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RE: Clemency Petition on Behalf of Mr. Yener Vahit Belli

Dear Mr. Martin,

I respectfully submit this clemency petition on behalf of Mr. Yener Vahit Belli, who is currently incarcerated at FCI Miami pursuant to a 384-month sentence imposed in 2012 for two counts of Hobbs Act robbery and two associated firearm offenses under 18 U.S.C. § 924(c). Had he been sentenced under current law, Mr. Belli would likely have already been released. After over 14 years in custody, and in light of his extraordinary rehabilitation, dramatically changed sentencing law, and absence of any physical harm to victims, Mr. Belli is a strong candidate for executive clemency.

I. Procedural History

In 2012, Mr. Yener Vahit Belli plead guilty in the U.S. District Court for the Middle District of Florida (Case No. 8:11-cr-307-T-33TBM) to two counts of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The charges stemmed from three separate convenience store robberies totaling $1,120. On August 21, 2012, Judge Virginia M. Hernandez Covington sentenced Mr. Belli to a total of 384 months (32 years) in prison: 84 months and 300 months consecutively for the two firearm counts, pursuant to the then-mandatory "stacked" penalties under § 924(c).

At sentencing, Judge Covington expressed concern about the inflexibility of the statutory penalties noting Mr. Belli's diagnosis of bipolar disorder, stating: "You could give me the most compelling of circumstances, but this is a statutory requirement. It's not a discretionary issue that the judge can say, 'You know, this was an anomaly. I'm going to depart downward.'" (Doc. 144 at Exhibit 4, 14:2-5.) The Court also acknowledged the harshness of the outcome, remarking: "He's going to get 32 years in prison... I know for you as his family, as his mother, that that's a very difficult situation for a parent to find herself in, but that is the way that it's going to be." (Id. at Exhibit 4, 14:9-13.)

On December 27, 2023, Mr. Belli filed a motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A) (Doc. 144), arguing that his rehabilitation, the change in § 924(c)

law, and his low risk to public safety warranted a reduced sentence. The government filed its opposition on January 9, 2024 (Doc. 150).

On January 16, 2025, Judge Covington denied the motion. The Court first stated that "granting compassionate release when Mr. Belli has served less than 50% of his sentence would not adequately reflect the seriousness of the offense…" (Doc. 166 at 5). However, the Court did not acknowledge that Mr. Belli had served 14 years, approximately the sentence he would have received under current law, before accounting for "good time" credit. Further the Court relied upon isolated acts of discipline in prison, including fighting in defense of another inmate, and drinking homemade intoxicants, to deny compassionate release. (Doc. 166 at 5-6).

No appeal was filed.[1] With judicial avenues now exhausted, Mr. Belli respectfully seeks executive clemency as the only remaining remedy to correct the ongoing disparity in his sentence under current law.

II. Disparity in Sentencing Law—What Would Happen Today

Mr. Belli's 32-year sentence is a product of an outdated and now-rejected interpretation of 18 U.S.C. § 924(c), which—prior to 2018—required courts to impose a 25-year mandatory minimum sentence for a "second or subsequent" § 924(c) conviction, even when both convictions stemmed from a single indictment. This interpretation led to sentencing outcomes that judges routinely called unjust, especially for first-time offenders like Mr. Belli. It produced sentences not based on escalating conduct, but on prosecutorial charging decisions, and quite frankly, in this case, the fact that Mr. Belli was not arrested after his very first robbery.

Congress recognized the injustice of this "stacking" scheme and amended § 924(c) through the First Step Act of 2018. Now, the enhanced 25-year penalty only applies if the defendant's first § 924(c) conviction is final before the second offense is committed. Had Mr. Belli been sentenced under current law, the statutory minimum for his two firearm counts would be 14 years: two consecutive 7-year terms. The remaining 18 years of his current sentence would not have been imposed. In other words, Mr. Belli would not only have been released by now—he likely would have been released years ago with good time credit.

This nearly two-decade disparity is not speculative but is actually confirmed by the Government in its own filings and by numerous district courts applying the current statute. It is the exact type of "gross disparity" recognized as extraordinary and compelling in *United States v. Elie*, 739 F. Supp. 3d 1032 (M.D. Fla. 2024), where a similarly situated defendant's 32-year sentence was reduced to time served of 15 years. That case, like Mr. Belli's, involved two § 924(c) convictions handed down in a single prosecution, where the original sentence dramatically exceeded what Congress now deems fair.

Similar relief has been granted in *United States v. Ware*, 720 F. Supp. 3d 1351 (N.D. Ga. 2024), where the court reduced a 55-year sentence under § 924(c) to time served; in *United States v. Smith*, No. 4:99-cr-66-RH-MAF, 2024 WL 885045 (N.D. Fla. Feb. 20, 2024), where a 92-year sentence was reduced to 28 years; and in *United States v. Colley*,

[1] The District Court's denial of the motion would have been reviewed for abuse of discretion. *United States v. Handlon*, 97 F.4th 829, 832 (11th Cir. 2024).

No. 2:94-cr-7-RWS, 2024 WL 1516128 (N.D. Ga. Mar. 26, 2024), where a 60-year stacked sentence was similarly cut to time served. In *United States v. Padgett*, 713 F. Supp. 3d 1223 (N.D. Fla. 2024), the court granted release to a defendant serving a life sentence under repealed § 851 enhancements. These cases collectively underscore that the legal system is evolving to address the harshness of prior sentencing regimes and that Mr. Belli's continued incarceration is precisely the kind of injustice executive clemency is intended to correct.

The only reason Mr. Belli remains incarcerated is because his sentence—unlike the law—has not caught up with modern standards of justice. Clemency is the only remedy left to reconcile that imbalance.

III. BOP Acknowledges Rehabilitation and Low Risk

Mr. Belli's conduct during more than 14 years of incarceration demonstrates profound personal reform and growth. Before this case, he had no history of violence or serious criminal behavior. From the moment of sentencing, he accepted responsibility for his actions and made a conscious decision to change the trajectory of his life.

Since then, Mr. Belli has done exactly what the justice system hopes of any incarcerated individual. He has maintained steady work assignments, has pursued vocational and educational programs, and committed himself to mentorship and service within the institution. He has become a source of stability and guidance for others—especially younger inmates—who look to him as a model of discipline, accountability, and perseverance. He also earned a Master's Degree in Business Administration and a Paralegal certification while incarcerated, demonstrating not just discipline and academic commitment, but an intent to return to society equipped with real-world, marketable skills.

This is not just self-serving rhetoric. The Bureau of Prisons ("BOP") itself has recognized the extent of Mr. Belli's rehabilitation. BOP Correctional Counselor Mark Jones, someone with direct, daily contact with Mr. Belli submitted a letter to the court describing him as "role model for the younger inmates" and noting his positive outlook for his future having "made a turnaround on his life goals and focuses." (Doc. 158, Exhibit 1). This kind of institutional endorsement is powerful, and speaks volumes about the person Mr. Belli has become.

Further reinforcing that judgment, the BOP has formally reclassified Mr. Belli from a medium-security facility to FCI Miami, a low-security institution. (Doc. 162). This decision is based on a detailed, objective risk assessment of his disciplinary record, programming participation, and likelihood of recidivism. The reclassification is a clear institutional finding that Mr. Belli no longer poses a threat to society and is capable of reintegration.

At this point, continued incarceration does not serve the goals of deterrence, rehabilitation, or public safety. It only perpetuates a sentence length Congress itself has repudiated, applied to a man the BOP has already acknowledged as reformed. According to the BOP, it costs $44,090 [2] to incarcerate Mr. Belli each year. The additional incarceration from the date of this letter through 2038 will cost the taxpayer $793,620. At

[2] https://www.federalregister.gov/documents/2024/12/06/2024-28743/annual-determination-of-average-cost-of-incarceration-fee-coif (Last accessed May 20, 2025).

a time when government spending must be curtailed, and the deficit must be reduced, this is a clear waste of tax dollars. One must ask, it is worth borrowing an almost seven-figure sum from countries like China to incarcerate Mr. Belli for more than another decade?

IV. No Physical Harm to Victims

There is no dispute that Mr. Belli's underlying conduct was serious and warranted punishment. But it is equally important to recognize what this case was not. At no point during the course of the robberies (which amounted to $1,120 stolen) did Mr. Belli discharge a firearm, threaten violence beyond the display of an unloaded weapon, or cause physical injury to any person. In fact, the firearm in question had neither a magazine nor any bullets, further reinforcing that its presence, while serious, did not pose any actual threat of harm. (Doc. 144, Exhibit 4, 12:2-5 ("none of these guns ever had any bullets in it"); 22:23-24 (Court noting Mr. Belli "didn't have bullets in that gun")). No victims were physically harmed, touched, or restrained.

This distinction matters. A person who uses a firearm to inflict injury presents a fundamentally different danger to the public than one who does not. The absence of physical injury mitigates the severity of a criminal act and weighs against excessively long sentences. That principle is even more compelling when evaluating clemency for an individual who has already served a substantial term, taken accountability, and caused no physical harm.

Mr. Belli has never been accused of being a violent individual. His criminal history before these offenses was clean. Even within the charged conduct, he did not lay a hand on a single victim. This case, while involving a firearm, is not one of brutality or force. It is a case of a drug addicted young man whose crimes were nonviolent in the physical sense and who has now served more than enough time to account for them.

In the context of clemency, where mercy is extended to those who demonstrate rehabilitation and no continuing danger, the absence of physical harm reinforces why continued incarceration does not serve the interests of justice.

V. Disciplinary History Context

While incarcerated for over 14 years, Mr. Belli has accumulated only two violent infractions, both of which occurred under exceptional and understandable circumstances. Neither incident defines his institutional record or undermines the extraordinary progress he has made.[3]

Mr. Belli became involved in the July 2019 fight at Coleman Medium when his friend was attacked by two other inmates wielding socks containing metal combination

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[3] The District Court denied his motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A) on January 16, 2025, declining to grant relief despite unrebutted evidence of rehabilitation, lack of danger, and a significant sentencing disparity. With no further judicial remedies available, clemency remains the only mechanism capable of correcting a result that modern law and sentencing policy no longer support.

locks. Mr. Belli joined this fight in defense of his friend. In the November 2021 incident at FCI McDowell, Mr. Belli was accused of fighting because his cellmate had been hit and Mr. Belli was the last prisoner seen leaving that room. Mr. Belli "denied ever fighting with inmate in cell." (Doc. 144, Exhibit 13). The inmate who was hit never identified who hit him.

While institutions must treat all altercations seriously, this incident reveals more about Mr. Belli's loyalty and moral code than it does about any risk he poses. Importantly, these infractions occurred years ago and have not been repeated. Mr. Belli has otherwise maintained a remarkably clean record throughout his incarceration. He has earned the respect of BOP staff, been reassigned to a low-security facility, and is trusted to mentor others. When viewed as a whole, his disciplinary history is not a reason to deny clemency but rather is further evidence of his resilience and his capacity to grow even in the harshest conditions.

VI. Reentry Plan and Family Support

Mr. Belli has developed a realistic and well-structured reentry plan, demonstrating that he is not only ready for release but positioned to succeed outside of custody. He intends to obtain his HVAC license, a goal he has pursued while incarcerated through relevant training. This certification will allow him to contribute immediately to his family's established business, which includes general contracting, electrical contracting, and roofing services. He has mapped out a viable path to employment that allows him to contribute to society and support himself lawfully from day one.

Equally important, Mr. Belli will not face reintegration alone. Upon release, Mr. Belli intends to reside with family in Valrico or Lakeland. (Doc. 144, Exhibits 14 and 15). Mr. Belli will work with his brother's electrical company and attend church programs several times per week. (Id.). Although passage of time and treatment for the underlying addictions that led to Mr. Belli's conduct already ensure a low risk of recidivism, Mr. Belli's access to supportive and stable family further ensure his good conduct upon release.

Extended family members have also expressed their commitment to guiding, encouraging, and supervising his progress. As part of his reintegration, Mr. Belli's longtime pastor will mentor him upon release and has welcomed him back to the church community. This spiritual support adds another layer of accountability and emotional stability. This strong network will offer both accountability and stability.

Before his incarceration, Mr. Belli was a nationally recognized soccer player whose athletic discipline foreshadowed the same perseverance he has since shown in his rehabilitation. He was a two-time Florida State Champion and a 1996 National Champion, earning Most Valuable Player honors for his leadership and performance on the field. His talent and commitment to the sport led him to compete at the collegiate level for Palm Beach Atlantic University, an NCAA Division II institution, where he continued to distinguish himself through teamwork, sportsmanship, and a relentless work ethic. The dedication and resilience he developed as a high-performing athlete continue to define his character today, shaping the structured and goal-oriented mindset he brings to his reentry plan.

Mr. Belli has used his time in prison to prepare for the outside world in earnest. He has not wasted his incarceration but used it to build a foundation for a new life. There is no

doubt: if granted clemency, Mr. Belli has the tools, the plan, and the community support to become a productive, law-abiding citizen. The groundwork has already been laid. All he needs now is the opportunity to walk out the door and prove it.

VII. Conclusion

Mr. Belli is not the same man who entered the federal prison system more than 14 years ago. He arrived as a drug addicted 26-year-old with no prior criminal record and has grown into a mature, accountable, and rehabilitated individual who has earned the trust of correctional staff and the support of his community. He has done what society hopes of any incarcerated person: taken responsibility, changed course, and prepared himself for a productive, law-abiding future.

His continued incarceration, however, reflects a sentencing scheme that Congress has since corrected, courts across the country have disavowed, and the U.S. Sentencing Commission has deemed unjust in its 2023 policy amendments. Under the law today, Mr. Belli would face 14 years for the same conduct—not 32. This 18-year disparity is a legal and moral imbalance. As decisions like *United States v. Elie*, *Ware*, *Smith*, *Padgett*, and *Colley* have shown, courts are increasingly recognizing that such sentences are no longer necessary to serve the goals of justice, especially for individuals who, like Mr. Belli, have reformed and no longer pose a risk to public safety.

He has served well over a decade behind bars, including substantial good time, with dignity and purpose. He has caused no physical harm to anyone, accepted responsibility, and rebuilt his life from within the walls of prison. The BOP has acknowledged his low security risk. His family stands ready to receive him. The legal system, while evolving, has closed its last procedural door.

All that remains is for mercy to do what law no longer can.

For these reasons, we respectfully urge the President of the United States to grant clemency and commute Mr. Belli's sentence to time served. Thank you for your consideration of this request. Should you have any questions or require further information, please do not hesitate to contact our office.

Sincerely,

/s/Michael P. Beltran

Michael Beltran

Enclosure(s):

1. BOP Counselor Letter (Doc. 158, Exhibit 1)
2. Reassignment to Low-Security Facility (Doc. 162, Exhibits 1 and 2)
3. *United States v. Elie*, 739 F. Supp. 3d 1032 (M.D. Fla. 2024)
4. Sentencing Transcript (Doc. 120)
5. Plea Agreement (Doc. 88)
6. Affidavits of Jacalyn Belli and Randy Belli (Doc. 144, Exhibits 14 and 15)
7. Presentence Report

Enclosure 1

U. S. Department of Justice

Federal Bureau of Prisons

Federal Correctional Institution – McDowell

P.O. Box 1029
Welch, West Virginia 24801

March 1, 2024

TO: Whom it may concern

From: Correctional Counselor M. Jones
FCI McDowell, West Virginia

Inmate Belli, Yener. Register Number 53741-018. He is currently incarcerated at the Federal Correctional Institution in Welch, West Virginia. According to our records, he has been in custody since November 20, 2020. He has a projected release date of July 24, 2038. He has worked to get his points down from Medium Security to Low Security. He has held multiple jobs since he has been incarcerated, he carries himself well among the other inmate population and serves as a role model for the younger inmates. He has completed several Education and FSA classes since his incarceration. He has made a turnaround on his life goals and focuses on working and programming and has a positive outlook for his future when he is released from prison. He has had multiple staff recognize his transition from his past circumstances and he already has plans for work, housing, and transportation when he does release.

