

NO. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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AMIR HOSSEIN GOLSHAN,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT**

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## **QUESTION PRESENTED**

Was the arbitrary denial of a sentencing continuance, which prevented U.S. Probation from considering Petitioner's mitigating evidence, and where U.S. Probation recommended a 50% upward variance from the top of the applicable guideline range, necessarily an abuse of discretion, violation of Rule 32, and the Due Process Clause?

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Petitioner, Amir Hossein Golshan, respectfully asks that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Ninth Circuit in Case No. 23-4030.

## OPINION BELOW

The February 21, 2025, Memorandum decision of the Ninth Circuit Court of Appeals, affirming Petitioner's sentence, is attached to the Appendix.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The matter seeks redress from the Ninth Circuit Court of Appeals' February 21, 2025, Memorandum decision affirming Petitioner's sentence (Appendix at 2). Petitioner's motion for panel reconsideration and rehearing en banc was denied March 14, 2025 (Appendix at 6).

## CONSTITUTIONAL PROVISION AND FEDERAL RULE INVOLVED

This case involves a violation of the Fifth Amendment right to Due Process and Fed. R. Crim. P. 32, by the arbitrary and prejudicial denial of a necessary continuance of the sentencing hearing.

## LIST OF PROCEEDINGS

Petitioner was indicted on February 23, 2023, and charged with violating 18 U.S.C. § 1030 (Counts 1, 4, 6), wire fraud, 18 U.S.C. § 1342 (Counts 2 and 3), aggravated identity theft, 18 U.S.C. § 1028A (Count 5), and forfeiture allegations. CDCA No. 23-CR-85-ODW, Dkt. 17. He was originally granted bail (Dkt. 32), but subsequently remanded to custody pending trial. Dkt. 17.

Petitioner's plea agreement was filed on July 7, 2023 (23-CR-85-ODW, Dkt. 49), he pled guilty on July 19, 2023 (Dkt. 54), and sentencing was scheduled for November 27, 2023. Dkt. 54. On October 24, 2023, U.S. Probation disclosed its Presentence Report ("PSR"). In November 2023, the district court denied Petitioner's multiple attempts to continue his sentencing to address the voluminous

victim-impact allegations by probation and its request for a large upward variance. Dkts. 58 and 60. At the November 27, 2023, sentencing hearing, the district court followed probation’s recommendation and sentenced Petitioner to 96 months of custody and three years of supervised release [Dkt. 79]—a 50% upward variance from the high end of the applicable guideline range.

On Appeal to the Ninth Circuit, Petitioner argued, *inter alia*, that the denial of a sentencing continuance was an abuse of discretion that required re-sentencing. 9<sup>th</sup> Cir. Case No. 23-4030, Dkt. 10.1. The Panel found Petitioner had not established prejudice, because the district court “fully considered” the expedited, first draft of his expert report, and there was “no indication what additional information the second draft would contain.” Appendix at 3-4. In his Petition for Rehearing, Petitioner focused on the fact that probation did not have the opportunity to consider the expert report. Dkt. 40.1 at 2. That Petition was denied without further comment. Dkt. 41.1.

#### STATEMENT OF THE CASE

Petitioner committed serious crimes: Over the course of about 4 years, he used various schemes to defraud and extort people over the internet, causing more than \$1,200,000 in financial losses, as well as emotional distress to many victims. But he pled guilty to those crimes, stipulated to the applicable guideline range, consented to onerous forfeiture and disclosure obligations, and was completely honest with the government.

On October 24, 2023, the PSR was disclosed. It “including a 178-paragraph description of the offense conduct and victim impact,” and a request for a 50% upward variance from the top of the applicable guideline range. 23-CR-85-ODW, Dkt. 56. On November 9, the parties stipulated to continue sentencing for 2 months because “of the extensive presentence report and the need to review

defendant's medical records and develop further mitigation evidence." Dkt. 57 at 2. The stipulation was denied on November 13. Dkt. 58.

On November 14, Petitioner filed an ex parte request to continue, asserting:

