UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Crim. No. 3:23-cr-26 (KAD)
	:	
v.	:	
	:	
GARY OZTEMEL	:	
	:	
	:	

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States respectfully submits this memorandum in advance of the sentencing of Gary Oztemel, scheduled for October 28, 2024, and in response to Gary Oztemel's sentencing memorandum (ECF No. 314). The government respectfully submits that a sentence of imprisonment within or below the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G.") range of 21 to 27 months of imprisonment is appropriate in this case. Specifically, and contrary to the arguments raised by Gary Oztemel, a sentence of incarceration is necessary to comply with the purposes of sentencing set forth in 18 U.S.C. § 3553(a), to reflect the seriousness of the offense, and to afford adequate deterrence.

I. FACTUAL BACKGROUND AND OFFENSE CONDUCT[1]

A. The Bribery and Money Laundering Scheme

Defendant Gary Oztemel was the owner and president of Oil Trade & Transport S.A. ("OTT") and the owner of Petro Trade Servies, Inc. ("Petro Trade"), two commodities trading companies located in Connecticut. *See* Presentence Investigation Report ("PSR"), ECF No. 312 ¶

[1] Because the Court presided over the trial of Glenn Oztemel for the same bribery and money laundering scheme, the government will not describe all aspects of the criminal conspiracy or cite all evidence relevant to the matters addressed herein. Many of these facts are set forth in the PSR at ¶¶ 8–15, and the government also references certain trial testimony and government exhibits ("GX") admitted during Glenn Oztemel's trial.

8. Defendant Glenn Oztemel, Gary Oztemel's brother, worked as a senior oil and gas trader at Arcadia Fuels, Inc. ("Arcadia") and later at Freepoint Commodities LLC ("Freepoint"). *Id.* Defendant Eduardo Innecco ("Innecco") worked as an agent for Arcadia, Freepoint, and OTT, as well as other companies. *Id.*

Glenn Oztemel, Gary Oztemel, and Innecco participated in a scheme to pay over $1 million in bribes to Rodrigo Berkowitz ("Berkowitz") and other foreign officials at Brazil's state-owned and state-controlled oil and gas company, Petróleo Brasileiro S.A. – Petrobras (together with its U.S. subsidiary Petrobras America, Inc., "Petrobras"). *Id.* ¶¶ 8–9. In exchange for bribes, Berkowitz and other foreign officials at Petrobras provided Glenn Oztemel, Gary Oztemel, and Innecco with confidential information related to Petrobras's business and directed cargoes to Arcadia, Freepoint, and OTT. *Id.* The confidential information and other improper assistance Berkowitz provided to Glenn Oztemel, Gary Oztemel, and Innecco gave Arcadia, Freepoint, and OTT improper business advantages in trades with Petrobras. *Id.* ¶ 9.

In exchange for their assistance in helping win business with Petrobras, Glenn Oztemel, Gary Oztemel, and Innecco offered, promised, and paid bribes to various Petrobras officials, including Berkowitz. *Id.* For his part, Gary Oztemel agreed to make payments to and to share profits with Innecco while knowing that Innecco would use a portion of that money to pay bribes to Berkowitz and other Petrobras officials. As established at Glenn Oztemel's trial, the scheme lasted from at least 2010 through 2018.

More specifically, Gary Oztemel, Glenn Oztemel, and Innecco caused OTT to facilitate "back-to-back" trades to pay higher bribe amounts to Petrobras officials. *Id.* ¶ 10. OTT purchased oil from Petrobras (with Berkowitz's assistance) and immediately sold the oil to Arcadia and/or Freepoint (with the assistance of Glenn Oztemel). *Id.* Gary Oztemel then caused OTT to transmit

corrupt payments, funded at least in part from OTT's profits on the back-to-back trades, to Innecco's companies. *Id.* The payments were made pursuant to invoices sent from Innecco, which sought payment for purported consulting fees, commissions, and profit sharing. *Id.* Innecco then paid a portion of the money he received from Arcadia, Freepoint, and OTT to Berkowitz and other foreign officials as bribes. *Id.* The bribes were paid into a bank account in Uruguay controlled by Berkowitz and his father, and in cash. *Id.*

B. Gary Oztemel's Role

Gary Oztemel and his co-conspirators used OTT to conduct back-to-back trades and pay bribes to Petrobras officials between at least 2010 and 2013. *Id.* While the role that Gary Oztemel played and the nature of his involvement in the conspiracy changed over time, Gary Oztemel never abandoned the conspiracy and was still involved, including by using Petro Trade to receive and conceal criminally derived funds, through at least 2018. *Id.* As set forth in the Stipulation of Offense Conduct and the PSR, Gary Oztemel received corrupt payments from Innecco and engaged in transactions using criminal proceeds in excess of $10,000 in the United States. *Id.* ¶¶ 10, 14; ECF No. 187 at 12–13. In 2017 and 2018 alone, Gary Oztemel received over $300,000 in corrupt payments from Innecco. PSR ¶ 14.

