

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Case No. 09-CR-414 (RJS)

against

*ORAL ARGUMENT AND/OR  
HEARING REQUESTED*

JAMES NICHOLSON,

*Defendant.*

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MEMORANDUM OF LAW IN SUPPORT OF JAMES NICHOLSON'S  
MOTION PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)

Andrew J. Frisch  
The Law Offices of Andrew J. Frisch, PLLC  
40 Fulton Street, 17<sup>th</sup> Floor  
New York, New York 10038  
646-349-7660  
*afrisch@andrewfrisch.com*

*Attorneys for James Nicholson*

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Introduction

With full acknowledgment of the severity of the underlying criminal conduct, James Nicholson respectfully submits this Memorandum of Law and the accompanying exhibits in support of his motion, pursuant to 18 U.S.C. § 3582(c)(1)(A), for reduction of his sentence of forty years to time served. This motion is based on extraordinary and compelling circumstances warranting the requested relief, none more so than the support of this motion by victims of Mr. Nicholson's crime for whose financial benefit he wishes to work upon release.

Mr. Nicholson's crime warranted a substantial period of incarceration. The community's interest in Mr. Nicholson's isolation should now be tempered by Mr. Nicholson's resolve to help his victims recoup more of their losses (on top of assets forfeited by Mr. Nicholson when he pled guilty). Mr. Nicholson has been incarcerated for over fourteen years. He is now 57 years old, and his time in custody, accounting for good time credits, is the

equivalent of 21 years, more than half the term imposed. Mr. Nicholson’s exemplary conduct in custody and attendant rehabilitation has been distinctive, achieved while enduring the entire sweep of the pandemic and its attendant harsh conditions, itself extraordinary circumstances not foreseen when sentence was imposed. Nor foreseen was the increasingly severe dementia of Mr. Nicholson’s eighty-one year-old mother, for whom Mr. Nicholson is uniquely able to care. Mr. Nicholson has the Bureau of Prisons’ lowest possible Prisoner Assessment Tool Targeting Estimated Risk and Needs (“PATTERN”) score.<sup>1</sup> See Exhibit B.

The letter and spirit of *United States v. Brooker (Zullo)*, 976 F.3d 228 (2d Cir. 2020), do no injustice to the punishment intended by the Court’s sentence of Mr. Nicholson. *Brooker* and related developments empower the Court to balance the general interest of the community in Mr. Nicholson’s isolation with the specific interest of victims by conditioning Mr. Nicholson’s release on his employment for their benefit. By such a condition, the Court would tangibly serve the interests of Mr. Nicholson’s victims. Congress passed the First Step Act in part to empower federal judges to do what they were previously prohibited from doing absent a motion filed by the Bureau of Prisons - - take a second look at sentences imposed on defendants years ago to achieve appropriate justice.

Judiciary Sentencing Information (“JSIN”) is a new tool created by the United States Sentencing Commission in September 2021 to provide judges with benchmarks about sentences of similarly situated defendants.<sup>2</sup> See U.S. Sentencing Commission, 2021 Annual

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<sup>1</sup> See <https://www.bop.gov/inmates/fsa/pattern.jsp>

<sup>2</sup> Available at <https://www.ussc.gov/guidelines/judiciary-sentencing-information>

Report and Sourcebook of Federal Sentencing Statistics (Mar 16, 2022)<sup>3</sup> at 9. While neither JSIN nor the Guidelines themselves provide perfect guidance on sentencing any particular defendant, JSIN shows that the average length of imprisonment imposed for the six defendants similarly-situated to Mr. Nicholson sentenced in the United States between 2017 and 2022 was 200 months, and the median length of imprisonment imposed was 168 months. Under either of these benchmarks, applicable credits would already have qualified Mr. Nicholson for release.

The Jim Nicholson sentenced by the Court in 2010 is not the same Jim Nicholson who presents himself to the Court today; consideration of the factors of 18 U.S.C. § 3553(a)(1) favors a different result. Mr. Nicholson's continued isolation would serve to deny tangible benefits for his victims. The Court is now empowered to implement its broad discretion to revisit Mr. Nicholson's sentence and fashion relief that most effectively embraces all interests of the community and the current status of the sentencing factors.

Mr. Nicholson has exhausted administrative remedies. His application for administrative compassionate release was made and denied. *See* Exhibit A (with Mr. Nicholson's application attached thereto).

