

**The Law Office of
Thomas S. Mirigliano, Esq.**

A Professional Service Corporation

**40 Wall Street, 28th Floor
New York, New York 10005**

Phone: (718) 530-6548

Direct: (718) 844-6855

Facsimile: (646) 219-5027

Email: TSM@MiriglianoLaw.com

Thomas S. Mirigliano, Esq.*

*Admitted in New York & New Jersey

Michael J.R. Mule, Esq.*

Of Counsel

April 25, 2022

VIA ECF

Hon. LaShann DeArcy Hall, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**RE: UNITED STATES V. MILETA MILJANIC
CASE NO.: 21-CR-191 (LDH)**

Dear Judge DeArcy Hall,

Please accept this letter submitted on behalf of Mileta Miljanic (“Mr. Miljanic”) in anticipation of his sentencing scheduled for May 5, 2022. The purpose of this letter is to provide the Court with information that we believe is essential to determining an appropriate sentence in this case and to respond to the Government’s request for an upward departure.

As discussed in more detail below, on December 10, 2021, Mr. Miljanic pled guilty, pursuant to a plea agreement, to the sole count of the above-referenced Indictment, charging him with possession of a firearm following a previous conviction for a felony. *See* 18 U.S.C. § 922(g)(1). Both the plea agreement and the Presentence Investigation Report (“PSR”) calculate Mr. Miljanic’s Sentencing Guidelines as 10 to 16 months’ imprisonment. Nevertheless, the Government is seeking an upward departure pursuant to Section 4A1.3 of the United States Sentencing Guidelines (“USSG”), based on a foreign conviction in Italy from 2012. For the reasons set forth herein, the Government’s application should be denied. And after considering the range of factors necessitated by 18 U.S.C. § 3553(a), we respectfully request that the Court sentence Mr. Miljanic to a within Guidelines sentence of time served.

Since his arrest on February 23, 2021, Mr. Miljanic has been detained at the deplorable Metropolitan Detention Center (“MDC”) in Brooklyn. At the time of sentence, Mr. Miljanic will

have served over fourteen months in pretrial detention at MDC, with much of that time spent in isolation because of the COVID-19 pandemic. The time that Mr. Miljanic has already spent in custody is a serious punishment that is “sufficient, but not greater than necessary” to achieve the ends of sentencing here. *See* 18 U.S.C. § 3553(a), *et seq.*

I. OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

At the outset, we offer the following objections to the PSR prepared by the United States Probation Office on or about March 21, 2022. Some of these objections – in particular, those concerning the offense conduct and potential application of USSG § 4A1.3 – we address in more detail in the following sections.

Paragraph 3: With the exception of the first sentence being offered for background and context only, we object to the inclusion of this paragraph in the PSR. Mr. Miljanic denies the allegations underlying the investigation in the Southern District of New York (“SDNY”) and hereby requests a determination from this Court that said allegations will not affect his sentence in the instant matter.

Paragraph 23: Mr. Miljanic is in Criminal History Category I. We object to the characterization of the 2012 Italian conviction as “involving the large-scale distribution of cocaine” as baseless and unsupported by anything other than the Government’s representations. Furthermore, we object to the PSR’s suggestion that an upward departure may be appropriate pursuant to USSG § 4A1.3. An upward departure is neither appropriate nor warranted because the information underlying the Italian conviction is unreliable, and this foreign conviction is otherwise insufficient to warrant the type of departure sought by the Government in this case. *See also* PSR, ¶ 74.

If available, please include the number of lockdowns that the MDC and/or Mr. Miljanic’s unit has been subject to in 2021-2022.

Please also include the undersigned as defense counsel appearing on behalf of Mr. Miljanic.

II. PROCEDURAL BACKGROUND AND OFFENSE LEVEL CALCULATION

On December 10, 2021, pursuant to a written plea agreement, Mr. Miljanic pled guilty before the Honorable Cheryl L. Pollak, Chief United States Magistrate Judge, to possession of a firearm following a conviction for a felony, in violation of 18 U.S.C. §§ 922(g)(1). [*See* ECF No. 24]. Mr. Miljanic’s plea agreement contains the following USSG calculation:

Base Offense Level (§ 2S1.1(a)(2)):	14
Adjustment for Timely Acceptance of Responsibility (§ 3E1.1(a)):	<u>-2</u>
<u>Total Offense Level:</u>	<u>12</u>

With a remote criminal history, Mr. Miljanic has zero criminal history points and a Criminal History Category of I. Accordingly, his Guidelines range is 10 to 16 months' incarceration. As previously noted, this calculation is consistent with the PSR prepared by the United States Probation Office on or about March 21, 2022, as well as the negotiated plea agreement. Accordingly, Mr. Miljanic does not dispute the Guidelines range of 10 to 16 months.

We respectfully urge the Court to adopt the Guidelines calculation of 10 to 16 months, and sentence Mr. Miljanic to time served in consideration of the mitigating factors set forth herein.

III. 18 U.S.C. SECTION 3553(a) ANALYSIS

The United States Supreme Court decision in *United States v. Booker*, 543 U.S. 220 (2005), and its progeny, “significantly altered the federal sentencing regime, essentially by making the federal sentencing guidelines advisory concepts instead of mandatory.” *United States v. Carlton*, 442 F.3d 802, 808 (2d. Cir. 2006) (also citing *United States v. Crosby*, 397 F.3d 103, 108-11 (2d Cir. 2005); see also *Gall v. United States*, 552 U.S. 38, 50 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007). The Sentencing Guidelines are just one of many factors that must be considered when making a sentencing determination. *Booker*, 543 U.S. at 245-46.