At Glenn Oztemel's trial, Berkowitz testified that he had an agreement with Gary Oztemel (among others) to help Gary Oztemel's and Glenn Oztemel's companies win Petrobras business in exchange for bribes. Sept. 9 Tr. (PM) at 49:1–8. Berkowitz explained that, when he joined the bribery conspiracy in or around 2010, OTT—which Berkowitz identified as Gary Oztemel's company—was already paying bribes to Petrobras officials, including Carlos Barbosa. Sept. 9 Tr. (AM) at 11:8–12:1; 14:23–15:9; 24:9–18; 36:10–17. As Berkowitz described, during a February 2011 meeting in Miami, Glenn Oztemel, Marcus Alcoforado, and Berkowitz agreed to use OTT

to pay bribes to Petrobras officials in connection with Petrobras's trades with Glenn Oztemel's and Gary Oztemel's companies. *Id.* at 33:5–36:15. Alcoforado and Berkowitz then met with Innecco to give Innecco instructions on how to make the bribes payments. *Id.* at 38:13–39:13. As planned, after the Miami meeting, Petrobras resumed trading with Arcadia using OTT as an intermediary, and Berkowitz testified that he was promised and received bribes in exchange for these trades. *Id.* at 36:1–9; 40:16–17; 55:2–18; 86:2–10.

In his objections to the PSR, Gary Oztemel contends that he has not stipulated to being a member of the bribery and money laundering conspiracy after 2013. ECF No. 312-3. But the record shows Gary Oztemel's knowledge of and participation in the bribery and money laundering scheme from 2010 through 2018 and, importantly, is devoid of any evidence establishing his withdrawal from the conspiracy. The evidence of his knowledge includes, among other examples:

- In August 2010, Innecco emailed Gary Oztemel to "reconfirm to you, in [writing], what I think are the basic points of our recent discussions few days ago, in Connecticut, on this subject, and what my final understanding is," including that "[o]utstanding brkfst had to be settled, in order to guarantee the continuity of bizz." PSR ¶ 12.
- In October 2011, Innecco wrote to Gary Oztemel and Glenn Oztemel about the "Current Situation" and stated that "[t]here is only one little problem: in principle max nbr of people Archie can invite for breakfast is 25, and that wud leave some key people (although not top people) with no breakfast." GX 5218. Innecco then stated that "OTT wud be solution, buying from large co and resselling [*sic*] to both Archie and Mr. X company. This way 40 people may sit in one table and additional 40 may sit in another table, reserved only for OTT people . . . . Our mission is to find a way to cover the man and the key people, as we used to do. OTT wud be the solution." *Id.*

- In March 2012, Innecco emailed Gary Oztemel and told him that Glenn Oztemel "wud rather not rcv any more messages on breakfast related subjects on his private e-mail." GX 5390. Innecco further noted that he was due over $188,000 "aside from breakfast." *Id.*; PSR ¶ 13.
- In June 2012, Innecco sent Gary Oztemel an email with the subject "Freight Deviations," another code word for bribes, which listed purported nautical miles and the "freight deviation due." GX 5435. Approximately five minutes before, Innecco sent Gary Oztemel the code to interpreting this email, explaining that "Miles=Bbls" and that abbreviations were used for the vessel names. GX 5434.
- In September 2012, Innecco, using the alias email account "Spencer Kazisnaf," emailed Gary Oztemel a spreadsheet of OTT's 2012 trades with Petrobras, which listed per barrel and total bribe amounts owed as the "investment fund allocation." GX 5457, 5457-A. Innecco wrote that the spreadsheet was "good and bad. It is good because it will save a lot of time if we need to check this type of info. It is bad because anyone who sees it will also get to know what we've been doing in a quick glance." Innecco stated that "Spencer Kazinaf" sent the email because "we must keep this worksheet out of curious eyes." GX 5457.
- In July 2014, Innecco sent Gary Oztemel an email with the subject "Copies of invoices of some previous payments" and attached five invoices to OTT from one of Innecco's companies for purported "profit sharing." GX 5718, 5718-A.
- In August 2014, Innecco emailed Gary Oztemel that another of Innecco's alias's "Nikita Maksivov sent you an e-mail." GX 5733. Gary Oztemel confirmed that he received the email. *Id.*

