

sentencing judges.” *Id.* at 380. Therefore, “district judges can and should exercise their discretion when deciding whether or not to follow the sentencing advice that guideline provides.” *Id.* at 379. *See also United States v. Faulkenberry*, 759 F. Supp. 2d 915, 928 (S.D. Ohio 2010), *aff’d*, 461 F. App’x 496 (6th Cir. 2012) (imposing a variance and a ten-year re-sentence in a case involving a \$2.4 billion fraud, “among the worst in history by a privately-held corporation,” noting that it is “common” for district courts to find in financial fraud cases that the loss calculation substantially overstates the gravity of the offense).

Indeed, the loss table that drives this calculation is itself about to change. On April 16, 2026, the United States Sentencing Commission voted to amend § 2B1.1’s loss table to adjust its monetary thresholds for inflation, effective November 1, 2026. If Brant were sentenced only six days later than his current sentencing date, his loss would fall within a lower tier and his offense level would be reduced accordingly. Under the amended table, the threshold for a 24-level increase rises from \$65 to \$90 million, so Brant’s stipulated loss would instead draw a 22-level increase, yielding an adjusted offense level of 36 and an advisory range of 188 to 235 months. Judges in this District have already granted downward variances to account for this imminent amendment. *See, e.g.,* Minute Entry for Sentencing Hearing, *United States v. Shull*, No. 1:25-CR-29-JPB-CMS-1 (June 16, 2026), ECF No. 143; Minute Entry for Sentencing Hearing, *United States*

v. Williams, No. 1:25-CR-68-VMC-RDC-2 (July 21, 2026), ECF No. 129; Minute Entry for Resentencing Hearing, *United States v. Barry*, No. 1:21-CR-385-ELR-JSA-5 (June 30, 2026), ECF No. 300. The Court should apply the same reasoning and vary downward so that Brant is not punished more severely merely because of the timing of his hearing.

At a minimum, the Court should take into account the widespread criticism of § 2B1.1 as part of the Guidelines’ substantial overstatement of Brant’s culpability under § 3553(a). *See, e.g., United States v. Mueffelman*, 400 F. Supp. 2d 368, 378–79 (D. Mass. 2005), *aff’d*, 470 F.3d 33 (1st Cir. 2006) (granting variance to defendant where “losses generated by [his] businesses are not the complete, much less the fair, measure of his culpability” because he was “consistently optimistic about his chances of getting financing for his clients in time to meet his obligations.”); *United States v. Johnson*, No. 16-cr-457-1 (NGG), 2018 WL 1997975, at *3-4 (E.D.N.Y. Apr. 27, 2018) (describing loss enhancement as a “grievous wrong” and noting “the rigidity of the loss amount overriding . . . the lack of any consideration of danger to society”); *Adelson*, 441 F. Supp. 2d at 512 (“the guidelines’ fetish with abstract arithmetic” can result in a “travesty of justice” and in “harm . . . visit[ed] on human beings[,] if not cabined by common sense.”);

Brant’s advisory Guidelines range is constrained by the 20-year (240-month) statutory maximum on the single count of conviction. *See* 18 U.S.C. § 1343; U.S.S.G. § 5G1.1(a). Before the reduction for acceptance of responsibility, Brant’s offense level of 41 would yield an advisory range of 324 to 405 months—well above that cap—the statutory maximum compresses the post-acceptance range of 235 to 293 months to 235 to 240 months; *see* U.S.S.G. § 5G1.1(c)(2), leaving the three-level reduction under § 3E1.1 worth, at most, five months. The Eleventh Circuit has recognized that in precisely this circumstance a sentencing court may adjust downward to give the defendant the genuine benefit of his acceptance of responsibility. *See United States v. Blanco*, 102 F.4th 1153, 1167-68 (11th Cir. 2024); *United States v. Rodriguez*, 64 F.3d 638, 643 (11th Cir. 1995). Moreover, as shown herein, *infra*, Brant’s acceptance has been extraordinary.