In addition to the applicable Guidelines range, the sentencing judge must also take into account the factors set forth in 18 U.S.C. § 3553(a), and “conduct its own independent review of the sentencing factors, aided by the arguments of the prosecution and defense,” in order to reach “an informed and individualized judgment ... as to what is ‘*sufficient, but not greater than necessary*’ to fulfill the purposes of sentencing.” *United States v. Cavera*, 550 F.3d 180, 188 (2d Cir. 2008) (quoting 18 U.S.C. § 3553(a)) (emphasis added).

A sentencing judge has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime.” See 18 U.S.C. § 3553(a); *Cavera*, 550 F.3d at 188. “In view of the excessive incarceration rates in the recent past and their unnecessary, deleterious effects on individuals sentenced, society, and our economy, parsimony in incarceration is encouraged.” *United States v. Eiflaar*, 255 F.Supp.3d 394, 396 (E.D.N.Y. 2017) (citing 18 U.S.C. § 3553(a)); National Research Council of the National Academies, *The Growth of Incarceration in the United States, Exploring Causes and Consequences* 8 (2014). Moreover, Congress has recognized that, “imprisonment is not an appropriate means of promoting correction and rehabilitation. 18 U.S.C. § 3582(a).

As detailed herein, there are compelling mitigating factors to be considered in this case which militate in favor of a sentence that is within the applicable Guidelines range of 10 to 16 months' imprisonment, i.e., a sentence of time served with no upward departure or variance. Such a sentence is both warranted and appropriate in light of Mr. Miljanic's history and characteristics, as well as the nature and circumstances of his offense.

Mr. Miljanic is a 62-year-old man whose life is defined by his dedication to his family. He is a beloved husband, father, grandfather, and brother, and his continued detention since February 2021 has been devastating to him and his entire family. It has prevented him from being the constant presence in their lives that he had previously been, but it was uniquely impactful because

of what he missed during this period of time. Because he is incarcerated, Mr. Miljanic was not present for the birth of two of his grandchildren and he has yet to meet them in person.

Indeed, Mr. Miljanic has been punished greatly for his actions in this case and he has seen the impact his choices have had on his wife, children, and grandchildren. Therefore, it is without question that his age, the experience of this prosecution and the significant amount of time he has already spent in custody will be more than sufficient to deter Mr. Miljanic from committing future crimes and otherwise satisfy the goals of sentencing. We also ask the Court to take into consideration the unusually harsh conditions Mr. Miljanic has experienced while detained at MDC over the last 14-plus months.

a. BACKGROUND AND CHARACTER OF MILETA MILJANIC

Mileta Miljanic was born in Bodezista, Bosnia and Herzegovina, in the former Yugoslavia, on January 1, 1960. PSR, ¶ 33. He is the youngest of four living siblings. *Id.*, ¶ 34. A younger brother, Mico Miljanic, died in 1962, at the age of 12, after falling off a train. *Id.*

Mr. Miljanic and his siblings were raised in abject poverty in an Eastern Bloc country¹ where many lacked basic utilities we take for granted in the United States, like running water, plumbing, and electricity. PSR, ¶ 35. Although his childhood was difficult in general, Mr. Miljanic's parents cared deeply for him and his siblings, and they were shown a lot of love and support. *Id.*

Due to the limited economic opportunities in Yugoslavia and his antipathy towards the oppressive communist government, at the age of 21, Mr. Miljanic immigrated to the United States. PSR, ¶ 35. And he did so with the best intentions: to seek a better life. *Id.* He became a naturalized citizen of the United States on November 21, 1989. *Id.*, ¶¶ 33, 39.

Because he was a talented soccer player, Mr. Miljanic initially endeavored to play professional soccer upon arriving in the United States. PSR, ¶ 36. He played semi-professionally for various soccer clubs in the New York area and was well on his way to earning a roster spot on the New York Cosmos – a professional soccer club based in Uniondale, New York – when he suffered a career-ending injury during tryouts. *Id.* Because of his injury, Mr. Miljanic was unable to obtain employment and began to struggle financially. *Id.*

¹ By way of brief history, after World War I, Slovenes, Croats, Bosnians, and the pre-war states of Serbia and Montenegro joined to form what eventually became known as the Kingdom of Yugoslavia. *See* John B. Allcock, *Explaining Yugoslavia*, 54-56 (2004 Columbia University Press). Following World War II, the Federal People's Republic of Yugoslavia was created under the authoritarian leadership of Joseph Broz Tito ("Tito") and his Communist Party. *Id.* at 70-71, 236-241, 271. In 1963, the federation was renamed the Socialist Federal Republic of Yugoslavia. *Id.* After Tito's death in 1980, the Yugoslav economy began to collapse, causing increased unemployment and inflation. *Id.* at 89. This period was marked with strife and inter-ethnic conflict among the individual republics and eventually led to the dissolution of what is now referred to retrospectively as the "former Yugoslavia." *See* U.N.S.C. Res. 777, 31 I.L.M. 1427, 1473 (1992) ("The state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist.").

