance would not cover that Mr. Mizrahi paid them and got her a needed operation. (S. Duarte Ltr.) Lifelong friend Geoff Silver describes how when he was struggling financially, Mr. Mizrahi paid his water and power bills. (G. Silver Ltr.) Countless friends describe how Mr. Mizrahi has an "open-door policy" for friends who need a place to stay. (M. Garcia Ltr.; *see* K. Babaei Ltr.; C. Herscu Ltr.; S. Pak Ltr.; P. Taheri Ltr.; V. Del Muro Ltr.) Mr. Mizrahi has also helped numerous friends struggling with addiction. (*See* I. Alonzo Ltr.; S. Tallard Ltr.; M. Wilson Ltr.) In short, "there are many many lives that count on Marty." (S. Berlie Ltr. at 2.)

Mr. Mizrahi shows the same generosity to the broader community. "Mr. Mizrahi is well known for paying college tuition for many employees; he has helped numerous people pay their debts, Therapy, Medical expenses, Professional licensing, and vehicles for transportation" and he "has donated his time and finances to charitable causes throughout Las Vegas, perhaps too many to list." (M. Del Castillo Ltr.) His Rabbi explains that he has been particularly generous in supporting his synagogue (Rabbi Shuchat Ltr.), and he never says no to assisting charities, such as the Las Vegas "Turkey Gobble," which feeds the hungry at Thanksgiving (S. Chattah Ltr.).

Plainly, Mr. Mizrahi is a man of extraordinary character, and a downward departure or variance also

would be warranted by his dedication to his family, community, and his history of generosity. *United States v. Nellum*, 2005 WL 300073, at *4 (N.D. Ind. Feb. 3, 2005); *see, e.g.*, *United States v. Garcia*, 413 F.3d 201, 229 n.19 (2d Cir. 2005); *United States v. Bisanti*, 414 F.3d 168, 173 (1st Cir. 2005). In *Pepper*, for example, the Supreme Court looked to a defendant's rehabilitated relationship with his family and explained "there is no question" this is a "critical part" of his "history and characteristics" that should be considered at sentencing. 562 U.S. at 492. Similarly, in *Gall*, the Supreme Court affirmed a downward variance from a recommended sentencing range of 30–37 months to a 36-month purely probationary sentence following a "small flood" of letters of support and in part because the defendant's family and friends, which made recidivism less likely. 552 U.S. at 43–44; *see id.* at 45 (explaining probation is a meaningfully punitive sentence). In opposing that sentence, even the government conceded that a probationary sentence would be appropriate if "there are compelling family circumstances where individuals will be very badly hurt in the defendant's family if no one is available to take care of them." *Id.* at 59; *see also United States v. Taffaro*, 919 F.3d 947, 949 (5th Cir. 2019) (upholding a downward variance from a sentencing range of 27–33 months to 60-months' probation based on a defendant's age, physical condition, family ties, and charitable acts, among other factors).

CONCLUSION

The massive number of letters submitted to the Court demonstrate that time after time, Mr. Mizrahi has been instrumental in providing those who have stumbled in life with a second chance. (*See, e.g.*, J. Silberman Ltr. ("What I admire most about Marty was

he gave people second chances in life.").) As saddened as all of those who he has helped are to see Mr. Mizrahi in his present predicament, they find it incredibly meaningful to address this Court and ask that Your Honor show Mr. Mizrahi the same courtesy he has shown so many others. This is a community telling the Court that it does not need protection from Mr. Mizrahi and pleading that the Court give him a second chance. They know him best and should be heard. For a man who has done so much to restore a hopeful future to those who have lost hope, it would be a cruel twist of fate for him to be given a sentence that would deny him any hope of regaining his freedom and the connections that he has with his family and so many friends who love him.

The Court's hands are tied in having to sentence Mr. Mizrahi to a two-year mandatory minimum prison term, but it is within this Court's power to ensure that the ends of justice are met by requiring no more incarceration than that. The Court can supplement that sentence by imposing conditions of home confinement and requiring him to obtain rehabilitory treatment for his ASD. That is a humane punishment that would preserve his ability to care for his family and leave him with some hope of happiness in his future.

