NO. 19-20157

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANIELA GOZES-WAGNER, ALSO KNOWN AS DANIELA WAGNER, ALSO KNOWN AS DANIELA MAYER GOZES, ALSO KNOWN AS DANIELA GOZES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION
No. 4:14-cr-637

BRIEF OF THE ALEPH INSTITUTE AND MORE THAN 130 FORMER LEGAL OFFICIALS AND LEGAL SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST

Amici curiae are the Aleph Institute; numerous former legal officials, including six U.S. Attorneys General, an FBI director, two U.S. Solicitors General, two state Governors, a Member of Congress, several Deputy, Associate, and Assistant Attorneys General, scores of U.S. Attorneys, more than three dozen Judges and Justices, and many more senior state and federal officials, whose careers collectively span more than half a century of public service; as well as professors who teach and conduct research in the fields of criminal law and sentencing at law schools in the United States.

The Aleph Institute is a national nonprofit educational, humanitarian, and advocacy organization. It was founded in 1981 at the direction of The Lubavitcher Rebbe. Aleph provides spiritual and emotional support, as well as rehabilitation and family counseling, to thousands of individuals of all faiths and their families who are enmeshed in the criminal justice and penal systems. In many cases, Aleph also provides advocacy for defendants at their sentencing hearings. Aleph's overarching mission is to bring about criminal justice outcomes that are beneficial to the sentenced individuals, their families and communities, and society as a whole.

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All of these persons have a professional interest in ensuring that federal sentencing statutes are interpreted and applied in a manner that coherently advances their purposes and is consistent with modern jurisprudential principles

and the will of Congress. Amici curiae submit this brief to raise their profound concerns with various elements in the sentencing of Ms. Daniela Gozes-Wagner.

With the consent of the defendant and the government, amici file this brief to ensure that federal sentencing law and procedure continues to evolve sensibly in the wake of *United States v. Booker*, 543 U.S. 220 (2005), and its progeny. Amici believe this case highlights procedural and substantive errors that arise in many white-collar cases. Amici fear that the decision below, if allowed to stand, could adversely affect the law and policy of modern federal sentencing under the Sentencing Guidelines. Amici seek to ensure that, as post-*Booker* jurisprudence continues to develop, the soundest sentencing policies and the most sensible sentencing practices are fostered. Amici also believe it is critical that U.S. Courts of Appeals exercise their authority to correct defective sentencing processes, as well as substantively unjust sentences, emerging from the district courts.

SUMMARY OF THE ARGUMENT

Congress has instructed district courts to "impose a sentence sufficient, but not greater than necessary, to comply with" the purposes of sentencing set forth in the Sentencing Reform Act, 18 U.S.C. § 3553(a), and appellate courts are to review sentencing determinations for "reasonableness." *See United States v. Booker*, 543 U.S. 220, 261-63 (2005). The Supreme Court has explained that reasonableness review has both procedural and substantive dimensions: Courts of Appeals play an essential role in ensuring (1) that district courts approach the sentencing process with a proper understanding of their statutory sentencing obligations, and (2) that sentencing outcomes comply with the substantive sentencing goals Congress set forth in § 3553(a). Mindful of these principles, this Court should find the district court's sentencing process and the extreme 20-year sentence imposed on Ms. Gozes-Wagner to be unreasonable. Vacatur of the sentence imposed, and remand (ideally to a different judge) for resentencing, is justified for two principal reasons.

First, the district court's approach to sentencing was ***procedurally unreasonable*** because the district court ignored the Supreme Court's repeated admonitions that a sentencing court must not presume that a sentence within the calculated Guidelines range is reasonable. *See Nelson v. United States*, 555 U.S. 350, 352 (2009); *Rita v. United States*, 551 U.S. 338, 351 (2007); *Gall v. United*

States, 552 U.S. 38, 50 (2007). The district court's excessive focus on the Guideline range and on Ms. Gozes-Wagner's exercise of her constitutional right to trial—especially given the nature and circumstances of the offense, the tenuous connections between her conduct and the extreme loss amount adopted by the district court for the Guideline calculation, and the much lower sentences given to far more culpable co-defendants—was contrary to Congress's statutory instructions and the caselaw interpreting them. Left undisturbed, the district court's heavy reliance on the Guidelines and Ms. Gozes-Wagner's exercise of her trial rights to justify an extreme prison term will undermine the very appearance of proportionate punishment.