- In February 2015, Innecco, using the "Nikita Maksimov" alias email account, emailed Gary Oztemel and Glenn Oztemel and attached several cargo reports, which contained confidential Petrobras information. GX 5803, 5803-A, 5803-B, 5803-C, 5803-D, 5803-E, 5803-F.

It is not in dispute that, in the early stages of the conspiracy, Gary Oztemel was a more central and critical player. As Berkowitz testified, OTT was already paying bribes to Petrobras officials when he joined the conspiracy. Sept. 9 Tr. (AM) at 11:8–12:1; 14:23–15:9; 24:9–18; 36:10–17. And without OTT's involvement, Glenn Oztemel's companies could not pay the higher bribe amounts Petrobras officials demanded.

While Gary Oztemel's role in the conspiracy changed after 2013, he continued to participate in—and benefit from—the bribery and money laundering scheme until 2018. As Berkowitz testified, in or around 2017 or 2018, Innecco told Berkowitz that "to help his brother," Glenn Oztemel had requested that Gary Oztemel be paid five cents per barrel in connection with Freepoint's trades with Petrobras. Sept. 9 Tr. (PM) at 41:16–42:16.

Other evidence in this case corroborates Berkowitz's testimony. *See* GX 4001 at 44 (June 2018 WhatsApp exchange between Glenn Oztemel and Innecco ("don't forget about big bro")). For example, on January 11, 2017, Innecco paid Gary Oztemel a $14,000 commission for purported consulting services provided by Petro Trade. *See* GX 523. There is no evidence that Gary Oztemel and Petro Trade, in fact, provided any actual consulting services to Innecco or his companies.

Between January 2017 and November 2018, Innecco transmitted over $300,000 to Gary Oztemel's Petro Trade account. *See* GX 523; PSR ¶ 14. Many of the payments Gary Oztemel received from Innecco equated to a five-cent-per-barrel commission on the fuel oil volumes that

Innecco invoiced to Freepoint through Glenn Oztemel. Sept. 13 (AM) Tr. at 29:17–31:18; GX 523; GX 9013.

To conceal the transfer of criminally derived proceeds, Gary Oztemel and Innecco prepared backdated invoices from Petro Trade to Wertech for payments made months prior. GX 6929, 6869-L; PSR ¶¶ 10–11, 14. On December 11, 2018, Gary Oztemel transferred $11,000 of these laundered funds from his Petro Trade bank account to his personal bank account, knowing that the monetary transactions involved funds that were derived from unlawful activity, specifically violations of the Foreign Corrupt Practices Act ("FCPA") and Brazilian anti-bribery laws. PSR ¶ 14; ECF No. 76 ¶ 40.

C. Relevant Procedural History

On August 29, 2023, a grand jury sitting in New Haven, Connecticut returned a nine-count superseding indictment charging Glenn Oztemel, Gary Oztemel, and Innecco with conspiracy, multiple counts of violating the FCPA, money laundering conspiracy, and money laundering. *See* ECF No. 76. Gary Oztemel self-surrendered on August 31, 2023. ECF No. 83. On June 24, 2024, Gary Oztemel pleaded guilty to Count Nine of the Superseding Indictment, which charged Monetary Transactions Involving Criminally Derived Property, in violation of 18 U.S.C. § 1957, in connection with the December 11, 2018 transaction described above.[2] *See* ECF No. 186.

Following a three-week jury trial, Glenn Oztemel was found guilty of Counts One through Seven of the Superseding Indictment. ECF No. 303. Innecco is currently pending extradition to the United States and has not been arraigned. PSR ¶ 3.

[2] When initially interviewed by the FBI at his residence on October 2, 2019, Gary Oztemel was not candid. Specifically, according to FBI records, Gary Oztemel told the FBI that the commissions he paid to Innecco "were at a normal rate, usually between 4 cents and 10 cents per barrel" and that he had never been involved in any transactions involving illegal payments, bribes, or kickbacks. While Gary Oztemel ultimately accepted responsibility for his criminal conduct, he did not do so until almost five years after his initial statements to the FBI.

