

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JASIEL F. CORREIA, II

No. 18-cr-10364-DPW

**DEFENDANT JASIEL F. CORREIA, II's  
SENTENCING MEMORANDUM**

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Defendant Jasiel F. Correia, II, respectfully submits this Memorandum and accompanying letters (Exhibit A) to assist the Court with sentencing.<sup>1</sup>

### **INTRODUCTION**

Mr. Correia stands before the Court adjudged guilty of very serious crimes. As this Court has previously observed, public corruption offenses are “as serious as we can find as crimes against the community as a whole.” *United States v. Wilkerson*, No. 08-CR-10345-DPW, D.E. 346 (sentencing transcript excerpt) at 10. The “tainting and corruption of our government” tears at the “ligaments that tie a community together, a Commonwealth together.” *Id.* at 8. Mr. Correia’s conviction undermines the trust his constituents placed in him and taints every one of his very real accomplishments in public life. The feelings of betrayal expressed by SnoOwl investors also weigh heavily on Mr. Correia.<sup>2</sup>

But Mr. Correia cannot be defined solely as a “crooked politician” or “thief.” He is also a devoted grandson, son, brother, cousin, friend, and now husband. A striving and precocious child of immigrants, Mr. Correia pursued public service opportunities from an early age and repeatedly found himself the youngest leader in many settings, beginning in childhood and culminating in his

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<sup>1</sup> This presentation assumes that all current counts of conviction remain in place but is not a concession that the verdict was correct. Should the Court grant Mr. Correia’s Motion for Judgment of Acquittal or New Trial in part, he would request an opportunity to re-formulate his sentencing arguments based on the surviving count(s) of conviction.

<sup>2</sup> The government’s descriptions of Mr. Correia as “defiant” and “remorseless” and “without empathy” are misplaced. Mr. Correia exercised his right to a jury trial. He acknowledges that his statements to the press outside the courthouse in the immediate emotional aftermath of the verdict were ill-advised but otherwise he has been and will remain silent as the legal process continues. Mr. Correia thus is not in a position to engage in ritual public expressions of remorse and he is prohibited from private contact with witnesses or alleged victims. Consequently, Mr. Correia cannot point to “acceptance of responsibility” in mitigation. But no adverse or aggravating inference should be drawn about what is in his heart based on his exercise of constitutional rights.

election as mayor at age 23. His accomplishments as mayor conferred broad benefits on constituents and the city itself. None of this remotely excuses the offense conduct, but it provides critical context. Still in his twenties, Mr. Correia has great potential to learn from this chapter of his life, make amends, fulfill his financial obligations, and contribute constructively to his family and community in the years ahead.

Accordingly, we propose that a sentence of **36 months imprisonment**—comprised of a high-end Guideline sentence of 30 months on the “SnoOwl” counts (1-13)<sup>3</sup> and a concurrent sentence of 36 months on the “public corruption” counts (14-21)—is sufficient, but not greater than necessary in the circumstances. Three years of Probation supervision upon release, mandatory restitution, and appropriate forfeiture provide additional, meaningful components of punishment.

This case evokes the legend of Icarus. Mr. Correia flew early, high, and fast. The verdict points to a hubristic loss of moral compass and, now, a crash into the sea. But Mr. Correia’s story need not end there. The proposed sentence imposes just punishment and makes an example of Mr. Correia while still affording him a meaningful opportunity for redemption as a relatively young man.

## **BACKGROUND**<sup>4</sup>

### **A. Childhood and Education**

Mr. Correia is now 29-years old. Born to hard-working immigrant parents and raised in Fall River, he and his younger sister, Alexandra, enjoyed a working-class childhood in a modest tenement house with both parents present. Mr. Correia’s mother recalled that he almost had to

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<sup>3</sup> See PSR ¶ 121 (level 17, CHC I, yields an advisory Guideline Sentencing Range of 24-30 months).

<sup>4</sup> The narrative in this section is a cursory synopsis based on the more extensive social history contained in the PSR and accompanying letters.

repeat kindergarten because he was the youngest in his class and had difficulty keeping up with his peers. She did not want him to repeat a grade, so she purchased “Hooked on Phonics” and worked him for hours each night to improve his speech. Mr. Correia proceeded to first grade and, thereafter, always excelled in school. Ex. A3.

With assistance and support from his grandmother, Mr. Correia attended local Catholic elementary and middle schools and then Bishop Connolly High School. He led his high school student government, was captain of the debate team, and helped with recruitment of students. He went on to attend Providence College, where he served as class president and a resident advisor. His father recalls that in these leadership roles, “he always stepped up with the best intentions and led by action and compassion, ensuring that those around him were built up and not put down.” Ex. A1. Mr. Correia’s aunt and uncle, Maria and Gary Moukhtarian, noted, “We knew very early on JC had a gift to unite people by making them feel welcomed, appreciated, and loved. We know this is a gift he will never lose.” Ex. A10.