1. On July 19, 2023, Defendant pled guilty to Counts One, Two, and Four.
2. Sentencing is presently set for November 27, 2023.
3. On October 24, 2023, the probation department disclosed a 62-page presentence report consisting of 350 enumerated paragraphs, including 178-paragraph description of the offense conduct and victim impact. (Dkt. 56 at ¶¶ 20-198) The same day, probation filed a sentence recommendation letter arguing for a substantially above-guidelines sentence. (Dkt. 55.)
4. On November 9, 2023, the parties filed a stipulation to continue the sentencing citing the extensive PSR and the need to further develop defense mitigation for sentencing. (Dkt. 57.) The Court denied the stipulation on November 13, 2023. (Dkt. 58).
5. On November 14, 2023, the parties exchanged emails with *the Court's Courtroom Deputy*, who *relayed that the Court was denying all requests to continue sentencing hearings to avoid congestion and upcoming trials in 2024*.
6. As set forth in the declaration [of defense counsel], attached, defense counsel has retained an expert psychologist. That expert is working with reasonable diligence to produce a mitigation report addressing Defendant's mental health challenges, which are acknowledged to exist in probation's recommendation letter. This report will arguably constitute the most important defense mitigation evidence which the Court should consider at sentencing. Without an opportunity to receive, process, and

describe the report in his sentencing position, Defendant will not receive constitutionally adequate representation at sentencing.

23-CR-85-ODW, Dkt. 59 at 1-2 (emphasis added). Defense counsel's supporting declaration continued:

2. I require additional time to ensure Defendant receives the competent representation of counsel to which he is entitled at the sentencing hearing.
3. The presentence report in this case is 62 pages long and contains extensive descriptions of offense conduct and victim impact. It was disclosed on October 24, 2023. The probation department recommends a sentence of 96 months, a sentence that twice exceeds the advisory guideline range. I require additional time to process this report and adequately respond to it in my sentencing position.
4. More critically, I have yet to receive my expert psychological report which will form the main basis of Defendant's mitigation position at sentencing. Defendant entered a change of plea on July 19, 2013. I contacted Dr. Stephen C. Phillips, J.D., Psy. D. to inquire about availability and willingness to evaluate Defendant and prepare the necessary report the day after.
5. My client's family engaged Dr. Phillips on August 1, 2023 and retained him on August 23, 2023.
6. Dr. Phillips evaluated Defendant in custody on September 8, 2023 and received his medical records from MDC on September 25, 2023. I promptly forwarded Dr. Phillips the PSR to incorporate that information in his analysis after it was disclosed on October 24, 2023.

7. On November 1, 2023, Dr. Phillips informed me that due to his other work commitments, he had completed the bare bones of the report but required additional time to finalize it. As of this writing, I have not received the final report.
8. I believe Dr. Phillips is working diligently on this report based on my prior experience working with him, including in federal sentencing matters. This is a complex case involving a substantial amount of material with a defendant who is in custody. Without Dr. Phillips' report, I cannot competently represent Defendant at sentencing.

23-CR-85-ODW, Dkt. 59-1 at 1-2. Despite obvious good cause, that application was denied on November 15.

The record reflects that as of November 2023, the district court was denying “*all* requests to continue sentencing hearings to avoid congestion and upcoming trials in 2024.” 23-CR-85-ODW, Dkt. 59 at 2 (emphasis added). Denying *all* continuances is arbitrary because the court is not even considering the defendant’s good cause (as required by Fed. R. Cr. P. 32(b)(2)).

The blanket denial of all continuances, regardless of the need, to protect the court’s calendar, is not an exercise of discretion. The problem is heightened where, as here, the need for the continuance goes to the most important issues in the case—victim impact and the reasons for Petitioner’s poor relationship with probation.

Petitioner was prejudiced. The expert’s expedited “first draft” of the report is dated November 17, 2023, and was submitted with Petitioner’s November 21, 2023, Under Seal Sentencing Memo. Probation submitted its revised November

21, 2023, Sentencing Recommendation on November 22, 2023. 23-CR-85-ODW, Dkt. 70. It makes no reference to the expert's report. But it does conclude that:

Although Golshan has presented mitigating factors regarding his mental health and childhood, they do not provide justification for the context or reasoning behind why he committed the instant offense and inflicted the substantial harm or injury he has made on the victims.

Dkt. 70 at 11.

At sentencing, Petitioner requested a 51-month sentence; the bottom of the guidelines. The government requested a 9-month upward variance, to 72 months. But probation requested a 96-month sentence—a 50% upward variance from the top of the applicable guideline range. The district court sided with probation.

The district court “noted” Petitioner’s “failure to comply with pretrial supervision” and alleged he continually changed his story when confronted. 11/27/23 Sent. Tr. at 54. The district court also noted that he provided conflicting information about his personal life. *Id.* The Court dismissed evidence of all Petitioner’s psychological and emotional issues because records re mental health and childhood abuse purportedly do not provide “justification for the context or reasoning behind why he committed the instant offense.” *Id.* at 55-56.

That is the same link that probation found lacking. Because a continuance was arbitrarily denied, Petitioner was denied the opportunity to address that link with probation—the only participant in the sentencing process advocating an extensive upward variance.