II. SENTENCING GUIDELINES CALCULATION

The government agrees with the Guidelines calculation set forth in the PSR. *See* PSR ¶¶ 20–29. Pursuant to U.S.S.G. § 2S1.1(a)(2), Gary Oztemel begins with a base offense level of 8 plus the number of offense levels from the table in § 2B1.1 corresponding to the value of the laundered funds. Here, the $301,575.14 in payments that Gary Oztemel received from Innecco between January 2017 and November 2018 provide the value of the laundered funds. Accordingly, pursuant to U.S.S.G. § 2B1.1(b)(1)(G), 12 levels are added because Gary Oztemel is responsible for laundering at least $250,000 but less than $550,000. This calculation yields a base offense level of 20. Pursuant to U.S.S.G. § 2S1.1(b)(2)(A), one offense level is added because Gary Oztemel was convicted under 18 U.S.C. § 1957. The government agrees that a three-point reduction is appropriate for Gary Oztemel's prompt and timely acceptance of responsibility pursuant to U.S.S.G. § §3E1.1. Gary Oztemel also qualifies as a Zero-Point Offender pursuant to U.S.S.G. §§ 4C1.1(a)(1)-(10), such that the offense level is reduced by an additional two points. Gary Oztemel's Criminal History Category is I. PSR ¶¶ 34–35.

Accordingly, Gary Oztemel's total adjusted offense level is 16, and his Guidelines range is 21 to 27 months of incarceration.

A. Gary Oztemel Is Not Entitled to a Mitigating Role Reduction

Gary Oztemel contends that he is entitled a non-Guidelines sentence of probation, in part because "he was a minor participant in the conduct that enabled" Innecco to pay him over $300,000 in criminal proceeds. ECF No. 314 at 10. The government agrees with the Probation Officer's determination (*see* PSR ¶ 78) that Gary Oztemel should not receive any mitigating role adjustment. In short, there was nothing minor about Gary Oztemel's role in the scheme.

A defendant bears the burden of establishing a downward role adjustment. *See United States v. Carpenter*, 252 F.3d 230, 234 (2d Cir. 2001). Gary Oztemel fails to do so here. "The commentary to the Guidelines provides that a 'minimal role' adjustment applies to a defendant who is 'plainly among the least culpable of those involved in the conduct of a group.'" *Id.* (quoting U.S.S.G. § 3B1.2 cmt. n.1). "Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant." *Id.* "The Guidelines make clear that the 'minimal role' adjustment should be used 'infrequently.'" *Id.* A "minor role" adjustment, on the other hand, applies to "any participant who is less culpable than most other participants, but whose role could not be described as minimal." *Id.* at 234–35 (quoting U.S.S.G. § 3B1.2 cmt. n.3).

Whether a minor or minimal role reduction is appropriate is a "fact-based determination" based on the "totality of the circumstances," and the Court should consider the following non-exhaustive list of factors: (i) the defendant's understanding of the scope and structure of the criminal activity; (ii) the degree to which the defendant participated in planning or organizing the criminal activity; (iii) the degree to which the defendant either exercised decision-making authority or influenced the degree of the exercise of such authority; (iv) the nature and extent of the defendant's participation in the criminal activity; and (v) the degree to which the defendant stood to benefit from the criminal activity. U.S.S.G. § 3B1.2 cmt. n.3(C); *see also United States v. Ravelo*, 370 F.3d 266, 270 (2d Cir. 2004) (district courts look to factors such as "the nature of the defendant's relationship to other participants, the importance of the defendant's actions to the success of the venture, and the defendant's awareness of the nature and scope of the criminal enterprise") (quoting *United States v. Yu*, 285 F.3d 192, 200 (2d Cir. 2002)).

As the Second Circuit noted in *United States v. Kirk Tang Yuk*, 885 F.3d 57, 88 n.16 (2d Cir. 2018), the Guidelines have been amended to explain that a role reduction is appropriate if the defendant was "substantially less culpable than the average participant in the criminal activity" and that the "average participant" specifically refers to the defendant's "co-participants in the case at hand." In other words, a defendant whose participation in the conspiracy is essential may qualify for a mitigating role only if "he/she is also substantially less culpable than the average participant in the conspiracy." *Id.*; U.S.S.G. § 3B1.2 cmt. 3(C).

