

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

UNITED STATES OF AMERICA

v.

EDWIN BRANT FROST, IV,

Defendant.

Case No. 3:26-cr-00008-LMM

SENTENCING MEMORANDUM OF EDWIN BRANT FROST IV

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TABLE OF CONTENTS

	Page
SENTENCING MEMORANDUM	1
PRELIMINARY STATEMENT.....	1
BACKGROUND	5
THE 3553 SENTENCING FACTORS COUNSEL A SIGNIFICANT VARIANCE FROM THE GUIDELINES LEVEL AND THE GOVERNMENT’S RECOMMENDATION.....	10
I. The History and Characteristics of the Defendant: Lifelong Acts of Service.....	10
II. The Guidelines’ Offense Level Overstates Brant’s Culpability.....	22
III. Brant’s Acceptance Of Responsibility Was Early and Extraordinary and Shows True Remorse and Post-Offense Rehabilitation	28
IV. The Prosecution and Its Collateral Consequences Have Already Imposed Significant Punishment.....	33
V. Deterrence	35
VI. The Need To Avoid Unwarranted Sentencing Disparities	39
CONCLUSION	45

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	45
<i>Peugh v. United States</i> , 569 U.S. 530 (2013).....	27
<i>United States v. Adelson</i> , 441 F. Supp. 2d 506 (S.D.N.Y. 2006)	1, 26, 30, 37
<i>United States v. Anderson</i> , 267 F. App'x 847 (11th Cir. 2008).....	34
<i>United States v. Anderson</i> , 533 F.3d 623 (8th Cir. 2008)	34
<i>United States v. Blanco</i> , 102 F.4th 1153 (11th Cir. 2024)	27
<i>United States v. Blarek</i> , 7 F.Supp.2d 192 (E.D.N.Y. 1998).....	47
<i>United States v. Carpenter</i> , 803 F.3d 1224 (11th Cir. 2015)	23
<i>United States v. Clay</i> , 483 F.3d 739 (11th Cir. 2007)	28
<i>United States v. Corsey</i> , 723 F.3d 366 (2d Cir. 2013)	24, 25
<i>United States v. Del Campo</i> , 695 F. App'x 453 (11th Cir. 2017).....	38
<i>United States v. Emmenegger</i> , 329 F. Supp. 2d 416 (S.D.N.Y. 2004)	35

<i>United States v. Faulkenberry</i> , 759 F. Supp. 2d 915 (S.D. Ohio 2010), <i>aff'd</i> , 461 F. App'x 496 (6th Cir. 2012)	25
<i>United States v. Gaind</i> , 829 F. Supp. 669 (S.D.N.Y. 1993), <i>aff'd</i> , 31 F.3d 73 (2d Cir. 1994).....	36, 37
<i>United States v. Gupta</i> , 904 F. Supp. 2d 349 (S.D.N.Y. 2012)	24
<i>United States v. Hendrick</i> , No. 04-10009-CR-ZLOCH, 2009 WL 10709763 (S.D. Fla. Sept. 23, 2009)	37
<i>United States v. Howard</i> , 28 F.4th 180 (11th Cir. 2022)	37
<i>United States v. Johnson</i> , No. 16-cr-457-1 (NGG), 2018 WL 1997975 (E.D.N.Y. Apr. 27, 2018)	26, 38, 39
<i>United States v. Malik</i> , 424 F. App'x 122 (3d Cir. 2011)	34
<i>United States v. Malone</i> , No. CR 08-00776 EMC, 2012 WL 762000 (N.D. Cal. Mar. 7, 2012).....	28
<i>United States v. McQueen</i> , 727 F.3d 1144 (11th Cir. 2013)	39
<i>United States v. Mohamud</i> , No. 10-cr-4246 JM, 2021 WL 4460705 (S.D. Cal. Sept. 29, 2021).....	21
<i>United States v. Mueffelman</i> , 400 F. Supp. 2d 368 (D. Mass. 2005), <i>aff'd</i> , 470 F.3d 33 (1st Cir. 2006)	26
<i>United States v. Olis</i> , Criminal No. H-03-217-01, 2006 WL 2716048 (S.D. Tex. Sept. 22, 2006)	36