Thank You.

Enclosure 2

Find an inmate.

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present. Due to the First Step Act, sentences are being reviewed and recalculated to address pending Federal Time Credit changes. As a result, an inmate's release date may not be up-to-date. Website visitors should continue to check back periodically to see if any changes have occurred.

Find By Number | **Find By Name**

First	Middle	Last	Race	Age	Sex
Yener		Belli	White		Male

1 Result for search **Yener Belli**, Race: **White**, Sex: **Male**

Clear Form Search

YENER VAHIT BELLI

Register Number: 53741-018

Age: 40
Race: White
Sex: Male

Located at: Miami FCI

Release Date: 07/24/2038

Related Links

Facility Information
Call or email
Send mail/package
Send money
Visit
Voice a concern

About the inmate locator & record availability

FCI MIAMI

A low security federal correctional institution with an adjacent minimum security satellite camp.

15801 S.W. 137TH AVENUE
MIAMI, FL 33177

Email: MIA-ExecAssistant-S@bop.gov
Phone: 305-259-2100
Fax: 305-259-2160

Inmate Gender: Male Offenders

Population: **1,041 Total Inmates**
188 Inmates at the Camp
853 Inmates at the FCI

Judicial District: Southern Florida

County: Miami-Dade

BOP Region: Southeast Region

Visiting Information

How to send things here

Resources for sentenced inmates

Driving Directions

Job Vacancies

Visiting Information

Visiting Overview

How to visit an inmate. This covers the basic fundamentals that apply to all of our institutions. The BOP welcomes visitors to our institutions. We remind all visitors to carefully review our visiting regulations and to observe any applicable state and local travel advisories in planning your visit.

Visiting Schedule & Procedures

Official policy at FCI Miami that outlines the specific regulations and procedures for visiting an inmate at this facility.

Also available in Spanish: ***Regulaciones de Visitas***

Resources for Media Representatives

Conditions under which qualified media representatives may visit institutions.

Enclosure 3

739 F.Supp.3d 1032 (2024)

UNITED STATES of America

v.

Jenny ELIE.

CASE NO: 6:09-cr-50-Orl-22GJK.

United States District Court, M.D. Florida, Orlando Division.

Signed May 3, 2024.

1034 *1034 Kara Wick, Nicole M. Andrejko, U.S. Attorney's Office, Orlando, FL, Patricia A. Willing-FLU, U.S. Attorney's Office, Tampa, FL, for United States of America.

ORDER

ANNE C. CONWAY, United States District Judge.

This cause comes before the Court on Defendant Jenny Elie's Motion to Reduce Sentence to time served pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) under the amended policy statement in U.S.S.G. § 1B1.13, effective November 1, 2023. (Doc. 126). The Government responded (Doc. 131), Elie filed an authorized Reply (Doc. 134) and two Supplements listing recent in-circuit decisions supporting his position. (Docs. 136, 137). Elie has also filed multiple letters from family and friends in support of his compassionate release request attesting to his character. (Doc. 126, Attachments). The Motion is ripe for review.

The thrust of the Government's argument against Elie's sentence reduction is a legal one—that the Sentencing Commission exceeded its congressionally delegated authority by amending § 1B1.13 to allow district courts to reduce an "unusually long sentence," if the defendant has served ten years and a change in the law has produced a "gross disparity" between the defendant's sentence and the one likely to be imposed at the time the motion is filed. The Court finds—as have all of the other district courts in this Circuit who have considered the point recently—that the Sentencing Commission did not exceed its authority in amending Subsection (b)(6) of § 1B1.13; and its application is limited to an extremely narrow set of defendants. Applied here, because Elie's "extraordinary and compelling" circumstances under Subsection (b)(6) merit a
1035 reduced sentence; his release would not endanger the community; and the § 3553 factors favor *1035 the reduction in sentence. Thus, Elie's Motion will be granted for the reasons explained in detail below.[1]

I. BACKGROUND[2]

On December 14, 2009, at age 25, Elie was sentenced to 32 years (384 months) and 1 day after pleading guilty to two counts of bank robbery in violation of 18 U.S.C. § 2113(a) and two counts of use and carrying of a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1), (3). (Docs. 1, 35, 37, 58). The charges stemmed from the armed robberies of two banks in a five-month period in late 2008, in which Elie and others stole more than $14,000. (Doc. 35 at 16-18).

At the time Elie was sentenced, § 924(c)(1) required district courts to impose a 25-year mandatory minimum consecutive sentence for any "second or subsequent conviction under [§ 924(c)]." 18 U.S.C. § 924(c)(1)(C) (2002). "The Supreme Court had interpreted the 25-year mandatory minimum as applying to second (and third, and fourth, and so on) § 924(c) convictions within a single prosecution." *United States v. Smith*, 967 F.3d 1196, 1210 (11th Cir. 2020) (citing *Deal v. United States*, 508 U.S. 129, 131-32, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993)). As a result, this Court imposed the minimum 25-year consecutive sentence for the second § 924(c) conviction in addition to seven years for the first § 924(c) violation, consecutive to the 1 day imprisonment for the two bank robbery offenses. (Doc. 58 at 2). Elie's Co-Defendants (Bernard Benjamin and Eli Pierre) were sentenced to 85 months (7 years) for their participation in one of the bank robberies.

Elie is currently incarcerated at Miami FCI Lee in Miami, Florida, he is now 40 years old,[3] and is projected to be released on February 12, 2036; he has served more than 15.5 years, or nearly half, of his 32-year sentence.[4] (*See* Doc. 108-1).

Sentencing Guidelines, 2018 First Step Act, and Bryant *Decision*

District courts lack the inherent authority to modify criminal sentences but may do so when authorized by a statute or rule. *United States v. Edwards*, 997 F.3d 1115, 1118 (11th Cir. 2021). The Eleventh Circuit, in *United States v. Bryant,* described the rationale and statutory background leading to passage of the First Step Act. 996. F.3d 1243, 1248 (11th Cir. 2021). "For a long time, sentencing judges had nearly unbridled discretion, bound only by statutory minimums or maximums." *Id.* at 1248 (citations omitted). "Parole boards also had discretion to release a prisoner after he had served as little as one third of his sentence ... obscuring at sentencing the actual amount of time that the defendant would serve.... That system spawned drastic disparities and uncertainty in sentencing, which drove Congress to pass the Sentencing Reform Act of 1984" ("SRA"). *Id.* (citations omitted).

The SRA "sought uniformity and honesty in sentencing," creating the U.S. Sentencing Commission and "delegate[ing] to it the power to create a comprehensive system of sentencing guidelines." *Id.* at 1248-49 (citing *Peugh v. United States*, 569 U.S. 530, 535, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013)). The SRA abolished the parole system and prohibited courts from
1036 "modify[ing] a term of imprisonment once it *1036 ha[d] been imposed," with three narrow exceptions, including § 3582(c)(1)(A), which allows a court to reduce a term of imprisonment for "extraordinary and compelling reasons." *Id.* at 1249 (citing 18 U.S.C. § 3582(c)). However, the SRA "did not put district courts in charge of determining what would qualify as extraordinary and compelling reasons that might justify reducing a prisoner's sentence." *Id.* Instead, the SRA directed the Sentencing Commission to define "what should be considered extraordinary and compelling reasons for a sentence reduction, including the criteria to be applied and a list of specific examples" through "general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A)." *Id.* (citations omitted).

As the Eleventh Circuit described it, "[t]he only boundary the SRA placed on the Commission's definition was that `[r]ehabilitation... alone shall not be considered an extraordinary and compelling reason,'" and "it required district courts to follow that definition." *Id.* (citations omitted). "[T]he SRA made clear that a district court cannot grant a motion for reduction if it would be inconsistent with the Commission's policy statement defining `extraordinary and compelling reasons.'" *Id.* (citing 18 U.S.C. § 3582(c)(1)(A)).

The Commission published its substantive definition of "extraordinary and compelling reasons" in 2007, listing four reasons: (i) a "terminal illness"; (ii) a "permanent physical or medical condition" or "deteriorating physical or mental health because of the aging process," which "substantially diminishes the ability of the defendant to provide self-care" in prison; (iii) "death or incapacitation of the defendant's only family member capable of caring for" a minor child; and (iv) "[a]s determined by the Director of the Bureau of Prisons, ... an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii)"; the policy statement also required that a defendant not be "a danger to society." *Id.*; U.S.S.G. § 1B1.13 & cmt. n.1(A) (U.S. Sent'g Comm'n 2007). Courts were additionally required to consider the § 3553 factors. *Id.*

As the Eleventh Circuit noted in *Bryant,* previously only the BOP was allowed to file motions under § 3582(c)(1)(A), which it rarely did, and criticism of the "BOP's reticence" mounted. *Id.*[5] In response to the criticism, the Commission conducted an "in-depth review," held a public hearing, and revised § 1B1.13 in 2016 by expanding, reorganizing, and clarifying the four categories of "extraordinary and compelling" reasons. *Id.* (citing U.S.S.G. App. C, Amend. 799 at 132-33, 135 (eff. Nov. 1, 2016)). These categories included: the serious "medical condition of the defendant"; deterioration due to the "age of the defendant" of at least 65 years and having served 10 years or 75% of his sentence; certain "family circumstances"; and the catch-all "other reasons" category which remained unchanged. *Id.* at 1250 (citing U.S.S.G. § 1B1.13 cmt. n.1(A)-(D) (U.S. Sent'g Comm'n 2016)).

Two years later, in 2018, Congress passed the First Step Act which "expanded who could file a motion for a reduction of sentence," allowing a district court to grant a sentence reduction on the motion of the BOP Director or the defendant, after
1037 exhausting administrative rights to appeal or a lapse of 30 days. *Id.* at 1250 (citing First Step Act of 2018, Pub. L. No. *1037 115-391, § 603(b), 132 Stat. 5194, 5239 (2018) (amending 18 U.S.C. § 3582)). The Commission lost its quorum in January 2019.

The First Step Act in 2018 also amended § 924(c)(1)(C) so that the 25-year mandatory consecutive minimum would no longer apply to multiple § 924(c) convictions resulting from a single prosecution. *See United States v. Luster,* No. 22-12062, 2024 WL 95469, at *2 (11th Cir. Jan. 9, 2024)[6] (citing First Step Act of 2018 § 403(a), Pub. L. No. 115-391, 132 Stat. 5194, 5221-22); *United States v. Smith,* 967 F.3d 1196, 1210 (11th Cir. 2020). Rather, the 25-year minimum would only apply when a defendant violated § 924(c) "after a prior conviction under this subsection ha[d] become final." *Luster,* 2024 WL 95469, at *1 (citing 18 U.S.C. § 924(c)(1)(C)(i)). However, Congress did not make this amendment to § 924(c)'s stacking provision retroactive. *Id.* (citing First Step Act, § 403(b); *Smith,* 967 F.3d at 1210-13 (holding that § 403 does not apply retroactively)). Notwithstanding the lack of an explicitly retroactive change in the stacking under § 924(c), a significant number of district courts granted compassionate release under § 3582(c)(1)(A) to defendants who were sentenced to "excessively" long sentences under the catch-all "other reasons" category in the commentary to § 1B1.13 cmt. 1(D).[7] *See, e.g, United States v. Ogun,* 657 F. Supp. 3d 798 (E.D. Va. Feb. 24, 2023) (reducing a sentence of 412 months to 205 months, finding defendant's "stacked" 924(c) offenses and substantial rehabilitation to be extraordinary and compelling).

While other circuit courts had held that 1B1.13's policy statement did not bind judicial discretion as to defendant-filed motions, the Eleventh Circuit decided in *Bryant* that district courts reviewing defendant-filed motions under § 3582(c)(1)(A) were "bound by the Sentencing Commission's policy statement." 996 F.3d at 1247. "[A] court can reduce an otherwise final sentence for `extraordinary and compelling reasons,'" under Section 3582(c)(1)(A), "as long as the reduction is `consistent with applicable policy statements issued by the Sentencing Commission.'" *Id.* Bryant held that the "statute's procedural change"— allowing defendants instead of exclusively the BOP to file motions—did not change the "statute's or 1B1.13's substantive standards, specifically the definition of `extraordinary and compelling reasons' and the `Commission's standards [were] still capable of being applied and relevant to all Section 3582(c)(1)(A) motions, whether filed by the BOP or a defendant.'" *Id.*

Under "the structure of the Guidelines, our [Circuit's] caselaw's interpretation of `applicable policy statement,' and general canons of statutory interpretation all confirm that 1B1.13 is still an applicable policy statement for a Section 3582(c)(1)(A) motion, no matter who files it." *Id.* The Eleventh Circuit then set forth "how district courts should apply that statement to motions filed under Section 3582(c)(1)(A)" while avoiding the suggested alteration from defendant that—as the *Bryant* court defined it—"would give [district] courts effectively unlimited discretion to grant or deny motions" under the "other reasons" catch-all provision.[8] *Id.* at 1248. Instead, 1038 the court found that "1B1.13 is an applicable policy statement for all Section 3582(c)(1)(A) motions" and the catch-all provision "d[id] not grant discretion to courts to develop `other reasons' that might justify a reduction in a defendant's sentence." *Id.*

Unlike in other Circuits, the Eleventh Circuit specifically held in *Bryant* that, as to those compassionate release motions filed prior to the November 1, 2023 Amendment to the policy statement (described in detail below), district courts were not authorized to consider the disparity in sentences based on the nonretroactive change in § 924(c) or any "other reasons" which were not outlined in the § 1B1.13 list of medical, age, and family circumstances[9] which qualified as sufficiently "extraordinary and compelling." *See, e.g., Luster,* 2024 WL 95469, at *2 (affirming rejection of defendant's argument made in his April 2022 motion that "he would not be subject to a 25-year mandatory minimum if he were sentenced today" because the district court could not grant a reduction for reasons other than the medical, age, or family circumstances outlined in the commentary in § 1B1.13 at the time) (citing U.S.S.G. § 1B1.13, cmt. n.1(A)-(C) (Nov. 2021)). *Cf. United States v. Ruvalcaba,* 26 F.4th 14 (1st Cir. 2022) (holding district courts could consider a nonretroactive change in the law as an "extraordinary and compelling" reason for a sentence reduction although not specifically enumerated); *United States v. McCoy,* 981 F.3d 271 (4th Cir. 2020) (same); *United States v. Chen,* 48 F.4th 1092 (9th Cir. 2022) (same); and *United States v. Maumau,* 993 F.3d 821 (10th Cir. 2021) (same); *but see United States v. Andrews,* 12 F.4th 255 (3d Cir. 2021) (holding non-retroactive change in law could not be a reason for sentence reduction); *United States v. McCall,* 56 F.4th 1048 (6th Cir. 2022) (same); *United States v. King,* 40 F.4th 594 (7th Cir. 2022) (same); *United States v. Crandall,* 25 F.4th 582 (8th Cir. 2022) (same); and *United States v. Jenkins,* 50 F.4th 1185 (D.C. Cir. 2022) (same).