In 1984, Mr. Miljanic was convicted of a theft-related misdemeanor in Ohio state court. Unfortunately, that same year, he was also convicted in this District of conspiracy to commit wire fraud and bank fraud. *Id.*, ¶¶ 21-22. With respect to the latter conviction, Mr. Miljanic was sentenced to 3 years in prison and paroled on September 5, 1986. *Id.*, ¶ 22. His parole was discharged on January 9, 1988. *Id.*

Shortly after arriving in the United States, Mr. Miljanic met and fell in love with his wife, Rada Miljanic.² PSR, ¶ 37. The couple were married in 1981 and had four children, specifically: two daughters, Nikol (age 39) and Jelena (age 37); and two sons, Nikola (age 33) and Petar (age 32). *Id.* In all, he has nine grandchildren, with the tenth about to be born in the next few months.

There is an enormous amount of love and support for Mr. Miljanic from his family. Mr. Miljanic is also a strong source of love and support for his family, and he plays an important role in their lives. As his youngest daughter, Jelena, poignantly explains:

My father was always the best dad to me and my brothers and sister, a good husband to my mother, and now the best grandfather to all of his 9 grandchildren.

Looking at him as our role model, we, his kids, have grown into good and honest people. We miss him, no words can describe how much. He is our biggest support and someone we can always count on, to be there when we need love, support and comfort. My children ask for him every day ...

See Letter from Jelena Stevanovic, attached hereto as **Exhibit A**.

Eldest daughter, Nikol Novka Miljanic, writes:

From my father we learned compassion, grace, kindness, bravery and the importance of family and friends. He is the best dad and grandfather and we are all very proud of him.

See Letter from Nikol Novka Miljanic, attached hereto as **Exhibit B**.

Eldest son, Nikola Miljanic, further describes the important role Mr. Miljanic has played in the lives of his immediate family:

From my childhood I remember my father being always next to me and my siblings because his priority in life was always the family, he is a good husband to my mother. He was a devoted son to his mother and father and he is the best grandfather to his nine grandchildren.

² Although the PSR indicates that Rada has not been in contact with the Probation Office, she has been in contact with the undersigned and has corroborated the information set forth in the PSR. She has also provided a character letter on Mr. Miljanic's behalf. *See* Letter from Rada Miljanic, attached hereto as **Exhibit C**.

As I am a father now to three children, I can see how parenting is not an easy job and I am trying to raise up my children's [sic] with the same values that my father gave to me and my three siblings.

See Letter from Nikola Rako Miljanic, attached hereto as **Exhibit D**.

His youngest son, Petar, notes that Mr. Miljanic's "main goal in life is to keep us safe, happy, satisfied, to enjoy our liberties by coming to America." See Undated Letter from Petar Mileta Miljanic, attached hereto as **Exhibit E**. While his son-in-law, Zeljko Stevanovic, views Mr. Miljanic as the "pillar of his family" and a person who is "noble and kind." See Letter from Zeljko Stevanovic, attached hereto as **Exhibit F**.

These are just excerpts from the letters written by those individuals who know Mileta Miljanic best. As demonstrated in these letters, Mr. Miljanic is universally admired and he legitimately cares about the welfare of his family, his community, and his friends. Likewise, Mr. Miljanic's family is shaken and saddened by his arrest and continued incarceration. And his absence has caused a tremendous strain on his wife, children, and grandchildren.

When considering the history and characteristics of Mr. Miljanic, as well as his family circumstances, he is clearly not the dangerous offender that the Government is trying to portray.

b. MR. MILJANIC IS UNLIKELY TO COMMIT ANOTHER OFFENSE

Mr. Miljanic has been incarcerated at MDC for over a year. He has missed precious time with his family, including the birth of two of his grandchildren. The pandemic has made his period of incarceration more painful and at times unbearable.

Furthermore, Mr. Miljanic is 62 years old. And notwithstanding the arguments made by the Government regarding Mr. Miljanic's criminal history, discussed *infra*, he has been a law-abiding citizen for a substantial portion of his life. For the past thirty-five years, Mr. Miljanic has maintained a solid work history. PSR, ¶¶ 49-52. He is a devoted family man, and he is distraught knowing that he may miss – and already has missed – many of the important events in his children's and grandchildren's lives because of this matter. Mr. Miljanic realizes that at his age, a potential prison sentence is not what he should be looking forward to. For this reason alone, it is very unlikely that Mr. Miljanic will ever commit another crime.

Additionally, after *Booker*, district courts have routinely given lesser sentences to defendants who, like Mr. Miljanic, are over the age of forty because such defendants exhibit markedly lower rates of recidivism in comparison to younger defendants. See *e.g.*, *United States v. Hernandez*, 2005 U.S. Dist. LEXIS 10026, at *5-*6 (S.D.N.Y. May 24, 2005) (imposing a term of incarceration of 50 months on a 48-year-old defendant where the Guidelines recommended a minimum term of 70 months); *United States v. Carmona-Rodriguez*, 2005 U.S. Dist. LEXIS 6254, at *5 (S.D.N.Y. Apr. 11, 2015) (citing *Simon v. United States*, 2005 WL 711916 (E.D.N.Y. March 17, 2005) (imposing a term of incarceration of 240 months on a 43-year-old defendant where the Guidelines recommended a minimum of 324 months); *United States v. Nellum*, 2005 WL 300073 (N.D. Ind. Feb. 3, 2005) (imposing a term of incarceration of 108 months on a 57-year-old where

the Guidelines recommended a minimum of 168 months); *see also* United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation Of The Federal Sentencing Guidelines*, at p. 28 (2004) (stating that for those defendants in Criminal History Category I, the recidivism rate for defendants who are between the ages of 41 and 50 is 6.9 percent whereas the recidivism rate for such defendants who are between the ages of 31 and 40 is greater than 12 percent)³.