<i>United States v. Redemann</i> , 295 F. Supp. 2d 887 (E.D. Wis. 2003)	34
<i>United States v. Rodriguez</i> , 64 F.3d 638 (11th Cir. 1995)	27
<i>United States v. Samaras</i> , 390 F. Supp. 2d 805 (E.D. Wis. 2005)	34
<i>United States v. Shy</i> , 538 F.3d 933 (8th Cir. 2008)	32
<i>United States v. Sponaugle</i> , Case No. 19-103-LPS, 2022 WL 4079197 (D. Del. Sept. 6, 2022)	34
<i>United States v. Stewart</i> , 590 F.3d 93 (2d Cir. 2009)	33, 34
<i>United States v. Vigil</i> , 476 F. Supp. 2d 1231 (D.N.M. 2007).....	35
<i>United States v. Walker</i> , 252 F. Supp. 3d 1269 (D. Utah 2017), <i>aff'd</i> , 918 F.3d 1134 (10th Cir. 2019).....	30

SENTENCING MEMORANDUM

NOW COMES DEFENDANT EDWIN BRANT FROST IV, pursuant to 18 U.S.C. § 3553, and files this Sentencing Memorandum in support of a sentence of five years' imprisonment, plus restitution (at a later date) and supervised release, a sentence sufficient, but not greater than necessary, to serve each of the statutory sentencing factors.

PRELIMINARY STATEMENT

[I]f ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance.

United States v. Adelson, 441 F. Supp. 2d 506, 513–14
(S.D.N.Y. 2006) (Rakoff, J.)

Edwin Brant Frost IV will appear before this Court for sentencing, a 69-year-old man, broken, chastened and humbled. He agonized for the people he hurt even before he wept his way through each and every Victim Impact Statement (“VIS”). He is tortured every day by the pain he caused, and he is profoundly remorseful for violating the law and abusing the trust that clients, colleagues and customers placed in him. He accepts full responsibility for his conduct. Brant knows he should have done things differently. He is wiser today than he was yesterday.

Brant respects the advisory Sentencing Guidelines stipulations and calculations in the Plea Agreement, as well as the factual statement to which he

agreed at the guilty plea hearing. Nothing set forth herein should be taken to the contrary. But a Guidelines sentence or the 14-year term proposed by the government would condemn Brant Frost to die in prison. Such a punishment is far greater than necessary to serve the purposes of Section 3553(a) for this first-time, non-violent offender, whose criminal conduct – while undoubtedly serious – stands in stark contrast to the upright and honorable way he has lived nearly all of his life.

Brant has a constitutional right to be sentenced based on truth and not based on arguments or inferences that create a one-dimensional, exaggerated or cartoonish version of who he is or what he did. Although various accounts of this case might have onlookers thinking that Edwin Brant Frost IV is a ruthless and conniving shark who preyed on his local community to line his own pockets, *nothing could be further from the truth*. He is neither the swindler nor the con artist some imagine.

The *true* record of Brant's life is set forth in over 80 letters—meaningful, personal letters—that were written to this Court by friends and members of his community. The letter-writers know about this case. They understand the gravity of the charge. They also know Brant Frost IV better than any witness or lawyer or judge or probation officer ever will. They are people who have known Brant in the private spaces where character is most clearly revealed. They are unanimous in describing Brant as a gentle, kind, and loving soul – a man who is a promoter of

others. He asks little of the world and he covets only family, faith and service. Brant has never been fueled by self-interest, arrogance or ego, and he is not a person who looks down on anybody. That's why he is respected—even today, and even by some of the people he hurt—for his modesty, his decency and his generosity of spirit.

A critically important point in the sentencing analysis is Brant's crime was not motivated by nastiness, spite, or ill will toward others. His First Liberty investment program was not a sham or a con; it ran legally and successfully for many years, and it helped scores of community businesspeople fulfill their dreams. When economic events turned against Brant, and he feared that he would miss interest payments to investors, he made terrible decisions in the hope that his business would recover without anyone getting hurt. His was a poor, but quintessentially human reaction to a desperate financial situation. Brant didn't "target" anyone - rich or poor, sophisticated or unsophisticated, friend or stranger. His decisions were criminal to be sure, but they were borne of the hope that his business could recover and rebound and he could make things right for First Liberty investors. His choices, however misguided, were not borne of malice. Brant's brother explains:

“[Brant's] earnest optimism and hard work led to many successful business transactions and enabled him to recover from ones that went poorly. In this case, however, Brant's great strength became his great weakness and led to perilous choices. Those choices were not taken out

of greed, but with an earnest belief that “he could make everyone whole” with his next success. Perhaps it was irrational optimism, but it was earnest optimism. It was not malevolence. (Exh. A at 40).