While the Court may be required to assess the Guidelines, the Guidelines here are draconian under the facts of this case as to this defendant, and accordingly we respectfully request the Court temper justice with mercy and impose a sentence not greater than necessary. *See Peugh v. United States*, 569 U.S. 530, 536 (2013) (“The district court ‘may not presume that the Guidelines range is reasonable,’ and it ‘may in appropriate cases impose a non-Guidelines sentence based on disagreement with the [Sentencing] Commission’s views[.]’”) (citation omitted). Five years is that sentence.

III. Brant's Acceptance Of Responsibility Was Early and Extraordinary and Shows True Remorse and Post-Offense Rehabilitation

The Court should take into consideration under § 3553 that Brant Frost's acceptance of responsibility was early and extraordinary and his rehabilitation has begun. He is the rare defendant who candidly admitted his guilt right up front, promptly resolved his cases with the SEC and the DOJ without contest, and has taken every possible step to facilitate relief for the victims and rehabilitate himself. These factors warrant a variance. *See, e.g., United States v. Malone*, No. CR 08-00776 EMC, 2012 WL 762000, at *6 (N.D. Cal. Mar. 7, 2012) (government acknowledged that defendant showed “extraordinary acceptance of responsibility” when he pleaded guilty and allowed the government to divert its time and resources to other matters and provided letters from his wife, daughter, brother, and friends that showed his potential to be productive, and participated in classes and programs while in custody to better himself through education and rehabilitation); *United States v. Clay*, 483 F.3d 739, 746 (11th Cir. 2007) (extraordinary post-offense rehabilitation efforts supported downward adjustment).

As noted above, Brant closed down First Liberty of his own accord. He immediately consented to the relief sought by the SEC, including an asset freeze and the appointment of a receiver, avoiding protracted legal proceedings and a delay in resolution for those who suffered losses. Then, before any criminal charges were filed, Brant initiated discussions with the U.S. Attorney's Office and

the FBI in order to save the government the trouble of undertaking what would have been a lengthy and complicated criminal investigation. Beyond that, he twice met with the prosecutor and investigators to explain and discuss his conduct and admit his wrongdoing. Thereafter, he waived indictment and agreed to plead guilty, no doubt saving an under-staffed U.S. Attorney's Office enormous amounts of time and resources. His Plea Agreement also contains a cooperation provision and although we understand no 5K letter or Rule 35 motion will be forthcoming, Brant has always stood ready, willing and able to cooperate if the government so requests.

And Brant Frost didn't just talk the talk. He walked the walk. He did something remarkable, that very few defendants do when they still face legal jeopardy. Brant issued a public apology to those he hurt:

"I take full responsibility for my actions and am resolved to spend the rest of my life trying to repay as much as I can to the many people I misled and let down . . . I will be cooperating with the receiver and federal authorities and ask that everyone allow the receiver time to sort things out and do his best to repair the damage I created."

Jeff Amy, *Georgia Republican apologizes for \$140M Ponzi scheme as judge freezes assets*, Associated Press (July 11, 2025), <https://apnews.com/article/brant-frost-iv-ponzi-scheme-first-liberty-80922ed266e203bd77ed1a5c4244d482>.

Since his arraignment and release on bond, Brant has maintained 100% compliance with his bail terms. This demonstrates the Court's ability to trust him

to avoid even the appearance of any further misconduct. He has also sought counseling from clergy and various professionals.

And there's more. When First Liberty closed, Brant secured employment selling generators, in the hopes that he could start earning some money with which to support his family and repay investors. He vows to do everything he can in that regard if given the chance. *See, e.g., United States v. Walker*, 252 F. Supp. 3d 1269 (D. Utah 2017), *aff'd*, 918 F.3d 1134 (10th Cir. 2019) (granting substantial variance on resentencing in case of exceptional "gravity" where victims can experience "terror," noting, among many other considerations, that incarceration would prolong the completion of restitution); *Adelson*, 441 F.Supp.2d at 514 ("In the case of financial fraud . . . an important kind of retribution may be achieved through the imposition of financial burdens").