c. THE OFFENSE AND OFFENSE CONDUCT

By possessing the firearm at issue in this case, Mr. Miljanic failed to live up to the ideals that he espoused for his family. Nevertheless, the nature and circumstances of the offense, (*see* 18 U.S.C. § 3553(a)(1)), suggests that a within Guidelines sentence is appropriate. It is without question that gun violence is a serious problem facing this country. Yet the nature of Mr. Miljanic’s case demonstrates a strictly possessory intent. As indicated in the PSR, during the execution of an unrelated search warrant, federal law enforcement agents discovered a Taurus PT-22 LR semi-automatic pistol in the top drawer of the nightstand next to Mr. Miljanic’s bed. PSR, ¶ 4. He immediately admitted that the firearm belonged to him, and he explained that he obtained it for protection because he feared the rising violence occurring during the pandemic.⁴ *Id.* He is not alleged to have used the firearm in any way – he did not carry it on his person, and he made no threats to harm any person or property with it. To be sure, as a previously convicted felon, Mr. Miljanic no longer enjoys the right to possess a firearm, and he readily admitted his guilt. But the solely possessory nature of the offense provides no reason to impose a sentence beyond the advisory Guidelines recommendation.

Pursuant to 18 U.S.C. § 3553(b), a Guidelines sentence “shall” be imposed “unless the Court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from that described.” No such aggravating circumstance exists here. The PSR calculation of a total offense level of 12 demonstrates the Sentencing Commission’s view on the seriousness of the offense. 18 U.S.C. § 3553(a)(2)(A). No specific offense characteristic applies to the facts of Mr. Miljanic’s case. He possessed one firearm, in his home. It was not stolen, its serial number was intact, he did not traffic in firearms, and it was not possessed in connection with any other felony offense. USSG § 2K2.1(b). Mr. Miljanic’s conduct fits squarely within the heartland of the commission of this type of offense.

³ Available at <https://www.ussc.gov/research/research-publications/measuring-recidivism-criminal-history-computation-federal-sentencing-guidelines>.

⁴ Although in no way meant to excuse or justify his conduct, we ask that the Court take into consideration Mr. Miljanic’s stated reason for possessing the firearm, i.e., his sincere concern for his family’s safety stemming from the “pandemic and all the violence which had occurred during the summer” preceding his arrest. PSR, ¶ 4. As discussed above, Mr. Miljanic immigrated to the United States from a country with a long history of political strife and violent inter-ethnic conflict, which eventually resulted in the country being dissolved only 30 years ago. While obviously not on par with what occurred in the former Yugoslavia, for the past several years our own country has struggled with significant political dissension and civil unrest – problems that have been exacerbated by the pandemic. Thus, it is respectfully submitted that it is at least understandable why someone with Mr. Miljanic’s political experiences would be concerned enough to take protective measures.

To be certain, possession of a firearm as a previously convicted felon is a serious offense and Mr. Miljanic understands the seriousness of the offense. But for the reasons set forth herein, a within Guidelines sentence of time served, without any upward departure or variance, is appropriate to fit the nature and circumstances of the offense as well as the offender in this case.

d. CRIMINAL HISTORY DEPARTURE/VARIANCE IS NOT WARRANTED

Admittedly, Mr. Miljanic is not a stranger to the criminal justice system. However, as noted above, the extent of his domestic criminal history are convictions from almost forty years ago. Because Mr. Miljanic also appears to have a foreign conviction in Italy related to narcotics, (PSR, ¶ 23), the Government contends that a two-level upward departure in his criminal history category is warranted. The Government justifies its request by making two basic arguments: 1) the exclusion of Mr. Miljanic’s “Italian sentence and failure to complete it” creates an “obvious risk” that his Criminal History Category of I would fail to reflect the true seriousness of his criminal history; and 2) his relevant conduct in this case is particularly egregious, *i.e.*, possession of a loaded firearm by a convicted felon, and the public must be protected from him. Mr. Miljanic respectfully submits that the Government’s arguments lack merit and its request for an upward departure should be denied.

Pursuant to Section 4A1.3(a)(1) of the USSG, “[i]f **reliable** information indicates that the defendant’s criminal history category **substantially** under-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes, an upward departure **may** be warranted.” (emphasis added); *see also United States v. Gayle*, 389 F.3d 406 (2d Cir. 2004).

At the outset, the Government is ostensibly seeking a two-level upward departure in criminal history categories based entirely on its own representations about the Italian conviction. As far as undersigned counsel is aware, the only documentation related to this conviction is an Italian “warrant” that was provided to defense counsel in or about July 2021. Notably, the purported “warrant” is untranslated, not a part of the record in this case and contains no substance regarding the offense other than a reference to the charges.⁵ Thus, despite the Government’s claim that Mr. Miljanic was “arrested in Italy for participating in a scheme involving large-scale distribution of cocaine in Italy,” (*see* Govt. Memo, p. 2), there is no independent evidence to support that assertion. Consequently, this information is unreliable.