July 26, 2024

Respectfully submitted,

Richard A. Portale
Chad Mair
PORTALE RANDAZZO LLP
245 Main Street, Suite 605
White Plains, N.Y. 10601
rportale@portalerandazzo.com
cmair@portalerandazzo.com
(914) 359-2400

s/ Richard Weber Richard Weber
WINSTON & STRAWN LLP
200 Park Avenue
New York, N.Y. 10166
rweber@winston.com
(212) 294-1718

Christopher D. Man (pro hac vice pending)
WINSTON & STRAWN LLP
1901 L Street, N.W.
Washington, D.C. 20036
(202) 282-5622
cman@winston.com

Counsel for Martin Mizrahi

APPENDIX G

USA v. ZUBAID

New York Southern District Court

Case no. 1:22-cr-00650-JPO (S.D.N.Y.)
Filed date: March 04, 2024
Docket entry no.: N/A

Docket text:

JURY VERDICT as to Martin Mizrahi (4) Guilty on Count 1s,2s,3s,4s,5s,6s,7s. (ap) (Entered: 03/07/2024)

This PDF was generated on December 11, 2024 by PacerPro for a text-only docket entry synced on December 08, 2024.

https://app.pacerpro.com/cases/398436338

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---

22 Cr. 650 (JPO)

UNITED STATES OF AMERICA,

v.

MARTIN MIZRAHI,
a/k/a "Marty Mizrahi,"

Defendant.

Trial

New York, N.Y.
March 1, 2024
9:30 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge and a Jury

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: EMILY S. DEININGER
BENJAMIN D. KLEIN
Assistant United States Attorneys

PORTALE RANDAZZO LLP
Attorneys for Defendant
BY: RICHARD A. PORTALE
CHAD M. MAIR

-and-

FASULO GIORDANO & DIMAGGIO LLP
BY: LOUIS V. FASULO

Also Present: Dean Iannuzzelli
Nerlande Pierre
Paralegal Specialists
Cooper Marshall, Paralegal
Special Agent Louis Hillyard, FBI
Special Agent Lawrence Lonergan, FBI

[2188]

THE COURT: Thank you.

Ladies and gentlemen, the next task is for me to instruct you on the law. I'm going to ask my staff to pass out copies of the jury instructions. We're passing these out so that you can read along as I read them, if you like. But you'll also be able to, when you start deliberating, take these instructions as well as your notes back into the jury room. So if you'd rather just not follow along and listen, that's fine too.

Members of the jury, you've now heard all the evidence in the case as well as the final -- I'll wait a minute.

Members of the jury, you've now heard all of the evidence in the case as well as the final arguments of the parties. We've reached the point where you're about to undertake your final function as jurors. You've paid careful attention, and I'm confident you will act together to reach a fair and just verdict in this case.

My duty at this point is to instruct you as to the law. There are three parts to these instructions. First, I'm going to give you some general instructions about your role and about how you are to decide the facts of the case. These instructions really would apply to just about any trial. Second, I'll give you some specific instructions about the legal rules applicable to this particular case. Third, I'll give you some final instructions about procedure.

[2189]

It is your duty to accept these instructions of law and to apply them to the facts as you determine

them. With respect to legal matters, you must take the law as I give it to you. If any attorney or witness has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You must not substitute your own notions or opinions of what the law is or ought to be.

Listening to these instructions may not be easy. It is important, however, that you listen carefully and concentrate. I ask for your patient cooperation and attention. You'll notice that I'm reading these instructions from a prepared text. It would be more lively, no doubt, if I just improvised, but it's important that I not do that. The law is made up of words and those words are very carefully chosen, so it is critical that I use exactly the right words.

You'll have copies of what I'm reading in the jury room to consult, so don't worry if you miss a word or two. But for now, listen carefully and try to concentrate on what I'm saying. Remember, you are to consider these instructions together as a whole. You are not to isolate or give undue weight to any single instruction.

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve any [2190] conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

Do not conclude from any of my questions or any of my rulings on objections or anything else that I have done during the trial that I have any view as to the

credibility of the witnesses or as to how you should decide the case. Any opinion I might have regarding the facts is of absolutely no consequence. It is your sworn duty, and you have taken the oath as jurors, to determine the facts.

* * *

[2211]

I will now explain each of these three elements in more detail. The first element of bank fraud is that the defendant either: (1) executed or attempted to execute a scheme or artifice to defraud a bank, or (2) executed or attempted to execute a scheme or artifice to obtain money owned by or in the custody and control of the bank by means of false or fraudulent pretenses, representations, or promises that were material to the scheme.