Helen Sherman, a 20-year friend makes a similar point:

“I will never believe that Brant Frost IV would ever intentionally harm another individual in any way. . . I believe he was a man trying to hold things together until better economic times for . . . his clients.” (Exh. A at 110).

Indeed, Brant’s misconduct was at such odds with who he really is and how he led the rest of his life that even *victims* believe he acted improperly, but not with a nefarious motive:

Like other investors, we lost money when Brant IV’s business collapsed. He called us personally to share the news and accepted full responsibility without making excuses, which we appreciated. . . [W]e understand the hardship this collapse has caused on both sides. Yet we do not believe Brant acted with malice or ill-intent. (Exh. A at 78).

I have known Brant for 25 years. I have never known him to be an evil or scheming person. I believe he made some seriously bad decisions that led to an unreasonable situation... ([REDACTED] VIS).

And the irrefutable evidence that Brant never aimed to hurt or exploit anyone: his own beloved daughter lost her life savings as an investor in the First Liberty program.

* * * * *

Brant Frost still has a great deal to offer society and he is prepared to spend the remainder of his days working to repay the losses he caused if his sentence will allow it. We respectfully submit that a profound downward variance to a term of

five years would allow Brant to return home while he is still physically and intellectually capable of working in aid of restitution, and would do justice here.

This request is based, among other reasons set forth herein, principally on:

- Brant's lifelong acts of kindness and community service;
- the offense level's gross overstatement of the seriousness of the conduct; and
- Brant's early and extraordinary acceptance of responsibility and commitment to rehabilitation.

As demonstrated below, Brant has suffered significant and substantial punishment, and will continue to do so, even without a long term of imprisonment. A five year sentence, therefore, would not unduly depreciate the seriousness of the offense or promote disrespect for the law. On the contrary, it would impose a sufficient—indeed, a just—punishment.

BACKGROUND

From in or about 1993 through in or about 2025, Brant Frost operated First Liberty Building & Loan, LLC ("First Liberty"), a broker of residential and commercial loans in Newnan, Georgia. First Liberty was a small company, with fewer than ten employees, that arranged for loans to customers primarily through the SBA loan program and mortgage brokerage services. Brant grew and ran First Liberty without incident for many, many years.

In 2014, First Liberty began soliciting investors to raise capital through loan participation agreements and promissory notes. Investor funds were used to make short-term small business loans – also known as Bridge Loans -- at relatively high interest rates. Investors received rates of return between 8-18% interest on their investment (depending on the timing and type of investment), and their returns were paid in monthly installments. Investors were told that the Bridge Loans and interest would be repaid by borrowers through Small Business Administration or other commercial loans. Brant estimates that First Liberty funded over \$100 million in Bridge Loans since the program began in 2012.

In First Liberty's final years, COVID hit, the economy turned, and many development projects were delayed or abandoned. Many of First Liberty's Bridge Loan borrowers defaulted or no longer made timely payments on the Bridge Loans. Much of the crisis was Brant's own doing – his risk management skills were dismal. Some of it was external – one significant borrower died before his project became operational, and Brant believes that another misrepresented the volume of tenant occupancy in a vacant office building purchase-releasing project. Whatever the cause of the crisis, Brant accepts complete and total full responsibility.

When First Liberty stopped generating enough revenue to pay the interest that was owed to the investors, Brant panicked. Many of his investors were friends and family - people he knew and loved and desperately did not want to let down.

Even worse, he had never even met many of the investors and the thought of causing damage and distress to totally innocent strangers was something he felt he could not allow to happen. First Liberty had never missed an interest payment to anyone and he wanted to continue to honor his obligations. A series of very poor decisions on his part followed.

Brant made material misrepresentations to investors and omitted certain material facts in the hopes things would right themselves and nobody would miss a payment. These misrepresentations included, among others, that: First Liberty would use investors' money to fund the Bridge Loans; that investors' would be repaid from the repayment of the Bridge Loans and associated interest; that First Liberty had no more than a few Bridge Loans default; and that the borrowers to whom First Liberty made Bridge Loans had already received pre-approval for SBA loans and the Bridge Loan process was only needed to provide funds while the SBA loan process was completed.

Contrary to these representations, in the last years of First Liberty's operations, the returns to investors were paid largely from newly invested funds coming from existing and new investors and not from borrowers' repayments of Bridge Loans; First Liberty's ability to continue paying monthly interest payments was dependent on raising and using new investor money; most of the Bridge Loans funded by First Liberty were in default at the time of solicitation and investments

by new investors; and few, if any, Bridge Loan borrowers had received preapproval for an SBA loan at the time the Bridge Loan was funded.