It is apparent to all that Brant "faces sentencing as a deeply repentant offender. . . . He has acknowledged the painful and costly consequences of his poor choices and their terrible impact on many who invested their funds." (Exh. A at 47). He "makes no excuses" for his conduct. (Exh. A at 121). He feels tremendous "remorse" and a "desire to make amends." (Exh. A at 111). His friends "know that he is determined to take every step necessary to show and demonstrate the Godly and law-abiding man we all know him to be." (Exh. A at 79).

At sentencing, Brant will stand before the Court “with a contrite spirit” (Exh. A at 40) that has been noticed by those who’ve come into contact with him. Pastor Harry Parkerson had a frank conversation with Brant: “The pastor said he admired Frost’s contrition.” Jeremy Redmon, *Who is First Liberty founder Brant Frost IV?*, Atlanta J.-Const., July 20, 2025, <https://www.ajc.com/news/2025/07/who-is-first-liberty-founder-brant-frost-iv/>.

Eric and Debbie Coloney, friends of 35 years report:

“A few months ago, Brant spoke with us about the case. He expressed profound remorse for his failures and the damage he caused. He conveyed sincere regret for harming people who trusted in him and shared his earnest desire to restore what was lost and make right the wrongs committed. That moment revealed to us a person confronting his mistakes with honesty and accountability.” (Exh. A at 18).

Brant’s family knows him better than anyone else. Writes his daughter

A [REDACTED]:

My father has made mistakes in his life. He has had moments he could have handled differently, decisions he may wish he had made another way, and things he has had to learn along the way. But one thing I respect about him is his willingness to take accountability for his mistakes. (Exh. A at 33).

His sister-in-law, Kem Frost, served as a judge in Texas for 22 years. She observes that:

“Beyond accepting full responsibility for his actions . . . Brant longs to put things right. He has spent time thinking through his vision for the next season of his life and how he can do good during and after [any] period of incarceration to somehow make amends . . . He knows the best

apology is changed behavior, and he has taken concrete steps to move forward and plan for the time ahead.” (Exh. A at 47).

His brother Fred, a lawyer, writes of Brant’s “[r]edemptive resolve.” Fred informs that Brant plans to use his time in prison to serve others as a teacher in GED and other educational programs. According to Fred,

“He has applied to Adams State University’s Prison Education Program to complete his undergraduate degree, so that he can pursue a teaching certificate. Though Brant cannot be officially admitted to the Adams State program until he is incarcerated, he already has submitted his letter of intent, application, transcripts, and other paperwork so that he can be admitted and begin his coursework immediately upon incarceration. More than merely offering an apology with words, Brant wants to redeem his wrongdoing with action.” (Exh. A at 41).

Fred concludes: “I know that Brant will not rest until he has seen some good happen as a result of his time in custody.” *Id.*

These assessments demonstrate real rehabilitation, authentic remorse, and exceptional acceptance of responsibility that support a substantial variance. *See United States v. Shy*, 538 F.3d 933, 938 (8th Cir. 2008) (even though defendant’s “rehabilitation only came after an encounter with law enforcement, her rehabilitation appeared genuine, and she [was] a positive contributor to society through her extraordinary work with persons with disabilities.”). Brant knows he caused a huge problem and he is eager to be part of the solution.

IV. The Prosecution and Its Collateral Consequences Have Already Imposed Significant Punishment

A court, when imposing sentence, should consider the collateral consequences of the defendant's conviction. Indeed, "[i]t is difficult to see how a court can properly calibrate a 'just punishment' if it does not consider the collateral effects of a particular sentence." *United States v. Stewart*, 590 F.3d 93, 141 (2d Cir. 2009). In that regard, Brant has suffered, and will continue to suffer, significant collateral consequences as a result of his conviction.

Brant Frost has already been, and will continue to be, punished, wholly apart from any prison sentence the Court imposes. As a threshold matter, for Brant Frost, a conviction in itself imposes serious punishment. He has no prior criminal history; the status of "convicted felon" therefore delivers a significant blow. That status itself is a major punishment in this case—more than sufficient to satisfy many of the statutory requirements. Moreover, he will suffer the usual collateral consequences of a felony conviction, under both state and federal law. He will lose, for example, his right to vote, his right to hold office, his right to sit on a jury and perhaps his ability to obtain various professional licenses.