*A. The Interests of Victims Favor the Requested Relief*

While Mr. Nicholson's conduct during his incarceration has been and remains exemplary (as shown below), and while personal and family circumstances themselves warrant compassion and his release (as also shown below), this application starts with investors affected by Mr. Nicholson's crime and accompanying letters in support. These victims support Mr.

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<sup>3</sup> Available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/2021\\_Annual\\_Report\\_and\\_Sourcebook.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/2021_Annual_Report_and_Sourcebook.pdf)

Nicholson's application because they believe - - as victims of crime - - that any chance of recovering any additional meaningful restitution turns exclusively on Mr. Nicholson's capacity to work for their benefit. The community's interest in Mr. Nicholson's isolation should yield to the desire of victims to receive more restitution, a factor of which *Brooker's* broad sweep permits consideration.

Highlights of the letters of victims, set forth here alphabetically by investor's name, are provided here:

1. *Mary Ciorra*

[Mr. Nicholson] wants nothing more than to be able to make amends by dedicating himself to making restitution . . . .

Jim is committed to making restitution. And I've seen his work ethic since he was a child. I can still remember Jim at the age of six with a satchel full of newspapers, that was about half his size and weight, as he delivered them door-to-door. A few years later he was mowing just about everyone's lawn in the neighborhood while also stocking shelves at the Kwik Stop in a nearby shopping center. Jim has worked his entire life and now wants to apply his work ethic to atone for his wrongdoing by paying back shareholders. America is a place where second chances and fresh starts should be celebrated and championed. I urge you to grant Jim's motion. Give the shareholders the opportunity for restitution and Jim the ability to redeem himself and prove his ethical failure was an aberration. You will not regret it.

Exhibit D ("Jim sent heartfelt, handwritten apology letters to every shareholder. I believe he wrote close to three hundred letters. Someone doesn't do that if they don't care. He cares greatly and wants to make amends").

2. *Carl D'Antonio*

Fulfilling his restitution order won't be easy, but it's part of the punishment, and will greatly benefit the victims. Some might say that making restitution is impossible. That is not true. The only way that it is impossible is if this motion is denied and he remains incarcerated. Anyone that knows Jim, is familiar with his work ethic, and understands how committed he is to his restitution order, won't doubt for a second that he

will make meaningful restitution.

Exhibit E.

3. *Maureen Delehanty*

I am requesting that you grant James Nicholson's motion which will allow him to begin working to make restitution to the victims of his crime.

Mr. Nicholson has taken full responsibility for his actions, has been severely punished, learned hard lessons, and now wants to dedicate himself to paying investors back. To my husband and I this seems like a no brainer . . . .

I'd also like to point out that Mr. Nicholson has not led a life of crime. He's a good, decent man that made a terrible mistake and now wants to dedicated his life to correcting it. Please grant Mr. Nicholson's motion. Please allow the victims to start being paid back . . . .

Exhibit H.

4. *John Friedman*

My father and I were shareholders in Westgate Capital Funds. We did receive a portion of our money back as a result of the \$30 million Mr. Nicholson paid, but I know Jim sorely wants to work to make further restitution payments. I have known Jim for many years, and he is fully committed to achieving his goal. He's made it his mission in life.

Exhibit N.

5. *Barbara Kostewich*

[W]e are vigorously supporting his motion for release from prison. We held a family meeting, and although our reasoning varied, everyone universally agreed we should support Jim. We have unique insight into this case, including a nephew who was an employee of Westgate Capital . . . . If Jim remains incarcerated, he has no ability to pay restitution beyond what he has already paid. Something we know he sorely wants to do and will work tirelessly towards.

Exhibit T.

6. *Frances Sotire*

Paying his debt to society has not only been met, it's abstract, paying his debt to shareholders is real and tangible. That in itself is likely a life sentence, but one that better serves all parties - the victims, the community, society, the taxpayer, as well as Jim and his family.

Exhibit BB ("I went to visit Jim in prison in 2011 and back then he expressed genuine remorse, contrition and acceptance of responsibility, over a decade before the First Step Act was passed, his motion was contemplated, or even thought possible.").

7. *Mitchell Spearman*

I was a victim of his crime but I feel strongly that Jim not only deserves a second chance, but that he will use the time productively. Jim is committed to atoning his wrongdoing and working relentlessly towards paying restitution.

. . . .

[Jim] fell down, has gotten up, learned from his mistakes, and now wants to make it right. The victims like myself will benefit greatly. Justice will have been served.

Exhibit CC.