Mr. Miljanic was apparently convicted of a violation of Article 73(1) of Decreto Presidente della Repubblica 9 ottobre 1990, n.309. Article 73 of Decreto Presidente della Repubblica 9 ottobre 1990 (hereinafter, “Article 73”) only distinguishes between general violations of subsection 1 of the article and other “minor” violations under subsection 5. What might be considered a “minor” violation is undefined. Specifically, Article 73 provides, in relevant part:

1. Any person who, without the authorization referred to in Article 17, cultivates, produces, manufactures, extracts, refines, sells, offers or offers for sale, assigns, distributes, trades, transports, procures to others, sends, passes or ships in transit, delivers for any purpose narcotic or psychotropic substances referred to in Table I provided for in Article 14, shall

⁵ Because I am proficient in the Italian language, I was able to informally interpret the contents of the document.

be punished with imprisonment from six to twenty years and with a fine of € 26,000 to € 260,000.⁶

...

5. Unless the act constitutes a more serious crime, anyone who commits one of the acts provided for in this article **which, by means, manner or circumstances of the action or by the quality and quantity of the substances, is minor**, shall be punished with the penalties of imprisonment from six months to four years and a fine of € 1,032 to € 10,329.

(emphasis added).

Therefore, while the drug-related offenses that are the subject of Article 73 are “not obscure,” it is certainly unclear as to what exactly Mr. Miljanic was accused and convicted of. And it is impossible to know what weight, if any, to give this conviction in an analysis under § 4A1.3. For this reason, it is also unreliable.

Likewise, collateral use of a foreign conviction obtained under procedures that are constitutionally incompatible with and which depart greatly from American standards also raises serious due process concerns – especially when the defendant’s underlying conduct is completely unknown, as is the case here. Because the Italian convictions were obtained pursuant to Italian law – which does not have a common law legal tradition similar to ours – the Court should not rely on this conviction in determining whether an upward departure under § 4A1.3 is warranted.⁷ See, e.g. *United States v. Guzman-Betancourt*, 456 Fed. Appx. 64 (2d Cir. 2012) (finding that convictions in the United Kingdom and Ireland qualified as reliable based upon the similarities with our own legal tradition); *United States v. Simmons*, 343 F.3d 72, 79 (2d Cir. 2003) (in discussing the reliability of a foreign conviction from Canada, the Second Circuit acknowledged that the district court “expressly stated that Canada convictions ‘are very similar to conviction here in this country’”) (internal citations omitted).

The instant case can also be distinguished from the Italian conviction at issue in *United States v. Delmarle*, 99 F.3d 80 (2d Cir. 1996), cert. denied, 528 U.S. 1175 (2000). In *Delmarle*, the defendant’s earlier Italian conviction, which defendant claimed was obtained in violation of due process, was not relied on by the district court in departing upward under § 4A1.3. *Id.* at 85. Rather, [t]he court considered the investigative report of the United States Military Police, which was accompanied by extensive documentation.” *Id.* at 86. The district court “found that the information in the report was ‘reliable and relevant.’” *Id.* (internal citation omitted). Here, no such “reliable and relevant” documentation exists and thus the Italian conviction should be disregarded.

⁶ Available with English translation at [Art. 73 Consolidated Law on Narcotic Drugs - Illicit production, trafficking and possession of narcotic or psychotropic substances - Brocardi.it](#)

⁷ Mr. Miljanic has informed the undersigned that the “trial” in Italy proceeded with no real due process. For one thing, the entire trial through verdict totaled only three hours. Judgment was passed by three judges who, in many cases, are corrupt and/or reluctant to adjudicate defendants innocent for political reasons. See Bruce Fischer, *Injustice in Perugia: a Book Detailing the Wrongful Conviction of Amanda Knox and Raffaele Sollecito* 75 (2011). In fact, a 2009 poll by the Euromedia research group showed that only sixteen percent of Italians fully trust the justice system in Italy, and they were highly displeased with the court system. *Ibid.*

Even if accepted as reliable, it is respectfully submitted that this single foreign conviction in an Italian court does not **substantially** under-represent the seriousness of Mr. Miljanic's criminal history enough to warrant a two-level upward departure in his criminal history category.

Though the Government contends that Mr. Miljanic's criminal history category fails to reflect the seriousness of his criminal history because the 2012 Italian conviction is not counted, that argument fails to take into account the fact that Mr. Miljanic's domestic criminal history is both remote and unremarkable. As previously mentioned, his last and only convictions in the United States were non-violent offenses, unrelated to weapons or narcotics, and occurred almost *forty years ago* when he was in his early 20s. Mr. Miljanic is now 62 years old, and he has been a law-abiding citizen for a substantial portion of his life. Mr. Miljanic does not ask this Court to excuse or forgive him for his crimes – he understands what he has done wrong in the past is wrong – he simply wants the Court to recognize his past for what it is. And looking at Mr. Miljanic's record as a whole, there is a long history of law-abiding behavior, which the Government completely glosses over.

The Government further argues that an upward departure is warranted because Mr. Miljanic “absconded” from his sentence in Italy and “committed the instant offense” while under “escape status” for that sentence. *See* USSG §§ 4A1.1(d) & 4A1.2(n). However, the Government cites to no authority – legal or otherwise – that supports the application of § 4A1.1(d) under these circumstances.

Still, should the Court accept the Government's position and grant an upward departure, it is respectfully submitted that the two-level increase in criminal history category – and a sentence of 21 months' imprisonment – recommended by the Government is unjustified and unreasonable in this case.