The government must prove only that the defendant did one of these. They are not necessarily mutually exclusive. If you find that the defendant committed one of these, or both, then the first element is satisfied. However, you must be unanimous in your view as to the manner in which the defendant violated the bank fraud statute. If half of you think (1), but not (2), and the other half think (2), but not (1), then you must vote to acquit the defendant.

* * *

I will now turn to Counts Four and Five. Counts Four alleges that the defendant conspired to commit money laundering, and Count Five alleges that the defendant committed [2235] the substantive offense of money laundering. Because the law relating to the money laundering that is charged in Count Five is

relevant to my instructions on the conspiracy that is charged in Count Four, I will first instruct you on the substantive crime of money laundering that is charged in Count Five. Then I will turn back to the law of conspiracy.

Count Five alleges that the defendant committed money laundering, between in or about February 2021 up to and including June 2021, by agreeing to launder the proceeds of the wire fraud charged in Count Two, the bank fraud charged in Count Three, and proceeds from the sale and distribution of narcotics.

The federal money laundering statute, Title 18, United States Code, Section 1956, provides as follows: Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity, knowing that the transaction is designed in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity shall be guilty of a crime.

In order to prove the crime of money laundering in violation of Section 1956, the government must establish beyond a reasonable doubt each of the following elements: First, that [2236] the defendant knowingly conducted or attempted to conduct a financial transaction that in some way affected interstate commerce.

Second, that this transaction involved the proceeds of specified unlawful activity, which here was wire

fraud, bank fraud, or the sale and distribution of narcotics.

Third, that the defendant knew that the financial transaction involved the proceeds of some form of unlawful activity.

Fourth, that the defendant acted with intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity.

I will now explain each of these four elements in more detail. The first element of money laundering is that the defendant knowingly conducted or attempted to conduct a financial transaction. The term "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

The term "financial transaction" means a transaction involving a financial institution that is engaged in, or engaged in activities which affect, interstate commerce in any way or degree, or a transaction that involves the movement of funds by wire or other means and in any way or degree affects interstate commerce, or involves one or more monetary instruments.

[2237]

The phrase "transaction involving a financial institution" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit; purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument; use of a safety deposit box, or any other payment, transfer, or delivery by, throughout, or to a financial institution by whatever means. And the term "monetary instrument," which I just used, includes

things like the coins or currency of the United States or any other country, personal checks, traveler's checks, cashier's checks, bank checks and money orders, and other things.

The term "funds" includes any currency, money, or other medium of exchange that can be used to pay for goods and services, including digital or crypto-currency.

The term "interstate commerce" means commerce between any combination of states, territories, or possessions of the United States.

Now, Count Two. The second element of money laundering is that the financial transactions must involve the proceeds of specified unlawful activity. In this case, the specified unlawful activity charged in the indictment is the wire fraud scheme charged in Count Two, the bank fraud scheme charged in Count Three, and the sale and distribution of narcotics. I instruct you as a matter of law that wire fraud, bank fraud, and narcotics trafficking constitute "specified [2238] unlawful activity."

The term "proceeds" means any property, or any interest in property, that someone acquires or retains as profits resulting from the commission of the specified unlawful activity.

The third element of money laundering is that the defendant knew that the financial transactions at issue involved the proceeds of some form of unlawful activity. I have previously instructed you on what constitutes knowledge, and you should apply those instructions here. It is not necessary for the defendant know that the proceeds came from wire fraud, bank fraud or narcotics trafficking specifically. It is

sufficient that the defendant knew that the proceeds came from some unlawful activity.

The fourth element of money laundering is that the defendant acted with the intent to conceal or disguise the nature, location, source, ownership, or control of the property.

To take an action "intentionally" means to act deliberately and purposefully, not by mistake or accident. To satisfy this element, the government must prove that the defendant intended and knew that the transaction was designed at least in part to conceal or disguise the origin, nature, location, source, ownership, or control of the property in question as he believed it to be. The government need not [2239] prove that the intent to conceal or disguise was the only purpose of the defendant as long as it was an intent of the defendant.

We have discussed Count Five of the indictment, which charges money laundering. Now I will turn back to Count Four, which charges Mizrahi with participating in a conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h), which makes it unlawful to conspire to commit, among other crimes, money laundering.

As previously discussed, a conspiracy is an agreement, or an understanding, of two or more persons to accomplish by concerted action one or more unlawful objects. To meet its burden of proof on this charge, the government must prove the following two elements beyond a reasonable doubt:

First, that the conspiracy charged existed.