Brant also failed to tell investors that several borrowers had defaulted on their loan obligations and, despite those defaults, he continued to provide Bridge Loan financing to at least one of the defaulted companies; and he was using new investor funds to pay earlier investors, either for the payment of interest or for the return of principal.

During this excruciating time, Brant hoped he might find a solution to his financial woes through a virtual health care company he founded called MyHealthAI. He truly believed, down to his core, that MyHealthAI would be a success and give him the financial wherewithal to steady First Liberty's ship. The business plan was developed in association with a successful entrepreneur who operated successful cancer clinics and gave Brant reason to believe the project could generate tens of millions of dollars. Brant poured an enormous amount of time, money and effort into the company, including using certain First Liberty investor funds because he truly believed it would be a prosperous venture. He was wrong. MyHealthAI's projections were never realized. Brant failed. The SEC was investigating First Liberty and there would be no fixing the damage.

On June 27, 2025, First Liberty voluntarily closed its doors after 32 years in business.

On or about July 10, 2025, the U.S. Securities and Exchange Commission charged Brant Frost IV with securities fraud. Thereafter, Brant never proclaimed his innocence and never sought to delay the inevitable. He consented to the proposed judgment ordering the SEC’s requested emergency and permanent relief, including an asset freeze and the appointment of a receiver. He began handing over assets to the receiver.

Brant also engaged in discussions with the U.S. Attorney’s Office about a criminal disposition - even though he hadn’t yet been criminally charged – because he thought it would accelerate recovery for the victims. On May 12, 2026, Brant pleaded guilty to wire fraud pursuant to a plea agreement. The Plea Agreement – and the Pre-Sentence Report (“PSR”) set forth the advisory Guidelines range as follows:

Explanation	Level	Source
Base offense level	7	U.S.S.G. § 2B1.1(a)(1)
Loss between \$65 mill and \$150 mill	+24	U.S.S.G. § 2B1.1(b)(1)(M)
Substantial financial hardship to 25 or more victims	+6	U.S.S.G. § 2B1.1(b)(2)(C)
Investment Adviser	+4	U.S.S.G. § 2B1.1(b)(20)(A)(iii)

Acceptance of Responsibility	-3	U.S.S.G § 3E1.1
Adjusted Offense Level	38	
Criminal History Category	I	
Advisory Guidelines Range	235-240 months (235-293 months before 240-month statutory maximum, § 5G1.1(c)(2))	Plea Agreement/PSR
Government Recommendation	168 months	Plea Agreement, ¶ 20

**THE 3553 SENTENCING FACTORS COUNSEL A SIGNIFICANT
VARIANCE FROM THE GUIDELINES LEVEL AND THE
GOVERNMENT’S RECOMMENDATION**

I. The History and Characteristics of the Defendant: Lifelong Acts of Service

Criminal cases like this are often marked by the reflexive application of common tropes to define the defendant. *The greedy and conniving fraudster who wouldn’t let rules or regulations get in the way of his devious scheme.* We urge the Court not to draw negative assumptions about Brant or submit to an attempt to flatten him into an oversimplified stereotype. There is a marked difference between someone who has lived a selfish, self-serving life with questionable motives and tactics and finally gets caught, and someone who has lived an upstanding and public-service oriented life but made a bad mistake in a desperate situation. Brant is the latter.

Brant Frost is 69 years old. He was born in Rye, New York but has lived the majority of his life in Macon and then Newnan, Georgia. He is a loving husband to Krista, his wife of 37 years, a devoted father to Brant V, Mary, Caroline, Lizzie, A [REDACTED] and a proud grandfather to E [REDACTED]. Brant “cares deeply about his family and his country.” (Exh A. at 14).

Friends describe Brant as “soft-spoken,” kind and thoughtful. He is a man who let his gestures speak louder than his words. (Exh. A at 120). There is no “pretentious bravado.” (Exh. A at 72). He is “gentle, cordial, loving, and a friendly conversationalist” (Exh. A at 16) who “listens well, speaks with courtesy, and leaves those around him more at ease than he found them.” (Exh. A at 125). He shows “the same respect and kindness to everyone he interact[s] with, whether it was a millionaire client or a member of [the local restaurant’s] kitchen staff.” (Exh. A at 91). “He has been a steady source of encouragement” to others, and he has been that way “consistently, across a long stretch of years and through changing circumstances.” (Exh. A at 87).