Given that the calculated "loss" greatly inflated the Guideline range despite bearing no substantive relation to Ms. Gozes-Wagner's actual culpability, it is especially problematic that the district court failed to discharge its obligation to "filter the Guidelines' general advice through § 3553(a)'s list of factors" when determining a fitting sentence for this defendant. *Rita*, 551 U.S. at 357-58. The absence of any truly "reasoned sentencing judgment" below amounts to reversible procedural error. *Id.* By stressing the Guidelines range and giving no express attention to the many mitigating facts and the § 3553(a) factors—which together provide a compelling basis for a much lower sentence for Ms. Gozes-Wagner—the district court disregarded the Supreme Court's clear instruction that district courts

treat the Guidelines as just "one factor among several courts must consider in determining an appropriate sentence" in service of "§3553(a)'s overarching instruction to 'impose a sentence sufficient, but not greater than necessary' to accomplish the sentencing goals advanced in § 3553(a)(2)." *Kimbrough v. United States*, 552 U.S. 85, 90, 111 (2007).

Disconcertingly, the district court here barely acknowledged *any* of the § 3553(a) factors that Ms. Gozes-Wagner presented at sentencing. The district court's failure to address adequately the factors Congress set forth in its instructions to sentencing judges, especially when combined with its conspicuous focus on the Guideline range and Ms. Gozes-Wagner's exercise of her constitutional right to trial, adds up to the sort of procedural error that requires a remand.

Second, the district court's sentencing decision was ***substantively unreasonable*** because the 20-year sentence inflicted on Ms. Gozes-Wagner—now a 37-year-old first offender and mother providing for two children who was convicted based on nonviolent conduct—is substantively much "greater than necessary" to comply with the purposes of sentencing set forth by Congress in § 3553(a)(2). This Court has explained that a district court's sentence is substantively unreasonable if it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or

improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Respectfully, amici contend that the sentencing decision below fails under each of these criteria, in large part because all the factors Congress set out in § 3553(a)—ranging from the "nature and circumstances of the offense" to the "history and characteristics of the offender" to the need to "provide just punishment" to the "kinds of sentences available" to the "need to avoid unwarranted disparity"—call for a much shorter sentence than the two decades imposed on Ms. Gozes-Wagner.

Most obviously, the district court's failure to give significant weight to Ms. Gozes-Wagner's mitigating "history and characteristics" and its decision to give controlling weight to the exercise of her constitutional right to trial would each independently justify a finding that her sentence is substantively unreasonable. And a clear error in judgment is manifest in the district court's imposition of a multi-decade prison sentence in violation of Congress's command in 18 U.S.C. § 3553(a). Ms. Gozes-Wagner's co-defendants, who were the masterminds, principals, and beneficiaries of the wrongdoing, all received much shorter sentences than she did. Prosecutors and judges must have determined that prison terms of only five and six years were sufficient for their much more culpable conduct. It is thus impossible to understand what proper purposes were served by Ms. Gozes-Wagner's extreme sentence. It follows that the sentence imposed on

Ms. Gozes-Wagner is "greater than necessary" under these circumstances. Put simply, the sentence imposed below is substantively unreasonable in light of § 3553(a).

Booker and its progeny call for district courts to engage in reasoned and reasonable decision-making in service to Congress's sentencing goals in order to "promote the perception of fair sentencing." *Gall*, 552 U.S. at 50. The record below does not support the district court's sentencing decision as reasoned or reasonable in light of the § 3553(a) statutory factors. Amici respectfully suggest that this Court remand for resentencing in a published opinion instructing district courts that the sentencing approach adopted below and the extreme sentence imposed on Ms. Gozes-Wagner is unreasonable.