Applying this standard, Gary Oztemel cannot meet his burden to show that he should receive a mitigating role reduction. Gary Oztemel's sentencing memorandum attempts to narrow the scope of his participation in the bribery and money laundering conspiracy to give the appearance that he withdrew from or legally abandoned the conspiracy in 2013. He did not. Although his plea to Count Nine of the Superseding Indictment concerned a single transaction in 2018, the Stipulation of Offense Conduct, together with other evidence in this case, establishes that Gary Oztemel knowingly remained a participant and benefitted from the conspiracy through at least 2018. Moreover, he was critical to the scope and structure of the initial criminal activity from at least 2010 through 2013, when he used OTT to facilitate back-to-back trades between Arcadia and Petrobras and Freepoint and Petrobras, and when he caused OTT to transfer funds to Innecco to be used as bribe payments for Petrobras officials. *See* ECF No. 187 at 12.

Although the back-to-back trades with OTT, Petrobras, and Freepoint ended in or around 2013, Gary Oztemel's membership in the scheme continued, and his becoming less central to the mechanics of the conspiracy does not equate to legal or actual withdrawal. "For a defendant to show that he withdrew from the conspiracy, proof merely that he ceased conspiratorial activity is not enough." *United States v. Eppolito*, 543 F.3d 25, 49 (2d Cir. 2008). Rather, a defendant "must

also show that he performed some act that affirmatively established that he disavowed his criminal association with the conspiracy, either the making of a clean breast to the authorities, or communication of the abandonment in a manner reasonably calculated to reach co-conspirators." *Id.* (citations and internal quotation marks omitted). "Unless a conspirator produces affirmative evidence of withdrawal, his participation in a conspiracy is presumed to continue until the last overt act by any of the conspirators." *United States v. Diaz*, 176 F.3d 52, 98 (2d Cir. 1999) (quoting *United States v. Greenfield*, 44 F.3d 1141, 1150 (2d Cir. 1995)).

While he was less involved in the day-to-day operations of the bribery and money laundering conspiracy after 2013, Gary Oztemel continued to communicate about the scheme with Innecco, including emails with Innecco's alias email accounts. *See* GX 5718, GX 5733, GX 5803. And critically, Gary Oztemel continued to benefit from the conspiracy. Despite claiming to have no role in Freepoint's trades with Petrobras in 2017 and 2018, Gary Oztemel received more than $300,000 in corrupt proceeds from trades that Freepoint won through bribery. *See* GX 523; PSR ¶ 99. Accordingly, given the Guidelines calculation used in the PSR, Gary Oztemel is not entitled to any reduction based on this role in the scheme.

III. THE COURT SHOULD IMPOSE A SENTENCE OF INCARCERATION

Calculation of the Guidelines range is the starting point for the Court's determination of a sentence. *See Gall v. United States*, 552 U.S. 38, 49 (2007) (citation omitted). Next, the Court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [it] may not presume that the Guidelines range is reasonable. [It] must make an individualized assessment based on the facts presented." *Id.* at 50 (citation and footnote omitted).

Section 3553(a) provides that, in imposing a sentence, the Court shall consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct; [and]

(C) to protect the public from further crimes of the defendant.

Section 3553(a) also addresses the need for the sentence imposed "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). "[I]n determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, [the Court] shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation." 18 U.S.C. § 3582(a).

At sentencing, "the court is virtually unfettered with respect to the information it may consider." *United States v. Alexander*, 860 F.2d 508, 513 (2d Cir. 1988). Indeed, "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. Thus, the Court should first calculate the applicable Guidelines range and then apply the Section 3553(a) factors to arrive at an appropriate sentence, considering all relevant facts.

Each of the factors in 18 U.S.C. § 3553(a) weighs in favor of a term of imprisonment for Gary Oztemel, and the government respectfully submits that a sentence of imprisonment within or

below the Guidelines range of 21 to 27 months is sufficient, but not greater than necessary, to satisfy the goals of sentencing.

A. Nature and Circumstances of the Offense

The nature and circumstances of the offense counsel strongly in favor of a sentence of incarceration. *See* 18 U.S.C. §§ 3553(a)(1), (2)(A). As detailed above, Gary Oztemel participated in a bribery and money laundering scheme involving fuel oil cargoes worth hundreds of millions of dollars for nearly a decade. In addition to the corrupt profits he received on OTT's back-to-back transactions with his brother's companies, Gary Oztemel later used Petro Trade to receive and launder additional criminal proceeds.