#### **B. Youth Accomplishments and Public Service**

As a teenager, Mr. Correia was inspired by positive role models in his family, his school, and his faith community. These examples led to Mr. Correia’s volunteer participation in several youth organizations mostly focusing on drug abuse prevention.

As early as age 13, Mr. Correia became involved with a youth group called Teens Against Drug Abuse (“TADA”). Mr. Correia took pride in building this youth group and was elected its chair. Although drug abuse never directly touched the lives of Mr. Correia or his immediate family members, he felt it was an important issue affecting his friends and community. He lost friends to overdoses and watched parents cry at their children’s funerals due to drug abuse.

TADA provided Mr. Correia with his first real opportunity to lead and build a public service team. TADA’s goal was to provide alternative youth activities to prevent drug use as well

as adult and youth education around substance abuse. Mr. Correia organized “skit” performances to provide a creative arts method of teaching adults how (and how not) to talk to children about drug abuse.

TADA was a subcommittee of Building Our Lives Drug-Free (“BOLD”), a program funded through a Substance Abuse and Mental Health Services grant and operated through a drug treatment center called SSTAR located in Fall River.<sup>5</sup> Mr. Correia was one of the youth founders of BOLD, and he eventually became its co-chair, together with a local independent pharmacist. BOLD allowed Mr. Correia serve Fall River on a larger scale, and as co-chair, he was able to have a youth voice represented at the table with adults who were making decisions for his peers.

BOLD became one of the most influential coalitions in Fall River and still exists today. BOLD has hosted debates, forums, drug take backs, and education sessions. It has provided lockboxes to the elderly for their prescription drugs, youth programming, family fun days, and other initiatives. These efforts have raised awareness and saved lives.

In 2009, Mr. Correia was honored as Fall River’s Youth of the Year, in particular for his commitment to drug abuse prevention but also for his creation of the Youth Bill of Rights.<sup>6</sup>

### **C. City Councilor and Mayor**

Mr. Correia’s parents recall that when they had achieved enough financial security to consider buying or building a new family home in the suburbs, Mr. Correia prevailed on them to remain in Fall River, a city that he aspired to serve.

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<sup>5</sup> See <https://m.facebook.com/youcanbebold/> (BOLD Coalition web page).

<sup>6</sup> See Rich Snizek, “Fall River’s Youth of the Year,” *SouthCoast Today* (Mar. 26, 2009), available at <https://www.southcoasttoday.com/article/20090326/PUB03/903260320>.

After graduating from college, Mr. Correia returned to Fall River and won a city council seat in 2013. He served on the Ordinance Committee and tried to strike a balance between speaking up for constituent concerns while still working constructively with the mayor.

Then in 2015, at age 23, Mr. Correia was elected mayor after running a tireless campaign that sought a brighter future for Fall River. While it impossible to succinctly summarize the important day-to-day work of Mr. Correia’s administration, in partnership with the City Council and other organizations, several notable accomplishments during his tenure stand out:

- Fulfilled a campaign promise to eliminate the “Purple Bag Program” and the associated \$120 per unit fee, which amounted to a regressive tax, adding up to millions of dollars that every homeowner and renter in Fall River had to pay for trash collection.<sup>7</sup>
- Instituted the “Zero Based Budget Process”<sup>8</sup> which over three years permitted the city to increase its reserve savings from \$500,000 to \$9,000,000.
- Demonstrated his continued commitment to substance abuse mitigation by appointing the city’s first Drug Prevention Coordinator.<sup>9</sup>
- Launched the “Streetscapes” program to transform business districts by beautifying streets and increasing sidewalk space for walkability and outdoor dining.<sup>10</sup>

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<sup>7</sup> See Jo C. Goode, “‘A promise fulfilled:’ Correia announces end of purple bags,” *The Herald News* (Jan. 29, 2019), available at <https://www.heraldnews.com/news/20190129/a-promise-fulfilled-correia-announces-end-of-purple-bags>.

<sup>8</sup> See Jo C. Goode, “Correia details first spending plan ahead of council hearings,” *The Herald News* (Jun. 7, 2016), available at <https://www.heraldnews.com/article/20160607/NEWS/160606650>.

<sup>9</sup> See Jo C. Goode, “Mayor Correia announces plan to support opioid prevention in Fall River,” *The Herald News* (Jan 11, 2016), available at <https://www.heraldnews.com/article/20160111/NEWS/160119270>.