It is also a mistake to think that Brant Frost’s bad decision-making in this case is indicative of a person who sought to cheat or take shortcuts in life. To the contrary, he learned from his father and mother that hard, honest work lifts people up and is its own reward. Brant’s father set that example by breaking with the Jim Crow laws when he sponsored the first black man for membership in the Macon-

Bibb Count Board of Realtors. His mother started and for 25 years ran Volunteer Macon; more than 600,000 volunteer hours were clocked under her leadership. And Brant followed in those footsteps for the overwhelming majority of his business and personal life.

Brant is a self-made man, with no college degree, who has never been afraid of hard work. He got his first job at 13 years old, delivering the newspaper to his neighbors, and he's been working non-stop ever since. He went from paper boy to work at the local Pig N' Whistle BBQ, then Burger Chef, and then the Winn Dixie grocery store. At only 16 years old, he became part-owner of the first pizza delivery parlor in Macon. Three weeks after he turned 18, he got a real estate license – among the youngest in Macon to ever do so – and started selling real estate with his father. He closed his first real estate deal before he turned 19 years old and stayed in the real estate business until he was 30. In 1993, after a brief sojourn into politics, Brant opened First National Mortgage, which would later become First Liberty.

Brant Frost believes service is the essential purpose of life; that we rise when we help to lift others. The letters submitted herewith illustrate a lifetime of helping strangers in need, the impoverished, the elderly and the infirm. Brant helped people he didn't know and who could offer him nothing. Some vignettes from

Brant's longtime friends and colleagues provide a fitting vantage point from whence to start understanding him.

Amy Wilson tells a revealing story about a local community event where she saw Brant speaking with the building janitor:

[Brant] was speaking [to the janitor], and someone in a suit approached and interrupted to shake Brant's hand. Brant shook the man's hand briefly and then respectfully asked him to wait because he wanted to hear the janitor's story. I later learned that the person in the suit was a Senator. That moment, and many others over the years, reflected who Brant is at his core. (Exh. A at 124).

Joel Balin, a friend of 20 years, tells of Brant's bond with a blind man who was part of a local church group.

For an extended period of time, [Brant] went considerably out of his way to pick this man up, bring him to our meetings, and return him home afterward. What impressed me was that Brant didn't simply provide transportation. He helped him become part of the group, stayed alongside him during the meetings, and made sure he was included and cared for.

Doing this required a genuine sacrifice of Brant's time and freedom, and he continued doing it for someone who had nothing to offer him in return. (Exh. A at 6).

A banker friend of 20 years, William H. Gafford, Jr., regularly interacted with Brant on lending matters and observes that:

Over the course of . . . two decades, I consistently found Brant to be professional, courteous, and respectful in our business dealings. He was prepared, responsive, and treated clients and business associates with dignity and professionalism. My interactions with him were always positive, and I never experienced conduct that caused me to question his integrity or his commitment to serving clients responsibly. (Exh. A at 51).

And Gary Pernice best sums up the difficult situation presented when a good man like Brant does wrong:

I understand that a person's good qualities do not erase wrongdoing or repair the losses suffered by others. At the same time, I respectfully ask the Court to consider the whole of Brant's life: the years during which he encouraged, counseled, and assisted people; the relationships he formed; the kindness he extended; and his capacity for remorse, restitution, and constructive service. I believe he remains capable of doing meaningful good and of devoting the remainder of his life to making amends. (Exh. A at 102).

* * * * *

Humble as he is, Brant Frost has every reason to be proud of the work he did at First Liberty that predated his misconduct. Consistent with the lessons of service learned from his parents, Brant created First Liberty as a tool to provide for others. For years, First Liberty served the community and local citizens by helping scores of small businesses and small business owners acquire financing when they needed it most. And they did it lawfully, legally and legitimately. Some business owners needed financing to seed their dreams of growing their business by hiring more employees. Others needed money to help a struggling company stay afloat during hard times. Whatever the situation, Brant was viewed as someone who "would treat [people] honestly and make a sincere effort to help them." (Exh. A at 84). His work was "transformational for individuals, their families and small communities in poverty areas of the state." *Id.*

Several first-hand accounts demonstrate the commitment and integrity with which Brant Frost conducted First Liberty's business for decades.