International corruption of the nature and extent engaged in by Gary Oztemel and his co-conspirators undermines the public's confidence in international markets and institutions, destroys faith in public servants, and is deeply unfair to market participants who play by the rules. When, as here, foreign corruption is undertaken by American citizens working for U.S.-based companies, it impacts the confidence and trust in American businesses worldwide. The damage caused by this type of corruption is real and lasting.

Gary Oztemel's sentencing memorandum seeks to minimize and rationalize his conduct. *See* ECF No. 314 at 10. While admitting that he "overlooked his knowledge" that the funds he received from Innecco were the result of foreign bribery, Gary Oztemel endeavors to explain away his participation in the international bribery and money laundering conspiracy by stating that he needed to pay for his daughter's wedding and "did not want to disappoint his family during this incredibly important time in the life of his daughter." ECF No. 314 at 1–2. Simply put, funding a wedding does not justify money laundering.

In addition, Gary Oztemel asserts that he "ceased engaging in trades with Petrobras" after 2013 and "was willing to accept payments from Innecco that he knew derived from unlawful activity because he was determined to recover this loss and felt he needed to make money." *Id.* at 10. While Gary Oztemel may have stopped using OTT to facilitate his "profit sharing" with Innecco, he did not withdraw from the conspiracy and, in fact, continued to profit from it.

In short, Gary Oztemel's attempts to minimize his role should not be credited. A sentence of incarceration is appropriate in this case.

B. The Defendant's History and Characteristics

A significant portion of the defendant's sentencing memorandum concerns his personal history, including his hard work, acts of kindness and service to his community, and personal and family circumstances, which include his medical problems. ECF Nos. 314 at 1–2, 6–9, 11–12; 314-1. The government agrees that the Court should consider these circumstances in arriving at a sentence under 18 U.S.C. § 3553(a), and the government's recommendation accounts for them.

Gary Oztemel's personal history and characteristics do not set him apart from similarly situated defendants who have had the opportunity to engage in good deeds and charitable acts, who face similar challenges as a result of incarceration, and whose families often suffer disproportionately despite having no role in the criminal conduct. Indeed, unlike many defendants, Gary Oztemel had every opportunity to succeed. He had a strong community, loving family, and a stable home. PSR ¶¶ 40–49; 100. Despite these advantages, Gary Oztemel chose crime. "Criminals who have the education and training that enables people to make a decent living without resorting to crime are more rather than less culpable than their desperately poor and deprived brethren in crime." *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013) (quoting *United States v. Stefonek*, 179 F.3d 1030, 1038 (7th Cir. 1999) ("Business criminals are

not to be treated more leniently than members of the 'criminal class' just by virtue of being regularly employed or otherwise productively engaged in lawful economic activity.")).

Furthermore, the government does not object to the Probation Officer's determination that "[t]he Court may wish to consider a downward departure pursuant to USSG §5H1.1, due to the defendant's physical condition and treatment needs." PSR ¶ 91. However, the government submits that a term of incarceration, even if below the Guidelines range, is appropriate under Section 3553(a). Indeed, terms of incarceration were imposed in each of the cases Gary Oztemel cites in support of a downward departure based on his medical needs. *See* ECF No. 314 at 8–9; *United States v. Velasquez*, 762 F. Supp. 39, 40 (E.D.N.Y. 1991) (defendant sentenced to statutory minimum five-year term of imprisonment); *United States v. Vaughan*, No. 92 CR. 575-04 (RWS), 1993 WL 119704, at *1 (S.D.N.Y. Apr. 15, 1993) (defendant sentence to one year of imprisonment and one year of home detention); *United States v. Kloda,* 133 F. Supp. 2d 345, 349 (S.D.N.Y. 2001) (defendant sentenced to one year and one day of imprisonment).

As such, while the government does not object to a downward departure based on Gary Oztemel's medical needs, the government submits that a term of incarceration is warranted in this case.[3]

C. The Need for Protection of the Public, Just Punishment, and Respect for the Law

Gary Oztemel contends that "the financial, psychological, and reputational harm" from this case have "already inflicted severe punishment" and asks the Court to impose a sentence a probation. ECF No. 314 at 12–13. But given the seriousness and the scope of the criminal conduct,

[3] If the Probation Officer or the Court believes additional information is necessary to appropriately account for Gary Oztemel's recent medical updates, the government would not object to continuing the sentencing.

a sentence of imprisonment is warranted to provide just punishment and to promote respect for the law.