Elie's 2020 Motion for Compassionate Release

Elie previously filed a Motion for Compassionate Release, which was fully briefed (Docs. 104, 106), requesting on December 30, 2020 that the Court reduce his sentence for "extraordinary and compelling" reasons pursuant to 18 U.S.C. § 3582(c)(1)(A), and arguing that his sentence based on the § 924(c) penalties was too harsh for a first-time offender. The Government opposed the relief in 2021, arguing that the First Step Act's 2018 amendment to the mandatory penalties for

offenses under 18 U.S.C. § 924(c) did not constitute an "extraordinary and compelling" reason for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A); the relief sought was inconsistent with the Sentencing Reform Act's goals; and Elie would pose a danger to the community based on his conduct during the armed robberies. (Doc. 108).

The Court denied Elie's 2020 Motion based on the Eleventh Circuit's *Bryant* decision, but noted that if Elie presented an "extraordinary and compelling" reason consistent with (then-existing) Eleventh Circuit caselaw, he would be eligible to be resentenced to the currently prevailing minimum mandatory sentence of fourteen years:

1039 *1039 Based on the Eleventh Circuit's ruling in *Bryant,* the Court has no independent authority to consider "extraordinary and compelling circumstances" that do not fall within the four circumstances delineated in the commentary to § 1B1.13. Defendant's Motion represents that he has had no major disciplinary infractions while incarcerated for more than 12 years in prison. (Doc. 108 at 15; Doc. 110). Defendant's commitment to vocational courses and employment while in prison (Doc. 110) is commendable. However, the Court cannot determine that any of Defendant's circumstances constitute an extraordinary and compelling reason for relief because the circumstances Defendant cites do not comply with the reasons set forth in the applicable policy statement. *See Bryant,* 996 F.3d at 1265 ("Because Bryant's motion does not fall within any of the reasons that 1B1.13 identifies as `extraordinary and compelling,' the district court correctly denied his motion for a reduction of his sentence."); *United States v. Griffin*, 859 Fed.Appx. 359 (11th Cir. 2021) (citing *Bryant,* 996 F.3d 1243) (finding that the defendant's argument, "anything can be considered as extraordinary and compelling reasons to justify a sentence reduction[,] ... is foreclosed by [Eleventh Circuit] precedent." (internal quotation marks omitted))....

> The Court must also consider the applicable § 3553(a) factors. As explained above, the Court recognizes Defendant's rehabilitation efforts since his incarceration. At sentencing, the Court expressed concern about the severity of the mandatory minimum sentences for the "stacked" § 924(c) offenses in the case of a first-time offender like Defendant Elie:
>
> After considering the advisory sentencing guidelines, the mandatory consecutive sentence required by statute and all the factors identified in Title 18, United States Code, Sections 3553(a)1 through 7, the Court finds well, the Court can't find this the sentence is sufficient and not greater than necessary. But a mandatory consecutive sentence, my personal feeling is that it's a serious crime and that you should be punished harshly. But I think this is a little harsh under the circumstances for a first offender, even considering the victims in this case. But it's a mandatory consecutive sentence and Congress and the United States Attorney have determined that this is the sentence that you're going to get.
>
> (Doc. 98 at 23). The Court offset the lengthy sentences for the firearm counts by reducing Defendant's sentences for the bank robbery counts to 1 day[.] Defendant seeks to have his sentence reduced to seven years each consistent with the current version of § 924(c) penalties, for a total of fourteen years, and leave the sentences for the bank robberies unchanged.... If Defendant had presented an "extraordinary and compelling" reason for relief consistent with the Eleventh Circuit's *Bryant* analysis, and the Court were to re-sentence Defendant today, *he would be eligible to be resentenced to the minimum mandatory sentence of 14 years for the two stacked § 924(c) counts.*

(Doc. 113 at 7-9, entered August 26, 2021 (emphasis added)).

Sentencing Commission's 2023 Modifications to Compassionate Release

The Sentencing Commission regained its quorum in August 2022, and on May 3, 2023, the Sentencing Commission submitted to Congress amendments to the Sentencing Guidelines, policy statements, and official commentary with an effective date of November 1, 2023. *See* 88 Fed. Reg. 28254, May 3, 2023 (Doc. 126-1). One amendment specifically
1040 updated § 1B1.13 *1040 in response to the First Step Act by revising § 1B1.13(a) to reflect that a defendant is now authorized to file a motion under 18 U.S.C. § 3582(c)(1)(A), making the policy statement applicable to both defendant-filed and BOP-filed motions. 88 Fed. Reg. 28256-57. The amended version of § 1B1.13 also expressly added new grounds for relief under 18 U.S.C. § 3582(c)(1)(A)(i) in response to the First Step Act. *See* U.S. Sentencing Commission, Adopted Amendments (eff. November 1, 2023) (Doc. 126-1). The amendments added a new category in the guideline text for

"Unusually Long Sentence[s]," which may qualify as extraordinary and compelling where, among other things,[10] "a change in the law ... would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed." U.S.S.G. § 1B1.13(b)(6) (Nov. 2023).

Elie's Post-Amendment Compassionate Release Motion

Immediately following the effective date of the Amendment to § 1B1.13, Elie filed his Motion to Reduce Sentence to time served pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) based on "extraordinary and compelling reasons." (Doc. 126). The Government filed a Response in Opposition (Doc. 131) on December 18, 2023. On January 5, 2024, Elie filed a Reply (Doc. 134) and, in the following weeks, Supplements to the Reply identifying recent district court cases on point (Docs. 136, 137).

II. LEGAL STANDARD

The compassionate release statute out-lines the procedure and factors to be considered before a court may grant compassionate release:

> The court may not modify a term of imprisonment once it has been imposed except that—
>
> (1) in any case—
>
> (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment ...

18 U.S.C. § 3582(c).

Before the Court may modify a defendant's sentence, it must: (1) determine that the defendant has fully exhausted all administrative rights; (2) find that extraordinary and compelling reasons—as defined in the Sentencing Commission's policy statement—warrant the reduction; and (3) consider the § 3553(a) factors. *Id.*; *see Bryant,* 996 F.3d at 1248; *United States v. Johnson*, 849 F. App'x 908 (11th Cir. 2021) (citing *Bryant,* 996 F.3d at 1262-64). The defendant "bears the burden of proving entitlement to relief under § 3582(c)(1)(A). *United States v. Kannell,* 834 F. App'x 566, 567 (11th Cir. 2021) (citation omitted).

1041 *1041 The Sentencing Commission's policy statement for 18 U.S.C. § 3582(c)(1)(A) is found in U.S.S.G. § 1B1.13. *See Bryant,* 996 F.3d at 1248. The Commission's policy statement in § 1B1.13 defining "extraordinary and compelling reasons" binds district courts. *Id.* at 1249-50. To apply U.S.S.G. § 1B1.13, "a court simply considers a defendant's specific circumstances, decides if he is dangerous,[11] and determines if his circumstances meet any of the reasons that could make him eligible for a reduction." *Id.* at 1254. If the court determines that the defendant is not dangerous and his circumstances fit into an approved category, then the defendant "is eligible, and the court moves on to consider the [§] 3553(a) factors in evaluating whether a reduction should be granted." *Id.*

The policy statement identifies the circumstances that could make a defendant eligible for a reduction as categories of "extraordinary and compelling" reasons, "one of which the defendant must fit to be eligible for relief." *Id.* This three-step analysis has not materially changed with the revisions in November 2023 Amendments to § 1B1.13, except that the categories of "extraordinary and compelling" reasons for relief have been modified and expanded. *See, e.g., United States v. Ware*, 720 F.Supp.3d 1351, 1356 (N.D. Ga. 2024).

The Sentencing Commission's 2023 Amendment moved the description of the "permissible bases for a reduction" from the commentary to the policy statement of U.S.S.G. § 1B1.13. *See* Amendment to the Sentencing Guidelines at 2 (Doc. 126-1). The amended policy statement retains the text of the original four "extraordinary and compelling reasons," with some modification, and includes two new sections:

> (b) Extraordinary And Compelling Reasons. —Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:
>
> (1) Medical Circumstances of the Defendant.

(A) The defendant is suffering from a terminal illness (*i.e.,* a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (*i.e.,* a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is—

(i) suffering from a serious physical or medical condition,

(ii) suffering from a serious functional or cognitive impairment, or

(iii) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant presents the following circumstances—

(i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an
1042 ongoing outbreak of infectious disease, or (II) an ongoing *1042 public health emergency declared by the appropriate federal, state, or local authority;

(ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be adequately mitigated in a timely manner.

(2) Age of the Defendant.—The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) Family Circumstances of the Defendant.—

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, "immediate family member" refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

(4) Victim of Abuse.—The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of:

(A) sexual abuse involving a "sexual act," as defined in 18 U.S.C. § 2246(2) (including the conduct described in 18 U.S.C. § 2246(2)(D) regardless of the age of the victim); or

(B) physical abuse resulting in "serious bodily injury," as defined in the Commentary to § 1B1.1 (Application Instructions);

that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant.

For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) Other Reasons.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), *1043 are similar in gravity to those described in paragraphs (1) through (4).

1043

(6) Unusually Long Sentence.—If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

U.S.S.G. § 1B1.13(b)(5)-(6).

Subsection (b)(6) expressly provides the only circumstance for which a nonretroactive change in law can be considered as part of an "extraordinary and compelling" reason for compassionate release. *See id.* § 1B1.13(c). A defendant's rehabilitation is not, by itself, an extraordinary and compelling reason that may justify a sentence reduction. 28 U.S.C. § 994(t); USSG § 1B1.13(d). A court may, however, consider a defendant's rehabilitation while serving his sentence in combination with other circumstances in determining whether and to what extent a reduction is warranted. *Id.* § 1B1.13(d).

If the court finds that the defendant's release would not be a danger to the community and that "extraordinary and compelling" reasons exist, the court must consider whether the § 3553(a) factors weigh in favor of release. Specifically, the court must consider: "the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant." *United States v. Laureti,* 859 F. App'x 490, 491 (11th Cir. 2021) (citing 18 U.S.C. § 3553(a)(1)-(2)).

III. APPLICATION

Exhaustion of Administrative Rights

It is undisputed that Elie has exhausted his administrative rights. He sought a sentence reduction on August 29, 2023 (Doc. 126 at 6). More than thirty days, passed since the BOP's receipt of his application before Elie filed his Motion, and the BOP declined to file a motion on Elie's behalf. (*Id.*). The Government does not dispute (Doc. 131 at 3) that the Court may consider Elie's Motion on the merits. 18 U.S.C. § 3582(c)(1)(A); *see United States v. Harris,* 989 F.3d 908, 910-11 (11th Cir. 2021).

Not A Danger to the Community and § 3553 Factors

The court must determine that the "defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." U.S.S.G. § 1B1.13(2)(2). These factors in § 3142(g) include: (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the history and characteristics of the person, and (4) the nature and seriousness of the danger posed by Defendant's release. 18 U.S.C. § 3142(g)(1)-(4); *see also United States v. Vigil,* 3:09-cr-322-J-32PDB, 2020 WL 6044561, at *6-7 (M.D. Fla. Oct. 13, 2020) (granting compassionate release to "repeat bank robber" based on lack of danger to community in assessing the defendant's older age, rehabilitation, remorsefulness, educational coursework, decade of sobriety, and lack of discipline record); *cf. Pepper v. United States,* 562 U.S. 476, 492,

1044 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011) (court may consider evidence of *1044 the defendant's post sentencing rehabilitation at resentencing if his sentence is set aside on appeal and such evidence is highly relevant to several § 3553(a) factors).

The Court finds that Elie, now 40 years old and having served 15 years of his sentence, is not a "danger to the community." As it did in response to Elie's 2021 Motion, the Government again argues that Elie is a danger to the community based solely on his conduct during the robberies —in spite of the Court's clear rejection of the same arguments the Government asserted three years ago regarding Elie's 2008 offenses. The Government again points to Elie's conduct during the 2008 bank robberies, when he showed a handgun the teller as he demanded money and forced a bank employee to the ground at gunpoint, in the course of stealing $14,938 during the two robberies. (Presentence Investigation Report ("PSR")[12] at ¶¶ 8, 10-11). Elie's offenses involved a firearm which presented a serious danger to the community (although he contended that it was unloaded at the robbery), and the evidence against him was compelling, leading to his guilty plea. (PSR ¶¶ 5, 9, 14).

Despite the facts surrounding Elie's offenses, however, the Court determines that Elie's lack of a prior criminal history, his current age (40 years old), the BOP's scoring of his low recidivism risk, and his commendable prison record since 2009 support a conclusion that he no longer presents a danger to society.

The Court previously considered the applicable § 3553(a) factors in deciding Elie's 2020 Motion and found, based on Elie's rehabilitation efforts since his incarceration, and the § 3553(a) factors, that "[i]f Defendant had presented an `extraordinary and compelling' reason for relief consistent with the Eleventh Circuit's *Bryant* analysis ... he would be eligible to be resentenced to the minimum mandatory sentence of 14 years for the two stacked § 924(c) counts." (Doc. 113 at 10).

As explained in the excerpt of the sentencing transcript above, the Court has expressed significant misgivings since Elie's original 2009 sentencing about the severity of the mandatory consecutive sentence for the "stacked" § 924(c) offenses in a case like his involving a first-time offender, and declined to find his sentence to be "sufficient and not greater than necessary," but acknowledged at the time that "Congress and the United States Attorney have determined that this is the sentence" that Elie was "going to get." (Doc. 98 at 23). The Court offset the mandatory consecutive firearm sentences by reducing Elie's sentences for the bank robbery counts to 1 day. (*Id.*).

At the time of Elie's sentencing in 2009, the undersigned had been a federal judge for nearly twenty years and had sentenced hundreds of defendants for a variety of offenses; this experience is more extensive fifteen years later. As this Court acknowledged at the original sentencing, the armed robberies committed by Elie were "serious crime[s]" and Elie therefore deserved to be "punished harshly." However, the undersigned specifically expressed deep concern in 2009 that imposing the 25year consecutive mandatory sentence for Elie's second "stacked" firearm offense was "harsh under the circumstances for a first offender, even [when] *considering the victims in this case*." (*See* Doc. 113 at 9 (emphasis added)). The Court's opinion on the matter has not changed. By 2018, Congress also recognized the harshness of the mandatory
1045 consecutive "stacked" sentences *1045 in § 924(c), which led it to significantly change the statute as part of the First Step Act, albeit without retroactive effect.

As Elie points out, prior to the bank robberies in May 2008, he had no history of violence or interactions with law enforcement, and following his arrest, he has shown remorse and accepted responsibility. (PSR ¶¶ 5, 20-21, 45-46 (accepted responsibility and expressed remorse)). As the Court noted previously (in 2021), Elie has had no major disciplinary "infractions while incarcerated" for (now) more than 15 years in prison and "his commitment to vocational courses and employment while in prison is commendable." (Doc. 113 at 8 (citations omitted)). Prior to committing the bank robberies, Elie had graduated from high school and attended some college before dropping out due to being ineligible for financial aid. (PSR ¶ 55). He has spent time in prison preparing to earn his commercial driver's license, and, if released, he plans to become a commercial truck driver. (Doc. 126 at 6).

The Government's only relevant argument regarding whether Elie might currently present a danger to the community on release is that he received a disciplinary citation[13] in August 2022 for "assault without serious injury." (Doc. 131 at 4). Elie explains in his Reply that the incident "involved [him] standing up to a notoriously troublesome inmate in his unit who was repeatedly antagonizing other inmates. They were both disciplined and are now on good terms, housed in the same unit" and the incident is not reflective of "the man he has grown into." (Doc. 134 at 21). The Court is not persuaded that this single incident reflects Elie's otherwise non-violent record and significant efforts at rehabilitation.