Mike Hardin tells a moving story of Brant delivering for him in a time of great need. Mr. Hardin's concrete construction company got hit hard by the 2008 recession. (Exh. A at 60). It had to reduce its force from 600 employees to 60, it lost over \$4 million, it had two properties foreclosed upon, and he couldn't borrow from the bank. *Id.* When Brant learned of the situation, he dedicated himself to "get[ting] the company healthy again," one small loan at a time. *Id.* According to Mr. Hardin, over a period of several years, Brant helped him "turn[] the company around." *Id.* Through Brant's tireless efforts, \$4 million was raised, an SBA loan became available, and the company was saved. *Id.* Brant's hard work, creativity, and true commitment to serving others resulted in this small miracle.

V.T. Murray, a business associate for more than 20 years, describes Brant over the course of their many transactions as "forthright, ethical, professional and committed to doing what he believed was right." (Exh. A at 93). He recounts one situation where Brant found a solution for a client in "severe financial distress." *Id.* When Brant learned of the client's troubles, he "immediately immersed himself in the situation and successfully arranged a series of financing transactions that allowed the [client's] company to satisfy its existing lenders, keep multiple

locations operating, preserve jobs, and ultimately stabilize the business.” *Id.* That is a quintessential example of Brant Frost’s big heart.

Another longtime business colleague, Donny McKinney, echoes Mr. Murray’s sentiments. In 2012, as the country was recovering from the financial crisis, Mr. McKinney was trying to start a propane gas distribution company. (Exh. A at 85). However, traditional lending options were quite limited at the time. *Id.* In stepped Brant Frost, who “worked diligently” to help Mr. McKinney secure bridge loan financing from two private investors and a bank. *Id.* The money enabled McKinney’s propane business to open and eventually achieve wonderful things: it now serves over 5,000 customers in twelve counties and has provided stable jobs to the community and dependable propane service to thousands of families, farms, and businesses in the region. *Id.* According to Mr. McKinney, “none of this would have been possible” without the loyalty and devotion of Brant Frost. *Id.*

Brant’s friend Paul Stengenga sums it up best:

Over the decades, I personally witnessed Brant provide sound financial counsel and access to capital for healthcare and long-term-care projects that might otherwise have been overlooked or abandoned. He had a remarkable ability to look beyond the immediate financial transaction and understand what a project could mean to the people it would ultimately serve. His work helped create places where patients received care, where families found hope, and where older adults could live with dignity and community.

Our most recent project together was a substantial senior-housing development for a faith-based organization in Georgia that provides charitable housing and services to retired pastors and church personnel, as well as affordable housing and services to others in the community.

It is difficult to measure the value of that kind of contribution.

How do you measure the value of helping provide a cancer patient access to leading-edge healthcare? How do you place a dollar value on giving an elderly widow or widower a safe home, a sense of belonging, and the dignity of living out the remainder of life in a caring community?

Those are the things I have seen behind Brant's work. (Exh. A at 114).

What happened after Brant was forced to close First Liberty speaks volumes about the trust his community *still* places in him. Needing a job to provide for his family and begin to repay investors, Brant approached a friend, Joshua VanDusseldorp, and explained the position he was in, including the criminal charges he expected to face. He asked Mr. VanDusseldorp if there was anything he could do for Mr. VanDusseldorp's electrical contracting business to help make ends meet. Mr. VanDusseldorp "did not hesitate." (Exh. A at 120). He wanted to do "whatever I could to be a help to Brant as he had always been a help to me." *Id.* He offered Brant a position selling generators and "Brant has successfully worked that position from that time to this day." *Id.* According to Mr. VanDusseldorp, "Brant has a humble spirit and fit right in with our team. My team and myself love and appreciate his contribution." *Id.* Says Mr. VanDusseldorp of Brant: "I trust him. I trust him in business. I trust him as a friend." (Exh. A at 121).

* * * * *

Throughout his personal life too, Brant has practiced service. He has demonstrated uncommon dedication to his community and its most needy members. He has helped raise awareness and support for those in need and demonstrated “character, compassion and genuine concern . . . for the quality of life and well-being of others.” (Exh. A at 8). Like many other community-minded citizens, Brant has “helped plan and support numerous rallies for middle school, high school and college-age students.” *Id.* The events “addressed serious concerns such as illegal drug use, gang involvement, bullying, peer pressure and criminal activity.” *Id.* He has helped to provide, food, coats, school supplies and book bags to those in need. But Brant has also gone farther, above and beyond, to exceptional lengths to serve his community. A few personal anecdotes stand out, among many, that reveal the true nature of Brant Frost’s character.