More particularly, Brant "has experienced ruin in a way he never would have imagined. He has lost his business, his livelihood, and his reputation." (Exh. A at 48). First Liberty closed its doors after 32 years, and with it ended all that had been Brant's life work. His reputation, once a source of standing in his

community, now lies in tatters. *See Stewart*, 590 F.3d at 141 (conviction “made it ‘doubtful that the defendant could pursue’ his [prior] career . . . and therefore . . . the need for further deterrence and protection of the public is lessened because the conviction itself ‘already visits substantial punishment’”) (citation omitted). This loss is excruciating for a man who loved his work. And soon he will lose his freedom. All of this “makes his punishment unavoidably severe and long-lasting regardless of the length of the sentence he receives.” (Exh. A at 48). Courts around the country have recognized that consequences like these constitute punishment.¹

¹*See, e.g., United States v. Sponaugle*, Case No. 19-103-LPS, 2022 WL 4079197, at *6-7 (D. Del. Sept. 6, 2022) (identifying “significant punitive components” of non-custodial sentence, including financial punishment, collateral consequences of “greatly reduced job prospects” and impact on the defendant’s reputation); *United States v. Anderson*, 533 F.3d 623, 633 (8th Cir. 2008) (upholding below-Guidelines sentence, in part, because district court found that “defendant had suffered atypical punishment such as the loss of his reputation and his company”); *United States v. Anderson*, 267 F. App’x 847, 850 (11th Cir. 2008) (affirming a below-Guidelines sentence in part because defendant suffered loss to his professional reputation and lost his high-paying job); Transcript of Sentencing Hrg., *United States v. Jasen*, 8:15-CR-00214-JDW-TBM (M.D. Fla. Jan. 28, 2016), ECF No. 191 at 84-85 (imposing probation because, in part, “one who makes a mistake in judgment . . . should be, in my judgment, absent other aggravating circumstances, be able to go on with their life and suffer the humiliating and devastating effects of being prosecuted . . . which will . . . harm your reputation, your social status[.]”); *United States v. Malik*, 424 F. App’x 122, 127 (3d Cir. 2011) (affirming a below-Guidelines sentence, in part, because the defendant “was punished by the reputational harm he suffered as a result of the criminal action”); *United States v. Redemann*, 295 F. Supp. 2d 887, 894–97 (E.D. Wis. 2003) (downward departure warranted where defendant suffered serious collateral consequences from conviction); *United States v. Samaras*, 390 F. Supp. 2d 805, 809 (E.D. Wis. 2005) (imposing below-Guideline sentence, in part, because, “as a consequence of his conviction and sentence, defendant lost a good public sector job, a factor not

Finally, a particularly ugly collateral consequence of this conviction is that Brant, his wife and his children have been subjected to non-stop, vicious and cruel attacks in the mainstream news media, in innumerable podcasts and on the internet. Brant understands that critical reporting about his case and his conduct is warranted. Baseless, personal attacks on his wife and children, which will live online forever, are a brutal form of punishment he will endure for the rest of his days.

V. Deterrence

This case has already achieved the sentencing objectives of specific and general deterrence.

Brant is no longer in any position to commit fraud of this kind. *See, e.g., United States v. Emmenegger*, 329 F. Supp. 2d 416, 428 (S.D.N.Y. 2004) (defendant “yielded to a temptation and committed a crime particularly adapted to his chosen career. That career is over, and his potential to commit this particular type of crime has been eliminated.”). He is keenly and painfully aware that he has,

considered by the Guidelines.”); Transcript of Sentencing Hrg., *United States v. Anghaie*, 1:09-CR-00037-MW-GRJ (N.D. Fla. Nov. 29, 2011), ECF No. 238 at 34 (imposing below-Guidelines sentence and noting that defendants “received significant punishment through financial loss, loss to reputation and career opportunities.”); *United States v. Vigil*, 476 F. Supp. 2d 1231, 1315 (D.N.M. 2007) (in considering justness of sentence, “it is important to consider all other forms of punishment [defendant] has already suffered,” including loss of job and damage to his personal and professional reputation).