Second, that the defendant knowingly, willfully, and intentionally became a member of the conspiracy, with intent to further its illegal purpose.

I previously instructed you, in connection with Count One, on the law relevant to determining whether a conspiracy existed and whether a defendant became a member of such a conspiracy. Those instructions apply here as well, with the difference here being the object or goal of the conspiracy. The government alleges that there were two objects of the conspiracy in Count Four. The first object was to commit money [2240] laundering, which I just described in Count Four. The second object was to engage in monetary transactions greater than $10,000 in property derived from specified unlawful activity, which I will describe momentarily. In deciding whether the conspiracy existed, you must unanimously determine and agree as to whether the conspirators agreed to accomplish at least one of those two objects.

Because I have already described the first object, I will now describe the second object. The second alleged object of the conspiracy charged in Count Four is engaging in monetary transactions over $10,000 in property derived from specified unlawful activity, in violation of Title 18, United States Code, Section 1957. Section 1957 provides that:

Whoever is a United States person or while in the United States, knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be guilty of a crime.

The elements of this object are as follows: First, that the defendant was a United States person or in

the United States and engaged in a monetary transaction with a value greater than $10,000.

Second, that the defendant knew the property involved in the transaction was criminally derived property.

Third, that the property involved in the transaction [2241] was actually derived from specified unlawful activity.

The first element of this object is that the defendant was a United States person or in the United States and agreed to engage in a monetary transaction with a value greater than $10,000.

A "United States person" is a citizen or national of the United States. The term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a financial institution. The term "interstate commerce" means commerce between any combination of states, territories, or possessions of the United States.

You must find that, had the object of the conspiracy been completed, the transaction would have affected interstate commerce in some way, however minimal. The effect on interstate commerce can be established in several ways, including, but not limited to, that the source of the funds used in the transaction affected interstate commerce, or that the transaction itself involved an interstate transfer of funds.

The amount or value of the "financial transaction" must be greater than $10,000.

The second element of this object is that the defendant knew the property involved in the transaction was criminally derived property. "Criminally

derived property" [2242] means any property constituting, or derived from, proceeds obtained from a criminal offense. The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

The government must prove that the defendant knew the transaction involved criminally derived property. However, the government is not required to prove that the defendant knew the particular offense from which the criminally derived property was derived.

The third element of this object is that the property involved in the transaction was actually derived from specified unlawful activity. Here, the "specified unlawful activity" is the wire fraud scheme charged in Count Two, the bank fraud charged in Count Three, and the sale and distribution of narcotics. I instruct you, as a matter of law, that the term "specified unlawful activity" includes wire fraud, bank fraud, and narcotics trafficking.

If you find that the government has proved one or both objects of the money laundering conspiracy beyond a reasonable doubt, you should consider the second element. The second element of Count Four is that the defendant knowingly and willfully joined and participated in the conspiracy to commit money laundering. I have already instructed you in connection with Count One what it means for a defendant to knowingly and [2243] willfully become a member of and join a conspiracy, and you should apply those instructions here.

* * *

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S2 22 Cr. 650 (JPO)

UNITED STATES OF AMERICA

- v. -

JOEL ZUBAID,

JULIAN REBIGA,
a/k/a "Iulian Rebiga," and

MARTIN MIZRAHI,
a/k/a "Marty Mizrahi"

Defendants.

SUPERSEDING INDICTMENT

COUNT ONE

(Conspiracy to Commit Wire Fraud and Bank Fraud)

The Grand Jury charges:

OVERVIEW

1. From at least in or about April 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, participated in a conspiracy to defraud corporations, banks, credit card companies, and other entities and

to launder the fraud proceeds received from those victims.

2. As part of their participation in the conspiracy, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, engaged in business email compromise ("BEC") schemes and credit fraud, among other things.

3. To effectuate the BEC schemes, the conspirators sent email messages to victims that fraudulently appeared to come from a known source making a legitimate request. Through those emails, the conspirators requested that the victims send money to bank accounts under the control of, among others, JOEL ZUBAID and JULIAN REBIGA, a/k/a "Iulian Rebiga," the defendants, which was then quickly transferred and disbursed to bank accounts and cryptocurrency wallets, including accounts under the control of ZUBAID, REBIGA, and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendant, and other co-conspirators.