<sup>10</sup> See Brian Fraga, “Fall River Major Jasiel Correia discusses his Streetscapes plan to improve the city’s neighborhoods,” *The Herald News* (Sep. 17, 2016), available at <https://www.heraldnews.com/article/20160917/VIDEO/309179946>.

- Obtained a HUD-approved loan to purchase nearly \$5 million worth of firefighting equipment to be placed in low-income neighborhoods.<sup>11</sup>
- Secured grants from Seaport Economic Council and Mass Works, totaling \$2.6 million, to revitalize and redevelop the city pier. “This funding commitment from the Seaport Economic Council, along with other grants our administration has already provided, will allow Fall River to realize its vision of redeveloping City Pier,” said Lieutenant Governor Karyn Polito, chair of the Seaport Economic Council. “This project will transform a former brownfield into an engine for new jobs and recreational opportunities. We are proud to partner with Mayor Correia, Fall River’s local leadership, and the city’s legislative delegation, to move this important local economic development initiative forward.”<sup>12</sup>
- Eliminated practice of issuing provisional “pink slips” to teachers every year due to uncertainty about school budget salary coverage.<sup>13</sup>
- Approved plan to transform shuttered South End Mall into commercial plaza with a movie theater, shopping, dining, and other businesses.<sup>14</sup>

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<sup>11</sup> See Jo C. Goode, “Fall River Fire Department gets green light for \$4.9M in new equipment,” *The Herald News* (Aug. 12, 2016), available at <https://www.heraldnews.com/news/20160812/fall-river-fire-department-gets-green-light-for-49m-in-new-equipment>.

<sup>12</sup> Press Release, “Baker-Polito Administration Announces Seaport Economic Council Funding for Fall River,” (Dec. 15, 2016), available at <https://www.mass.gov/news/baker-polito-administration-announces-seaport-economic-council-funding-for-fall-river>.

<sup>13</sup> See Jo C. Goode, “Fall River School Department’s \$106.85M budget clears Finance Committee, moves on to full council,” *The Herald News* (Jun. 7, 2018), available at <https://www.heraldnews.com/news/20180607/fall-river-school-departments-10685m-budget-clears-finance-committee-moves-on-to-full-council>.

<sup>14</sup> See Michael Holtzman, “TIF Board Oks tax break for Market Basket,” *The Concord Journal* (Feb. 16, 2016), available at <https://concord.wickedlocal.com/article/20160216/NEWS/160216729>.



- Worked to upgrade a range of veterans' services and supported construction of a memorial wall.<sup>15</sup>
- Added over 20 new police officer and firefighter positions.
- Added mobile surveillance cameras to improve security in crime hotspots.
- Secured voter approval of \$263,000,000 high school project and oversaw state process to ensure reimbursement.<sup>16</sup>

In short, the business of the City of Fall River proceeded apace under Mayor Correia. Mr. Correia and his administration tried and succeeded in myriad ways to improve the provision and efficiency of services for its citizens. Thus, any harm that has come to the city from the conduct at issue in this case must be considered in the broader context of the many benefits that Mr. Correia also brought to that same community.

**D. Work in the family restaurant**

During the pendency of this case, after he no longer served as mayor, Mr. Correia went to work assisting with his wife's family restaurant business in Fall River, which consists of a steakhouse, oyster bar, café, and function hall. The business operates seven days a week from 7 a.m. to 11 p.m. and weekends until 1 a.m., and Mr. Correia typically stays even later until the entire facility is closed and cleaned. The business is only in its second year of operation, which

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<sup>15</sup> See Jo C. Goode, "City commits \$30,000 for Vietnam Veterans monument," *The Herald News* (Sep. 24, 2018), available at <https://www.heraldnews.com/news/20180924/city-commits-300000-for-vietnam-veterans-monument>.

<sup>16</sup> See Michaela MacDonald, "Fall River to vote in special election on funding new Durfee High School," *WPRI.com* (Jan. 30, 2018), available at <https://www.wpri.com/news/local-news/se-mass/fall-river-to-vote-in-special-election-on-funding-new-durfee-high-school/1082551620/>.

rendered it ineligible for a PPP loan and has made it particularly challenging to navigate the COVID-19 pandemic.

Mr. Correia's role has been multi-faceted, including both "front-of-the-house" and "back-of-the-house" management. His duties include opening and closing daily, creating and managing the schedules for 18 to 25 employees, inventorying liquor and placing weekly orders, managing social media and traditional advertising, hiring and firing employees, creating and maintaining menus, providing tech support, picking up food from various suppliers, as well as planning and executing events.

One of Mr. Correia's most important duties has been to expedite and step behind the cooking line to cook and/or put together cold plates in the kitchen. This occurs most often on weekends because COVID-19 has led to short staffing. Mr. Correia had to quickly learn how to cook and plate dishes to assist the kitchen on a regular basis. When not behind the line, he can be found coordinating orders as they come in. Without this important role, delays increase, wait staff and cooks become stressed and overwhelmed, and the entire operation falters.