ARGUMENT

I. THE DISTRICT COURT'S APPROACH TO SENTENCING WAS PROCEDURALLY DEFECTIVE IN ITS APPROACH TO VARIOUS SENTENCING FACTORS

The Supreme Court has been very clear since *Booker* that district courts, though expected to calculate the Guidelines range and use it as a starting point, must not presume that a sentence within that range is reasonable. *See Nelson*, 555 U.S. at 352; *Rita*, 551 U.S. at 351; *Gall*, 552 U.S. at 50. A fair reading of the sentencing transcript reveals that the district court violated this admonition. The court approached the sentencing of Ms. Gozes-Wagner presuming that the Guidelines range was reasonable and that a court "needs to stay within the guidelines" absent special showings by the parties. In *Nelson*, the Supreme Court held that the district court erred and must have its sentencing decision reversed when it stated at initial sentencing that "unless there's a good reason in the [statutory sentencing] factors..., the Guideline sentence is the reasonable sentence." *Nelson*, 555 U.S. at 350. The district court in this case said virtually the same thing.

Specifically, the district court's very brief explanation disclosed that it considered the Guidelines range presumptively reasonable, so that "a judge needs to stay within the guidelines, unless under … the *Booker* case, the Judge has some flexibility... [by] giving some reasons. But the guidelines is generally where it's

holding right now…." ROA.20157:1246-1247. Though a bit garbled, the district court's statement in this case is, in substance and spirit, akin to the sentencing court's erroneous statement in *Nelson*: In both cases, the court states (wrongly) that it is expected to impose a within-Guidelines sentence unless it is provided a compelling reason to do otherwise. Further—and tellingly showing the force of the Guideline in the district court's thinking—after imposing the extreme prison term of 20 years on Ms. Gozes-Wagner, the district court seemingly sought to comfort family members in the courtroom by saying "she did not get the top of the guidelines, the 360. That would be 30 years." ROA:20157:1252. (It bears noting that the government did not seek 30 years, and the court merely adopted the government's proposed sentence length.) These statements—coming within an otherwise very short discussion by the court marked by repeated emphasis of the Guidelines and no real mention of the statutory factors of § 3553(a)—demonstrate quite clearly that the district court's sentencing of Ms. Gozes-Wagner defies the Supreme Court's instruction to treat the Guidelines as just "one factor among several courts ***must*** consider in determining an appropriate sentence." *Kimbrough*, 552 U.S. at 90 (emphasis added).

That Ms. Gozes-Wagner received a sentence below the calculated Guideline range does not inoculate the procedurally infirm process deployed by the district court. Though the district court did not treat the Guidelines as strictly mandatory,

the district court's excessive concern with the Guideline range—especially given the nature and circumstances of the offense, her ministerial role in a fraud engineered by others, the relatively low amounts she received dwarfed by the millions raked in by others, that she was driven by the need to care for her children rather than greed for exorbitant wealth, the extreme loss amount adopted by the district court for the Guidelines calculation, and the much lower sentences received by far more culpable co-defendants—is still contrary to Congress's statutory instructions and related caselaw. Indeed, given the effect of the calculated "loss" on the Guideline range in this case and the lack of a rational relation to Ms. Gozes-Wagner's level of culpability,[1] it was particularly problematic that the district court

[1] Over objections by the defense, the district court adopted the Presentence Investigation Report's assertion that Ms. Gozes-Wagner should be held responsible for more than $25 million in loss and thus subject to a 22-level sentencing enhancement. This enhancement exploded her applicable offense level from 19 to 41, increasing her Guidelines range tenfold, from 30 to 37 months to 324 to 405 months. In other words, this single factor turned a fraud offense that the Guidelines would otherwise say justifies a sentence of around three years to into one in which the Guidelines call for a sentence of nearly 30 years(!).

Defense counsel argued to the District Court that Ms. Gozes-Wagner's gain of less than $400,000, which was the cumulative salary she received over multiple years (unlike the ringleaders, who were raking in huge payouts), served as "a more appropriate measure" of her economic culpability. (It should be noted that upon arrest, Ms. Gozes-Wagner's net worth was $45,000 and she was living simply and raising her two children.) Had the District Court accepted this approach to the Guideline calculation, the resulting Guideline range would have been 108 to 135 months. Though a nine- or ten-year sentence for a defendant with many mitigating personal factors would still be greater than appropriate under the circumstances, adopting this metric in the Guideline calculation would have resulted in an

entirely failed to discharge its obligation to "filter the Guidelines' general advice through § 3553(a)'s list of factors." *Rita*, 551 U.S. at 357-58.