4. To effectuate the credit card fraud scheme, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, submitted charges using stolen credit card information from cards issued in the names of third parties, without the authorization or consent of those parties.

Corporation-1 Business Email Compromise

5. By at least in or about May 2021, co-conspirators of JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, had obtained access to the business email account of the Chief Financial

Officer ("CFO-1") of a community development corporation ("Corporation-1"). CFO-1's email was then used to send fraudulent interstate wire instructions to a bank where Corporation-1 held an account ("Bank-1").

6. In response to those fraudulent wire instructions, between on or about May 12, 2021 and on or about June 1, 2021, Bank-1 released a series of wires, totaling approximately $3,488,000, from Corporation-1's account at Bank-1 to accounts at other financial institutions, including an account (the "CC-1 Account") controlled by JOEL ZUBAID, the defendant, and another co-conspirator ("CC-1") at another financial institution ("Bank-2"). During this time period, approximately $1,570,000 was sent from Corporation-1's account at Bank-1 to the CC-1 Account.

7. After Corporation-1's funds were fraudulently received in the CC-1 Account, these funds were laundered by JOEL ZUBAID and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, in a manner designed to conceal the source, ownership, and control of those funds. Among other things, funds sent to the CC-1 Account were quickly transferred to other accounts under the control of MIZRAHI and other coconspirators and converted into Bitcoin.

8. At a certain point, Bank-2 froze the CC-1 Account. JOEL ZUBAID, the defendant, and CC-1, subsequently made multiple attempts to free the funds in the CC-1 Account, including by making misrepresentations to Bank-2 about the purpose of the transfer of funds from Corporation-1 to the CC-1 Account and the intended use for those funds.

9. In addition, after Bank-2 sought to recoup funds transferred from the CC-1 Account to an account controlled by MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendant, (the "Mizrahi Account"), MIZRAHI made misrepresentations to Bank-2 about the purpose of the transfer to the Mizrahi Account in an effort to prevent Bank-2 from seizing the funds.

Corporation-2 Business Email Compromise

10. By at least in or about June 2021, co-conspirators of JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, had obtained access to the business email account of an employee ("Employee-1") of a portfolio company owned by a private equity fund ("Corporation-2"). On or about June 28, 2021, Employee-1's compromised email was used to send fraudulent interstate wire instructions for a contractual payment due to Employee-1 to an account at Bank-2 controlled by ZUBAID and REBIGA (the "Rebiga Account").

11. In response to those fraudulent wire instructions, on or about July 1, 2021, Corporation-2 caused a wire transfer for approximately $2,008,034.76 to the Rebiga Account.

12. After these funds were fraudulently received in the Rebiga Account, the funds were laundered by JOEL ZUBAID and JULIAN REBIGA, a/k/a "Iulian Rebiga," the defendants, and others known and unknown, in a manner designed to conceal their ownership, including by quickly transferring funds from the Rebiga Account to multiple other accounts controlled by REBIGA.

13. In or about July 2021, Bank-2 froze the Rebiga Account. After the Rebiga Account was frozen, JOEL ZUBAID and JULIAN REBIGA, a/k/a "Iulian Rebiga," the defendants, and other co-conspirators, made numerous attempts to free the funds in the Rebiga Account, including by making misrepresentations to Bank-2 about the purpose of the transfer of funds from Corporation-2 to the Rebiga Account.

Credit Card Fraud

14. From in or about April 2021 to in or about June 2021, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, conducted a series of charges, totaling at least approximately $3,840,149, on multiple credit cards issued in the names of third parties without those parties' consent. These charges were conducted through point-of-sale credit card machines associated with companies controlled by MIZRAHI and REBIGA.

15. After multiple fraudulent credit card charges were disputed by card holders, JOEL ZUBAID and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, prepared false justifications for the charges, which were sent to the credit card companies via emails that traveled interstate. In addition, CC-1, and others known and unknown, prepared fraudulent forms purporting to authorize certain of the underlying charges that JULIAN REBIGA, a/k/a "Iulian Rebiga," the defendant, submitted to the credit card companies.

STATUTORY ALLEGATION

16. From at least in or about April 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343, and bank fraud, in violation of Title 18, United States Code, Section 1344.

17. It was a part and an object of the conspiracy that JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, ZUBAID, REBIGA, and MIZRAHI participated in a scheme to defraud corporations, credit card companies and other entities through BEC schemes and by making unauthorized credit card charges using stolen credit card information, using interstate wires, including wire transfer requests and emails, in violation of Title 18, United States Code, Section 1343.