Mr. Correia's work has been integral to the success of the restaurant; slim margins and ongoing pandemic challenges have prevented the hiring of additional managerial personnel. Mr. Correia's in-laws also run other businesses, and thus, Mr. Correia's extended absence will have a substantial negative impact. Mr. Correia's wife wrote:

Jasiel and I are full time managers of my family restaurant and although he has had to take a step back and a substantial pay cut for the trial he continues to show up every day and support our team and ensures smooth operation. We are a small family business and without the entire team there are parts of the business that would certainly be negatively affected and would permanently affect the lives of my parents, our amazing staff and customers. I am truly amazed that under the pressure and sometimes ridicule I have personally witnessed he continues to put others and the success of the business first so that they can have a job to support their families. I have seen him wake up at the crack of dawn to gather the weekly products, I have seen him wait and bus tables, I have seen him cook on the line, do

dishes and interact with customers and staff on a daily basis. He is an essential part of our team and family. I depend on him to ensure that the business continues to operate because my stepfather and mother run and operate the other restaurant and the responsibilities my husband has taken on allows me to operate my jewelers store.

Ex. A5-6.

**E. Life of Faith**

Having attended Catholic schools, Mr. Correia is a baptized and confirmed Catholic who has found inspiration, comfort, and support in religious communities throughout his life. Father Jay Mello, a Catholic priest in Fall River who is also Chaplain to the Police Department and serves on the School Committee, wrote:

I have been a priest for almost 15 years, 7 of which have been serving in my hometown of Fall River. Shortly after returning to serve in the city, I met the young city councilor and mayoral candidate, Jasiel Corriea. We first connected because each of us were quickly dismissed for being thought to be too young to be considered a real leader in the city. While I will admit that youthfulness often has a lack of experience and perhaps even a lack of sound judgment or a zeal that isn't always guided by prudence, we both shared a common bond of being city kids who were now assuming leadership roles in our community. Jasiel and I would become close friends over the next few years, a friendship that I value.

I admire Jasiel's work ethic and his dedication to the community. In his time as both a City Councilor and as Mayor, I believe that he worked hard to make the city a better place – a cleaner, safer city with a focus on economic development, support for the Police and Fire Departments and a commitment to our city schools.

I would consider myself a spiritual advisor to Jasiel, and out of respect for the confidentiality, I will not go into detail on this point, but I will say that he is a man of faith and prayer, something that preceded his legal challenges. I believe that he was trying to grow in virtue and make good decisions, based on his faith in God.

As his friend, and as a priest, I humbly appeal to you to show mercy and compassion on this young man. I have maintained a relationship with Jasiel during his trial and after his conviction and believe that this experience has helped him to grow as a person, that he has learned a great deal about himself, about who he is and about who he wants to be.

Ex. A9.

About four years ago, Mr. Correia's wife introduced him to her church, Conquerors for Christ, a non-denominational congregation in North Dartmouth, which he now attends weekly.

Kenneth Walsh, the lead pastor, wrote:

I've known Jasiel Correia for approximately four years since he started attending Conquerors for Christ church. Sometime after he started attending, I felt a need to connect with Jasiel in a way that would facilitate a friendship that goes beyond the "hi and bye" of passerby greetings on a Sunday morning at church.

In Jasiel I saw a young man who was very gifted, but also a man who needed guidance, as we all do. I couldn't imagine the daunting task of running a city at such a young age and offered him my prayers and availability.

It was sometime after he was first indicted that we began meeting semi-regularly for breakfast at a local restaurant in Fall River, Massachusetts. At first, we talked about life and family upbringing to get to know one another, but as our morning meetings became more frequent, we started talking about purpose, and what we wanted to accomplish in this life.

Through our conversations I began to see Jasiel's genuine care for the people he served in Fall River. In my opinion, his ambition wasn't for personal success but for a city of people who desperately needed new leadership and a belief that they could thrive, not merely survive.

I can remember on many occasions constituents coming to our table to greet him, and despite the public embarrassment of what was happening, he never shied away from their conversation. He gave them his ear and time like he would've had everything been "normal". A genuine care for people and for serving them was obvious.

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Certainly, Jasiel is a flawed human being as we all are, which he acknowledged during our talks. We grow as people in this life from doing, failing, learning, and trying again. The important thing is that everyone is afforded the opportunity to try again.

Whatever the outcome of this chapter in his life, it is just one chapter in a young man's life that has many more chapters to go. It's my sincere hope that Jasiel be given the opportunity to continue trying again, as I am convinced that he has learned volumes during this time, and that his greatest contribution to this world is still to come.

