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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12 (HONORABLE CYNTHIA BASHANT)

13 UNITED STATES OF AMERICA,)	Criminal No. 20CR1916-BAS
14 Plaintiff,)	Date: January 4, 2022
15 v.)	Time: 10:00 a.m.
16 YISROEL GOLDSTEIN,)	SENTENCING MEMORANDUM
17 Defendant.)	

18
19 **INTRODUCTION**

20 Defendant Yisroel Goldstein respectfully submits the following Sentencing
21 Memorandum and video. *See Ex. A.* After extensive discussions considering the
22 seriousness of Mr. Goldstein’s offense conduct, his significant cooperation including
23 undercover work, the extraordinary and unique physical and emotional trauma that he
24 suffered as a result of a horrendous hate crime during his period of cooperation, and the
25 numerous good and charitable acts that he has done throughout his career as a rabbi, the
26 parties agreed that a non-custodial sentence was appropriate. As part of this resolution,
27 Rabbi Goldstein agreed that he would disclose his cooperation and all of his offense
28 conduct for a full accounting to the public of what he had done; by doing so, he was

1 willing to bear the risk that he could once again become the target of the very hatred that
2 nearly led to his death. The parties recognized that punishment can take many forms, not
3 just imprisonment, and the physical and emotional pain and fear that Rabbi Goldstein
4 suffers daily is an enormous burden that constantly reminds him of the many people he has
5 gravely disappointed, as his offense and his near-death experience are publicly intertwined.
6 Some may believe that the parties' proposed resolution may not be severe enough, while
7 others may think that Rabbi Goldstein has already suffered more than any person should
8 ever be forced to endure. Our system, however, trusts the government to speak for the
9 victims and the public, and its view that a non-custodial sentence is appropriate should be
10 given "[s]ubstantial weight[,]" particularly in a case involving a defendant's cooperation.
11 U.S.S.G. § 5K1.1 comment. (n.3); *United States v. Ressay*, 679 F.3d 1069, 1092 (9th Cir.
12 2012) (*en banc*). For all of these reasons, and as explained more fully below, the Court
13 should impose a sentence of home detention and restitution.

14 ARGUMENT

15 As the Court is well aware, after *United States v. Booker*, 543 U.S. 220 (2005), the
16 Sentencing Guidelines are only one part of the analysis, and the Court must assess all of
17 the factors in 18 U.S.C. § 3553(a) in determining an appropriate sentence. *See, e.g., United*
18 *States v. Carty*, 520 F.3d 984 (9th Cir. 2008) (*en banc*). Importantly, § 3553(a) instructs
19 courts to impose a sentence that is "sufficient, but not greater than necessary," to comply
20 with the relevant sentencing purposes laid out in the statute. Mr. Goldstein submits that,
21 when considering all of the § 3553(a) factors, a sentence of 4 months of home detention
22 with restitution is sufficient and not greater than necessary.

23 **A. Section 3553(a)(1) – the offense and defendant's history and character**

24 Under section 3553(a)(1), the court is to consider "the nature and circumstances of
25 the offense and the history and characteristics of the defendant." Mr. Goldstein stands
26 before the Court having pled guilty to conspiracy to defraud the United States and to
27 commit wire fraud in violation of 18 U.S.C. § 371, a Class D felony. The offense conduct
28 involves fraudulent tax deductions for charitable donations and other fraudulent activity

1 related to securing funds and grants. Mr. Goldstein has accepted responsibility, laying out
2 his misconduct in a more-detailed-than-usual factual basis for his guilty plea and has
3 publicly disclosed his cooperation with authorities, also a somewhat unusual step. In short,
4 he plainly admits: “I have fallen prey and worshiped the Golden Calf of money. I have let
5 myself down and everything that I have taught, and everything that I have preached for 40
6 years, and allowed myself to be seduced to a very dark place, allowing the power of money
7 to get the better part of my soul. At the time of the crimes I’ve committed I knew it was
8 wrong and against everything I stood for, and I’ve let myself and so many others down by
9 deceiving my own soul.” Ex. B.