18. It was further a part and an object of the conspiracy that JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a

"Marty Mizrahi," the defendants, and others known and unknown, would and did execute, and attempt to execute, a scheme and artifice to defraud a financial institution, as that term is defined in Title 18, United States Code, Section 20, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, ZUBAID, REBIGA, and MIZRAHI participated in a scheme to defraud financial institutions by submitting false information to banks and credit card companies regarding the purpose, intended use, and authorizations for wire transfers and credit card charges, using interstate wires, including emails, in violation of Title 18, United States Code, Section 1344.

(Title 18, United States Code, Section 1349.)

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

19. The allegations set forth in paragraphs 1 through 15 are repeated and realleged as if set forth fully herein.

20. From at least in or about April 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, transmitted

and caused to be transmitted by means of wire, radio, and television communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, ZUBAID, REBIGA, and MIZRAHI participated in a scheme to defraud corporations, credit card companies and other entities through BEC schemes and by making unauthorized credit card charges using stolen credit card information, using interstate wires, including wire transfer requests and emails.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE

(Bank Fraud)

The Grand Jury further charges:

21. The allegations set forth in paragraphs 1 through 15 are repeated and realleged as if set forth fully herein.

22. From at least in or about April 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, knowingly executed, and attempted to execute, a scheme and artifice to defraud a financial institution, as that term is defined in Title 18, United States Code, Section 20, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, ZUBAID, REBIGA, and MIZRAHI participated in a scheme to defraud financial institutions by

submitting false information to banks and credit card companies regarding the purpose, intended use, and authorizations for wire transfers and credit card charges, using interstate wires, including emails.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT FOUR

(Conspiracy to Commit Money Laundering)

The Grand Jury further charges:

23. The allegations set forth in paragraphs 1 through 15 are repeated and realleged as if set forth fully herein.

24. From at least in or about February 2021 through at least in or about May 2021, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, participated in a scheme to launder bulk cash narcotics proceeds by converting it into cryptocurrency, among other things, on behalf of individuals involved in a drug trafficking organization. ZUBAID, and others known and unknown, picked up large amounts of bulk cash and gave it to, among others, REBIGA, who would transfer it to others who could provide cryptocurrency, or MIZRAHI, who converted the funds into cryptocurrency and then sent that cryptocurrency to cryptocurrency wallets controlled by the individuals who had provided the bulk cash.

25. From at least in or about February 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown,

knowingly did combine, conspire, confederate, and agree together and with each other to violate Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 1957(a).

26. It was a part and an object of the conspiracy that JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, would and did conduct and attempt to conduct a financial transaction, which transaction affected interstate and foreign commerce and involved the use of a financial institution which was engaged in, and the activities of which affected, interstate and foreign commerce, and which in fact involved the proceeds of specified unlawful activity, to wit, the wire fraud and bank fraud charged in Counts Two and Three of this Indictment, and the sale and distribution of narcotics, in violation of Title 21, United States Code, Section 841, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

27. It was a further part and an object of the conspiracy that JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, within the United States, knowingly would and did engage and attempt to engage in a monetary transaction, as defined in Title 18, United States Code, Section 1957(f)(1), in criminally derived

property of a value greater than $10,000 that was derived from specified unlawful activity, to wit, the wire fraud and bank fraud charged in Counts Two and Three of this Indictment, and the sale and distribution of narcotics, in violation of Title 21, United States Code, Section 841, in violation of Title 18, United States Code, Section 1957(a).

(Title 18, United States Code, Section 1956(h).)

COUNT FIVE

(Money Laundering)

The Grand Jury further charges:

28. The allegations set forth in paragraphs 1 through 15 are repeated and realleged as

if set forth fully herein.

29. From at least in or about February 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, knowing that the property involved in financial transactions represented the proceeds of some form of unlawful activity, conducted and attempted to conduct such a financial transaction, which transaction affected interstate and foreign commerce and involved the use of a financial institution which was engaged in, and the activities of which affected, interstate and foreign commerce, and which in fact involved the proceeds of a specified unlawful activity, to wit, the wire fraud and bank fraud charged in Counts Two and Three of this Indictment, and the sale and distribution of narcotics, in violation of Title 21, United States Code, Section 841, knowing that the transaction was

designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity.