Many sentencing courts have recognized that extreme "loss" enhancements are especially unjustified when a defendant does not directly profit from the fraud, and both courts and commentators have long lamented how the Guidelines in many economic cases do not present a reasonable starting point for sentencing. *See, e.g.*, *United States v. Watt*, 707 F. Supp. 2d 149 (D. Mass. 2010); *United States v. Parris*, 573 F. Supp. 2d 744 (S.D.N.Y. 2008); *United States v. Adelson*, 441 F. Supp. 2d 506 (S.D.N.Y. 2006); Andrew Weissmann & Joshua A. Block, *White-Collar Defendants and White-Collar Crimes*, 116 Yale L.J. Pocket Part 286, 286 (2007) ("Guidelines for fraud and other white-collar offences are too severe" and are greater than "necessary to satisfy... traditional sentencing goals"); Frank Bowman, *Sacrificial Felon*, AMERICAN LAWYER 63 (January 2007) (highlighting that the "rules governing high-end federal white-collar sentences are now completely untethered from both criminal law theory and simple common sense"). Against this backdrop, it is especially troubling that the court below barely acknowledged *any* of the § 3553(a) factors that Ms. Gozes-Wagner presented at sentencing in pleading for a much shorter term of imprisonment. The district

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applicable range that was at least within the realm of reason rather than being grotesquely inflated by treating a bit player in a fraud as if she had master-minded one of the most heinous frauds in American history.

court's conspicuous failure to address adequately the factors Congress set forth in its instructions to sentencing judges, especially when combined with its conspicuous focus on the Guideline range and Ms. Gozes-Wagner's exercise of her constitutional right to trial, constitutes the sort of procedural error that calls for a remand.

Problematically, to the extent any factors other than the Guidelines played a significant role at sentencing, the transcript suggests that Ms. Gozes-Wagner's decision to exercise her right to trial unduly and improperly influenced the district court's sentencing decision. At sentencing, Ms. Gozes-Wagner's counsel pointed to her lesser culpability and significantly lower personal gain than her co-defendants. The district court's persistent response was to stress that Ms. Gozes-Wagner had opted to exercise her right to trial while they had not. ROA.20157: 1232-1234. Pointing out repeatedly that the more culpable defendants "pled guilty," the district court rebuffed arguments based on real-world disparities by saying: "But again, bottom line, Counsel, [Ms. Gozes-Wagner] exercised the constitutional rights she has in the United States to plead not guilty." ROA.20157:1234. It is a poor constitutional right, indeed, that costs the defendant exercising it 15 years of her life.

There is something fundamentally awry when those who are clearly guilty and have no hope of acquittal get a slap on the wrist, while those who maintain

their innocence and put the government to its task of proving guilt get decades-long sentences. An extreme penalty for a less-guilty defendant based on exercise of her constitutional right to trial rather than on any actual culpability perverts our system of justice. Of course, there are valid reasons in some situations to provide a benefit to those who admit guilt and save time and cost of a trial. That said, providing a reasonable sentencing benefit for acceptance of responsibility must never be converted, as it seems to have been in this case, into a trial penalty that massively burdens and punishes the exercise of the right to trial. Ms. Gozes-Wagner did not testify, so she cannot be accused of perjury. She merely required the government to meet its obligation to prove her guilt. There should be no penalty for that decision, and it is certainly unreasonable to burden the decision not to plead guilty with an additional decade or more of imprisonment.

Based only on this "bottom line" exercise of her trial rights and with no other substantive explanation, the court sentenced Ms. Gozes-Wagner to 20 years in prison, a term four times as long as co-defendant Voronov, and three times as long as Shiforenko, one of the masterminds of the conspiracy. This result not only served to penalize Ms. Gozes-Wagner severely for going to trial instead of pleading guilty, but also emphasized the obvious reality that the district court did not focus on the statutory § 3553(a) factors and was instead inappropriately concerned with Ms. Gozes-Wagner's decision to exercise her right to trial.

Especially in light of the Supreme Court's emphasis on the need for district courts to engage in reasoned and reasonable decision-making to "promote the perception of fair sentencing," *Gall*, 552 U.S. at 50, this Court must exercise its authority to declare the sentencing decision-making below procedurally defective.