through criminal conduct, seriously hurt people he loves. Indeed, he has jeopardized the basic welfare of his family. His livelihood is gone. His wife and children are in economic peril, which pains him greatly. The case has also damaged his community, both emotionally and financially. These are pains, profoundly felt, that Brant never wants to suffer, or inflict, again. For Brant, this whole awful ordeal is something that serves as a constant reminder to do better going forward. Those who know Brant agree that this very public and painful experience has made an indelible, lifelong impression on him that accomplishes much of what the criminal justice system is designed to achieve.

Under the circumstances, there is no reason whatsoever to believe Brant will re-offend. Unsurprisingly, neither the PSR nor the government suggests he will commit further crimes. The criminal law has therefore already achieved its deterrence objective. *See, e.g., United States v. Gaind*, 829 F. Supp. 669, 671 (S.D.N.Y. 1993) (“Elimination of the defendant’s ability to engage in similar or related activities—or indeed any major business activity—for some time . . . constitutes a source of both individual and general deterrence[.]”), *aff’d*, 31 F.3d 73 (2d Cir. 1994); *United States v. Olis*, Criminal No. H-03-217-01, 2006 WL 2716048, at *13 (S.D. Tex. Sept. 22, 2006) (substantial variance warranted in part because “the attendant negative publicity, the loss of his job and accounting and

law licenses, and the need to provide support for his family will provide adequate deterrence against any potential future criminal conduct.”).

General deterrence has also been satisfied. We are mindful that “[g]eneral deterrence is more apt, not less apt, in white collar crime cases.” *United States v. Howard*, 28 F.4th 180, 209 (11th Cir. 2022). Importantly, there is “considerable evidence that even relatively short sentences can have a strong deterrent effect on prospective ‘white collar’ offenders.” *Adelson*, 441 F. Supp.2d at 514 (citing Richard Frase, *Punishment Purposes*, 58 Stan L. Rev. 67, 80 (2005); Elizabeth Szockyj, *Imprisoning White Collar Criminals?*, 23 S. Ill. U. L.J. 485, 492 (1999); and a United States Sentencing Commission report).

The letters submitted by Brant’s community in Georgia reflect that his community is well aware that misconduct of this nature carries with it severe penalties and consequences. *See, e.g., United States v. Hendrick*, No. 04-10009-CR-ZLOCH, 2009 WL 10709763, at *3 (S.D. Fla. Sept. 23, 2009) (“This case has garnered wide media attention . . . those in similar positions now know that they have grave reason to avoid any type of criminal conduct. [Defendant] has lost his [livelihood], has felony convictions, and faces the onerous burdens that this sentence imposes upon him”); *Gaind*, 829 F. Supp. at 671 (“Others engaged in similar activities or considering engaging in them have doubtless already learned

through informal sources that loss of the business entity involved is an obvious consequence of such illegal behavior.”).

Moreover, a sentence well below the advisory Guidelines range can still achieve the objective of general deterrence. For example, in *United States v. Del Campo*, 695 F. App’x 453, 458–59 (11th Cir. 2017), the Court imposed a sentence of home confinement and supervised release, against a 46-57 Guidelines range, on a defendant who was a 71-year-old attorney and first-time offender and it did so notwithstanding that the defendant failed to express “the contrition that [the district court] expected to hear.” *Id.* at 459. The government maintained that a greater sentence was necessary in order to send a “message.” *Id.* at 458. On appeal, the Eleventh Circuit held that the sentence was not substantively unreasonable in light of the Court’s consideration of the other 3553 factors and the fact that:

the sentencing guidelines and statutory sentencing provisions—and the frequency with which district courts hand down sentences well within the advisory ranges—send a clear message that the presumptive penalty for bank fraud is imprisonment. Whether [the defendant] personally receives a sentence of probation surely cannot meaningfully affect whether would-be criminals—again, assuming they act rationally in determining whether to commit crime in the first place—decide that their own potential criminal activity is worth the risk of being caught and punished.