Moreover, according to the BOP assessment, Elie's recidivism risk is low. (*See* Doc. 126-14, FSA Recidivism Risk Assessment). He has helped counsel other inmates at risk during his incarceration. (Doc. 126-15, Letter from Correctional Counselor Saiah-Quan Martin ("While incarcerated, Mr. Elie helped me counsel other inmates who were at risk ... I know Mr. Elie to be dependable, responsible, honest, and courteous.")). Other letters in support from long-time friends and family members reflect their opinions that Elie has served as a father figure to his younger brother and cousins who attribute their "success today" to his early influence and his mentorship. (Docs. 126-3 to 126-7; 126-11 to 126-13). They describe Elie as "possessing an admirable level of personal integrity" and "[d]espite facing challenges in the past, he has always maintained his sobriety." (*Id.*).

The letters also describe Elie as having made a "grave" and "reckless" mistake, and having now "changed," growing in faith and compassion, and making a positive impact on those around him. (*Id.*). Elie argues that this strong system of friends and family are in place to support him if he is released; his plan is to reside with his mother or his brother, who is a Lee County Sheriff's Deputy and sponsors a "Give Back Academy" to help kids stay on the "right path." (Doc. 126-11).

1046 These opinions have support in the record based on his lack of serious incidents *1046 during the fifteen-year period he has been incarcerated.

Parties' Arguments Regarding "Extraordinary and Compelling" Relief

Elie seeks to have the Court reduce his sentence to time served pursuant to 18 U.S.C. § 3582(c)(1)(A) based on the "extraordinary and compelling reason" in § 1B1.13(b)(6) for "Unusually Long Sentences," which became effective in November 2023.[14] The Commission explained at length its reasoning for adding Subsection (b)(6):

> [N]ew subsection (b)(6) ... permits non-retroactive changes in law (other than non-retroactive amendments to the Guidelines Manual) to be considered extraordinary and compelling reasons warranting a sentence reduction, but only in narrowly circumscribed circumstances. Specifically, where (a) the defendant is serving an unusually long sentence; (b) the defendant has served at least ten years of the sentence; and (c) an intervening change in the law has produced a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, the change in law can qualify as an extraordinary and compelling reason after the court has fully considered the defendant's individualized circumstances.
>
> One of the expressed purposes of section 3582(c)(1)(A) when it was enacted in 1984 was to provide a narrow avenue for judicial relief from unusually long sentences. S. REP. NO. 98-225 (1983). Having abolished parole in the interest of certainty in sentencing, Congress recognized the need for such judicial authority. In effect, it replaced opaque Parole Commission review of every federal sentence with a transparent, judicial authority to consider reducing only a narrow subset of sentences—those presenting "extraordinary and compelling" reasons for a reduction.
>
> Subsections (b)(6) and (c) operate together to respond to a circuit split concerning when, if ever, non-retroactive changes in law may be considered as extraordinary and compelling reasons within the meaning of section 3582(c)(1)(A)....
>
> The Commission considered whether the foregoing split among the circuit courts of appeals was properly addressed by the Commission, which typically resolves such disagreements when they relate to its guidelines or policy statements, *see* *Braxton v. United States*, 500 U.S. 344, 111 S.Ct. 1854, 114 L.Ed.2d 385 (1991), or by the Supreme Court. In making that determination, the Commission was influenced by the fact that on several occasions the Department of Justice successfully opposed Supreme Court review of the
1047 issue on the ground that it should *1047 be addressed first by the Commission. *See, e.g.,* Brief For the United States in Opposition to Grant of Certiorari, *Jarvis v. United States*, No. 21-568, 2021 WL 5864543 (U.S. Dec. 8, 2021); Memorandum For the United States in Opposition to Grant of Certiorari, *Watford v. United States*, No. 21-551, 2021 WL 5983234 (U.S. Dec. 15, 2021); Memorandum For the United States in Opposition to Grant of Certiorari, *Williams v. United States*, No. 21-767, 2022 WL 217947 (U.S. Jan. 24, 2022); Memorandum For the United States in Opposition to Grant of Certiorari, *Thacker v. United States*, No. 21-877, 2022 WL 467984 (U.S. Feb. 14, 2022).

> The amendment agrees with the circuits that authorize a district court to consider nonretroactive changes in the law as extraordinary and compelling circumstances warranting a sentence reduction but adopts a tailored approach that narrowly limits that principle in multiple ways. First, it permits the consideration of such changes only in cases involving "unusually long sentences," which the legislative history to the SRA expressly identified as a context in which sentence reduction authority is needed. *See* S. REP. NO. 98-225, at 55 (1983), *reprinted* in 1984 U.S.C.C.A.N. 3182, 3238-39. ("The Committee believes that there may be unusual cases in which the eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines for the offense of which the defender [sic] was convicted have been later amended to prove a shorter term of imprisonment."). Second, the change in law itself may be considered an extraordinary and compelling reason only where it would produce a gross disparity between the length of the sentence being served and the sentence likely to be imposed at the time the motion is filed. Finally, to address administrative concerns raised by some commenters, the amendment limits the application of this provision to individuals who have served at least 10 years of the sentence the motion seeks to reduce. Commission data show that between fiscal year 2013 and fiscal year 2022, fewer than 12 percent (11.5%) of all offenders were sentenced to a term of imprisonment of ten years or longer.
>
> Subsection (b)(6) excludes from consideration as extraordinary and compelling reasons warranting a reduction in sentence changes to the Guidelines Manual that the Commission has not made retroactive. Public comment requested that the Commission clarify the interaction between § 1B1.13 and § 1B1.10, and the Commission determined that excluding non-retroactive changes to the guidelines from consideration as extraordinary and compelling reasons was consistent with § 1B1.10 and the Supreme Court's decision in *Dillon v. United States*, 560 U.S. 817, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010).

(Doc. 126-1 at 8-10) (Amendments to the Sentencing Guidelines, at 5-6 (April 27, 2023) (citations omitted)).

Parties' Arguments Regarding the Validity of § 1B1.13(b)(6)

Elie argues that the Court should reduce his sentence to time served based on the "extraordinary and compelling" reason that he is serving an "usually long sentence"; he has served more than ten years of the sentence; and the intervening change in the law with the 2018 First Step Act has produced a "gross disparity" between his 32-year sentence for two § 924(c) firearms offenses and the fourteen-year sentence that would be imposed today. *1048 (Doc. 126). He argues that a sentence reduced to time served would diminish the injustice that resulted from his stacked § 924(c) convictions, as numerous other district courts have recognized (pre-Amendment). (*See* Doc. 126-2 (listing District Courts That Have Granted Relief to Defendants with Excessively Long Sentences)).

Elie argues that his 32-year sentence is "unusually long" on its face because it is nearly four times longer than the length of the average sentence for robbery and nearly eight times the length of the average sentence for firearms offenses. (Doc. 126 at 10) (citing U.S. Sent'g Comm'n, *2022 Annual Report and Sourcebook of Federal Sentencing Statistics* 64 (2022)). He cites to statistics from the Sentencing Commission reporting that, between 2013 and 2022, "fewer than 12 percent (11.5%) of all offenders were sentenced to a term of imprisonment of ten years or longer," making Elie's sentence more than two decades longer than the sentences of more than 88% of all defendants sentenced in the last decade. (Doc. 125 at 15) (citing Doc. 126-1 at 10 (excerpted *supra*)). In his Reply, Elie points out that only 2.6% of sentences in the 2021 Fiscal Year were over 20 years, and (presumably) fewer were over 30 years, although the Commission does not break out sentences over 20 years.[15]

Although the Government disputes the validity of Subsection (b)(6), it does not dispute that Elie's fifteen years of incarceration qualifies under Subsection (b)(6)—because he meets the minimum time served of ten years—and if sentenced today for the firearm offenses, he would receive a sentence of fourteen years rather than his the 32-year sentence he received, an eighteen-year difference.

Elie persuasively argues that the eighteen-year difference reflects a "gross disparity," and other district courts have held similar differences fit the description. *See, e.g., United States v. Vanholten*, No. 3:12cr-96-RBD-MCR, 2023 WL 8357739, at *3 (M.D. Fla. Dec. 1, 2023) (holding twenty years is "[a] difference of a generation between the actual sentence and the

sentence Mr. Vanholten would likely receive today [which] no doubt makes for a gross disparity."); *Ware*, 720 F.Supp.3d at 1357 (holding reduction in sentence for armed bank robbery offenses of 14 years if sentenced today was a gross disparity); *United States v. Rahim*, 535 F. Supp. 3d 1309, 1319 (N.D. Ga. 2021) (an eighteen-year difference was a gross disparity).

The Government focuses its entire argument regarding "extraordinary and compelling" on the validity of Subsection (b)(6). The Government argues, as it has in multiple other district court cases within the Eleventh Circuit, that the Sentencing Commission exceeded its authority to define "extraordinary and compelling" reasons for compassionate release in promulgating Subsection (b)(6). (Doc. 131 at 5 ("Although Congress has delegated broad authority to the Sentencing Commission, subsection (b)(6) is contrary to the text, structure, and purpose of 18 U.S.C. § 3582(c)(1)(A) and 28 U.S.C. § 994(a), and is invalid.")). It argues that "[n]o reasonable interpretation" of extraordinary and compelling "can encompass nonretroactive or intervening changes in law," and "[t]he majority of the circuits to have considered the issue" concluded that "an intervening change in the law is neither extraordinary nor compelling." (*Id.* at 6 (citing cases)).

1049 Elie counters that the Government mischaracterizes the holdings of Circuits outside *1049 the Eleventh — "[a]ll other circuits that addressed the issue concluded that the then-existing policy statement was not applicable to inmate-filed motions, but they split on whether courts could consider unusually long sentences when intervening changes in the law would produce much lower sentences today. Five circuits held that they could, while six disagreed, reasoning that, in the absence of an applicable policy statement from the Commission governing inmate-filed motions, sentence length and non-retroactive changes to sentencing law were not valid bases for relief." (Doc. 134 at 7 (citing cases)). The Government, Elie contends, overstates the holdings of those cases as finding as a matter of law that the Commission could not provide the guidance in § 1B.1(b)(6), when all of those decisions were made to fill a gap until the Commission could regain its quorum and amend § 1B.1.13. (*Id.* at 5 n.4) (citing, *e.g.*, *United States v. Andrews*, 12 F.4th 255, 259 n.4 (3d Cir. 2021), *cert, denied,* ___ U.S. ___, 142 S. Ct. 1446, 212 L.Ed.2d 541 (2022) ("[T]he Commission has not yet promulgated a post-First Step Act policy statement describing what should be extraordinary and compelling in the context of prisoner-initiated motions ... that temporary anomaly does not authorize this Court to effectively update the Commission's extant policy statement")).

Elie responds that the Government's position now contradicts its pre-Amendment position[16] on the Sentencing Commission's authority before the Supreme Court, and that substantively the Commission has not exceeded the authority delegated to it by Congress. (Doc. 134 at 8-9). He contends that Subsection (b)(6) is "the product of a reasoned and carefully explained decision by the Commission to `describe what should be considered extraordinary and compelling reasons" for a sentence reduction under (c)(1)(A) and to set forth "the criteria to be applied and a list of specific examples.'" (*Id.* at 9) (citing 28 U.S.C. § 944(t)). Elie also contends that the recent amendments to Subsection (b)(6), like all amendments to all of the Commission's policy statements, were submitted to Congress for its approval, and the lack of congressional action to amend or override Subsection (b)(6) indicates "implicit approval" by Congress.

The Government argues that Congress made the deliberate choice not to apply the § 924(c) amendment to defendants who were sentenced before the First Step Act's enactment, adhering to the "ordinary practice" in "federal sentencing" of "apply[ing] new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced." (Doc. 131 at 8) (quoting *Dorsey v. United States*, 567 U.S. 260, 280, 132 S.Ct. 2321, 183 L.Ed.2d 250 (2012)). Therefore, the Government argues, there was nothing extraordinary or compelling about the fact that defendant's sentence reflects the statutory penalty that existed at the time he was sentenced and "[a]ny disparity between defendant's sentence and the sentence he would receive today is the product of deliberate congressional design." (*Id.*).

The Government also contends that to recognize intervening changes in law as "extraordinary or compelling" would undermine the SRA because § 3582(c)(1)(A) was enacted as a narrow "safety valve" for "unusual cases in which an
1050 eventual reduction in the length of a term of imprisonment is justified by changed circumstances." *1050 (*Id.* at 13 (citing Senate Report at 55, 121)). The Government argues that Congress anticipated such "justification[s] for reducing a term of imprisonment" would arise in a "relatively small number" of cases, and specifically identified severe or terminal illness as the archetype of "extraordinary and compelling circumstances" that would justify reducing a sentence. (*Id.* (citing Senate Report at 55-56, 121)). Allowing sentence reductions now, the Government contends, for "an unusually long sentence" would "effectively reproduce the indeterminate system the [SRA] sought to eliminate" because judges will implement "divergent views concerning the fairness" compared to the new sentencing scheme or the "gross disparity" comparison to the old scheme. (*Id.*). It argues that Congress's failure to reject the Commission's Amendment does not demonstrate congressional "acquiescence" in Subsection (b)(6). Finally, the Government argues that Subsection (b)(6) is in tension with general separation-of-powers principles because it contravenes Congress's decision declining to allow retroactive application of changes in the law.

Elie argues that Congress's decision not to make the amendment to § 924(c) categorically retroactive did not foreclose relief under generally available provisions, like § 3582(c)(1)(A), to a narrower range of defendants serving "stacked" § 924(c) sentences. (Doc. 134 at 12 (quoting *McCoy,* 981 F.3d at 286-87) ("As multiple district courts have explained, there is a significant difference between automatic vacatur and resentencing of an entire class of sentences—with its "avalanche of applications and inevitable re-sentencings," ... and allowing for the provision of individual relief in the most grievous cases.")).

Elie points to the Sentencing Commission's statement that Congress in enacting § 3582(c)(1)(A) specifically intended the sentence reduction authority to extend to "unusually long sentences," and Subsection (b)(6) is explicitly directed only at that already narrow slice of cases—limited to defendants who have served 10 years where the change in law has produced a "gross disparity"—a rare combination that will not apply to a significant number of inmates. (*Id.* at 14 (citing Doc. 126-1 at 9)). Moreover, Elie argues, his "excessive sentence was the government's design, not Congress's" and "[t]he draconian 25-year sentences for stacked 924(c) counts were never automatic" but applied only when the Government "chose to invoke them." (*Id.* at 16-17 & n.13).

In his Reply, Elie points to data collected by the Sentencing Commission in a series of Reports[17] showing that the Government charged Black defendants with multiple § 924(c) counts more often, resulting in a disparate impact among those who received "stacked" § 924(c) sentences. (Doc. 134 at 15-16). Elie cites the Sentencing Commission's 2004 report considering fifteen years of guidelines sentencing, in which the Commission stated that Black defendants had disproportionately received such sentences for decades, and these "racial differences created an impression of unfairness and unwarranted disparity." (*Id.* at 17) (citing *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the*
1051 *Federal Criminal Justice System is Achieving the Goals of Sentencing Reform,* U.S. Sent. Comm'n at 90 (2004)[18]). *1051 Elie also points to the Sentencing Commission's subsequent 2011 Report to Congress in which the Commission observed that § 924(c) stacking continued to be applied disproportionately against Black offenders and recommended that Congress amend § 924(c) to remedy those "excessively severe" sentences that stacking produces. (*Id.* at 17-18) (citing *2011 Report To The Congress: Mandatory Minimum Penalties in The Federal Criminal Justice System,* U.S. Sent. Comm'n at 363 (2011)[19]). Elie cites Sentencing Commission's Report in 2018—the same year Congress enacted the First Step Act—showing that Black men remained overrepresented in the § 924(c) caseload generally (at 52.6%) and represented 70.5% of defendants who received "stacked" sentences under the statute. (*Id.* at 18) (citing *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System,* U.S. Sent. Comm'n at 24 (2018)[20]). In the First Step Act, Congress amended § 924(c) so that that the 25-year mandatory minimum did not apply to multiple § 924(c) convictions resulting from a single prosecution. *Luster,* 2024 WL 95469 at *1; *Smith*, 967 F.3d at 1210.