Jay Adcock describes the support and assistance Brant provided when Jay’s wife [REDACTED] (Exh. A at 1). Brant provided assistance and encouragement to Jay and his family that “meant more to [the family] than [he] can put into words.” *Id.* And “[e]ven now, as he walks through his own difficult season, he continues to be an encouragement to others. That is simply who he is.” *Id.*

Carroll Conley, the retired Executive Director of the Christian Civic League of Maine, recalls getting a call from Brant “out of the blue”:

[Brant] was visiting Freeport, Maine, with his family and came across a homeless individual who was clearly in desperate need of help. Knowing no one in the state, Brant spent hours tracking down potential local resources to assist this person. Someone eventually directed him to me because of the organization I was leading at the time, the Christian Civic League of Maine. Brant’s relentless effort and persistence on behalf of a total stranger ultimately led to a positive outcome for that individual. (Exh. A at 20).

Chris Brown, a former business colleague of Brant’s, had fallen on hard times and was deep in the throes of addiction. Mr. Brown had lost his wife and family. Then he describes the following:

Brant literally tracked me down, he didn't know my address or my phone number he heard I was in trouble and came back into my life and rescued me from the garbage heap of life literally picked me up and carried me to church and encouraged me to get the help I so desperately needed. I was basically homeless...no job...divorced and honestly had no hope.....I made the decision to move to Alabama and join a recovery home...a 12 month program to get your life back on track. Brant highly encouraged me to follow through with this decision ...in fact he was on my wife Tracy’s side through all of this...he said I needed to step up and be a man and do the right thing by her and my daughter....Thank you Brant Frost!...for caring enough about your fellow man and tracking me down! Thank you for rescuing me! My wife Tracy and I remarried here in Alabama and we are a family together again...(Exh. A at 12).

Douglas Hill’s experience with Brant is similar. Mr. Hill was a cook in a local restaurant near Brant’s office at a time when Mr. Hill struggled with [REDACTED]

[REDACTED].

There were times in my life when I felt like I had hit rock bottom because I struggled with [REDACTED]. I made mistakes. But Brant Frost was right there when I needed someone. He encouraged me and told me things would get better. He reminded me that I was better than the choices I was making, even when I felt low and ashamed.

Brant connected me with [REDACTED], and not only did he connect me — he went with me to meetings to show support. I believe he wanted me to know that I wasn't in this struggle by myself. (Exh. A at 69).

Longtime friend Joel Balin tells of his experience with Brant:

I [REDACTED] and, later, [REDACTED]. During a season when it would have been easy for me to become isolated, Brant helped rally other men around me. He reached out with encouragement and continued to express confidence in me.... Over the years I have known him, I have repeatedly seen Brant make himself available to encourage and support people around him. (Exh. A at 6).

Larry Matthews is the President and C.E.O. of Veterans' Inn and Resource Center, Inc. When his son – who Brant had never met – needed emergency surgery, Brant led a campaign to help pay for the surgery and his “credibility, hope, and momentum” helped “open the floodgates that made the surgery possible.” (Exh. A at 82). When Mr. Matthews later lost his son unexpectedly to a brain aneurysm, Brant didn't just pay lip service, he gave real service.

There are people who offer help as a courtesy; Brant followed through. His kindness to my family was not public, calculated, or performed for recognition. It came at moments when we were frightened, grieving, and in genuine need. I owe him a debt of gratitude that I cannot repay. *Id.*

Another friend of 30 years, Paul Schneider, Jr., tells of the time he approached Brant needing assistance:

In 2009 I had a supplement that greatly helps those living with HIV. The opportunity opened up for me to send this to non-profits in 14 different countries, but I didn't have the funds to do so. Numerous times I went to Brant's office, requesting his help. Every time I left with the funds I needed to send this supplement to our partners overseas who worked with those with HIV. Brant saw the need and was quite eager to help. (Exh. A at 108).

The Pastor Emeritus of Coweta County Community Church, Peter H.

Mullins summarizes Brant's service to the community:

I have rarely encountered an individual who has had such a positive impact on a community. It would be difficult to find someone in Coweta County who has spent so much personal and professional virtue on behalf of others. (Exh. A at 92).

Courts credit these kinds of community and philanthropic efforts at sentencing, even for defendants convicted of far more serious crimes than Brant. *See, e.g., United States v. Mohamud*, No. 10-cr-4246 JM, 2021 WL 4460705, at *5 (S.D. Cal. Sept. 29, 2021) (court considered defendant's "substantial charity, education, and spiritual work in the community" in imposing 156-month sentence after conviction for providing material support to terrorists, rejecting life sentence recommended by the government and probation).