Id. at 459.

Other courts have ruled similarly. Judge Nicholas Garaufis commented in *United States v. Johnson*, that “any amount of prison time is a serious amount of

prison time” and therefore even a lenient sentence, “combined with the expense and emotional harm that have resulted from this prosecution, and the disgrace of having been convicted of a felony, should be sufficient . . . to effect general deterrence.” *Johnson*, 2018 WL 1997975, at *5 (24-month sentence for guidelines range of 87-108 months). *See also* Transcript of Sentencing Hrg., *United States v. Martoma*, No. 12-cr-973 (PGG) (S.D.N.Y. Sep. 17, 2014), ECF No. 318 at 41-43 (nine-year sentence sufficient for insider trading scheme that generated \$275 million in profits and \$9 million bonus for defendant with Guidelines range of 188 to 235 months).

Accordingly, there can be little doubt that general deterrence will be effected in this case, even with a substantial variance.

VI. The Need To Avoid Unwarranted Sentencing Disparities

Section 3553(a)(6) requires the Court to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]” “[T]he need to avoid unwarranted sentencing disparity ... requires the [district] court to consider other similarly situated defendants ... who were convicted of similar crimes.” *United States v. McQueen*, 727 F.3d 1144, 1160 (11th Cir. 2013).

First, United States Sentencing Commission data shows that lengthy terms for fraud under U.S.S.G. § 2B1.1 are the rare exception, not the rule, including in

this Circuit. For fiscal years 2015 through 2025, the average sentence imposed under § 2B1.1 in the Eleventh Circuit was 30 months, with a median of 21 months, and the figures for Criminal History Category I defendants were lower still with an average sentence of 26 months and a median of 15 months. For Zone D defendants over sixty years old, the average sentence length is 39 months and the median is 30 months. For fiscal years 2015 through 2025, only 3.8% of Criminal History Category I § 2B1.1 defendants over the age of 60 in the Eleventh Circuit received a sentence of between 10 and 20 years. See U.S. Sent’g Comm’n, Interactive Data Analyzer, <https://ida.ussc.gov> (last visited October 14, 2026).

Many defendants in high-dollar fraud cases around the country have engaged in conduct far more serious than Brant’s and still received more lenient treatment than the Guidelines and the government recommend here. Consider the outcome in *United States v. Gentile*, No. 21-cr-00054-RPK-PK (E.D.N.Y.). See Press Release, Dep’t of Justice, *Former Private Equity Executives Sentenced to Prison* (May 9, 2025), <https://www.justice.gov/usao-edny/pr/former-private-equity-executives-sentenced-prison>. Gentile was convicted of running a \$1.6 billion Ponzi scheme that victimized more than 10,000 investors – more than twenty times the losses in Brant’s case. According to the government, Gentile also pressured a witness to lie. Gov’t Sentencing Letter, *United States v. Gentile*, No. 21-cr-00054-RPK-PK, ECF No. 539 at 5. Unlike Brant, Gentile proceeded to trial on securities

and wire fraud conspiracy and substantive counts, and was convicted on all counts. He faced an offense level of 43, including an aggravating role enhancement, and a Guidelines range of 1,020 months. Prosecutors sought 15 years in prison. Yet Gentile was sentenced to 84 months, a 92% downward variance from the Guidelines range. Judgment, *United States v. Gentile*, No. 21-cr-00054-RPK-PK (E.D.N.Y. May 13, 2025), ECF No. 596. Although Gentile’s sentence was later commuted through executive clemency, the 84-month term reflects the sentencing court’s own § 3553(a) judgment, which is the relevant measure for disparity purposes. It seems unfathomable that Brant Frost should be treated more harshly.