Validity of § 1B1.13(b)(6)—"Unusually Long Sentences"

Congress did not define in § 3582(c)(1)(A) "what should be considered extraordinary and compelling reasons for sentence reduction," instead leaving the Commission to fill in the gap with "the criteria to be applied and a list of specific examples." Sentencing Reform Act of 1984, Pub. L. 98-473, § 217(a), 98 Stat. 1987, 2023 (1984) (codified at 28 U.S.C. §§ 994(a)(2)(C), (t)). The SRA's delegation section calls for a policy statement "that in the view of the Commission would further the purposes [of sentencing] set forth in [§] 3553(a)(2), including the appropriate use of ... [§] 3582(c)." 28 U.S.C. § 994(a)(2)(C).

Congress "gave the Commission a `substantial role' in sentence-modification proceedings by directing it to define the circumstances that justify a reduced sentence." *Bryant,* 996 F.3d at 1257 (citation omitted). The plain language highlights Congress's desire for the Commission to have significant discretion in determining "the appropriate use of § 3582(c)(1)(A). *See United States v. Colon,* 707 F.3d 1255, 1259 (11th Cir. 2013) (interpreting § 994(a)(2)(C)). "The only boundary the SRA placed on the Commission's definition was that `[r]ehabilitation ... alone shall not be considered an extraordinary and compelling reason.'" *Bryant,* 996 F.3d at 1249 (quoting 28 U.S.C. § 994(t)). "And it required district courts to follow that definition." *Id.* (citing 18 U.S.C. § 3582(c)(1)(A); *Dillon v. United States*, 560 U.S. 817, 826-27, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010)).

At least six other district courts within the Eleventh Circuit have carefully considered the Government's verbatim arguments challenging the validity of Subsection (b)(6) reductions of § 924(c) stacked charges and found these same arguments
1052 unavailing. *See United States v. Cousins*, No. 1:92-CR-250-MHC, 2024 WL 1516121, *1052 at *4-*5 (N.D. Ga. Apr. 4, 2024)

(reducing 74-year "stacked" sentence for armed bank robberies to time served of 32 years, rejecting "the Government's argument that the Commission's adoption of U.S.S.G. § 1B1.13(b)(6) is invalid," noting "the Eleventh Circuit has made it abundantly clear that this Court is bound to apply U.S.S.G. § 1B1.13 [(b)(6)]" because it "is an applicable policy statement that governs all motions under Section 3582(c)(1)(A)."); *see also United States v. Harper*, No. CV 1:04-CR-00218-SDG, 2024 WL 1053547, at *4 (N.D. Ga. Mar. 11, 2024) (reducing 87-year sentence with § 924(c) stacking to time served of 19 years for three bank robberies); *United States v. Colley*, No. 2:94-cr-7-RWS, 2024 WL 1516128, (N.D. Ga. Mar. 26, 2024) (reducing 60-year sentence for four armed robberies, including 45 years for three "stacked" § 924(c) convictions, to time served of 30 years); *United States v. Smith*, No. 4:99-CR-66-RH-MAF, 2024 WL 885045, at *2-*3 (N.D. Fla. Feb. 20, 2024) (reducing 92-year sentence with "stacked" § 924(c) offenses to time served of 28 years for four armed robberies); *cf. United States v. Allen*, 717 F. Supp.3d 1308, 1315 (N.D. Ga. 2024) (modifying life sentence based on § 851 sentencing enhancements, which no longer would apply to his previous convictions, for defendant who had already served 12 years for drug-related crimes); *United States v. Padgett*, 713 F.Supp.3d 1223, 1224-25, 1230 (N.D. Fl. 2024) (reducing sentence of life plus five years to time served of 18 years where the defendant's prior simple-possession convictions would not qualify as or "violent" or "serious drug offenses" and his sentence would be 15 years under current guidelines, finding "§ 1B1.13(b)(6) is valid" and "[n]othing about the word `extraordinary' suggests it could not apply to an unusually long sentence or an unusual temporal disparity—a disparity caused by an otherwise nonretroactive change in the law.").

In a seventh case, very similar to Elie's, with the § 924(c) stacking issue that led to a 55-year sentence, Judge Jones of the Northern District of Georgia recently found in considering the same validity arguments: "[a]s far as the case law is concerned, for this specific question" of whether the Commission's addition of Subsection (b)(6) was an "overreach" of Congress's "delegated authority," the court "finds little by way of binding authority." *United States v. Ware*, 720 F.Supp.3d 1351, 1359 (N.D. Ga. 2024). He summarized the little persuasive case law that exists in this Circuit:

> Since the 2023 amendments, at least one sister district court in the Northern District of Georgia has rejected the Government's arguments. *See United States v. Allen*, 717 F.Supp.3d 1308, 1314 (N.D. Ga. 2024). In *Allen,* the Court specifically relied on the fact that the Eleventh Circuit had not addressed whether a nonretroactive change in law could ever be an extraordinary and compelling reason for compassionate release and that the statute itself does not prohibit the Sentencing Commission's interpretation. *Id.* Other district courts within the Eleventh Circuit have agreed. *See United States v. Padgett*, 713 F.Supp.3d 1223 (N.D. Fla. 2024), ECF No. 162 (holding that it was the Sentencing Commission's "primary responsibility" to define extraordinary and compelling in the light of prior Supreme Court and Eleventh Circuit precedents and that Section 1B1.13(b)(6) did so without overreach).
>
> * * *
>
> *Allen* is correct that the Eleventh Circuit has not outright rejected nonretroactive changes of law as an extraordinary or compelling reasons for release under 18 U.S.C. § 3582(c)(1)(A). This omission is not
> 1053 surprising given that prior to the November 2023 amendments, the Eleventh Circuit's *Bryant* decision *1053 precluded consideration of any reason for compassionate release beyond the reasons articulated in the sentencing guidelines by the Sentencing Commission itself. Accordingly, unlike district courts in circuits with pre amendment case law on the issue, this Court is subject to no binding authority for its consideration of the legal issue instantly presented.
>
> The Court does, however, consider all the Eleventh Circuit's aforementioned admonishments regarding the strong deference to be afforded the Sentencing Commission in issuing its policy statements. *See, e.g., Bryant,* 996 F.3d at 1255 (holding that defining the circumstances for sentencing modifications "is not a task that the statute allocates to courts" and that while Congress allows a court discretion in determining if a sentence should be reduced, it "tasked [the Sentencing Commission] with defining the universe of `extraordinary and compelling circumstances' that can justify a reduction"). Indeed, the Government itself relied on these statements of deference prior to the Sentencing Commission's amendments. Doc. No. [83], 3-5 (collecting examples). Thus, the Court will proceed by affording strong deference to the Sentencing Commission's statutorily promulgated interpretation of extraordinary and compelling reasons.

Ware, 720 F.Supp.3d at 1360. This Court agrees with Judge Jones's rejection of the Government's argument that, "as a textual matter, nonretroactive changes in law are neither `extraordinary' nor `compelling' and thus cannot be a basis for compassionate release," based on the Sixth Circuit's decision in *United States v. McCall*, 56 F.4th 1048, 1055 (6th Cir. 2022)

—the same argument it makes in *Elie*'s case—that "extraordinary" should be understood "to mean `most unusual,' `far from common,' and `having little or no precedent.'" (Doc. 131 at 8). To the contrary, "the federal Courts of Appeals' different interpretations of these terms in the context of non-retroactive changes in law lends to a conclusion that they are ambiguous," and "in the light of the Eleventh Circuit's strong statements regarding Congress's deferential delegation to the Sentencing Commission's interpretation of Section 3582 ... strong deference ought to be afforded to the Sentencing Commission's reasonable interpretation." *Ware*, 720 F.Supp.3d at 1360.

As to the Government's argument that the Sentencing Commission's allowance of modification of sentences for nonretroactive changes in criminal penalties contravenes the intent of Congress, the argument is rejected. Subsection (b)(6) does not override congressional intent. "The Sentencing Commission clearly defines Section 1B1.13(b) (6) not in reference to a nonretroactive change in law, but to `an unusually long sentence'" for a defendant who has completed 10 years of it. *Id.* "The Sentencing Commission specified that as a part of this consideration, a court can look to any changes in law that have created a `gross' sentencing disparity," and did not declare that all changes in criminal penalty provisions create unusually long sentences—rather, a court's consideration of the nonretroactive change in law is a "measuring stick for the Court to use to determine if the sentence defendant is serving is, in fact, unusually long." *Id.* The ultimate determination must be based on the defendant's individualized circumstances after other prerequisites have been satisfied. *Id.* "[T]he Court has the discretion to determine if an unusually long sentence (such as, but not limited to, if a change in law later created a "gross disparity" between the defendant's sentence and a similarly situated defendant in the present day) can be modified. This
1054 interpretation of extraordinary and compelling *1054 reasons does not contravene Congress's intent." *Id.*

In addition, "while the finality of sentences is an important principle, § 3582(c)(1)(A) represents Congress's judgment that the generic interest in finality must give way in certain individual cases" to be determined by the Commission. *McCoy*, 981 F.3d at 287. It serves the important purpose of providing "a `safety valve' that allows for sentence reductions when there is not a specific statute that already affords relief but `extraordinary and compelling reasons' nevertheless justify a reduction." *Id.*

Subsection (b)(6) extends a case-by-case review of sentences to a narrow class of imnates. Prior to the First Step Act, only about 150 offenders annually received stacked § 924(c) mandatory minimum sentences, only about 250 offenders annually received § 851 enhanced mandatory minimum sentences. *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal System,* U.S. Sent'g Comm'n at 19 (Mar. 2018); *Application and Impact of 21 U.S.C. § 851: Enhanced Penalties for Drug Trafficking Offenders,* U.S. Sent'g Comm'n at 6 (July 2018).[21] Together, these groups made up around 0.6% of total offenders until the First Step Act passed. Already a small number, even fewer could petition for sentence reduction under Subsection (b)(6), since offenders must have served at least 10 years of their sentence to be eligible for consideration. Extending the possibility of sentence reduction to fewer than one percent of total offenders does not jeopardize the expectation that prisoners will serve their full sentences. Subsection (b)(6) is therefore reasonable in light of the statute's structure, nature, purpose, and history.

IV. CONCLUSION

In this case, Elie has demonstrated "extraordinary and compelling" circumstances under Subsection (b)(6) which merit a reduction in his "unusually long sentence" to time served. Elie's release would not endanger the community, and the § 3553 factors favor the reduction in sentence. As Judge Hinkle said in reducing a 92-year sentence with four "stacked" armed robberies to time served of 28 years, the defendant "has served a substantial sentence, far longer than most individuals who commit similar offenses. He was age 24 at the time of the offenses. Those of us who impose sentences hope that sometimes they have the desired effect. As the government concedes, [his] behavior in the Bureau of Prisons, especially in recent years, has been commendable." *Smith*, 2024 WL 885045, at *2-3. Elie was 25 when he committed the offenses and his rehabilitation—even when he faced incarceration of an additional 18 years until age 58—has been commendable. Elie's Motion to Reduce Sentence to time served will be granted as set forth below.

Based on the foregoing, it is ordered as follows:

1. Defendant's Motion for Compassionate Release (Doc. 126) is GRANTED and his sentence will be reduced to time served, not as of today, but as of 30 days from today.

2. The decision is STAYED for 30 days to allow the Bureau of Prisons and Probation Department time to implement an orderly transition plan and will afford the Government an opportunity, if it wishes, to appeal and seek a stay.

1055 *1055 3. The Clerk is DIRECTED to file the Presentence Investigation Report dated December 2, 2009 under seal in the docket simultaneously with entry of this Order. DONE and ORDERED in Chambers, Orlando, Florida on May 3, 2024.

[1] The Court does not believe oral argument (*see* Doc. 126-16) would be beneficial.

[2] Updated and adapted from the Court's previous Order. (Doc. 113).

[3] *See* http://www.bop.gov/inmateloc (visited April 18, 2024).

[4] Elie argues that the time he has served is the equivalent (considering good time) of an 18-year sentence. (Doc. 126 at 10).

[5] *See Bryant,* 996 F.3d at 1249 (citing U.S. Dep't of Justice: The Federal Bureau of Prisons' Compassionate Release Program 11 (Apr. 2013) ("BOP [did] not properly manage the compassionate-release program, resulting in inmates who may be eligible candidates for release not being considered.")).

[6] Unpublished opinions of the Eleventh Circuit constitute persuasive, and not binding, authority. *See* 11th Cir. R. 36-2 and I.O.P. 6. The case is cited for its general discussion of the "stacking" in § 924(c) and the 2023 Amendment to § 1B1.13.

[7] Elie cites a long list of district court cases— located in Circuits outside the Eleventh Circuit —granting relief to defendants with excessively long sentences, including based on § 924(c) stacking. (*See* Doc. 126-2).

[8] The "other reasons" provision was located at that time in Application Note 1(D) of U.S.S.G. § 1B1.13, cmt. n.1. A similar "catch-all" provision is now contained in amended § 1B1.13(b)(5).

[9] These provisions were located at that time in Application Note 1(A)-(C) of U.S.S.G. § 1B1.13, cmt. n.1 and are now contained in the amended version of § 1B1.13(b)(1)-(3).

[10] In addition, the amendment expanded the list of "extraordinary and compelling reasons" in § 1B1.13's application notes by: (i) revising the "Medical Circumstances of the Defendant" subsection to include "medical circumstances not expressly identified in § 1B1.13 that were most often cited by courts in granting sentence reduction motions during the pandemic"; (ii) adding a new provision for cases in which a defendant's parent is incapacitated to the "Family Circumstances" subsection; (iii) and creating new subsections for defendants who have been victims of "sexual assault perpetrated by BOP personnel." 88 Fed. Reg. 28257.

[11] The court must determine that the "defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." U.S.S.G. § 1B1.13(2).

[12] The PSR will be filed under seal in the docket simultaneously with entry of this Order.

[13] The Government has not provided a citation to the records they mention, and they were not attached to its Response. (Doc. 131). However, Elie does not deny the incidents. He explains that the reprimand for "possessing a hazardous tool" in 2022 was for" possessing a phone, which he tried to use in a desperate attempt to speak with his sister while she was experiencing severe complications during the birth of her daughter." (Doc. 134 at 18). Neither that citation nor "smoking in an unauthorized area" in 2020 could conceivably alter the Court's finding that Elie is not a danger to the community.