8. *Anthony Vitale*

I lost money in Westgate Capital['s] funds, but I am writing in full support of Jim Nicholson's motion for compassionate release . . . . [W]hen [Jim] asked himself "How can I fix it?", he wholeheartedly committed himself to making restitution. Jim will be utterly relentless in his focus to make victims whole. And as an investor in Westgate's funds, I want him home, working for me so to speak, making restitution.

Exhibit EE.

All affected investors would share in the fruits of Mr. Nicholson's employment upon release whether or not among those whose letters are submitted with this application. No affected investor reaps any significant recompense from Mr. Nicholson's continuing imprisonment. *See* Exhibit L ("Jim has expressed to me innumerable times his desire to begin



making restitution to the victims of his crime. Most people would stick their head in the ground and avoid the obligation. Jim's running towards it.").

*B. Mr. Nicholson's Full and Complete Rehabilitation Supports a Sentence Reduction and Underscores His Capacity for and Resolve to Work for the Benefit of Victims*

There is ample precedent for consideration of a defendant's rehabilitation as among factors warranting compassionate release. Here, where Mr. Nicholson's rehabilitation is truly extraordinary, this Court should take it into consideration and give it great weight.

When Mr. Nicholson committed his crime, he had breached his integrity with disastrous consequences for his victims, family, and himself. Over the subsequent weeks, months, and years, Mr. Nicholson subjected himself to exhaustive self-analysis of his own thinking and reflecting, writing notes and filling binders - - and began doing so long before *Brooker* authorized this type of motion. He became a student and dedicated himself to studying character development. He researched numerous ethicists like TM Scanlon and delved deeply into the psychology of morality and integrity. He read *The Road to Character* by David Brooks; *Mistakes Were Made (but not by me)* written by noted psychologists Carol Tavris and Elliot Aronson; and many others. *See Exhibit C.*

It is especially true for Mr. Nicholson that he has learned more from failure than success. He used adversity as an effective agent to make himself a better person. As Mr. Nicholson's son Ryan writes:

I've taken all of the bits of advice and wisdom my father's given me over the years and applied it to my life. One thing he's instilled in me is an uber belief in always improving and becoming better versions of ourselves. My father is a living testament to that philosophy. He's learned from his ethical failure, and it will never happen again. Failures are often the best teachers and can be enormous gifts, a catalyst for change. My father is a paragon of integrity, honesty and

altruism.

Exhibit Y.

Mr. Nicholson's sister, Donna D'Antonio, writes:

I'm also proud of the way my brother has handled what is, by far, the lowest moment in his life. He has a prison sentence that would crush the soul of any men. My brother was devastated. But he has taken responsibility for his mistakes, looked in the mirror and said "this is not who I am." This will never happen again. He then embarked on a years long rehabilitation effort. He's now the most principled man I know, giving bodily form to the term "moral excellence."

Exhibit F.

Mr. Nicholson rehabilitated himself, but also dedicated himself to helping others. During his nine years at FCI Ray Brook, Mr. Nicholson tutored, mentored, taught classes, and initiated programs, all on his own time. Mr. Nicholson taught an entrepreneurship class in conjunction with *Defy Ventures*, a non-profit that helps formerly incarcerated men start their own business and, in some cases, find employment. He created and implemented a program called *Fatherhood First*, a parenting course that encouraged and helped inmates to bond with and be a father to their children. He also started a biblio-learning program he named the *University of Books*, curating a diversified list of 150 mostly non-fiction books that were educational and thought provoking. He wrote the descriptions and exams for each book, and administered the tests. To complete the program the men were required to read fifty books. Mr. Nicholson also taught an Introduction to Finance course, Character Development course, and Curiosity classes. See Exhibits C, R, U, Z, DD..

Mac Parker, a former inmate, reports as follows:

From the first time I met him in the dining hall, it was obvious that Jim was not only an extraordinary inmate, but an extraordinary person. Despite serving an onerous 40-year sentence, he was consistently upbeat, creative in how he served his time, and always helpful in serving fellow inmates. He taught more classes than any other inmate I knew, from a regular parenting group, to how to start a business upon reentry into society. He also developed and ran a program which he called “The University of Books,” to open the world of literature to the prison population. He was always looking for ways he could help or raise the sights of those around him. While “respect” is an important part of prison life, Jim always seemed to elevate this to a whole other level.

I always found it remarkable how Jim maintained his integrity and positive sense in a community that can be hard in both. He was a leader in a powerful sense of the word, consistently doing his very best to use whatever skills or abilities he might have for the benefit of others.