United States v. Nadimpalli is also instructive. In its sentencing memorandum in that case, the government explained Nadimpalli “lied about the success of his artificial intelligence startup, SKAEL, to convince venture capital firms, angel investors, and friends and employees to invest over \$40 million in his company.” Gov’t Sentencing Memo, *United States v. Nadimpalli*, No. 24-cr-00021-CRB, ECF No. 22 at 1 (N.D. Cal. Oct. 31, 2025). Specifically, Nadimpalli “doctored bank statements and other documents to make it appear that SKAEL had subscriptions adding up to \$7 million in annual recurring revenue (“ARR”) when, in reality, SKAEL’s ARR was less than \$200,000.” *Id.* Despite Nadimpalli’s Guidelines range of 63 to 78 months, the government recommended only 18 months on account of his “clear and early acceptance of responsibility.” *Id.* The

government explained that such a sentence would be a “just punishment” that would reflect the seriousness of Nadimpalli’s conduct, provide adequate deterrence, and avoid unwanted sentencing disparities. *Id.* The court sentenced Nadimpalli to a year and a day, an 81% reduction from the low end of his Guidelines range. Judgment, *United States v. Nadimpalli*, No. 24-cr-00021-CRB, ECF No. 27 (N.D. Cal. Nov. 17, 2025); *see also* Gov’t Sentencing Memo, *United States v. Matthews*, Case No. 18-cr-00048-VAB (D. Conn. 2023), ECF No. 221, and Transcript of Sentencing Hrg., ECF No. 230 (57% variance and 65-month sentence for defendant who pleaded guilty to fraud, money laundering, and tax evasion schemes spanning more than a decade, including theft of millions of dollars from vulnerable EB-5 investors which was used to purchase a \$5.3 million home, a yacht, and several luxury vehicles, with offense level of 34 and advisory range of 151 to 188 months); Gov’t Sentencing Letter, *United States v. Cole*, No. 19-cr-00869-ER (S.D.N.Y. Oct. 4, 2023), ECF No. 312 at 8-9 (18-month sentence, 77% downward variance for public company CEO convicted of what the government described as “a calculated, long-running and sophisticated accounting fraud scheme” based on round-trip transactions, inflated prices, secret side deals and the CEO’s sale of \$40 million worth of stock during the scheme).

This Court should resist any temptation to compare this case to *United States v. Burkhalter*, No. 1:26-CR-002-TRJ (N.D. Ga.). The lead defendant in that case

was sentenced to 20 years in prison, the maximum under law in that case. Beyond the fact that both cases have been characterized as Ponzi schemes and took place in the general Atlanta area, the cases are readily distinguishable. Burkhalter's conduct was far more reprehensible. Some of the clearest distinctions:

- According to the government, Burkhalter orchestrated a years-long Ponzi scheme that resulted in thousands of investors losing approximately \$380 million. <https://www.justice.gov/usao-ndga/pr/drive-planning-fraudsters-sentenced-federal-prison-operating-massive-380-million-ponzi>. Without diminishing the serious nature of Brant's misconduct, it is nothing near Burkhalter's level.
- Burkhalter's conduct was brazen from the outset; he operated his "Real Estate Acceleration Loan" opportunity or "REAL," as a Ponzi scheme "from the inception." *Id.* Brant, on the other hand, ran an upright and honest business for decades before his misconduct.
- Burkhalter continued to solicit tens of millions of dollars in investments even after the SEC began investigating. *Id.* Brant voluntarily shut his business down and promptly offered to cooperate with the government.
- Burkhalter submitted nine letters in support of his character at sentencing. Brant submitted more than 80.

Finally, Burkhalter is 55 years old and may well survive a 20-year term. At 69 years old, with a family history of early male death and each year in prison reducing an individual's life expectancy by about two years, https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/, a term anywhere near the government's 14-year recommendation would make it likely Brant never comes home.