There can be criticism that Brant has not always practiced what he preached. He made purchases, investments and expenditures at a time and with funds that he should not have. He accepts that criticism. He deeply regrets those actions that

came at the expense of others, rather than in service to others. Still, he hopes to continue his servant leadership in the community when he gets on the other side of this recent, aberrational period in his life.

At 85 years old, Mr. Matthews offers valuable perspective on a person in Brant's position:

... I have lived long enough to know that good deeds do not erase serious wrongdoing. I have also lived long enough to know that a grave mistake, even one with painful consequences, does not erase every act of compassion, faith, loyalty, and generosity that came before it. (Exh. A at 82).

II. The Guidelines' Offense Level Overstates Brant's Culpability

Applying the § 3553(a) factors here, it is clear that Brant's offense level of 38 vastly overstates his culpability. That level is *higher* than would be assigned to the following defendants (each with a three-point reduction for acceptance of responsibility):

- Conspiracy or solicitation to commit murder involving the offer or receipt of anything of pecuniary value for undertaking the murder (U.S.S.G. § 2A1.5);
- Drug trafficking conspiracy involving 3.99 kilograms of fentanyl, defendant possessed a firearm, used violence in connection with the offense, and distributed fentanyl to an individual under the age of 18 (U.S.S.G. § 2D1.1); and
- Kidnapper who abducted a victim for more than seven days and caused permanent or life-threatening bodily injury (U.S.S.G. § 2A4.1).

Compare also United States v. Carpenter, 803 F.3d 1224, 1233 (11th Cir. 2015) (holding 97-month sentence to be substantively reasonable in child pornography case where defendant downloaded the pornography for a year, possessed 4,800 images, including video depicting the rape of female toddlers, one of whom “was tied at the ankles and neck” and three of the videos “depicted minors engaged in sadistic and masochistic conduct”).

Brant Frost wronged real people and real victims, but an offense level is fundamentally twisted that calls for him to receive a sentence as severe as, or more severe than, those of the defendants set forth above. The § 2B1.1 loss table is the culprit. It adds a 24-level increase for a loss between \$65 million and \$150 million. The calculations demonstrate the fundamental flaws that lie at the heart of the entire Guidelines regime. Senselessly harsh results under § 2B1.1’s loss table are now recognized as commonplace. Take the following observations from the Honorable Lewis A. Kaplan of the Southern District of New York:

The second thing I would say is that the loss table . . . is a debatable proposition. Any number of my colleagues have criticized it on various grounds. As I understand its genesis, there’s really no empirical basis for the brackets assigned or for the assignment of different losses to different brackets. I share many of those criticisms and concerns with my colleagues. I have never regarded myself, once *Booker* was decided, as in any way bound by guideline computations that depend on the loss table in 2B1.1. I do not regard myself as bound by it now.

United States v. Bankman-Fried, No. 22-cr-00673-LAK, ECF No. 426, Sentencing Tr. at 6:14-25 (S.D.N.Y. March 28, 2024).

An esteemed list of former federal judges and prosecutors have also recently added to the criticism of the loss table. The practitioners noted § 2B1.1 “can often call for decades in prison even for first-time offenders whose fraud offense may have been driven by dire personal or professional circumstances and who may have shown great remorse for their wrongdoing and are eager to make amends for harms caused.” Exh. B at 1. The authors also commented “these myriad problems with the Guidelines’ heavy reliance on loss are further compounded in those cases where calculations of loss end up having little or no relationship to either economic realities or an offender’s actual personal gain from an offense.” *Id.* at 2.

“The notion that this complicated analysis, and moral responsibility, can be reduced to the mechanical adding-up of a small set of numbers artificially assigned to a few arbitrarily-selected variables wars with common sense.” *United States v. Gupta*, 904 F. Supp. 2d 349, 350 (S.D.N.Y. 2012) (Rakoff, J.). One District Judge summarized—accurately, we submit—as follows: “The loss guideline . . . was not developed by the Sentencing Commission using an empirical approach based on data about past sentencing practices.” *United States v. Corsey*, 723 F.3d 366, 379 (2d Cir. 2013) (Underhill, J., concurring). This failure to apply an empirical, reasonable approach yields “[t]he widespread perception that the loss guideline is broken[,]” *id.* at 378, and “fundamentally flawed, especially as loss amounts climb. The higher the loss amount, the more distorted is the guideline’s advice to