10 While there is no sufficient explanation for the extensive misconduct, Rabbi
11 Goldstein has attempted to do whatever he can to right his wrongs. He began cooperating
12 shortly after agents executed search warrants in October of 2018, even working undercover
13 for the government. His cooperation has contributed to at least ten successful prosecutions.
14 PSR 2. He has also secured approximately \$1 million in gold from his coconspirators on
15 behalf of the government.

16 Also counterbalancing the seriousness of the offense conduct is Rabbi Goldstein’s
17 history and characteristics. He is 60-years old with no prior record. PSR 3, 28-29. Among
18 his many accomplishments, he considers his greatest one to be his nearly 36-year marriage,
19 which has produced six children and 18 grandchildren. PSR 30. While working long
20 hours as a rabbi and volunteering his time to numerous community organizations
21 throughout his lengthy career, he has simultaneously been a devoted husband, father, and
22 grandfather. Rabbi Goldstein has served as the primary caretaker and case worker for his
23 oldest son, who has suffered from serious mental illness for most of his life and is unable
24 to live on his own. *Id.* It was Rabbi Goldstein’s own personal experience raising his son
25 that drew him to working with children with special needs. Ex. C at 6. His work in this
26 area has been “tremendously meaningful” to those who are severely disabled and their
27 families. Ex. C at 1.

28 Rabbi Goldstein grew up in a large family of modest means in a tough

1 neighborhood in New York. PSR 29-30. Although one of the youngest of the siblings, he
2 stood out due to his thoughtfulness and caring, particularly for his grandparents, and
3 therefore it was not surprising that his parents ultimately turned to him when they reached
4 their elder years. Ex. C at 3. His oldest brother recounts: “I remember when he was just
5 14-years old, an age when most children enjoy playing sports and other games with
6 friends, he’d spend much of his free time involved in various community projects,
7 including packing and delivering boxes of food to the elderly and needy in the community,
8 and going on teaching missions to wherever he was needed.” *Id.* His formative years were
9 devoted to Jewish learning, and he ultimately studied at multiple rabbinical colleges and
10 was ordained as a rabbi in 1984. PSR 33.

11 Immediately thereafter, Rabbi Goldstein came to the San Diego, California area,
12 where he had previously worked as a summer camp counselor, to establish a Chabad
13 synagogue. PSR 33. The task was not easy, as Chabad practices an orthodox form of
14 Hasidic Judaism, which was certainly not popular in the North County area of San Diego
15 where he sought to build a congregation. But unlike other Hasidic groups, Chabad is very
16 inclusive and welcoming to all who practice Judaism, even those who are less traditional
17 and observant. Long-time members, who still support Rabbi Goldstein, recall the early
18 years moving from small storefronts in strip malls to trailers in a desperate effort to
19 establish a congregation: “Wherever there was a vacant storefront it became our sanctuary.
20 When management found a tenant we had to move to another vacant storefront. I believe
21 we moved three or four times. . . . [W]e wound up in a trailer for a few years, until finally
22 we had a real synagogue . . . talk about wandering Jews.” Ex. C at 8.

23 With an inclusive approach and through hard work and determination, Rabbi
24 Goldstein and his congregants built a well-attended synagogue, a preschool, which serves
25 both Jewish and even more non-Jewish children, a senior center, and an organization
26 serving children with special needs. During his nearly 40 years as the Rabbi for the
27 Chabad of Poway, Mr. Goldstein performed countless hours of volunteer community
28 service, including as a chaplain for the San Diego Sheriff’s Department and at the

1 Palomar/Pomerado hospitals. Ex. C at 3, 7. A long-time congregant notes that “Rabbi
2 Goldstein’s service activities go well beyond the Chabad congregation and extend into the
3 broader San Diego community, working with the police department, the physically and
4 mentally disabled and the homeless and poor.” Ex. C at 11.