Exhibit Z; *see* Exhibit I (“Jim has taught classes, provided mentorship and individual tutoring to fellow inmates to ensure they don’t repeat their mistakes. Jim has helped nearly 100 inmates earn their GED’s so when they are released, they will have a better life.”).

J. Kyle Kerr, who was an inmate with Mr. Nicholson at FCI Ray Brook, reports:

Jim has played an instrumental role in my continued sobriety and success. Jim with his huge heart and a touch of naivety engages many of the inmates who are actively mired in their addictions. He often asks my opinion and quite honestly, I have attempted to dissuade him from extending himself to what I surmise are addicts simply trying to manipulate him. Amazingly, Jim doesn’t give up easily. He is exasperatingly full of empathy and offers counsel to many. Often, he believes more in others than they believe in themselves.

For all of this, Jim is much beloved by the inmate population regardless of race, creed, religion, or even gang affiliation. It is not uncommon to see Jim walking the track surrounded by what looks to be a sea of tattooed hardened convicts. One might be concerned for Jim’s safety in these moments, but he engages them and they likewise enjoy his presence. Jim very candidly asks about their backgrounds, family history, and what led them to prison. He constantly looks for opportunities to help. When I see Jim out on the prison yard mingling with groups of men most people would fear or shun, I am proud to claim Jim as my friend.

....

Jim represents a bright light of character and kindness that sets him part. And, what truly separates him is his dedication to integrity, marries with his incessant drive to help others without any possibility for accolade or personal benefit.

Exhibit R.

Jessie Stark, who was in custody with Mr. Nicholson at FCI Ray Brook, writes movingly about how Mr. Nicholson “profoundly changed my life:”

I didn't know Jim real well. He was this nice guy who helped a lot of people. One day he approached me to tell me that his cellmate was leaving, and would I like to move in with him . . . Little did I know, Jim invited me because he had a goal to get me off drugs. I was smoking K-2 every day, all day, always high. Jim initially sat me down and talked to me about how drugs were destroying my life. I didn't even want to hear it. All I cared about was my next high. Jim was very persistent. I still can't believe he didn't give up on me. Sometimes he would give me a heart-to-heart talk, and other times he'd walk in the cell – I'd be high as a kite – and he'd get in my face yelling at me. He was trying anything to reach me. I'd promise him that I would quit time and time again, only to get high hours later. He stayed on me – relentlessly. I was running up debts that I couldn't pay, and always in and out of the hole. And Jim was constantly pointing out how the root cause of all my problems was my drug use. I never had anyone in my life that cares as much as he does. In a way, he became a father figure to me when my own father is not here. Eventually, I promised him I would quit, without being sure that I could. After 24 hours of not using drugs, Jim gave me a big hug, literally, and told me how proud of me he was. No one in my life has ever told me that they were proud of me. Jim continued to reinforce how well I was doing. In those early days, I didn't use drugs because I was afraid of disappointing him. After a month of sobriety, I came back to the cell one day and Jim had cake and sodas out, as if it were someone[']s birthday. He gave me a party to celebrate my one month of being sober. I'm getting teary eyed as I think about it. Jim continued to celebrate my milestones.

....

There's something else that Jim did for me that tops all of that. I have two sons, with two different mothers, and I hadn't spoken to them in years. Jim reunited me with my two sons. Jim started a program at FCI Ray Brook called “Fatherhood First.” One day, he walked into our cell, and as I've now learned he's apt to do, he told me, “You're enrolled in the Fatherhood First program. Be there Tuesday

night.” I attended the program and Jim drove home to everyone, not just me, how important it was to be a part of our children’s lives. I had nine million excuses why I couldn’t - their mothers hate me, I barely know my sons, I don’t know what to say, etc. etc. Jim looked at me and said, “That’s great, we’re writing them letters anyway.” He made me sit down and write letters every week. When my sons . . . replied, I was ecstatic. Jim told me to call them. I had more excuses – one of them quite legitimate – I didn’t have any money for the call. Jim put money on my phone so I could call them. When the holidays rolled around, Jim put me in touch with a woman that arranged to have a gift from me sent to them. I’m now in regular contact with both my sons, all thanks to Jim. I wouldn’t have done this without his help. It is the best gift that Jim could ever give me.

Exhibit DD (“Jim does not belong in prison. He is not like any of the people here. He sticks out like a sore thumb. He has his life together. I really wish I could be a tenth of what he is.”).