The corrosive effects foreign corruption and bribery cannot be denied. Among other harms, bribery schemes undercut fair business practices, undermine the rule of law, and destabilize countries and even entire regions. When only the corrupt prosper, societies, governments, and legitimate businesses lose. The United States has long recognized the harmful effects of bribery of foreign officials, and Gary Oztemel's personal involvement in bribing Brazilian government officials goes to the heart of the proscriptions put in place by the FCPA.

The FCPA was enacted by Congress in 1977 to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, to level the playing field between corrupt businesses and those who refused to pay bribes, and to ensure stability in the U.S. economy by requiring companies to give potential investors an accurate picture of their finances. *See United States v. Kay*, 359 F.3d 738, 746 (5th Cir. 2004) ("Congress resolved to interdict [foreign] bribery, not just because it is morally and economically suspect, but also because it was causing foreign policy problems for the United States"). As the House Report accompanying the bill stated: "The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system." H.R. Rep. No. 95-640 (1977) at 4.

Accordingly, a sentence of incarceration in this case would be a just punishment that would promote respect for the law and would fairly punish the defendant for his conduct—conduct that showed, repeatedly, over the course of several years, Gary Oztemel's lack of respect for the law.

D. The Need for General Deterrence

Finally, the need for general deterrence strongly weighs in favor of a sentence of incarceration. *See* 18 U.S.C. § 3553(a)(2)(B). Given the powerful economic incentives associated with paying bribes overseas to get lucrative contracts, it is critical that there be equally strong counterincentives. *See United States v. Blech*, 550 F. App'x 70, 71 (2d Cir. 2014) (summary order) ("Blech was sentenced based on the 18 U.S.C. § 3553(a) factors, including the need . . . for general deterrence for those who might otherwise feel that some white-collar crimes are 'game[s] worth playing.'") (quoting *United States v. Goffer*, 721 F.3d 113, 132 (2d Cir. 2013)); S. Rep. No. 98-225, at 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259 ("The second purpose of sentencing is to deter others from committing the offense. This is particularly important in the area of white collar crime. Major white collar criminals often are sentenced to small fines and little or no imprisonment. Unfortunately, this creates the impression that certain offenses are punishable only by a small fine that can be written off as a cost of doing business.")).

The sentence in this case should reflect the seriousness of the offense and, to create the appropriate level of deterrence, should be commensurate with the seriousness of the illegal conduct. The government respectfully asks the Court to impose a period of incarceration to demonstrate that those who engage in foreign corruption, bribery, and money laundering receive meaningful punishment. As Judge McMahon in the Southern District of New York observed in the context of a motion for compassionate release:

> [D]efendants [young men, most of them members of minority groups] and their families and communities have for years argued that white-collar criminals are hardly ever prosecuted, and that the few who are—no matter the damage they do—tend to receive lighter sentences and are incarcerated in less onerous conditions. They are not wrong. Privileged individuals who commit financial crimes from behind the walls of ostensibly legitimate financial institutions frequently go undetected and unprosecuted. The few who are

> prosecuted can hire the finest defense attorneys in the world to represent them. And those who are convicted are often designated to lower-security prisons, which—while admittedly still unpleasant places—are far less so than the facilities at which young men from minority communities typically serve their time.

United States v. Israel, No. 05 CR 1039 (CM), 2019 WL 6702522, at *8-9 (S.D.N.Y. Dec. 9, 2019). The government's recommended sentence will send a strong deterrent message to those tempted to engage in bribery and money laundering.

Furthermore, given that sophisticated schemes—like the instant scheme with multiple international actors and companies, foreign bank accounts, and other evidence abroad—are difficult to detect and prosecute, there is greater need for general deterrence. *See, e.g.*, *Harmelin v. Michigan*, 501 U.S. 957, 988 (1991) ("since deterrent effect depends not only upon the amount of the penalty but upon its certainty, crimes that are less grave but significantly more difficult to detect may warrant substantially higher penalties"). Because "economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation marks omitted)); *United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it."); *United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006) (deterrence of white-collar crime is "of central concern to Congress"). In furtherance of the bribery and money laundering conspiracy, Gary Oztemel and his co-conspirators communicated using personal and alias email accounts, established companies in foreign jurisdictions, and opened foreign bank accounts (among other

actions), all of which underscore the deliberate and calculated nature of their crimes and the need for robust general deterrence.