5 Those who know Rabbi Goldstein emphasize his commitment and devotion to
6 those in need, particularly children and the elderly. Ex. C at 3. He has established
7 programs pairing teenagers with special-needs children, providing a tremendous learning
8 experience for the former and a bond and friendship desperately needed by the latter.
9 Through such work, some severely disabled children have been able to achieve Bar
10 Mitzvahs, precious moments for those children and their families, and all who have
11 witnessed the events. Likewise, he has served the elderly, establishing programs for senior
12 citizens, thereby providing many who would otherwise be shut-ins with social programs,
13 while counseling Holocaust survivors as they have entered the last months and years of
14 their lives.

15 It is Mr. Goldstein’s compassion and warmth in the most desperate of times that
16 have had a lasting impact on the lives of his congregants and their families. When parents
17 lost a child, Rabbi Goldstein was the rock guiding them through such tragedy. Ex. C at 8.
18 He would travel across the world to be with a congregant who had lost a parent and would
19 fly across the country to be by a bedside during heart surgery. Ex. C at 9-10. He would
20 gather congregation members to attend the funeral of a Jewish person who did not have
21 any loved ones who could attend, so that the person could have a proper Jewish burial. Ex.
22 C at 11. A loved one who lost a severely disabled sister mentored by Rabbi Goldstein
23 observes: “Tragedy is a curious phenomenon in that it alienates some but not others. Even
24 some of my closest friends and family members stayed away and sent food or flowers after
25 my sister’s passing. I appreciated those gestures, but they were no substitute for
26 meaningful human contact. Rabbi Goldstein did not stay away. He talked to me. He was
27 not awkward with me or formulaic with his words. He just spoke and listened like a
28 human being who has also experienced or at least observed his share of grief and loss. I

1 imagine he could do that in part because comforting the bereaved is something a good
2 rabbi does. That too speaks to the quality of his character and the solemnity and dedication
3 with which he carried out his rabbinical duties.” Ex. C at 2.

4 Mr. Goldstein’s strength and support for others in the face of death was
5 exemplified on April 27, 2019, when a shooter with an AR-15 style rifle and a tactical vest
6 entered Chabad of Poway during a Shabbat service and murdered a congregant who the
7 rabbi dearly loved, shot Mr. Goldstein as his outstretched arms attempted to block the
8 bullets, and shot and injured two others. With his mangled hands wrapped in a prayer
9 shawl to contain the blood, Rabbi Goldstein attempted to comfort others and inspire those
10 who had just witnessed the worst in humanity. Ex. C at 7. He continued to do so in the
11 weeks and months following the shooting, despite severe physical and mental anguish.

12 Given all of Mr. Goldstein’s history and characteristics, both before and after the
13 offense, the joint recommendation for home detention is sufficient and not greater than
14 necessary under § 3553(a)(1). The founder of the Friends of Zion Heritage Center
15 observes: “I provided security for Rabbi Goldstein’s synagogue the first year after the
16 attack. I walked with Rabbi Goldstein not only through the crisis, the experience with his
17 life, but also through the pain and agony he experienced over the mistake he made. I’ve
18 never seen a man more broken, more humble, and more contrite. There is no question in
19 my mind that this beautiful human being wants to do everything possible to make amends
20 for his mistake.” Ex. C at 5.

21 **B. Sections 3553(a)(2) and (a)(3)**

22 Pursuant to § 3553(a)(2), the Court is to consider deterrence, just punishment, and
23 correctional treatment, including medical care. While Rabbi Goldstein has been strong for
24 others in the face of death, he is need of his own support and medical treatment after the
25 shooting. He has been diagnosed with post-traumatic stress disorder (“PTSD”) and
26 prescribed numerous medications to deal with his physical and emotional pain. PSR 32.
27 He has been under the care of psychiatrists and psychologists since the time of the shooting
28 and has undergone repeated surgeries due to the injuries to his hands and is in need of

1 further medical procedures. PSR 31-32. He has difficulty sleeping, paranoia, and his
2 personality has changed as a result of the tragedy. PSR 32.