(Title 18, United States Code, Sections 1956(a)(1)(b)(i) and 2.)

COUNT SIX

(Aggravated Identity Theft)

The Grand Jury further charges:

30. The allegations set forth in paragraphs 1 through 15 are repeated and realleged as if set forth fully herein.

31. From at least in or about April 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, knowingly transferred, possessed, and used, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, in connection with the offenses alleged in Counts One, Two, and Three of this Indictment, in or about May 2021, a co-conspirator sent ZUBAID pictures of a driver's license and credit card of a third party ("Victim-1"), which ZUBAID sent to, among others, REBIGA and MIZRAHI along with directions for making charges on Victim-1's card, after which time REBIGA and MIZRAHI used this information to make charges on Victim-1's card and subsequently sent receipts for the charges to ZUBAID.

(Title 18, United States Code, Sections 1028A and 2.)

COUNT SEVEN

(Conspiracy to Operate an Unlicensed Money Transmitting Business)

The Grand Jury further charges:

32. From at least in or about February 2021 through at least in or about June 2021, in the Southern District of New York and elsewhere, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, operation of an unlicensed money transmitting business, in violation of Title 18, United States Code, Section 1960.

33. It was a part and object of the conspiracy that JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, and others known and unknown, would and did knowingly conduct, control, manage, supervise, direct, and own all and part of an unlicensed money transmitting business, which affected interstate or foreign commerce and was operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor and a felony under State law, failed to comply with the money transmitting business registration requirements under Section 5330 of Title 31, United States Code, and regulations prescribed under such section, and otherwise involved the transportation or transmission of funds that were known to the defendant to have been derived from a criminal offense and were intended to be used to

promote or support unlawful activity, in violation of Title 18, United States Code, Section 1960.

Overt Acts

34. In furtherance of the conspiracy, and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about May 2021, co-conspirators of JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, sent fraudulent wire instructions to Bank-1, which is located in the Southern District of New York, causing Bank-1 to release a series of wires, totaling approximately $3,488,000 to, among other accounts, the CC-1 account, a portion of which funds were then transferred to the Mizrahi Account and converted into Bitcoin.

b. In or about June 2021, co-conspirators of ZUBAID, REBIGA, and MIZRAHI sent fraudulent wire instructions to Corporation-2, which is headquartered in the Southern District of New York, causing a wire transfer of approximately $2,008,034.76 to be approved by Corporation-2 employees located in the Southern District of New York and then sent to the Rebiga Account for the purpose of such funds being converted into Bitcoin.

c. From at least in or about April 2021, up to and including at least in or about June 2021, over the course of approximately twenty-eight additional transactions, MIZRAHI transferred at least approximately $3,655,305.58 to Bitcoin wallets provided by ZUBAID in

exchange for money provided in cash or by wire transfer.

(Title 18, United States Code, Section 371.)

FORFEITURE ALLEGATION

35. As a result of committing the offenses alleged in Counts One, Two, and Three of this Indictment, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) 982(a)(2)(A), and Title 28 United States Code, Section 2461(c), any and all property, real or personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses and the following specific property:

a. $690,000.00 in United States Currency formerly on deposit in Bank of America, N.A. Account Number XXXXXXXX2359 held in the name of LV.Net LLC LV Net; and

b. $81,284.03 in United States currency formerly on deposit in Bank of America, N.A. Account Number XXXXXXXX2488 held in the name of California Iolta Trust Accounts Madaen Law Inc.

36. As a result of committing the offenses alleged in Count Four and Five of this Indictment, JOEL ZUBAID, JULIAN REBIGA, a/k/a "Iulian Rebiga," and MARTIN MIZRAHI, a/k/a "Marty Mizrahi," the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any and all property, real and personal,

involved in said offenses, or any property traceable to such property, including but not limited to a sum of money in United States currency representing the amount of property involved in said offenses and the following specific property:

a. $690,000.00 in United States Currency formerly on deposit in Bank of America, N.A. Account Number XXX XXXX2359 held in the name of LV.Net LLC LV Net; and

b. $81,284.03 in United States currency formerly on deposit in Bank of America, N.A. Account Number XXXXXXXX2488 held in the name of California Iolta Trust Accounts Madaen Law Inc.