Contrary to Gary Oztemel's arguments, the disruption to Gary Oztemel's family due to his prosecution does not warrant a sentence of probation. Gary Oztemel details "the enormous negative impacts that this case has visited upon the stability" of his family and argues that the financial, psychological, and reputational harm that Gary has suffered as a result of this criminal prosecution has already inflicted severe punishment." ECF No. 314 at 13. But this case is a result of Gary Oztemel's actions, and the argument he asks the Court to accept could be made in virtually every case. *See, e.g.*, *United States v. Johnson*, 964 F.2d 124, 128 (2d Cir. 1992) ("Disruption of the defendant's life, and the concomitant difficulties for those who depend on the defendant, are inherent in the punishment of incarceration."); *United States v. Zadora*, 93 F. App'x 305, 306–07 (2d Cir. 2004) (same); *see also Koon v. United States*, 518 U.S. 81, 95 (1996) ("the defendant's family ties and responsibilities" are a "discouraged" basis for a departure) (citing U.S.S.G. § 5H1.6).

IV. FORFEITURE AND FINES

A. The Court Should Order Forfeiture

Criminal forfeiture "serves no remedial purpose, is designed to punish the offender . . . [and] focuses on the disgorgement by a defendant of his 'ill-gotten gains.'" *United States v. Contorinis*, 692 F.3d 136, 146 (2d Cir. 2012) (citations omitted). Furthermore, criminal forfeiture is mandatory and required by statute. *See United States v. Monsanto*, 491 U.S. 600, 607 (1989) ("Congress could not have chosen stronger words to express its intent that forfeiture be mandatory" in cases where the relevant forfeiture statute provides that the court 'shall order' forfeiture). Pursuant to 18 U.S.C. § 982(a)(1), Gary Oztemel has agreed to forfeit $301,575.14, which accounts

for corrupt payments he received from Innecco between January 2017 and November 2018. PSR ¶¶ 14, 89. The government respectfully requests that the Court impose such forfeiture as part of its sentence in this case.

B. The Court Should Impose a Fine

A fine is also appropriate in this case. In addition to the factors in Section 3553(a), 18 U.S.C. § 3572(a) sets forth factors to be considered by the Court before imposing a fine. Those factors include: (1) the defendant's income, earning capacity, and financial resources; (2) the burden that the fine will impose upon the defendant and any of his dependents; (3) any pecuniary loss inflicted upon others as a result of the offenses; (4) whether restitution is ordered; (5) the need to deprive the defendant of illegally obtained gains from the offenses; and (6) the expected costs to the government of any imprisonment. 18 U.S.C. § 3572(a). The Guidelines provide that the Court "shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine." U.S.S.G. § 5E1.2(a). The Guidelines further provide that "[t]he amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive." U.S.S.G. § 5E1.2(d). The defendant bears the burden of demonstrating an inability to pay a fine. *See United States v. Camargo*, 393 F. App'x 796, 798 (2d Cir. 2010) (upholding imposition of a fine despite Probation and the defendant arguing that the defendant was currently unable to pay a fine because the court concluded the defendant was likely to be able to pay in the future); *see also United States v. Salameh*, 261 F.3d 271, 276 (2d Cir. 2001) (concluding that the District Court acted within its discretion in basing fines on defendants' future earnings potential "in the absence of any evidence from defendants to counter the inference that future income from media contracts was a substantial possibility").

The statutory maximum fine applicable to Gary Oztemel's offense is $250,000, and the Guidelines fine range is $10,000 to $95,000. *See* 18 U.S.C. § 3571(b); U.S.S.G. § 5E1.2(c)(3); PSR ¶¶ 84, 86. While Gary Oztemel contends that he cannot a pay fine, ECF No. 314 at 14, based on his financial profile, the Probation Officer has concluded that he does have the ability to pay. PSR ¶ 71. As such, the government submits that the Court should impose a fine within the Guidelines fine range.

V. CONCLUSION

For these reasons, the government respectfully submits that a sentence of imprisonment within or below the recommended Sentencing Guidelines range of 21 to 27 months, a term of supervised release of 3 years, an order of forfeiture in the amount of $301,575.14, and a fine within the Guidelines range would be sufficient, but not greater than necessary, to serve the legitimate purposes of sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2024, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ *Allison L. McGuire*
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