Nor was Petitioner able to provide an objective explanation for providing incomplete and contradictory information to probation. Probation’s sentencing recommendation asserted that Petitioner showed disrespect for the law, in part because he “provided the undersigned with a multitude of conflicting information from his personal life, to educational history . . .” 23-CR-85-ODW, Dkt. 70 at 10. And defense counsel explained that probation could not adequately evaluate

Petitioner's mental health challenges "without an expert psychological report," in part, because Petitioner's mental health issues made him a poor historian. Def. Under Seal Sent. Pos. at 5.

The driving force beyond the upward variance was Petitioner's impact on his victims, and it was exacerbated by his poor relationship with probation. The district court saw no "causal connection" between Petitioner's history of abuse and his offenses. So, "the district court found no reason 'to show the [d]efendant any more concern than [d]efendant showed his victims.'"

While the district court obviously disagreed, the arbitrary denial of a continuance denied Petitioner an adequate opportunity to convince it (and probation) of the connection between a lifetime of being bullied and rejected, and then wrongfully taking control of other people's lives when the tables were turned (on the internet). It also denied him the opportunity to convince probation that Petitioner's mental and emotional issues negatively impacted his ability to accurately recount his personal information to probation. The expert report Petitioner was able to obtain was only a "first draft," it was submitted less than a week before sentencing, and it was not considered by probation.

In his under seal Sentencing Position, defense counsel explained that probation could not adequately evaluate Petitioner's mental health challenges "without an expert psychological report," in part, because Petitioner's mental health issues made him a poor historian. In other words, he was not being intentionally deceptive with probation. Because of probation's central role in the sentencing process, and the fact it was the only participant advocating for a massive upward variance, the denial of the requested continuance resulted in a sentencing process that was unfair, violated Rule 32, and violated Petitioner's right to due process.

## REASONS FOR GRANTING THE PETITION

This Court should exercise its supervisory powers because the Ninth Circuit's affirmation of the arbitrary denial of a sentencing continuance sanctioned a radical departure from the accepted and usual course of judicial proceedings. Probation plays a critical role in the sentencing process. Federal Rule of Criminal Procedure 32 mandates in almost every case, the probation officer must conduct a presentence investigation and write a report of her or his findings. Fed. R. Crim. P. 32(c). The rule contemplates that the defendant may object to the information the probation officer includes, or omits, from the report. Fed. R. Crim. P. 32(f).

Rule 32 sets forth probation's role in accurately finding facts and evaluating information. Accordingly, it requires the probation officer to give a copy of the PSR to the defense and prosecution at least 35 days before sentencing so that the parties may object. Fed. R. Crim. P. 32(e)(2). The probation officer's recommended findings are so important that “[a]t sentencing, the court may accept any undisputed portion of the presentence report as a finding of fact.” Fed. R. Crim. P. 32(i)(3)(A); *see also United States v. Manarite*, 44 F.3d 1407, 1419 & n. 18 (9th Cir.1995) (holding the defendants waived their objections to the PSR by withdrawing the objections at the sentencing hearing).

Appellate courts have recognized probation's essential role in accurate fact finding.

We have already held that the sentencing guidelines permit the probation officer to make departure recommendations, and that such a practice does not violate the Constitution. In *United States v. Belgard*, 894 F.2d 1092 (9th Cir.1990), we held that a probation officer's role in guidelines sentencing goes beyond adding and subtracting points: [N]othing will preclude the probation officers from giving *departure* recommendations (up or down) to district judges for their consideration.” *Id.* at 1098 (emphasis added); *see also United States v. Belgard*, 694 F.Supp. 1488, 1496 (D.Or.1988) (“The probation officer furnishes not information alone, but also his or her insight

into the matters covered by the presentence report. The probation officer's role includes ... offering a recommendation as to the ultimate sentencing decision of the judge.”).

*United States v. Sifuentes*, 30 F.3d 1047, 1049 (9th Cir.1994) (emphasis in original). *See also United States v. Virgen-Chavarin*, 350 F.3d 1122, 1132 (10th Cir. 2003) (also describing probation’s importance to the sentencing process).

Probation has an essential role at sentencing, and denying a defendant an adequate opportunity to explain or mitigate probation’s fact finding undermines basic fairness, and so is a violation of due process. Failure to consider good cause for the continuance also violates Rule 32. Probation made findings, observations and recommendations on topics directly impacted by an expert report it did not have time to consider. Denying Petitioner the opportunity to address probation’s conclusions on those issues, because of the arbitrary denial of a continuance, was prejudicial.

### CONLUSION

For the foregoing reasons, Petitioner requests that this Court grant the petition for writ of certiorari.

Dated: May 14, 2025

Respectfully submitted,

*s/Kenneth M. Miller*  
Kenneth M. Miller  
Counsel for Petitioner