The Government suggests that Mr. Miljanic poses a “particularly grave danger to the community” because of the offense conduct in this case. (Govt. Memo, p. 5). As discussed in more detail above, this is a simple possession case. Equally relevant, Mr. Miljanic has no prior firearm convictions and has never been convicted of assaultive or violent conduct – with or without a weapon. In fact, that in his 62 years of life, Mr. Miljanic has never used or possessed a firearm only supports his explanation of why he had a firearm on the day of his arrest. Thus, the Government's recommendation for a two-level increase in his criminal history category, and a top of the Guidelines sentence of 21 months, overstates the dangerous nature of the offense, and minimizes Mr. Miljanic's history and the terrible conditions of confinement he has faced during the COVID-19 pandemic.

Mr. Miljanic has already served upwards of the high end of the Guideline range relative to Mr. Miljanic's actual criminal history category of I. But even if the Court agrees to adopt the Guidelines range of 15 to 21 months' imprisonment suggested by the Government, a sentence at the lowest end of that range is appropriate based on the mitigating factors discussed herein.

e. THE UNUSUALLY HARSH CONDITIONS OF CONFINEMENT DURING THE COVID-19 PANDEMIC WARRANTS SPECIAL CONSIDERATION

Although the nature and circumstances of this offense are serious, it is respectfully submitted that a within Guidelines sentence is warranted based solely on the abject conditions of confinement Mr. Miljanic has endured while detained at MDC for the past 14-plus months.

Mr. Miljanic was arrested by federal authorities on February 23, 2021 and has been continually detained at MDC ever since. Even before the COVID-19 pandemic, conditions at MDC have been poor. With the outbreak of the virus, conditions at MDC are abysmal.

Since the start of the pandemic, MDC has imposed harsh restrictions on the movements and communications of detainees in order to prevent the transmission of the virus in the facility. Specifically, those incarcerated at MDC have universally suffered from frequent lockdowns, deprivation of family and attorney visits, deprivation of clergy and religious services, limited access to medical care, exposure to the virus and mistreatment at the hands of frustrated and over-worked guards, among other challenges. During the numerous lockdowns, detainees are caged in small cells for nearly 24 hours per day for weeks on end, without anything to do, generally having only 15 minutes outside of their cells to use the phone or shower. There is no doubt these conditions “levy a heavy toll on the mental and physical wellbeing of prisoners.”^{8 9}

Extended isolation with little to no stimulation is unimaginable to those who have not experienced it. Akin to solitary confinement, this type of type of confinement likely poses similar dangers: “emotional, cognitive, and psychosis-related symptoms.”¹⁰ Indeed, “[s]omeone who does not have diagnosable mental illness before going to prison, may very well develop one during the pandemic because of profound anxiety, depression and later PTSD caused by the trauma associated with COVID-19 conditions in federal prison ...”¹¹

⁸ As mentioned in previous filings, Mr. Miljanic suffers from high blood pressure – a preexisting condition that leaves him especially vulnerable to complications from COVID-19. See <https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/coronavirus-high-blood-pressure/faq-20487663>

⁹ Keri Blakinger, *What Happens When More than 300,000 Prisoners are Locked Down?*, The Marshall Project, April 15, 2020 at <https://www.themarshallproject.org/2020/04/15/what-happens-when-more-than-300-000-prisoners-are-locked-down>

¹⁰ Mary Murphy Corcoran, *Effects of Solitary Confinement on the Well Being of Prison Inmates*, New York University Applied Psychology OPUS, available at <https://steinhardt.nyu.edu/appsych/opus/issues/2015/spring/corcoran> (“Long term periods of solitary have documented physiological and psychological effects.”)

¹¹ Walter Pavlo, *Mental Fatigue, Anxiety and Hopelessness, Welcome to Today’s American Federal Prison Experience*, Forbes, August 28, 2020, available at <https://www.forbes.com/sites/walterpavlo/2020/08/28/mental-fatigue-anxiety-and-hopelessness-welcome-to-todays-american-federal-prison-experience/?sh=25ed9da25dcd>