3 A sentence of home detention can serve to provide just punishment while better
4 addressing Mr. Goldstein's medical needs. Imprisonment will interrupt his mental health
5 care and exacerbate his PTSD. Furthermore, there is no overwhelming need to imprison
6 Rabbi Goldstein in order to protect the public from potential further crimes committed by
7 him. He has been compliant with the conditions of pretrial release and cooperating with
8 the government for more than three years; unlike most cooperators, he agreed to make his
9 cooperation public. The very public nature of his guilty plea and cooperation not only
10 diminishes the possibility of any future crimes, but they also make him a potential target of
11 the same antisemitism that victimized him in 2019. Those safety concerns, particularly for
12 a highly public cooperator, would be seriously heightened in a custodial setting.

13 While the crimes are serious and implicate the need for general deterrence, Mr.
14 Goldstein has suffered significant consequences from his felony conviction, providing a
15 deterrent effect. Rabbi Yehoram Ulman states: "I have been very close and have
16 witnessed his remorse and regret for his sins and financial deceit. He has been humiliated,
17 ostracized and lost everything he built for close to 40 years. He is suffering terribly and is
18 exiled from his community and colleagues. He spends his days in prayer, confession,
19 remorse, pleading for forgiveness, with the hope that G-d and mankind can forgive him."
20 Ex. C at 6. When considering deterrence and the other factors in § 3553(a)(2), the Court is
21 also to consider "the kinds of sentences available" under § 3553(a)(3). As set forth below,
22 the parties agree that Mr. Goldstein should be placed in Zone B of the guidelines table. An
23 alternative to imprisonment such as home detention is available, and it is the type of
24 sentence that is sufficient and not greater than necessary under the circumstances.

25 **C. Sections 3553(a)(4) and (a)(5) – the Sentencing Guidelines**

26 Under sections 3553(a)(4) and (a)(5), the Court is to consider the Sentencing
27 Guidelines. The plea agreement recommends that the following guidelines apply under
28 U.S.S.G. §§ 2T1.9 and 2T4.1:

1	Base offense level:	22
2	U.S.S.G. § 3B1.3:	+2
3	U.S.S.G. § 3E1.1:	-3
4	U.S.S.G. § 5K1.1:	-4
5	Departure/Variance:	-6
6	Total Offense Level:	11
7	Criminal History Category:	I
8	Guideline Range:	8-14 months, Zone B
9	Recommendation:	Home detention

10 For all of the reasons articulated above and in the government’s sealed submission,
11 the joint request for a departure/variance is appropriate. The fact that Rabbi Goldstein is
12 the survivor of a mass shooting is an extraordinary and unique factor. *See Duncan v.*
13 *Bonta*, 19 F.4th 1087, 1109 (9th Cir. 2021) (*en banc*) (“Although mass shootings may be an
14 irregular occurrence, the harm that flows from them is extensive.”). The “devastation” of
15 the tragic experience obviously has “effects far beyond the moment” of the shooting. *Id.* at
16 1139 (Hurwitz, J., concurring). Even those witnessing the event who are not shot often
17 suffer the devastating effects of PTSD. *See Moe v. United States*, 326 F.3d 1065, 1067 (9th
18 Cir. 2003). Mr. Goldstein was shot at point-blank range resulting in permanent
19 disfigurement and injuries, and he was targeted as part of a hate-crime, which only serves
20 to exacerbate the paranoia and anxiety associated with PTSD. Under these circumstances,
21 a departure to Zone B and a sentence of home detention is reasonable, sufficient, and not
22 greater than necessary.

23 **D. Section 3553(a)(6) – unwarranted sentencing disparity**

24 Under § 3553(a)(6), the Court is to consider “the need to avoid unwarranted
25 sentence disparities among defendants with similar records who had been found guilty of
26 similar conduct.” Other defendants in related cases received probation and deferred
27 prosecutions. PSR 2. Thus, the joint recommendation of home detention does not create
28 an unwarranted sentencing disparity.