II. THE DISTRICT COURT'S 20-YEAR SENTENCE FOR A LESS-CULPABLE FIRST OFFENDER DESPITE MANY MITIGATING FACTS WAS SUBSTANTIVELY UNREASONABLE

Booker and its progeny call for district courts to engage in reasoned and reasonable decision-making in service to Congress's sentencing goals. *Gall*, 552 U.S. at 50. Based on the record below, Ms. Gozes-Wagner's sentencing decision does not appear to be reasoned or reasonable in light of the § 3553(a) factors and recent post-*Booker* jurisprudence. A 20-year prison term imposed on Ms. Gozes-Wagner—whose nonviolent conduct was part of a young single mother's (she was 28 when she began her employment with CPS) efforts to provide for her two children—is substantively much, much "greater than necessary" to comply with the purposes of sentencing set forth by Congress in § 3553(a)(2). Indeed, nearly every one of the considerations Congress listed in § 3553(a)—ranging from the "nature and circumstances of the offense" to the "history and characteristics of the offender" to the "kinds of sentences available" to the "need to avoid unwarranted disparity"—call for a far shorter prison term than was imposed by the district court.

When examining the nature and circumstances of the offense in the case of Ms. Gozes-Wagner, it is obvious the court did not take these factors into account when rendering its sentence. This offense was nonviolent, and Ms. Gozes-Wagner did not set out to commit any fraudulent acts. She got what purported to be an honest job to support her children; even the government admits that she may have been unaware of the fraud when she started her employment. ROA.1154:21-23. Once she discovered that this was a fraudulent enterprise—a fact *the government already knew* before she was hired—she was caught in the dilemma of having to give up the salary that put food on her children's table. A stronger person might have quit and taken her chances elsewhere, but there's a wide chasm between weakness and perfidy. Moreover, the subordinate nature of Ms. Gozes-Wagner's position and the lack of personal enrichment militate strongly against a draconian sentence. Thus, objective consideration of the nature and circumstances of the offense here would surely have called for much less time behind bars.

It is also clear that the district court glossed over the particular history and characteristics of Ms. Gozes-Wagner that defense counsel stressed at her sentencing. Hardly a predator or even a danger to anyone, Ms. Gozes-Wagner was never in trouble prior to this incident and did not seek out wrongdoing.

Ms. Gozes-Wagner also has long suffered from significant health challenges and was raising her children on her own. It is hard to fathom the sorrow that Ms.

Gozes-Wagner's children are experiencing at having been separated from their mother. At the sentencing hearing, Ms. Gozes-Wagner's daughter shared the following:

> It's important for a daughter to grow up with her mom. This past year-and-a-half has been difficult for me. I had to move across the world from Houston and start a new life away from my mother. I miss her so much. I miss being able to see her. I also miss my brother. I miss being able to tell her about my day. I miss crying to her when I'm sad, and I miss holding her and telling her I love her.

ROA.1238:14-1239:12.

A proper consideration of the history and characteristics of this defendant would have taken Ms. Gozes-Wagner's and her children's circumstances into account in balancing the § 3553(a) factors. The very first factors that Congress requires sentencing courts to consider are "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). In this case, these factors all clearly militate in favor of a sentence far lower than the severe decades-long sentence imposed on Ms. Gozes-Wagner. Moreover, given that Congress in § 3553(a)(3) also calls for courts to consider "the kinds of sentences available," the court below should have taken into account that the offenses of conviction here do not mandate *any* prison time. Since Ms. Gozes-Wagner is the sole caretaker of her children and is not a danger to the community,

the court could have and should have considered imposing a much lower sentence or substituting noncustodial options for all or part of the sentence.

Most problematically, Ms. Gozes-Wagner's 20-year sentence created rather than avoided unwarranted disparity vis-a-vis the nefarious principals in this case, as well as in comparison with far more culpable defendants in other cases. By plea bargaining, the leaders of this fraud capped their sentences at five years for the two lowest-ranked ringleaders and 10 years for the second-in-command, Shiforenko. In the end, even Shiforenko got only six years instead of his maximum of 10. Ms. Gozes-Wagner is due to serve four years longer than the *combined* sentences of three principal fraudsters. Where's the proportionality in that?