Ex. A7-8.

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This information, and the additional letters submitted with this Memorandum, paint a far more positive and complex picture of Mr. Correia than the limited evidence presented at trial. The alleged conduct underlying the jury verdict is reprehensible and inexcusable, but this information nevertheless should carry substantial weight in crafting an appropriate sentence.

### **ARGUMENT**

A criminal penalty must be “sufficient, but not greater than necessary, to comply with the purposes of sentencing.” 18 U.S.C. § 3553(a). Fair consideration of the offense conduct in light of Mr. Correia’s history and characteristics supports the conclusion that 36 months’ incarceration is an appropriate sentence here.

The Court is required to compute the Guideline Sentencing Range (“GSR”) as a “starting point and the initial benchmark.” *Gall v. United States*, 528 U.S. 38, 49 (2007). Here, there is no dispute that the GSR is 151-188 months (TOL 34, CHC I).

However, the Guidelines are not the sole factor, nor even the first among the many factors, that Congress has commanded the courts to apply in § 3553(a). The Court “may not presume that the Guidelines range is reasonable,” rather it must “make an individualized assessment based on the facts presented.” *Id.* at 50. Indeed, “the Guidelines are only one of the factors to consider . . . and § 3553(a) directs the judge to consider sentences other than imprisonment.” *Id.* at 59. The Supreme Court has emphasized that the “Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009) (per curiam) (emphasis in original).

Thus, district courts are now required to consider whether the Sentencing Commission’s underlying policy results in an advisory GSR that is unreasonably high. *See United States v. Kimbrough*, 552 U.S. 85, 109 (2007); *United States v. Boardman*, 528 F.3d 86, 87 (1st Cir. 2008); *United States v. Martin*, 520 F.3d 87, 93-94 (1st Cir. 1998).

The First Circuit has elaborated on the meaning and breadth of the so-called “parsimony principle” in *United States v. Rodriguez*, 527 F.3d 221 (1st Cir. 2008). It stressed that the Supreme Court’s ruling in *Kimbrough* requires a “more holistic inquiry” and that “section 3553(a) is more than a laundry list of discrete sentencing factors; it is, rather, a tapestry of factors, through which runs the thread of an overarching principle.” *Id.* at 228. That overarching principle is to “impose a sentence sufficient but not greater than necessary.” *Id.* In reaching a decision on what constitutes an appropriate sentence for an individual defendant, the district court should “consider all the relevant factors” and “construct a sentence that is *minimally sufficient* to achieve the broad goals of sentencing.” *Id.* (emphasis added).

**A. The “Loss” Guideline Yields an Excessive Advisory GSR.**

The advisory GSR in this case is largely “driven by a 14-point enhancement under the “loss” or “fraud” table, U.S.S.G. § 2B1.1, which is a poor proxy for individual culpability and results in an excessive advisory sentence.

As an initial matter, the calculation is based on the total value of all supposed “intended” bribe payments (alleged to be \$750,000), rather than the amount of any actual benefit to Mr. Correia (alleged to be \$156,500, although most of that is based solely on uncorroborated cooperator testimony). This accounts for 4 levels of the enhancement.

More generally, the structure of the “loss” or “fraud” guideline, *see* U.S.S.G. § 2B1.1, and the decision to employ notions of financial loss to measure moral culpability have long been criticized by courts and commentators alike. *See, e.g., United States v. Parris*, 573 F. Supp. 2d 744, 745 (E.D.N.Y. 2008) (concluding that the loss guidelines “have run so amok that they are patently absurd on their face” and imposing a sentence 25 years below the low end of the guidelines); *United States v. Adelson*, 441 F. Supp. 2d 506, 509 (S.D.N.Y. 2006) (criticizing “inordinate emphasis” on loss as a measure of culpability unexplained by Sentencing

Commission); *United States v. Ranum*, 353 F. Supp. 2d 984, 990 (E.D. Wis. 2005) (observing that “[o]ne of the primary limitations of the guidelines, particularly in white-collar cases, is their mechanical correlation between loss and offense level”); *United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004) (recognizing that the loss guidelines “place undue weight on the amount of loss involved in the fraud,” which is “a relatively weak indicator of the moral seriousness of the offense or the need for deterrence”).