[14] To the extent that Elie also seeks relief under § 1B1.13(b)(5) alleging that his individualized circumstances amount to additional "extraordinary and compelling" reasons warranting a reduction of his sentence, the Court finds that it cannot consider such "other reasons" based on the holding in *Bryant,* 996 F.3d at 1262-65 (limiting the prior "catch-all" category to only the reasons articulated by the BOP based on the text of the policy statement at that time). At this time, *Bryant* remains binding on the district courts in this Circuit. *See United States v. Ware*, 720 F. Supp.3d 1351, 1357 n.5 (N.D. Ga. 2024) ("while there has not been much opportunity for case law to develop on the issue, it does appear, that the new catch-all `Other Reasons' category stands in contrast to the Eleventh Circuit's *Bryant* decision by allowing a district court discretion in determining if the circumstances of a motion `are similar in gravity to' the other more specified extraordinary and compelling reasons permitted."); *see also United States v. Allen,* 717 F.Supp.3d at 1312 n.2 (noting only the director of the BOP can determine which other circumstances fall within the catch-all provision) (citing *Bryant,* 996 F.3d at 1263-65).

[15] *Fiscal Year 2021 Overview of Federal Criminal Cases,* U.S. Sent. Comm'n at 9 (2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.

[16] *See, e.g.,* Doc. 134 at 8-9 (citing Br. for the United States in Opp'n at 2, *Thacker v. United States* (No. 21-877) ("[T]he Sentencing Commission could promulgate a new policy statement that deprives a decision by this Court of any practical significance."); and other cases cited at nn.5 & 6).

[17] Counsel for Elie is John Gleeson, Esq., former United States District Judge, who currently serves as a Commissioner on the Sentencing Commission and is acquainted with the Commission's Reports discussing statistical disparities.

[18] http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15_year_study_full.pdf.

[19] The Commission's analysis of the geographic distribution of cases involving convictions of multiple section 924(c) counts for the fiscal year shortly after Elie was sentenced (October 1, 2009), showed concentrations in certain districts; the Middle District of Florida reported the third-highest number of cases nationally involving multiple convictions of section 924(c). *See 2011 Report to Congress* at 277. https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system.

[20] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf.

[21] *See* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf; and https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180712_851-Mand-Min.pdf.

Enclosure 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:11-cr-307-T-33TBM

UNITED STATES OF AMERICA

-vs-

YENER VAHIT BELLI

Defendant.
----------/

11 January 2013
10:10 a.m.
Courtroom 14B

TRANSCRIPT OF PROCEEDINGS
(SENTENCING HEARING)
BEFORE THE HONORABLE VIRGINIA M. HERNANDEZ COVINGTON,
UNITED STATES DISTRICT COURT, DISTRICT JUDGE

APPEARANCES

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(appearances continued on next page)

STENOGRAPHICALLY REPORTED
COMPUTER-AIDED TRANSCRIPTION

ALSO PRESENT **YENER VAHIT BELLI (Defendant)**
DIANE TREMMEL (Probation Officer)
LISA BINGHAM (Courtroom Deputy Clerk)

REPORTED BY SHERRILL L. JACKSON, RPR, FPR
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I N D E X T O P R O C E E D I N G S

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P R O C E E D I N G S (10:10 a.m.)

THE COURT: Good morning, everybody. We're here for -- the first sentencing is *United States vs. Yener* Vahit -- do I pronounce it Belli?

MR. BINI: Belli, Your Honor.

THE COURT: Belli. Case 11-cr-307-T-33TGW, and we can begin by having counsel state their appearances.

Mr. Bini.

MR. BINI: Mark Bini for the United States. Good morning, Your Honor.

THE COURT: Good morning.

MR. COHEN: Barry Cohen and Kevin Darken, Your Honor, for the Defendant, Yener Belli.

THE COURT: All right. And of course the Defendant is here, and Ms. Tremmel is here for Mr. Washington.

So excuse me one second. We did have some computer issues, so let me just make certain that I've got my computer working in case I need to check something.

And I did get the information that you submitted, Mr. Cohen. That -- I believe that was already part of the probation officer's package, so I had already looked at those --

MR. COHEN: Okay.

THE COURT: -- physicians' reports, but I thank

you very much for sending those to me anyway.

MR. COHEN: Thank you, Your Honor.

THE COURT: As well as the letters. I had already looked at those letters.

Okay, Yener Vahit Belli, on October 4th, 2012, you entered a plea of guilty to Count 3 of the indictment charging you with possession of a firearm during and in relation to a crime of violence, in violation of Title 18 United States Code, Section 924(c)(1)(A), and Count 5 charging you with possession of a firearm during and in relation to a crime of violence, in violation of Title 18 United States Code, Section 924(c)(1)(A).

The Court has previously accepted your guilty plea and has adjudged you guilty of those offenses. We have now reached the stage in the proceedings where it is my duty to address several questions to you and your attorney and the counsel for the government, and I'll start with Mr. Bini.

Mr. Bini, have you had the opportunity to read the presentence report?

MR. BINI: Yes, Your Honor.

THE COURT: Do you have any objections as to the factual accuracy of the report?

MR. BINI: No, Your Honor.

THE COURT: Do you wish to make any objections to the probation officer's application of the guidelines?

MR. BINI: No, Your Honor.

THE COURT: Thank you, Mr. Bini.

Mr. Cohen, have you had the opportunity to read and discuss with Mr. Belli the presentence report?

MR. COHEN: Yes, Your Honor.

THE COURT: Do you have any objections as to the factual accuracy of the report?

MR. COHEN: No, Your Honor.

THE COURT: Do you wish to make any objections to the probation officer's application of the guidelines?

MR. COHEN: No, Your Honor.

THE COURT: Thank you, Mr. Cohen.

There being no objections to either the factual statements or the application of the guidelines as contained in the presentence report, the Court adopts those statements and guideline applications as its findings of fact and determines that the advisory guidelines are seven years as to Count 3 and a consecutive 25 years as to Count 5 imprisonment.

And that's mandated by statute; correct, Ms. Tremmel?

THE PROBATION OFFICER: Yes, Your Honor.

THE COURT: All right. So that's why the guidelines not applicable here.

Two to five years supervised release; $1,120 in

restitution; up to $250,000 fine; and a $200 special assessment.

Mr. Bini, do you know if there's a victim present in the courtroom or a victim who has provided you with a statement that he or she would like to make?

MR. BINI: No, Your Honor. The victim witness coordinator did reach out to the victims, as did the agent on the case, but we do not have any victims here today or any victim impact statements.

THE COURT: Okay. Anything at this juncture that you would like to say on behalf of the victims, or will you just wait for when I ask for what an appropriate sentence will be?

MR. BINI: Yes, Your Honor. The Government will wait until that time.

THE COURT: All right. Mr. Bini, do you know of any reason why this Court should not now proceed with imposition of a sentence?

MR. BINI: No, Your Honor.

THE COURT: All right. Do you wish to make a statement with respect to what an appropriate sentence for this gentleman would be?

MR. BINI: Your Honor, the Government would seek a guideline sentence, which in this case is the mandatory minimum sentence of 32 years.

The Defendant pled guilty to two 924(c)s in connection with robberies on October 13th and October 19th where he brandished a TEC-9 firearm.

The case involved a spree of robberies from October 12th to October 21st. The Defendant was arrested on October 22 before committing -- he appeared ready to commit another armed robbery. He was arrested outside of a convenience store.

So the charges are serious, and for that reason, the Government asks for the guideline sentence of 32 years.

THE COURT: Okay. On the other hand, you're not asking that I depart upward from the guideline sentence -- or from the statutory sentence? You're not asking for an additional enhancement here?

MR. BINI: No, Your Honor. We are asking for the 32 years and no more.

THE COURT: Okay. Thank you, Mr. Bini.

All right. Mr. Cohen, do you know of any reason why this Court should not now proceed with imposition of sentence?

MR. COHEN: I do not, Your Honor.

THE COURT: All right. Do you wish to make a statement or present any information in mitigation of the sentence?

MR. COHEN: I would, Your Honor.

THE COURT: All right. And I'll get to that in just one second.

Mr. Cohen, Mr. Belli, I need to advise you that you have the right to directly address the Court. You don't have to, but I wanted to make certain that you understand that you have that right.

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Well, I'll come back to you in a moment to see if you would like to say anything before I impose sentence.

THE DEFENDANT: Yes, ma'am.

THE COURT: All right, Mr. Cohen, I'm happy to hear you now. You've heard that the Government is asking for the statutory sentence, which in this case is 32 years.

MR. COHEN: Thank you, Your Honor.

I think it's important, Your Honor, to -- and I'm not in any way diminishing the seriousness of the allegations here. They are -- they're very serious.

And frankly, when I first spoke with Mr. Belli's father, Dr. Belli, who just passed away this past week, and his mother, I was -- and I learned about who they are and who they've been and their family and the kind of things and the kind of past that this young man has had, it was -- and I've seen -- I've been doing this for a few years, and this was one of those very rare cases where you just can't

understand how somebody comes from a family like he came from and all of a sudden engages in conduct which is abhorrent to what's acceptable in a responsible society.

And so, I went to see him, and I really liked him, and I said to him, "How in the world could a guy like you find yourself in this position?" And I spent a lot of time with him; and of course I learned the kind of family that he came from, the kind of background he came from. You saw the PSI report, what I'm talking about.

THE COURT: Right.

MR. COHEN: One brother's a doctor. The other brother's a Ph.D. almost in mathematics and is a soccer coach and graduated from the University of South Florida, a Christian school, and so I -- I needed help, because I just couldn't figure it out. I just couldn't figure out how he could find himself in this situation coming -- given the kind of support system that he had all his life, given the kind of love that he had all his life, and the opportunities that he had all of his life. It was just something that -- as I say, it was just enigmatic to me.

So after I talked to him, I learned about him -- his discomfort as a little boy in school and how he felt better when he would take drugs. It made him feel -- he could get up in front of the classroom without feeling the shamefulness that he felt, and he got -- started taking

these -- marijuana at a very young age. And as he grew -- he continued to grow, and he got into these other -- these other drugs. And again I'm not saying this to try to condone the behavior, because that's not my point. I'm trying to help the Court as I went through trying to understand how he found himself here.

And I -- and I learned about the Xanax, and I learned about the cocaine, and I learned about all these things that some of these kids do that is so inconsistent with what's good for 'em, you know, and what's inconsistent with the value system that he learned in his -- but it wasn't that he was a bad boy -- I mean, a bad kid, a mean-spirited kid, because that's not who he is, and I think you saw that from the people who have known him all his life and the doctors who had treated him and examined him.

And what I found out was that this was a boy that never ever acted out violently. There's no evidence of any robberies or burglaries or some sort of sociopathic behavior or a pattern of behavior which we see a lot of unfortunately when we see these young kids who are recidivists from juvenile court and come through the system.

That's not who he is, who he was. And we found out that the medical report says he was diagnosed with -- with attention deficit disorder at a young age by Mr. -- by Dr. Mussenden. And then -- and then we saw that Dr. Szabo

saw him, and he diagnosed him --

THE COURT: With bipolar.

MR. COHEN: Well, Dr. Szabo -- I think the last -- Dr. Szabo, Dr. Carpenter, Dr. Gossinger all determined that he was bipolar, and sadly the doctor that he saw shortly before -- I think it was Dr. Szabo's diagnosis that it was -- he didn't diagnose him as a bipolar disorder; he diagnosed him with some -- some -- something -- some drug toxicity or some anxiety disorder.

And sadly this misdiagnosis permitted him not to have the medicine that he needed to have to -- to control his manic state when he went into this -- into this manic acting out for this couple of weeks, which was so totally irreconcilable with who this boy was. And I said, "How in the hell could you do something like this?" And he really didn't know. And I asked his doctors, and they said you don't know the effect on the brain that this has. This is not something that makes him a bad human being. This is a result of not being properly medicated, and he has this kind of acting out that he doesn't apply what you and I would apply as a rational consequence for doing this sort of thing.

And then he acted out, as the U.S. Attorney indicated; and I asked him, I said, "Well, how could you go in with a gun?" you know. "Don't you know that you could

get killed or you could kill somebody?"

And he explained to me that none of these guns ever had any bullets in it. And when you looked at the clip of the video that the Government has, you don't -- you see that -- you don't see the clip in there.

THE COURT: All right.

MR. COHEN: And the brandishing part of it, most of the time he would just open up his shirt, and that's called "brandishing" even if you don't point it at somebody. Brandishing is --

THE COURT: Right. But on the other hand, Mr. Cohen, I'm sure you understand and you've explained to him that when you're on the receiving end of somebody pointing a gun at you -- I mean, somebody like me who doesn't know that much about magazines -- and, I mean, I just see a gun pointing at me, and it's scary.

MR. COHEN: No question. And he fully understands that. His family fully -- as I say, when you're on the receiving end, God forbid, of something like that, it's probably the most fearful thing that one human being can ever go through. And I started this little discussion by saying I don't -- what I'm saying to you is I'm not trying to justify or condone it. All I'm trying to is that this young man is here now facing 32 years of his life away from his family, away from the things, the freedoms that we have

and enjoy because of this short period of time in his life for acting out.

And so I ask the Court to give weight to the -- to the -- to the life that he's lived except for this short period in his life that places him here today.

The offense, as I said earlier -- the offense that the Court has to consider, we would ask you to think about the fact that no one got hurt and that -- and that I would repeat what I said about the gun. The crimes were obviously impulsive. There was very little money in here for -- to show a motive to the -- the 32-year sentence, if he gets the good time that he probably -- that he'll be entitled to, he won't be released until he's 53 years of age.

The -- we talked about his bipolar disorder, the need for the sentence imposed reflects the seriousness of the offense, promotes respect for the law, and to provide just punishment for the offense. The plea agreement, the Department of Justice does agree this is a fair and just sentence. I think the probation officer did. And by the way, the probation officer was a very professional man that I had never met before, but he treated this family with ultimate respect and was a real credit to the department that he works for. I was just impressed with the way he -- the sensitivity that he showed to the family, and I just wanted the Court to know -- he's not here to hear what I had

to say. I hope Ms. Tremmel will share that with him, because it's nice to see. Sometimes we don't see that kind of professionalism; and when you do see it, it sticks out, and I think that he -- that his bosses should know that he is professional.

THE COURT: You know what? I'll make sure that the new chief probation officer knows as well, so --

MR. COHEN: Good.

THE COURT: I'll make certain he gets an e-mail from me.

MR. COHEN: Thank you very much.

THE COURT: Thank you, Mr. Cohen.

MR. COHEN: The -- and I could go on. I think the Court probably knows -- anticipates what I will say. I'd like for the -- for Jackie Belli, the Defendant's mother, to speak to you. She's -- as I said earlier, she lost her husband of many, many years this past week, and I think she wanted to share with you -- as a matter of fact, I handed the Court -- I don't know if the Court saw this group of pictures --

THE COURT: I did.

MR. COHEN: -- that I'd handed the Court, but I would like for Ms. Belli to give you a little bit of background and just to kind of share with you some of these -- what's behind this to help me explain who this

young man really has been and --

THE COURT: Certainly.

MR. COHEN: -- and is.

THE COURT: Of course.

Ms. Belli, if you can come forward there. And you can just speak from the podium there. We won't put you under oath or anything, but I'm happy to hear you as Mr. Belli's mother, and you can let me know about your thoughts on this.

MS. BELLI: Thank you, Your Honor.

THE COURT: You're welcome.

MS. BELLI: I just wanted to share with you today a few things about my son that I know, not the young man that you see here today. This is a picture of him when he was very little and full of energy, and Yener was always full of energy, and we tried to channel that energy somewhat with some soccer, which he played for many years and was a very competitive young man.

THE COURT: I think he even played one year in college, did he not?

MS. BELLI: Oh, yes, and earned many awards. I think you saw all the awards that he earned, and also played for high school and also graduated from a Christian school.

We always recognized, his father and I, that he had a lot of energy -- a lot of excess energy, and that's

why I had taken him to the psychologist to have him tested. Unfortunately, they did diagnose him with ADHD, but the medication they gave him didn't work for him, and we're wondering now if it was because it was misdiagnosed and he was actually bipolar at that time. Who knows.