In recognition of the excessively punitive conditions of pretrial detention during the pandemic, judges in this District – and in the southern District – have granted leniency to defendants, even in very serious cases. *See, e.g., United States v. Olivier*, No. 19-cr-00229 (PKC) (E.D.N.Y. June 24, 2021) (imposing 87-month sentence where bottom of guidelines range was 125 months); *United States v. Clark*, No. 20-cr-241 (NGG) (E.D.N.Y. May 7, 2021) (imposing 96 months in armed robbery case where bottom of guidelines range was 114 months); *United States v. Narcissi*, No. 20-cr-449 (RPK) (E.D.N.Y. Mar. 15, 2021) (imposing time-served sentence of 7 months, where guidelines range was 24-30 months); *United States v. Colon*, No. 15-cr-317 (MKB) (E.D.N.Y. Nov. 20, 2020) (imposing 18 months, consecutive to defendant’s 18-month state sentence, where bottom of guidelines was 100 months); *United States v. Shi*, No. 19-cr-451 (PKC) (E.D.N.Y. Nov. 2, 2020) (imposing no prison where guidelines range was 12-18 months); *United States v. Piper*, No. 18-cr-008 (AMD) (E.D.N.Y. June 25, 2020) (imposing time-served sentence on resentencing where defendant had served approximately 24 months and bottom of guidelines range was 63 months); *United States v. Morgan*, No. 19-cr-209 (RMB) (S.D.N.Y. May 5, 2020) (imposing 15-month sentence where bottom of applicable guidelines range was 33 months based in part on jail conditions during the pandemic); *United States v. Searles*, No. 19-cr-381 (GBD) (S.D.N.Y. Mar. 24, 2021) (imposing 48-month sentence in Hobbs Act robbery case where bottom of guidelines range was 120 months); *United States v. Soto*, No. 19-cr-903 (KMW) (S.D.N.Y. Mar 19, 2021) (imposing 60-month sentence, where bottom of guidelines range was 120 months); *United States v. Marmolejo*, No. 20-cr-1 (JSR) (S.D.N.Y. Feb 3, 2021) (imposing 18-month sentence where bottom of guidelines range was 87 months); *United States v. Almonte*, No. 19-cr-621 (RA) (S.D.N.Y. Jan 14, 2021) (imposing 15-month sentence where bottom of guidelines range was 51 months); *United States v. Garcia*, No. 19-cr-593 (PAC) (S.D.N.Y. Dec. 3, 2020) (imposing 48-month sentence where bottom of guidelines range was 57 months); *United States v. Paulino*, No. 19-cr-607 (AJN) (S.D.N.Y. Oct. 21, 2020) (imposing time-served sentence where bottom of the guidelines range was 27 months); *United States v. Cirino*, No. 19-cr-323 (JSR) (S.D.N.Y. July 21, 2020) (imposing 10-month sentence where bottom of guidelines range was 57 months); *United States v. Aracena de Jesus*, No. 20-cr-19 (PAE) (S.D.N.Y. July 1, 2020) (imposing time-served sentence where bottom of guidelines range was 30 months); *United States v. Gonzalez*, No. 18-cr-669 (JPO) (S.D.N.Y. April 2, 2020) (imposing a time-served sentence noting that conditions of confinement are much more punitive than usual and that “it’s essentially the equivalent of either time or time and a half or two times what would ordinarily be served”).

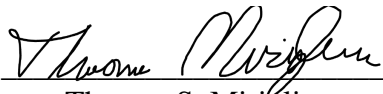
In determining sufficiency of punishment, conditions of confinement are an important factor. The unusually difficult conditions Mr. Miljanic has endured while detained at MDC have far exceeded the normal loss of liberty inherent in pretrial detention. It is the true definition of “hard time” and borders on extreme punishment. The harsh nature of pretrial detention in pandemic times – especially when we consider Mr. Miljanic’s age and infirmities – means less time in custody is needed to sufficiently meet the goals of deterrence, punishment, rehabilitation and protection of the community. Accordingly, a within Guideline sentence of time served is appropriate in this case.

IV. CONCLUSION

Based on the foregoing, it is respectfully submitted that Mr. Miljanic's history and characteristics, time at MDC during the COVID-19 pandemic and capacity for rehabilitation are reasons to impose a sentence that reunites him with his family as soon as possible and minimizes the harm of an unduly long prison sentence. Conversely, the Government's recommended sentence would be almost twice the top of the Guidelines set forth in the plea agreement and is far beyond what is necessary or fair in a case involving no violence or threat of violence, and no weapons on the street.

The Court's courtesy and consideration of this matter is greatly appreciated.

Respectfully submitted,



Thomas S. Mirigliano

Cc: AUSA Kayla Bensing (via ECF)
AUSA Victor Zapana (via ECF)
Lawrence DiGiansante, Esq. (via ECF)

EXHIBIT A

Dear Judge,

My name is Jelena, and I am reaching out to you as a second daughter to Mileta Miljanic.

My father was always the best dad to me and my brothers and sister, a good husband to my mother, and now the best grandfather to all of his 9 grandchildren.

Looking at him as our role model, we, his kids, have grown into good and honest people. We miss him, no words can describe how much. He is our biggest support and someone we can always count on, to be there when we need love, support and comfort. My children ask for him every day..

It is very hard knowing that he is in a place that he doesn't deserve to be, especially in his age and his health condition. We just hope that all of this will come to an end soon, and that he will be back with us, his loving family.

Jelena Stevanovic

EXHIBIT B

Character Letter to Judge asking for Leniency

Dear Judge,

I am writing this letter in hopes that you will see what kind of person my dear father Mileta Miljanic is. My name is Nikol Novka Miljanic and I am the eldest child of us four. We are a big, loving and a close-knit family. My father has two brothers and two sisters. They grew up very modestly without many basic things, but they had a warm and loving childhood. Because he was agreeing with the communist regime, he had to leave his country and try pursuit a free life as an immigrant in the USA. Not long after, he has met our mother and they married and are still together after forty years. He never forgot his parents nor his brothers and sisters nor his friends. He kept providing and helping them all. His enthusiasm has led to many good work in society and many charities for people in need and helping our church. From my father we learned compassion, grace, kindness, bravery and the importance of family and friends. He is the best dad and grandfather and we are all very proud of him. He has nine grandchildren which two were born in his absents and the tenth is on its way.

As no one is perfect so is not my father. He has made some mistakes in the past for which he paid the price.

When the state of emergency started there was a lot of violence and looting on the streets of New York. We all urged him to buy a gun for protection like so many people did. Like always he was just thinking of protecting his family.

We all miss him dearly and suffer knowing where he is. This past year was very hard for us but not as much it is for him. I know that prison shouldn't be easy but it also shouldn't be this much unhuman and draconian. In this past year there were many times that we couldn't hear with our father because the prison went in lockdowns because of staffing shortages. It is devastating and stressful enough without this additional lockdowns. It was like he was in solitary confinement almost the whole time he is in there. He does not talk about his time because he does not want to worry us, but we can all hear in his voice that it is brutal. I am scared for his physical and mental health.