1 While some defendants received custodial sentences, Mr. Goldstein’s significant
 2 cooperation sets him apart for § 3553(a)(6) purposes. *See United States v. Laurienti*, 731
 3 F.3d 967, 976 (9th Cir. 2013). A “sentencing *difference* is not a forbidden ‘disparity’ if it is
 4 justified by legitimate considerations, such as rewards for cooperation.” *United States v.*
 5 *Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006). “There would be considerably less
 6 cooperation – and thus more crime – if those who assist prosecutors could not receive
 7 lower sentences . . . and because this incentive takes the form of a lower sentence for a
 8 cooperator than for an otherwise-identical defendant who does not cooperate, the reduction
 9 cannot be illegitimate. After all, § 3553(a)(6) disallows ‘*unwarranted* sentence
 10 disparities,’ not all sentence differences.” *Id.*

11 As mentioned, Mr. Goldstein’s cooperation has been significant. He has worked
 12 undercover, helped the government secure approximately \$1 million in assets, and the
 13 government has successfully prosecuted at least 10 different cases with Mr. Goldstein’s
 14 substantial assistance. The other mitigating factors mentioned throughout this
 15 memorandum, including that Rabbi Goldstein was the victim of an unthinkable hate crime,
 16 also demonstrate that there is no unwarranted sentencing disparity. Furthermore,
 17 “sentencing disparity is only one factor a court considers in crafting an individualized
 18 sentence under § 3553(a).” *United States v. Treadwell*, 593 F.3d 990, 1012 (9th Cir. 2010).
 19 All of the § 3353(a) factors considered together support the joint recommendation of home
 20 detention.

21 **E. Section 3553(a)(7) – Restitution**

22 Finally, under § 3553(a)(7), the Court is to consider restitution to victims.¹ The
 23 plea agreement and PSR provide for restitution in a total amount of \$2,509,705. PSR 45.
 24

25 ¹ A “victim” is someone who is “directly and proximately harmed as a result” of
 26 the offense. 18 U.S.C. § 3663(a)(2). A similar definition applies under the Crime Victims’
 27 Rights Act, 18 U.S.C. § 3771(e). The use of the term “directly” and the other terminology like
 28 “as a result of” suggests at least but-for causation, if not a higher standard. *See In re Fisher*,
 649 F.3d 401, 403-04 (5th Cir. 2011); *see also Burrage v. United States*, 571 U.S. 204 (2014).

1 That figure includes \$1,500,000 to the Internal Revenue Service (“IRS”). *Id.* As part of
2 his cooperation, Mr. Goldstein secured approximately \$1,000,000 worth of gold for the
3 government, and he requests that the Court reduce the restitution figure to the IRS by that
4 amount. *See United States v. Ruff*, 420 F.3d 772, 774-75 (8th Cir. 2005) (permitting
5 restitution order to be offset by forfeiture where government entity is the victim). Such an
6 exercise of discretion is particularly appropriate here, where Mr. Goldstein secured the
7 gold through his cooperation and agreed to the forfeiture of the gold as part of his
8 cooperation regardless of the applicability of the forfeiture provisions. Furthermore, the
9 Supreme Court has clarified that restitution, like forfeiture, is punitive in nature, and
10 therefore double-recovery should be prohibited under the Excessive Fines Clause. *See*
11 *Paroline v. United States*, 572 U.S. 434, 456 (2014); *United States v. Bajakajian*, 524 U.S.
12 321, 329 n.4 (1998). Accordingly, due to this offset, this Court should order restitution to
13 the IRS in the amount of \$500,000, and total restitution based on joint and several liability
14 in the amount of \$1,509,705.

15 CONCLUSION

16 For the foregoing reasons, this Court should sentence Mr. Goldstein to 4 months of
17 home detention as part of a 3-year period of probation and \$1,509,705 in restitution. One
18 of the many people who Rabbi Goldstein has profoundly touched over the years concludes:
19 “As the events of the past few years – mass shootings and this pandemic among them –
20 have so starkly demonstrated, sometimes the world itself feels devoid of mercy.
21 Sentencing is one area where mercy still has a home.” Ex. C at 2.

22 Respectfully submitted,

23 *s/Benjamin L. Coleman, s/Jeremy Delicino*

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25 JEREMY DELICINO

26 *Counsel for Yisroel Goldstein*

27 Dated: December 29, 2021
28