In that vein, it is important to note Brant Frost, when incarcerated, will rank among the oldest inmates in federal prison. *See* Federal Bureau of Prisons, Inmate Age Statistics, https://www.bop.gov/about/statistics/statistics_inmate_age.jsp (last visited Oct. 14, 2026) (only 3.2% of federal prisoners for all offenses are age 65 or older). The non-profit, non-partisan Prison Policy Initiative writes:

Prisons are unhealthy places for anyone of any age, but keeping older adults locked up is particularly dangerous. A robust body of research shows that incarceration itself accelerates aging: people face more chronic and life-threatening illnesses earlier than we would expect outside of prison, and physiological signs of aging occur in people younger than expected. ... Years of limited resources, inaccessibility, and understaffing in prison healthcare have created a situation in which each year spent in prison takes two years off of an individual's life expectancy. The same scarcity of prison healthcare resources that jeopardizes older people's health is not just ineffective—it's also exorbitantly expensive.

Emily Widra, *The aging prison population: Causes, costs, and consequences* (Aug. 2, 2023), <https://www.prisonpolicy.org/blog/2023/08/02/aging/>.

Not only would imprisonment come at a potential cost to Brant's health, but it would also come at a cost to the public. A 2015 report by the Office of Inspector General, U.S. Department of Justice found that "aging inmates are more costly to incarcerate than their younger counterparts due to increased medical needs" and that "limited institution staff and inadequate staff training affect the BOP's ability to address the needs of aging inmates." The physical infrastructure of BOP institutions also limits the availability of appropriate housing for aging inmates.

Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (May 2015, revised Feb. 2016),

<https://oig.justice.gov/sites/default/files/reports/15-05.pdf>.

Accordingly, there can be no question that a five year sentence will pose a reduced risk to Brant's health and longevity and will be far less expensive to the public than a lengthy term of imprisonment.

CONCLUSION

A sentence of five years, rather than a longer term of incarceration, can work to promote the sentencing goal of respect for the law. It will illustrate a rejection of the view that the law is merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing. *Gall v. United States*, 552 U.S. 38, 54 (2007). We offer the poignant words of two former judges:

John S. Martin, a former District Judge, recently addressed “the overly long sentences that are being imposed every day in our federal courts on nonviolent offenders.” John S. Martin, *Cruel But Not Unusual: The Sentence Recommended for Sam Bankman-Fried*, New York Law Journal (March 12, 2024), <https://www.law.com/newyorklawjournal/2024/03/12/cruel-but-not-unusual-the-sentence-recommended-for-sam-bankman-fried/>.

Our extremely long prison sentences are one of the reasons the United States has the largest prison population in the world. We have lost all

sense of how horrible it is to spend even one year in prison, far away from family and friends, where every moment of existence must be lived under prescribed rules enforced by people who do not respect you and whom you do not respect and under constant fear of an unprovoked attack by another inmate. When you compare [past, more moderate sentences with present sentences] it becomes clear how irrational our sentencing system has become.

Let us start the comparison with Charles Ponzi, for whom the Ponzi scheme is named. Ponzi operated a scheme in which investors were sold securities and promised a high return. The investors received the promised returns, but they were being paid with money obtained from new investors. Investors lost over \$20 million, more than \$200 million today, and six banks failed. Ponzi, who was prosecuted for mail fraud served three and a half years in prison (see Mary Darby, "In Ponzi We Trust", Smithsonian Magazine, December 1998 (updated April 14, 2021)).

Kem Frost, Brant's sister-in-law and a former Texas judge, writes:

Many believe that justice defeats itself by a punishment that is so loaded with harsh effects that it crushes the redemptive spirit in the heart of a repentant offender. With so much now lost and so many challenges ahead, Brant's redemptive spirit has become his greatest asset – the fuel that runs the engine of his atonement. Protecting that asset by tempering the period of incarceration with a heavy dose of community service would serve the public, honor the purposes of punishment, and elevate the ends of justice more than a sentence that prioritizes retribution. (Exh. A at 48).

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Brant Frost deserves punishment. He does not deserve a death sentence. His remarkable history, utter lack of malice, extraordinary community service, and exceptional acceptance of responsibility should earn him a measure of mercy at sentencing. "Mercy is seldom included on the list of 'traditional' rationales for sentencing. It is, however, evinced by the federal sentencing statute, 18 U.S.C. §