The problem with high GSRs that have weak and unexplained correlations to the sentencing goals of § 3553(a) has been exacerbated by the “unplanned upward drift” of white-collar sentences in the Guidelines era. See Frank O. Bowman III, *Pour Encourager Les Autres? The Curious History and Distressing Implications of the Criminal Provisions of the Sarbanes-Oxley Act and the Sentencing Guidelines Amendments That Followed*, 1 OHIO STATE J. CRIM. L. 373, 387 (2004). The loss guideline fails to measure a host of factors that may be important and serve as bases for mitigating punishment. See Allan Ellis, John R. Steer, Mark Allenbaugh, *At a Loss for Justice: Federal Sentencing for Economic Offenses*, 25 CRIM. JUST. 34, 37 (2011); see also *United States v. Ovid*, No. 09-CR-216 (JG), 2010 U.S. Dist. LEXIS 105390, at \*4 (E.D.N.Y. Oct. 1, 2010) (“[T]he fraud guideline, despite its excessive complexity, still does not account for many of the myriad factors that are properly considered in fashioning just sentences, and indeed no workable guideline could ever do so.”).

Simply put, the loss-driven Guideline calculation in this case deserves minimal deference.

**B. The Proposed Sentence Imposes Just Punishment.**

The proposed sentence is a substantial penalty that adequately reflects the seriousness of the offenses of conviction, will promote respect for the law, and provide “just punishment” as required by § 3553(a)(2)(A).

This Court has expressed “reservations” about whether the Guidelines are “particularly helpful” in corruption cases and has noted “none of the cases are the same,” making comparisons difficult even if they all share “a ganglion of concerns that surround bribery, in this state, political corruption in this state.” *Wilkerson*, D.E. 346 at 3, 11; *see also United States v. Turner*, No. 08-cr-10345-DPW, D.E. 406 (transcript of sentencing) at 64-5 (“I recognize that each one of these cases, bribery and perjury cases, are on their own facts”). We respectfully submit that the proposed sentence for Mr. Correia properly meets sentencing concerns this Court has identified and avoids unwarranted disparity. And while it is easy to become inured to enormous sentences in the federal system, 36 months is a very substantial period of incarceration for a non-violent first offense, particularly for a man as young as Mr. Correia.<sup>17</sup>

### **1. The Proposed Sentence Avoids Unwarranted Disparity.**

Section 3553(a)(6) requires this Court to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” This is a “key premise” of the statute. *United States v. Williams*, 891 F.3d 962, 967 (1st Cir. 1989). The difficulty, as previously mentioned, lies in discerning what metrics should be used to compare cases and defendants.

The government argues that Mr. Correia deserves a sentence that would be *multiples* more severe than those this Court imposed on Turner (36 months) and Wilkerson (42 months) because, according to the government, their corruption “was far less substantial.” Gov. Sent. Mem., D.E.

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<sup>17</sup> *See, e.g.*, Adrian Bejan, “Why the Days Seem Shorter as We Get Older,” *Cambridge University Press* (Mar. 18, 2019) (“Among the most common human perceptions is that time passes faster as an individual becomes older. The days become shorter, and so do the years.”), *available at* <https://www.cambridge.org/core/journals/european-review/article/why-the-days-seem-shorter-as-we-get-older/2CB8EC9B0B30537230C7442B826E42F1>.



298, at 7. The government apparently is referring to the comparatively high “loss table” calculation in this case, but as explained above, that metric is not especially compelling. Notably, the most salient aggravating factors that this Court identified in those cases are absent here. In *Turner*, the bribery was compounded by his lies to the FBI and false trial testimony, “a thoroughgoing effort to corrupt the resolution of very important disputes like this crime by [ ] perjury.” *Turner*, D.E. 406 at 65. And in *Wilkerson*, this Court focused on her recidivism: a prior federal tax conviction, supervised release revocation, and campaign finance violations. *See Wilkerson*, D.E. 346 at 4-6. Thus, while there is nothing good to be said about the conduct underlying Mr. Correia’s convictions, it is wrong to suggest he necessarily deserves punishment orders of magnitude more severe. Moreover, unlike *Turner*, *Wilkerson*, and *DiMasi*, Mr. Correia’s youth, inexperience, and immaturity are all mitigating considerations. Of course, even a child can understand that bribery is wrong, but crimes committed by elder statesmen and stateswomen, with many more reasons and years to “know better,” reflect deeper and more cynical betrayals of public trust and, thus, warrant heightened condemnation.

Ultimately, weighing the harm that Mr. Correia did to Fall River, according to the jury, requires putting in the balance the good he also did, as described above. This is not a case where Mr. Correia sought public office for the purpose of enriching himself and abusing power. Rather, since his teenager years, he has been a sincere, active, and dedicated public servant who cares deeply about Fall River and his neighbors.

The government’s reliance on cherry-picked outlier cases imposing draconian sentences from other districts such as *Palowski* (180 months), *Ganim* (108 months), and *Kemp* (120 months) are also unhelpful in assessing disparity or determining a minimally sufficient sentence here. Gov.