Compared to her co-defendants in this case, Ms. Gozes-Wagner's role was relatively minor. The government recognized this as did the district court. There is no substantive justification for imposing on her a sentence that will leave her behind bars for 14 years after all of the true evil-doers have been released. The district court did not address squarely raised issues about this unwarranted disparity, despite the clear instruction from Congress that sentencing courts consider the "need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Indeed, given the astonishingly light sentences for the villains who engineered a complex fraud that enabled them to rake in tens of millions of

taxpayer dollars, Ms. Gozes-Wagner, who was carrying out the orders of others, deserved time served plus a period of home confinement.

The disparity is even more glaring when one considers sentences imposed in similar cases. Ms. Gozes-Wagner's sentence dwarfs those of others who were, unquestionably, far more blameworthy. *See, e.g.*, *United States v. Forbes*, 790 F.3d 403, 405 (2d Cir. 2015) (loss amount of at least 3.275 billion and a 12.5-year sentence); *United States v. Kumar*, 617 F.3d 612, 616, 626 (2d Cir. 2010) (loss amount of *at least* $400 million and a 12-year sentence); *United States v. Rigas*, 583 F.3d 108, 113 (2d Cir. 2009) (loss amount exceeding $100 million and 12- and 17-year sentences for the two principals); *United States v. Olis*, No. H-03-217-01, 2006 U.S. Dist. LEXIS 68281, at *33, *45 (S.D. Tex. Sep. 22, 2006) (loss amount of $79 million and six-year sentence). Daniela's sentence even exceeds the 14-year sentence received by Enron's infamous Jeff Skilling, whose very name is synonymous worldwide with corporate fraud. *See* United States v. Skilling, No. 4:04-cr-00025, ECF No. 1337, at 4 (S.D. Tex. June 24, 2013).

As is clear from the comparative sentences of far worse actors in this and similar cases, the district court's sentence did not appropriately avoid unwarranted disparity. On this basis, Ms. Gozes-Wagner's sentence is infirm and substantively unreasonable.

This Court has explained that a district court's sentence is substantively unreasonable if it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Respectfully, amici contend that the sentencing decision below fails under each of these three substantive unreasonableness criteria. Most obviously, the district court's failure to give significant weight to Ms. Gozes-Wagner's mitigating "history and characteristics" and its decision to give conclusive weight to exercise of her constitutional right to trial each could independently justify a finding that her sentence is substantively unreasonable. And, clear legal and reversible error in judgment is manifest in the district court's imposition of a multi-decade prison sentence in violation of Congress's command in 18 U.S.C. § 3553(a) that Ms. Gozes-Wagner's sentence be "sufficient, ***but not greater than necessary***, to comply with" the purposes of sentencing set forth in the Sentencing Reform Act. Ms. Gozes-Wagner did not contrive or captain this fraud. She has no criminal history. The risk that she will re-offend is close to zero. Meanwhile, the co-defendants, who set up and operated the fraudulent enterprise, all received drastically lower sentences. The sentences of these co-defendants were deemed adequate by prosecutors and judges for their more aggravated roles in this scheme.

Thus, it is impossible to understand just what proper purposes were served by Ms. Gozes-Wagner's oppressive sentence. It necessarily follows that her sentence is "greater than necessary" under these circumstances. Put simply, in addition to being the product of an unreasonable sentencing process, the sentence imposed below is substantively unreasonable in light of the § 3553(a) factors.

Amici suggest that this court not only order a new sentencing but remand the case to a different judge for the resentencing. This is not meant to impugn the district judge's integrity but reflects the reality that it is human nature to seek to vindicate one's previously made decisions, especially ones that are public. To foster public confidence in the fairness of the process, resentencing should be before a judge who has not yet rendered a public judgment as to defendant's appropriate sentence. This is particularly apposite in a case like this one, where the judge has displayed a lack of attention to the appropriate balancing factors set forth in § 3553(a). The judge here seemed unable or unwilling to appreciate the major distinctions between Ms. Gozes-Wagner's conduct and that of her bosses and the important individual characteristics and circumstances of Ms. Gozes-Wagner. Accordingly, amici respectfully request that the sentencing be conducted by a different district on remand.

CONCLUSION

For the reasons stated above, the sentencing judgment of the district court should be vacated, and the case remanded for resentencing before a different district judge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties.

/s/ Steven J. Lieberman
STEVEN J. LIEBERMAN

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Dated: November 1, 2019