Substitute Assets Provision

37. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;
Title 18, United States Code, Section 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)

/s/ Damian Williams
FOREPERSON

/s/ Damian Williams
DAMIAN WILLIAMS
United States Attorney

APPENDIX J

Constitution of the United States

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX K

Constitution of the United States

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX L

18 U.S. Code § 982 - Criminal forfeiture

(a)

(1) The court, in imposing sentence on a person convicted of an offense in violation of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate—

(A) section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial institution, or

(B) section 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 555, 842, 844, 1028, 1029, or 1030 of this title, shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation.

(3) The court, in imposing a sentence on a person convicted of an offense under—

(A) section 666(a)(1) (relating to Federal program fraud);

(B) section 1001 (relating to fraud and false statements);

(C) section 1031 (relating to major fraud against the United States);

(D) section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of insured financial institution);

(E) section 1341 (relating to mail fraud); or

(F) section 1343 (relating to wire fraud),

involving the sale of assets acquired or held by the the [1] Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency, or the National Credit Union Administration, as conservator or liquidating agent for a financial institution, shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violation.

(4) With respect to an offense listed in subsection (a)(3) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations, or promises, the gross receipts of such an offense shall include any property, real or personal, tangible or intangible, which is obtained, directly or indirectly, as a result of such offense.

(5) The court, in imposing sentence on a person convicted of a violation or conspiracy to violate—

(A) section 511 (altering or removing motor vehicle identification numbers);

(B) section 553 (importing or exporting stolen motor vehicles);

(C) section 2119 (armed robbery of automobiles);

(D) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(E) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce);

shall order that the person forfeit to the United States any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, as a result of such violation.

(6)

(A) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or section 555, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—

(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and

(ii) any property real or personal—

(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or

(II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.

(B) The court, in imposing sentence on a person described in subparagraph (A), shall order that the person forfeit to the United States all property described in that subparagraph.

(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

(8) The court, in sentencing a defendant convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344, or of a conspiracy to commit such an offense, if the offense involves telemarketing (as that term is defined in section 2325), shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

(b)

(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853).

(2) The substitution of assets provisions of subsection 413(p) shall not be used to order a

defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense unless the defendant, in committing the offense or offenses giving rise to the forfeiture, conducted three or more separate transactions involving a total of $100,000 or more in any twelve month period.

APPENDIX M

UNITED STATES DISTRICT COURT
Southern District of New York

UNITED STATES OF AMERICA

v.

DAVID GORAN

JUDGMENT IN A CRIMINAL CASE

Case Number: S1 22 Cr. 650-2 (JPO)
USM Number: 35509-510
Samuel M. Braverman, Esq.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2, 3, 4, 5, and 6

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1349	Conspiracy to Commit Wire and Bank Fraud	6/30/2021	1
18 U.S.C. §1343	Wire Fraud	6/30/2021	2
18 U.S.C. §1344	Bank Fraud	6/30/2021	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____

☐ all open ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/17/2025
Date of Imposition of Judgment

/s/J. Paul Oetken
J. Paul Oetken
United States District Judge

3/18/2025
Date

DEFENDANT: DAVID GORAN

CASE NUMBER: S1 22 Cr. 650-2 (JPO)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1956(h)	Conspiracy to Commit Money Laundering	6/30/2021	4
18 U.S.C. §1956(a)(1)	Money Laundering	6/30/2021	5
18 U.S.C. §1028A	Aggravated Identity Theft	6/30/2021	6

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Time Served.

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be housed at the FCI Lompoc in order to facilitate familial visits.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

2 years on Counts 1-5, and one year on Count 6, all concurrent, for a total of 2 years' supervised release.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender regi-

stration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to

unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or

dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

You shall provide the Probation Officer with access to any requested financial information.

You shall report to the nearest Probation Office by March 24, 2025.

You shall be supervised by the District of your residence.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	TOTALS
Assessment	$ 600.00
Restitution	$ 0.00
Fine	$ 10,000.00
AVAA Assessment*	$ 0.00
JVTA Assessment**	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately

---

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee:

Total Loss[***]:

Restitution Ordered:

Priority or Percentage:

TOTALS $__0.00__ $__0.00__

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

  ☐ the interest requirement is waived for the ☐ fine ☐ restitution.

  ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

[***] Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 600.00 due immediately, balance due

☐ not later than _____, or

☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The $10,000 fine shall be paid during the course of his supervision.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*:

Total Amount:

Joint and Several Amount:

Corresponding Payee, if appropriate:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

$10,000.00 as per the order of forfeiture.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.