Sent. Mem. at 8-9. Sentencing Commission data from the last 5 years reflect the following national and circuit average sentences in bribery cases:<sup>18</sup>

Year	National Mean (months)	National Median (months)	CA1 Mean (months)	CA1 Median (months)
2020	15	8	12	12
2019	22	12	23	21
2018	23	15	19	12
2017	25	18	15	15
2016	29	20	37	24

And in one of the most notorious mayoral corruption cases ever prosecuted in this circuit, former Providence Mayor Vincent “Buddy” Cianci was sentenced to 64 months following his conviction for an extensive racketeering conspiracy. *See United States v. Cianci*, No. 00-cr-00083-T (D.R.I.), D.E. 699 (Amended Judgment entered June 27, 2005).

As one additional data point, the Court should also consider the convictions and sentences recently affirmed by the First Circuit in the Insys Pharmaceuticals prosecution, which involved different but perhaps even more insidious and harmful forms of “corruption.” *See generally United States v. Simon*, \_\_\_ F.4th \_\_\_, 2021 U.S. App. LEXIS 25591 (Aug. 25, 2021). The defendants were convicted of racketeering conspiracy that involved, on one hand, bribing doctors to issue medically unnecessary prescriptions for a highly addictive fentanyl-laced medication, coupled with, on the other hand, a scheme to fraudulently induce insurance companies to pay for those opioid prescriptions. After trial, with a loss calculation of over \$17 million and facing a Guideline range of 135-168 months, the court sentenced billionaire CEO John Kapoor to 66 months and imposed sentences on other executives ranging from 33 months to a year and a day. *See United*

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<sup>18</sup> *See* U.S.S.C., Statistical Information Packet, Fiscal Years 2020, 2019, 2018, 2017, 2016, Table 7 (Length of Imprisonment by Primary Offense Category) under “Bribery.”

*States v. Kapoor*, No. 16-cr-10343-ADB, D.E. 1292, 1294, 1296, 1299, 1308. The proposed sentence for Mr. Correia in this case is reasonable against that backdrop.

Finally, while it may be true that Mr. Correia is not “entitled” to a lower sentence “merely because his co-defendants received lighter sentences,” Gov. Sent. Mem. at 7, it would surely create incongruous and unwarranted disparity for Mr. Correia to receive a sentence many years in excess of the probationary sentences received by Camara and Costa, longtime self-described drug dealers and con-men who exploited their relationships with Mr. Correia.

**2. Felony Conviction, Supervised Release, Restitution, and Forfeiture Also Inflict Substantial Additional Punishment.**

Apart from incarceration, a federal felony conviction is, itself, a severe penalty, particularly for non-violent offenses by an individual with no criminal history whatsoever. Mr. Correia has endured, and will continue to suffer, humiliation, stress, and financial devastation that he scarcely could have imagined before. Courts have recognized that myriad severe collateral consequences attach to a federal felony conviction, which can amount to a kind of “civil death.” *United States v. Nesbeth*, 188 F. Supp. 3d 179, 181 (E.D.N.Y. 2016) (lengthy opinion detailing collateral consequences of conviction in imposing non-incarceration sentence).

Probation supervision as part of a required term of supervised release is also meaningful punishment. As the Supreme Court noted in *Gall v. United States*, 552 U.S. 38 (2007), probation supervision amounts to a “substantial restriction of freedom.” *Id.* at 595. As one judge of this district observed in one of the first sentencing hearings conducted after *Gall*:

*Gall* recognized for the very first time in a very long time that probation is not nothing, that there are substantial restrictions on an individual’s freedom in probation, that we can structure a probationary sentence that meets all the purposes of sentencing, and that is entirely appropriate. This was one of the things that the guidelines ignored, and the guidelines dramatically changed from preguideline practice and which the Supreme Court is essentially saying we can now look at again.

*United States v. Ramos*, 04-CR-10275 (D. Mass. 2008) (excerpt of sentencing transcript filed with Judgment, D.E. 62) (ordering probationary sentence for substantial oxycontin trafficking). The district court's observations at sentencing in *United States v. Prospero*, 686 F.3d 32 (1st Cir. 2012), also deserve attention:

I think it is very difficult at times, for those of us who are judges or prosecutors or lawyers, to put ourselves in the shoes of a person with no prior experience with the criminal justice system who finds himself or herself accused of a crime. I do not think, sometimes, we fully recognize the anguish and the penalty and the burden that persons face when called to account, as these men are, for the wrong they have committed.

*Id.* at 343-44 (upholding sentence of probation with six months' home confinement and 1,000 hours of community service where the district court calculated the GSR as 87-108 months after conviction at a lengthy trial on over 100 felony counts of false statements and fraud related to the "Big Dig" project).