The fact of the matter is that he's a kind and gentle boy and wouldn't harm a soul; and like Mr. Cohen said, the fact that he went in with a gun, I fully believe that he was in a desperate situation and didn't know what he was doing and that if it came down to it, he was probably the one that would have been shot. I just don't see this boy pointing a gun at anybody; and like Mr. Cohen said, he showed it, but he didn't point it. Not to eliminate what he did at all, but it's just not him, Your Honor.

And I feel so badly, his dad and I being medical people, that we didn't do more. I don't know what we missed. And now that we have found out he has this problem, we both felt so badly that we haven't been able to do anything for him.

He was so proud of himself right before this. I knew something was troubling him, but he was able to graduate from college, and it was a struggle, not because Yener's not bright. He's very bright, but he has a hard time holding himself down to a task, you know.

THE COURT: Well, sometimes people who have those

learning disabilities are exceptionally bright, and it may be that your son was in that category, just an exceptionally bright person but they have certain learning disabilities or the attention deficit disorder, as I understand.

You can sit there and blame yourself as a parent, but, you know, hindsight is always 20/20, and it sounds like you did the very best that you could at the time, and you took him to a professional, and it's certainly not your fault that he was not properly diagnosed. So I don't think you should blame yourself.

MS. BELLI: Well, it's a little hard to do when you have a young man before you that you feel like is going to get his life taken away from him, Your Honor; and basically that kind of sentence, that's what it means to me.

And I ask you today to think about him and think about his future. I really feel like he could be a productive member of society. I think with the correct medication and the correct love and encouragement from his family and the support of the community, he could turn his life around very easily.

THE COURT: You do understand a couple of things, and that is that this -- sometimes courts have discretion. Most of the time they do have discretion under the sentencing guidelines, but in this particular case, because these are such serious offenses, the Court has no

discretion. So, this is -- this has to be imposed.

You could give me the most compelling of circumstances, but this is a statutory requirement. It's not a discretionary issue that the judge can say, "You know, this was an anomaly. I'm going to a depart downward."

This is statutory; and for certain crimes, that's the way it is. You can't utilize your discretion because the crimes are so serious or the person's background is such. I just wanted you to understand he's going to get 32 years in prison, and that is -- I know for you as his family, as his mother, that that's a very difficult situation for a parent to find herself in, but that is the way that it's going to be.

The Government's not requesting a higher sentence, which I could impose if I felt it appropriate. So there's no discretion here, and he's been found to be competent. The psychiatrist and psychologist that have evaluated him have found him competent to proceed, so this is very sadly for you as his mother -- that is the sad situation that he's in.

MS. BELLI: Well, then I feel that something is really wrong with our laws, because it really doesn't take into consideration when people have mental challenges rather than physical challenges, and I'm sorry for that, because I buried my husband last Friday, and I feel like I'm burying

my son this Friday.

THE COURT: Well, you know, that's a discussion for another day, and just -- the criminal justice system can always -- it always strives to do as well as it can, but that is the situation that your son is in today. It's 32 years in prison.

All right, thank you. I appreciate your having come in today.

MR. COHEN: Your Honor, thank you for explaining that. I've shared that with them, but sometimes it's hard to -- the cognizant processing of this kind of thing is difficult when you're so in the -- in the position, and you seem to -- as a mother yourself, you seem to understand exactly what I'm saying.

We will --

THE COURT: I'm sure it's a very rough time having lost her husband last week and --

MR. COHEN: Right, but hopefully, though, Your Honor, this is -- we will be coming back before Your Honor hopefully within a period of time that the law permits us to come back before Your Honor for reconsidera-tion of this, and we're able to do that. We will be doing that, and the Court can do what the Court thinks is appropriate at that time, but they understand that for today you have no discretion.

THE COURT: Right.

MR. COHEN: And that's the way it is, and so we'll proceed with the sentencing.

THE COURT: All right, thank you.

MS. BELLI: I do understand, Your Honor, and I thank you for everything.

THE COURT: All right, thank you.

MR. COHEN: Your Honor, we're ready to -- do you want to say something?

THE COURT: Would you like to say something, Mr. Belli?

THE DEFENDANT: Yes. Do you want me to come up there?

THE COURT: Why don't you come up to the podium.

THE DEFENDANT: First, I want to tell my mom that I'm sorry and my family for putting them through this, and second I want to tell all the victims that I'm sorry. I understand what I did, but I think that there's something else going on here. I have mental issues that need to be attended to, and I have a feeling that you're going to say your hands are tied like --

THE COURT: Well --

MR. COHEN: They are.

THE COURT: There's no discretion here, but let me also say I think this is a fair and just -- fair and just

sentence and it's a fair and just system. I'm -- I feel very bad that somebody who was raised in such a loving and attentive home has found himself in this situation, but I think this is a -- I think it's a just result. It's hard for me to say that with your mother being so upset, but that is what I think. This is a fair and just result, and I -- it's particularly sad when it's somebody who has been raised in such a loving home.

THE DEFENDANT: With no criminal background?

THE COURT: Well, you had some issues there, but you know what? I think your time is best spent with what you just said, saying that you were sorry to the victims and to apologize to your mother. I think that you did a good job doing that.

THE DEFENDANT: Thank you for your time. Thank you.

THE COURT: All right.

MR. COHEN: Okay, Your Honor, thank you. We're ready to proceed, Your Honor.

THE COURT: Anything else before I pronounce sentence?

MR. COHEN: Nothing from the Defendant, Your Honor.

THE COURT: All right, anything else from the Government?

MR. BINI: Your Honor, just very briefly. The -- the victims in this case, just as an example of one of the robberies for which the Defendant was not charged -- but one of the robberies was on October 15th. In that one, the statement that the witness gave to the investigators at the time was that, "A white male around five foot tall wearing a powder blue hooded sweatshirt, sunglasses, showed a gun to me and said, 'Give me all the money you have.' Then he said, 'Hurry up and put it in the bag.' I gave the money with his gun pointed on me. He then told me, 'Kneel down, and get on the floor.' Then he said, 'Count from one to a hundred.' He had his gun pointed on me, and I was nervous. I can't remember everything."

Sentencing is always a sad day, Your Honor, but these are serious crimes, and those victims -- and that's why the Government asked for no more than 32 years, believes, as the Court has said, that 32 years is appropriate.

THE COURT: This is a very fair sentence, and the Government could have asked for additional time, and it chose not to do that, and I think that given the -- the tragedy that could have happened here and easily somebody could have been hurt, not necessarily by you, if you didn't have bullets in that gun, but somebody in the store could have pulled out a gun, a customer could have pulled out a

gun, and a lot of innocent people could have been hurt.

I think when you stood up here and you apologized to your mother, I think that was a very heartfelt apology, and I appreciate that you did that, and you apologized to the victims, and I felt that that was also heartfelt.

Since you've plead guilty, I don't think we need to go into a lot of these other things, and I think there's no reason to -- there's no reason for us to -- at this juncture to berate you with these other things. Let's just try to have this be a new day and a beginning and that you can move forward in an effort to, you know, rehabilitate and to have as positive a life as you can.

So those are my views on the subject, but, Mr. Bini, I'm glad you put that on the record, because I think it should have been put on the record. So I appreciate you having done that.

Is there anything else?

MR. BINI: No, Your Honor.

THE COURT: Thank you.

The Court has asked the Defendant why judgment should not now be pronounced; and after hearing the Defendant's response, the Court has found no cause to the contrary. The parties have made statements in their behalf or have waived the opportunity to do so, and the Court has reviewed the presentence report.

Pursuant to Title 18, United States Code, Sections 3551 and 3553, it is the judgment of the Court that the Defendant, Yener Vahit Belli, is hereby committed to the custody of the Bureau of Prisons, to be imprisoned for a term of 384 years, or 32 years. This term consists of terms of 84 months on Count 3 and a consecutive term of 300 months on Count 5.

Upon release from imprisonment, the Defendant shall serve a five-year term of supervised release.

As to Counts 3 and Count 5, all such terms to run concurrently.

While on supervised release, the Defendant shall comply with the standard conditions adopted by the court in the Middle District of Florida.

In addition, the Defendant shall comply with the following special conditions: The Defendant shall participate in a substance-abuse program, outpatient and/or inpatient, and follow the probation officer's instructions regarding the implementation of this court directive.

Further, the Defendant shall contribute to the costs of these services, not to exceed an amount determined reasonable by the Probation Office's sliding scale for substance-abuse treatment services. During and upon the completion of this program, the Defendant is directed to submit to random drug testing.

The Defendant shall participate in a mental health treatment program, outpatient and/or inpatient, and follow the probation officer's instructions regarding the implementation of this Court derivative.

Further, the Defendant shall contribute to the costs of these services, not to exceed an amount determined reasonable by the Probation Office's sliding scale for mental health treatment services.

The Defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or obligating himself for any major purchases without approval of the probation officer.

The Defendant shall provide the probation officer access to any requested financial information.

The Defendant, having been convicted of a qualifying felony, shall cooperate in the collection of DNA as directed by the probation officer.

The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the Defendant to submit to random drug testing, not to exceed 104 tests per year.

The Defendant shall pay restitution in the amount of $580 to Chevron Gas Station, 939 Brandon Boulevard, Brandon, Florida 33511; $140 to 7-Eleven at 531 East Brandon Boulevard, Brandon, Florida 33511; and $400 to

Dunkin' Donuts at 2206 East Highway 60, Valrico, Florida 33594.

Restitution shall be paid jointly and severally with Kara Denise Guggino.

While in Bureau of Prisons' custody, the Defendant shall either, one, pay at least $25 quarterly if the Defendant has a non-UNICOR job or, two, pay at least 50 percent of his monthly earnings if the Defendant has a UNICOR job.

Upon release from custody, the Defendant shall pay restitution at the rate of $50 per month. At any time during the course of post-release supervision, the victim, the Government, or the Defendant may notify the Court of a material change in the Defendant's ability to pay and the Court may adjust the payment schedule accordingly.

Based on the financial status of the Defendant, the Court waives imposition of a fine.

The Court orders that the Defendant forfeit to the United States immediately and voluntarily any and all assets previously identified in the plea agreement that are subject to forfeiture.

It is further ordered that the Defendant shall pay the United States special assessments totaling $200, which shall be you due immediately.

After considering the advisory sentencing

guidelines and all of the factors identified in Title 18 United States Code, Sections 3553(a)(1) through (7), the Court finds that the sentence imposed is sufficient but not greater than necessary to comply with the statutory purposes of sentencing.

The Court has accepted the plea agreement because it is satisfied that the agreement adequately reflects the seriousness of the actual offense behavior and that accepting the plea agreement will not undermine the statutory purposes of sentencing.

Under the plea agreement, the Defendant has entered a guilty plea to Counts 3 and 5 in return for the dismissal of Counts 1, 2, 4, 6, and 7 against the Defendant. In accordance with the plea agreement, it is ordered that Counts 1, 2, 4, 6, and 7 of the indictment be dismissed.

Is that correct, Mr. Bini?

MR. BINI: Yes, Your Honor, and the Government would also move to dismiss the superseding indictment in the case.

THE COURT: Okay. So the superseding indictment will be dismissed, and Counts 1, 2, 4, 6, and 7 of the indictment are dismissed. All right.

I'm going to remand your client to the custody of the United States Marshal to await designation by the Bureau of Prisons.

A couple of questions there, Mr. Cohen: Where would you like me to recommend that your client be housed?

MR. COHEN: Your Honor, we would respectfully request the recommendation of Coleman.

THE COURT: Coleman.

All right. Are there any type of -- he is a college graduate. I understand that. Are there any type of educational programs or anything else that you would like him to participate in? Because, as you said, when he's released from prison, he's going to be in his fifties. He's going to need to support himself. Is there anything that you would like me to recommend in terms of training, vocational training, anything else?

MR. COHEN: He wants to be a lawyer.

THE COURT: Okay. All right. Well, good. There'll be lots of opportunities in prison. We get a lot of pleadings prepared by people in prison, and --

MR. COHEN: He's presently --

THE COURT: I was going to say it's a good opportunity for him to learn to do these things, so that's certainly fine.

MR. COHEN: And I think he has an interest in understanding -- in trying to understand more about why -- what happened psychologically and physiologically when something has caused him to be in this plight. I think he's

interested in finding out about that, and he's always been a spiritual man, as you've seen in his record. He's head -- at the Pinellas County Jail, he was head of the Bible study group there for -- he goes to church all the time there. He's sort of a leader in the spiritual department. He wants to continue that wherever he goes.

THE COURT: All right. I recommend that he be housed in Coleman. I recommend that he be allowed to take any legal classes that may be available to him, either paralegal training or legal training, any psychological classes that might be available to him, and any religious or spirituality programs or classes that are available to him.

In your plea agreement, Paragraph(b)(5), you waived and gave up your right to appeal either directly or collaterally unless one of four things happened: A sentence in excess of the applicable guideline range as determined by the Court, a sentence above the statutory maximum, a sentence in violation of the Eighth Amendment to the Constitution, or if the Government exercises its right to appeal the sentence imposed. As far as the Court is concerned, none of these have taken place, so you have no right to appeal. However, under the law I'm obligated to tell you of certain time limits with respect to taking an appeal.

A defendant in a criminal case must appeal from the judgment and sentence within 14 days from this date.

Failure to appeal within the 14-day period is another ground for a waiver of your right to appeal. The Government may file an appeal from this sentence. You're also advised that you're entitled to assistance of counsel if you try to take an appeal; and if you are unable to afford a lawyer, one will be provided for you.

Before I ask whether anybody has any objections to the sentence, which I have to do for the record, I just want to say one more thing, Mr. Belli, because you did raise -- and I can see that you still have a lot of angst about it, and I'm sure your family does as well. Under our system, you've been found competent to proceed. You've been found competent to proceed.

Granted, I wish that you -- that this problem that you had had been diagnosed earlier, and we don't know whether it would have made a difference. I think that you, with medication, probably would have led a different life, but it's not enough to get a pass on these cases. It doesn't work that way. You don't get a pass because you're suffering from depression or you're suffering from bipolar.

While there are certain cases where the Court does have discretion, I can consider those things in imposing sentence. Because of the statutory maximum, I don't -- or the statutory minimum, excuse me, I don't have that discretion here.

But quite frankly, it's something that I rarely do, because there are so many people who do have either depression or bipolar and some even with schizophrenia who don't break the law, and I know that's a hard bitter pill to swallow, but that is the way that it is; and if I didn't think this was a fair sentence, I wouldn't impose it.

It's a sad day for you and your family, but two years ago, it was a sad day for your co-defendant, Ms. Guggino, who was also raised in a loving family, and it was a very sad day for the people in those stores that had guns pointed at their heads. That's why this sentence is being imposed. All right? I just wanted to say that, because I didn't want any doubt left in anybody's mind. All right?

The Court having pronounced sentence, does counsel for the Defendant or Government have any objections to the sentence or to the manner in which the Court pronounced sentence other than those previously stated for the record?

Mr. Bini?

MR. BINI: Not for the Government, Your Honor.

THE COURT: Mr. Darken?

MR. DARKEN: Your Honor, we have no objection. There are two things we wanted to ask for --

THE COURT: Certainly.

MR. DARKEN: -- which are unopposed by Mr. Bini. One was to recommend to the Bureau of Prisons mental health

treatment for bipolar disorder and ADHD.

THE COURT: All right. I think I did say treatment there; but if I didn't say it, I will make certain that he gets his medication and that he gets treatment for bipolar disorder and for post-traumatic stress disorder. And let me also say I have found the Bureau of Prisons very good to work with in terms of medication.