Your Honour, my father is not a threat to society and he is not a violent criminal to endure this harsh imprisonment. I would like to plead to you for his leniency. I am pleading for his return and the reunion of our family.

Thank you.

Sincerely

Nikol Novka Miljanic

EXHIBIT C

Dear Judge,

My name is Rada Miljanic, I am the wife of Mileta Miljanic.

My husband and I are married for 40 years. We have 4 children and 9 grandchildren. Two of our grandchildren have been born while he is imprisoned.

That was very hard for everybody in our family, to be happy for such a beautiful thing, and in the same time very sad, because he wasn't there to share this happiness with us. My husband is a good man, and a beautiful husband and father.

For 40 years I know him and I can say only the best words for him. He is a man who loves his family and friends, and respects all others. He grew up with 2 brothers and 2 sisters which he loves and support his whole life. For him our children and grandchildren are everything in the world.

He takes this very hard, being unable to be with his family, especially with grandkids who he loves the most, in the same time during this corona period which was difficult even for the free people. The witch hunt for him that goes on is not correct and human, because he is a man who is loved and reputable in Serbian and New York community, known only for helping people, and not threaten.

I am also concerned for his health, because he has problems with stomach and blood pressure, and because he is not in his best years to sustain this brutal measures he is exposed to. There was time when we didn't know if he is alive, because he couldn't call us for weeks.

Therefore my beliefs are that he does not deserve to be where he is now and I call and ask you one more time to consider all this when you bring up the sentence.

Rada Miljanic

EXHIBIT D

Letter for leniency

Dear Judge

My name is Nikola and I am the older son of Mileta Miljanic. From my childhood I remember my father being always next to me and my siblings because his priority in life was always the family, he is a good husband to my mother He was a devoted son to his mother and father and he is the best grandfather to his nine grandchildren.

As I am a father now to three children, I can see how parenting is not an easy job and I am trying to raise up my children's with the same values that my father gave to me and my three siblings.

My father had a difficult childhood his father was not a member of the communist party and he and his four siblings were marked. They couldn't get jobs it was very difficult. And that's why he made a decision to come to this wonderful country seeking a better life and opportunity. He worked hard jobs and when he met our mother and had a family he worked even harder to provide to us a life he didn't have , freedom , liberty, equality, human rights and all the wonderful things that our great country provides.

Your honourable judge, my father is not a violent criminal. This past year was hell for him and all of our family. As many he is locked up without basic rights. Even prisoners should have some basic rights as is fresh air, medical etc... Our father health is deteriorating. This year that he is in prison was like couple years because of the staff shortages in federal prison the conditions are unbearable.

I plead you for his release. So we can heal and unit as a family.

Thank you for taking your time to read this letter

Sincerely

Nikola Rako Miljanic

EXHIBIT E

Dear honourable judge

I hope this letter finds you well and want to thank you for your consideration of reading it. I am writing in behalf of my father Mileta Miljanic. My name is Petar. Like my father the youngest child. We are all very proud of our father. His main goal in life is to keep us safe, happy, satisfied, to enjoy our liberties by coming to America.

I would sincerely like to vouch for the good character of my father. My father has always been there for me and his family. He has a helpful nature always there to lend a hand, even to the strangers. He has been involved in church charities and his efforts made a positive impact on so many people including myself and my siblings. All he wants to do in life is to continue the good work and to spend his time being the best husband, father, and grandfather.

I realize that your obligation and life's work is to keep us all safe to make sure justice is done and those before you are both punished and rehabilitated so the community is protected. But your honour I truly believe that the community doesn't need protection from my father. He did make a mistake of having a gun, but he did it because during the beginning of the pandemic nothing was certain not even our safety.

Your honour his time in prison is tormentors, draconian and unhuman. Because of the staff shortages in federal prison one year felt like 10 years. I am pleading with you like my whole family is to release him so we can all heal together.

When I think of my father who this quote comes to my head from the letter written by Oscar Wilde from his prison cell "We who live in prison, and in whose lives, there is no event but sorrow, have to measure time by throbs of pain, and the record of bitter moments"

Thank you, once more and best regards,

Petar Mileta Miljanic

EXHIBIT F

Dear Judge,

My name is Zeljko Stevanovic, and I am Mileta's son in law.

I am married to his daughter Jelena, for 12 years now and we are 18 years together.

As long as I know my wife, I know Mileta.

I haven't met a person in my life who is that reputable and admired in the community as he is. In the beginning I didn't know why, but then I realized. Mileta is a person who is helping people. Period. Maybe the best word that can describe him is - Philanthrop.

Another of his virtues is that he is a pillar of his family. He is a father of four and grandfather of nine. His tenth grandchild is on its way. There is no day when he doesn't call, even when we are in different parts of world. Recently, his calls are rare and his voice has changed. You could say by his voice that something fierce is happening to him. He is not saying anything, but when you hear from him, you are absolutely convinced in that.

He is far from a threat for community, by my opinion. The truth is that he is actually a noble and kind person who is loved by community all around him.

Jelena's and my kids are very bonded to him and miss him very much. They ask for him every day, in such manner that we have to lie that he is working far away from them.

I would like to use this opportunity to ask you dear Judge to free this man, because he is not a threat and he absolutely doesn't deserve to be in the place where he is now.

Zeljko Stevanovic