Finally, the amounts of restitution and forfeiture likely to be imposed in this case will far exceed the assets Mr. Correia has today or can quickly earn. Simply put, this case will crush Mr. Correia financially, and the debt obligation that accompanies the judgment will burden him for many years to come. This inevitable and devastating element of punishment warrants its own weight and consideration in the Court's sentencing analysis.

**C. Neither Specific nor General Deterrence Requires Lengthy Incarceration.**

Lengthy imprisonment is not necessary to protect the public or to deter Mr. Correia from similar crimes in the future, as required by § 3553(a)(2)(B) and (C). Mr. Correia has no prior criminal history; he will be subject to federal supervision following release, and this conviction will ensure he is subject to ongoing, intense scrutiny in any future professional or community activities. Life as Mr. Correia knew it has already been demolished, and no purpose would be served by gratuitously prolonging his incapacitation.

The very fact of federal prosecution will also serve the interest in general deterrence. Nobody looking at what Mr. Correia has experienced, the pain inflicted on his family, the end of his political career, and the obstacles he will face in the future could mistakenly conclude that his crimes were anything other than extremely serious or that they should engage in similar conduct.

In sentencing Wilkerson, this Court at one point mused, because “people go back and do it again,” it must follow that “the sentences imposed for similar conduct here and in other industrial states, frankly have not been sufficient” to effect general deterrence. *Wilkerson*, D.E. 346 at 11. Respectfully, however, that fact that corruption—or any species of crime—continues to exist does not mean that a steady upward ratchet of sentencing outcomes will increase deterrence and thereby reduce or eliminate such crime. If nothing else, the history and recent scrutiny of mass incarceration in the United States belies that prediction.

Indeed, this Court ultimately narrowed its analysis in *Wilkerson*: “[I]t is certain that for a recidivist, which is what Ms. Wilkerson is, it is necessary for there to be a more severe sentence than had been imposed on others committing similar crimes in the past, if the principle of general deterrence is to be served.” *Id.* at 12. Unlike Wilkerson, however, Mr. Correia has never previously faced criminal conviction or punishment.

At bottom, there are no data to suggest that a longer sentence would have any marginally greater general deterrent effect. Corruption thrives with impunity. The perceived likelihood of being exposed and prosecuted at all surely has deterrent effect. But empirical research consistently has shown that “increases in the severity of punishments do not yield significant (if any) marginal deterrent effects.” Michael Tonry, *Purposes and Functions of Sentencing*, 34 CRIME & JUST. 1, 28 (2006). “Three National Academy of Science panels . . . reached that conclusion, as has every major survey of the evidence.” *Id.*; see also Zvi D. Gabbay, *Exploring the Limits of the Restorative*

*Justice Paradigm*, 8 CARDOZO J. CONFLICT RESOL. 421, 447-48 (2007) (“[C]ertainty of punishment is empirically known to be a far better deterrent than its severity.”). Research regarding white-collar offenders in particular (presumably, the most rational of potential offenders) found *no difference* in the deterrent effect of probation and that of imprisonment. See David Weisburd et al., *Specific Deterrence in a Sample of Offenders Convicted of White Collar Crimes*, 33 CRIMINOLOGY 587 (1995); see also Gabbay, *supra*, at 448-49 (“[T]here is no decisive evidence to support the conclusion that harsh sentences actually have a general and specific deterrent effect on potential white-collar offenders.”). On the other hand, a substantial body of evidence establishes that “crime-reducing aspects of imprisonment are considerably negated by crime-enhancing ones.” Todd Clear, *Backfire: When Incarceration Increases Crime, The Unintended Consequences of Incarceration* (Vera Inst. 1996).

**D. Imprisonment Would Not Facilitate Any Needed “Treatment.”**

Mr. Correia plainly does not require any “treatment” of the sort that a Bureau of Prisons placement would uniquely facilitate under § 3553(a)(2)(D). Moreover, as the Sentencing Commission staff has recognized, lengthy terms of incarceration not only entail diminishing returns but can even be counterproductive. Emphasis on sentencing tools other than incarceration can “divert offenders from the criminogenic effects of imprisonment which include contact with more serious offenders, disruption of legal employment, and weakening of family ties.” U.S. Sentencing Commission, Staff Discussion Paper, *Sentencing Options Under the Guidelines* (Nov. 1996) at 19.

**CONCLUSION**

For the foregoing reasons, this Court should impose a sentence of 36 months’ imprisonment followed by 3 years’ supervised release, mandatory restitution, and forfeiture. No

fine should be imposed because restitution and forfeiture obligations will far exceed Mr. Correia's ability to pay.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 13, 2021. A copy will also be served by e-mail on U.S. Probation.

/s/ William W. Fick