I've probably had two complaints in the last -- well, two in the last eight years. In the eight years I've been a district court judge, I've had two complaints, as best I can recall, maybe three, from somebody who felt they weren't getting their proper medication. I took it up with the Bureau of Prisons.

So if you think that you have any issues with not getting that medication, Mr. Belli, you can either communicate directly with the Court. You can -- there are e-mail -- there are computers in the prison. You can actually send me an e-mail, and my e-mail address is on the Florida Bar website, so you get my e-mail address. You can also get it through the court. You can have one of your family members as simple as picking up the phone and calling me, and I will then deal with the Bureau of Prisons. But I've only had three issues in the last eight years. But -- or obviously your lawyer, Mr. Cohen, can help you.

So if there's a problem with medication, you reach

out to me, because I think that's very important. All right?

Yes, Mr. Darken.

MR. DARKEN: The last request was to recommend to the Bureau of Prisons the residential drug-abuse program, or RDAP program, for poly substance abuse based on the reports that the Court HAS.

Right now I'm not sure he would qualify for the year reduction of sentence given the nature of his conviction, but he's interested in doing the program whether or not he would benefit from the sentence reduction; and since he would do that program towards the end of his sentence, you know, who knows what the Bureau of Prisons' policy will be at that time; but if you could just recommend that, whenever he gets around to that, they will consider that.

THE COURT: All right.

What Mr. Darken is talking about, Mr. Belli, is that normally when people have drug issues, they can get -- they can seek to take the 500-hour intensive drug-treatment program, and that does result in an additional reduction in your sentence.

And I am -- I am happy to recommend that, because you do have a drug history. Unfortunately, because these were violent crimes as opposed to drug crimes, it normally

will not result in a reduction of your sentence, because these are statutory requirements. But nevertheless, I think it's to your benefit, and so I will recommend that you be considered for the intensive 500-hour drug-treatment program.

Anything else, Mr. Darken or Mr. Cohen?

MR. COHEN: He asked if he could address the Court with one other observation.

THE COURT: Sure, of course.

THE DEFENDANT: Your Honor, it's had not about the reduction. I just want the help.

THE COURT: That's why I'm doing it. I think it would help you tremendously. It's a tough program, but I think that it's a good program.

All right. Anything else, Mr. Bini?

MR. BINI: No, Your Honor.

THE COURT: Okay. Did I ask you specifically any objections and did you say -- let me just ask -- I just don't want to skip that. Any other objections that you have not previously stated for the record?

MR. BINI: No, Your Honor.

THE COURT: Okay. All right.

Anything else, Mr. Cohen or Mr. Darken or Mr. Belli? Anything else?

MR. COHEN: At the conclusion, I'd like permission

to approach the bench --

THE COURT: Okay.

MR. COHEN: -- on an unrelated matter.

THE COURT: That's fine, and let me make certain, Mr. Cohen, that your client gets these pictures. They don't have it stapled or anything, but he can have it. It's his family pictures, if he would like 'em.

MR. COHEN: Yes, thank you.

THE COURT: So I will hand them to the court security officer, and there is no clip on them or anything. I have taken it off. So you can have these pictures, Mr. Belli, so at least you've got them there.

Thank you. We are in recess. I can't allow him to have contact with the family members for security reasons, so I'm sorry. I know that's normally a question that's asked. I can't allow it.

And let me just see counsel at sidebar.

(Proceedings concluded at 10:54 a.m.)

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CERTIFICATE OF REPORTER

I, SHERRILL L. JACKSON, Federal Official Court Reporter for the United States District Court, Middle District of Florida, Tampa Division,

DO HEREBY CERTIFY, that I was authorized to and did, through use of Computer-Aided Transcription, report in shorthand the proceedings and evidence in this cause, as stated in the caption on page 1 of this transcript, and that the pages numbered 1 to 36, inclusive, constitute a true and correct transcription of my shorthand report of said proceedings and evidence.

IN WITNESS WHEREOF I have hereunto set my hand this 19th day of November, 2019.

s/Sherrill L. Jackson

SHERRILL L. JACKSON, RPR, FPR
Federal Official Court Reporter

Enclosure 5

14

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

Case 8:11-Cr-307-T-33TGW

v.

YENER VAHIT BELLI

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, Yener Vahit Belli, and the attorney for the defendant, Barry A. Cohen (MB) Chinwe O. Fossett, mutually agree as follows:

A. **Particularized Terms**

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts Three and Five of the Indictment. Counts Three and Five charge that the defendant carried, used and brandished a firearm during and in relation to a crime of violence, in violation of Title 18, United States Code, Section 924(c)(1)(A).

2. Maximum Penalties

Count Three carries a mandatory minimum sentence of seven years imprisonment up to life imprisonment, that sentence to run consecutive to any other sentence imposed, a maximum fine of $250,000, a term of supervised release of up to five years, and a special assessment of $100 per felony count, said special assessment

to be due on the date of sentencing.

Count Five carries a mandatory minimum sentence of twenty five years imprisonment up to life imprisonment, that sentence to run consecutive to any other sentence imposed, a maximum fine of $250,000, a term of supervised release of up to five years, and a special assessment of $100 per felony count, said special assessment to be due on the date of sentencing.

3. Elements of the Offense

The defendant acknowledges and understands the nature and elements of the offense with which the defendant has been charged and to which the defendant is pleading guilty.

Counts Three and Five

Possession of a Firearm in and Relation to a Crime of Violence
18 U.S.C. §§ 924(c) and 2

The Elements of Counts Three and Five are:

First: That the defendant committed the crime of violence charged in Count Two and Four of the Indictment;

Second: That during the commission of that offense the defendant knowingly carried, used and brandished a firearm, as charged; and

Third: That the defendant carried, used and brandished the firearm "during and in relation to" the crime of violence charged in Counts Two and Four of the Indictment.

4. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the

time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

5. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One, Two, Four, Six and Seven will be dismissed Fed. R. Crim. P. 11(c)(1)(A).

6. Mandatory Restitution to Victim

Pursuant to 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make full restitution, as calculated by the Court for the armed robbery of the Chevron gas station and convenience store located at 939 Brandon Boulevard, Brandon, Florida, a 7-11 convenience store located at 1531 Brandon Boulevard East, Brandon, Florida and any other robberies the defendant is charged with in the indictment.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution

for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

Defendant's Initials YB

9. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

10. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

11. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), which are in the possession or control of the defendant or defendant's nominees. The property to be forfeited specifically includes, but is not limited to, an Intratec, Model Tec-9, 9MM, serial number 072268. The defendant admits and agrees that the conduct giving rise to the indictment in this case provides a sufficient factual and statutory basis for the forfeiture of real and/or personal property sought by the government.

The defendant further agrees to fully assist the government in the recovery and return to the United States any assets or portions thereof as described above wherever located. The defendant further agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers. The defendant agrees and consents to the forfeiture of assets pursuant to any criminal, civil, and/or administrative forfeiture action brought to forfeit these properties. Defendant agrees to take all steps necessary to locate property and to pass title to the United

States before the defendant's sentencing. The defendant hereby waives any double jeopardy challenges that the defendant may have as to any forfeiture actions arising out of the course of conduct that provides the factual basis for the indictment in this case. The defendant hereby waives any double jeopardy challenges that the defendant may have to the charges in this indictment based upon any forfeiture actions. The defendant hereby waives any constitutional claims that the defendant may have that the forfeiture of the aforementioned assets constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then

the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence. Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

12. Abandonment of Property - Firearms and Ammunition

The United States of America and defendant hereby agree that any firearm and/or ammunition as defined in 18 U.S.C. § 921, seized from defendant and currently in the custody and/or control of the Bureau of Alcohol, Tobacco and Firearms, were properly seized and are subject to forfeiture to the government according to 18 U.S.C. § 924(d) and/or that the firearms and ammunition constitute evidence, contraband, or fruits of the crime to which he/she has pled guilty. As such, defendant hereby relinquishes all claim, title and interest he/she has in the firearms and ammunition to the United States of America with the understanding and consent that the Court, upon approval of this agreement, hereby directs the Bureau of Alcohol, Tobacco and Firearms, or other appropriate agency, to cause the firearms and/or ammunition described above to be destroyed forthwith without further obligation or duty whatsoever owing to defendant or any other person.

As part of the plea agreement in this case, defendant in this case hereby voluntarily abandons all right and claim to see above.

Defendant's Initials YB

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information,

including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and

acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence ~~of to challenge it collaterally~~ on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

Defendant's Initials YB

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and

Defendant's Initials YB

the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

The defendant is pleading guilty because she is in fact guilty. The defendant certifies that she does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

On October 13, 2010, at approximately 6:09 p.m., Yenir Vahit Belli, aided and abetted by defendant, Kara Denise Guggino, committed an armed robbery of a Chevron gas station and convenience store located at 939 Brandon Blvd., Brandon, Florida. On that date, Belli entered the store brandishing a Tec-9 semi automatic firearm, demanding that the clerk put the money from the register into a paper bag. Belli also demanded cigarettes from the clerk. The clerk put $580.00 in U.S. currency

into the bag and threw several packs of cigarettes onto the counter. Belli took the money and grabbed one pack of cigarettes before fleeing the store. Belli was wearing sunglasses and a dark green hooded sweatshirt with a University of South Florida logo. Defendant Kara Guggino was waiting in a vehicle outside the store so that she could drive Belli away after the robbery. After exiting the store, Belli got into the vehicle in which Guggino was waiting. Guggino then drove she and Belli away from the Chevron, aware that he had just committed an armed robbery of the store.

On Tuesday, October 19, 2010, at approximately 11:57 p.m., Yenir Vahit Belli, aided and abetted by defendant, Kara Denise Guggino, committed an armed robbery of a 7-Eleven Store located at 1531 Brandon Boulevard East, Brandon, Florida. On that date, Yenir Vahit Belli entered the store displaying a Tec-9 semi automatic firearm. He demanded cash, a carton of Newport cigarettes, and scratch off lottery tickets from the clerk. Belli ordered customers to lay on the floor prior to fleeing the store with 61 lottery tickets and $72.00 in U.S. currency. Defendant Guggino was waiting in a vehicle outside the store so that she could drive Belli away after the robbery. After exiting the store, Belli got into the vehicle in which Guggino was waiting. Guggino then drove she and Belli away from the 7-11, aware that he had just committed an armed robbery of the store.

On October 20, 2010, following the arrests of Belli and Guggino, Belli was advised of his rights and expressed his understanding of these rights and his willingness to be interviewed by law enforcement with oral affirmations as well as reviewing, initialing, and signing a rights advisement waiver form. During that interview, Belli admitting to committing the above armed robberies with Guggino, as well as

several other robberies.

Belli stated that the firearm he had used was a Tec-9 semi-automatic firearm which belonged to his father.

Chevron and 7-11 stores are chain stores with similar stores located in numerous other states. The funds stolen in these armed robberies would have been deposited into the victim store's corporate accounts. Funds in these accounts are utilized for business expenses including the purchase and replenishing of inventory items for sale at these stores. Both Chevron and 7-11 stores actively participate in interstate and foreign commerce in that many of their inventory items are received from locations outside the State of Florida and the United States. Since the robbery of a business establishment causes the establishments to be closed down for police investigation, the efforts by employees to sell these items acquired through interstate commerce and foreign commerce is disrupted. In addition, in committing armed robberies of these stores, Belli and Guggino were also responsible for depleting the store's assets and thus further disrupted the ability to acquire additional inventory through interstate and foreign commerce.

At the time of the arrests of Belli and Guggino, police located in the vehicle in which they were arrested the Tec-9, 9mm, semi-automatic firearm that Belli had used in the commission of the above armed robbery, as well as others. This weapon meets the definition of a firearm as set forth in Title18 U.S.C. § 921(a)(3).

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no

other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 25th day of SEPTEMBER, 2012.

ROBERT E. O'NEILL
United States Attorney

YENER VAHIT BELLI
Defendant

MARK E. BINI
Assistant United States Attorney

BARRY A. COHEN
Attorney for the Defendant

W. STEPHEN MULDROW
Assistant United States Attorney
Chief, General Crimes Section

Enclosure 6

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

vs. **Case No.: 8:11-CR-307-T-33TBM**

YENER VAHIT BELLI,
Defendant.
_____/

DECLARATION OF JACALYN BELLI

I, Jacalyn Belli, do hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of eighteen, have personal knowledge of the facts set forth herein, and am otherwise competent to give the testimony made in this Declaration.
2. I am Yener Belli's mother.
3. I am currently 69 years old.
4. I live in a house in Valrico, Florida.
5. I have offered my son, Yener, the opportunity to live in my house in Valrico with me for an initial period of several weeks after he is released from prison.
6. I am aware that my son, Randy Belli, has made Yener Belli a job offer to work at Randy's company, Bear Electric, after Yener is released from

7. I am available to support Yener Belli's needs for medical care, psychological/psychiatric care, and substance abuse prevention after Yener is released from prison.

Pursuant to 28 U.S.C. § 1746, signed this 4th day of December, 2023 in Valrico, Florida under penalty of perjury.

Jacalyn Belli

JACALYN BELLI

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

vs. **Case No.: 8:11-CR-307-T-33TBM**

YENER VAHIT BELLI,
Defendant.
_____/

DECLARATION OF RANDY BELLI

I, Randy Belli, do hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of eighteen, have personal knowledge of the facts set forth herein, and am otherwise competent to give the testimony made in this Declaration.
2. I am Yener Belli's brother.
3. I live in a house in Lakeland, Florida with my wife and two children.
4. My house has a mother-in-law suite with its own bathroom.
5. I have offered my brother, Yener, the opportunity to live in the mother-in-law suite in my house in Lakeland after he is released from prison and has spent some time living in my mother's house in Valrico.
6. I own and operate a company named Bear Electric which installs and services electrical equipment for residential customers.

7. I have made Yener Belli a job offer to work at my company, Bear Electric, as an electrician and then as an electrical sales representative after Yener is released from prison.
8. At Yener's request, he will join my church (The Kings Church in Lakeland) after he is released from prison, where he will attend Bible study on Mondays, a small mens group on Wednesdays, and a church service on Sundays, and will be in a mentoring/counseling relationship with one of the Church's pastors.
9. I am available to support Yener Belli's needs for medical care, psychological/psychiatric care, and substance abuse prevention after Yener is released from prison.

Pursuant to 28 U.S.C. § 1746, signed this 4th day of December, 2023 in Lakeland, Florida under penalty of perjury.

RANDY BELLI

Bear Electric
(863) 329 BEAR
service@bearelectric.com

Dear Yener Belli

Jack O'Falltrades LLC DBA Bear Electric is delighted to offer you the full-time position of outside sales representative. As an employee, you will play a crucial role in identifying and acquiring new business opportunities as well as day-to-day customer relations management.

Outside Sales Representative
Full-time
TBD
$30/hour, 40 hours per week. Pay schedule is bi-weekly.

Key Responsibilities:

- Conduct market research and identify potential business opportunities.
- Outbound calls to leads generated by our business.
- Build and maintain relationships with potential clients.
- Collaborate with the sales team to develop acquisition strategies.
- Keep accurate records/notes of all sales activities.

To accept this offer, please sign and return a copy of this letter by TBD. If you have any questions or need additional information, please contact me at rvb@bearelectricllc.com or (863) 329-BEAR.

We look forward to working with you and achieving new levels of success together.

Sincerely,

Randy V. Belli

Managing Partner

Candidate Signature: _____
Candidate Printed Name: _____
Date: _____