Martin Ekwebelem writes:

I was in prison with Mr. Nicholson in Ray Brook, New York in 2011-2013. Mr. Nicholson is a wonderful, kind, caring man. It was a blessing from God that I was able to meet him . . . I learned things I never would be able to without his help. He helped me plan for my own business. I now feed my family with the money I earn from my business. He always told me how important my children and family are. He also tells me how important it is to always learn for my whole life. I take classes at the learning center in my village [in Nigeria] and I think of Mr. Nicholson every time I go. I ask Mr. Nicholson if I can pay him. He always tells me no. He tells me to help someone that I can help. Mr. Nicholson does not belong in prison. He was not like others. He has so much good in him. Please help him the same way he helped me and my family.

Exhibit J. Mr. Ekwebelem’s wife also writes that she “cannot say enough good things about Mr. Nicholson and how he helped my husband and our family:”

It was very hard for the time that my husband was away from us. Martin was very depressed. My children and I struggled financially. I distinctly remember the time when Martin met Mr. Nicholson. I received an e-mail from my husband and his whole attitude had changed. In the e-mail he was excited. Mr. Nicholson was teaching him math and writing. When Martin called me on the telephone he told me that Mr. Nicholson really cared. It was not his job to teach, but Mr. Nicholson did it on his own time. Mr. Nicholson was patient. My husband does not have a

high level of education. Martin told him his dream of his business he wanted when he went home. Mr. Nicholson helped him with it. He gave my Martin confidence that he could do it. He is doing that business today and supporting our family very well. But Mr. Sullivan, the most important thing I will be forever thankful to Mr. Nicholson for. He would tell Martin how important it was for him to spend time with our children. He taught him how important a father was in their lives. That he could never do anything illegal again. He could not leave his children without a father. The children were my job. Now he is a wonderful father. He spend time with our children every day. He tells me Mr. Nicholson taught him the importance of this. Martin did not know his father.

Exhibit K.

Jordan B. Halem, who was in custody with Mr. Nicholson at the Metropolitan Correctional Center, reports as follows:

That first year I was locked up with Jim, I heard how much he regretted his actions. Like me, he was disappointed in himself, ashamed and deeply regretful. In the hours and hours that Jim and I spoke, Jim talked only of his regrets and shame. I also saw how Jim behaved in that environment and I can tell you that Jim was always the person that I could turn to for advice. It was Jim who always gave me encouragement even in those darkest of times.

Exhibit O.

The staff Chaplain at FCI Otisville, Deacon Davis, also speaks glowingly about Mr. Nicholson's faith and kindness:

Inmate James Nicholson continues to be a model Catholic here in this place. His active faith, concern for others and vital prayer life are an inspiration to our community.

I have known Nicholson since September 2019. Since that time, he has been an active participant in the life of the Chapel, especially attending services before COVID-19 and continuing with religious services after they shifted to his housing unit. He has been very involved in prayer, especially the Rosary individually and corporately. Within the past year Nicholson completed three classes that I have facilitated – Houses of Healing as well as first and second parts of the Forgiveness class. Nicholson has shown himself to be a mature member of our community, who is known for faith and kindness.

Exhibit G.

Mr. Nicholson's extraordinary rehabilitation and efforts helping others are not proffered as a list of accomplishments, but to demonstrate the reliability of Mr. Nicholson's resolve and determination to work for the benefit of victims if released. He is not just talking the talk, but has shown that he walks the walk with actual performance over the course of years - - and beginning before *Brooker*. His motivation to work for victims is genuine. See Exhibit P ("He didn't run from his failure, but instead, talked about it openly and introspectively, analyzed what went wrong, and learned from it. Jim used his crucible to make himself a better person. To many, principles, values, integrity, honesty, and compassion are words they pay lip service to, but to Jim they have deep meaning. He's internalized and consciously lives his core values every day.").

As Judge Hellerstein put it in *United States v. Caravajal*, Case No. 04-CR-222 (AKH), 2005 WL 476125 (S.D.N.Y. Feb. 22, 2005),

Rehabilitation is also a goal of punishment. . . . That goal cannot be served if a defendant can look forward to nothing beyond imprisonment. Hope is the necessary condition of mankind, for we are all created in the image of God. A judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life. Punishment should not be more severe than that necessary to satisfy the goals of punishment.

2005 WL 476125, at \*6. See also *United States v. Torres*, 464 F. Supp.3d 651, 661 (S.D.N.Y. 2020) (Stein, U.S.D.J.) ("[T]he Court holds that rehabilitation is relevant to whether there are extraordinary and compelling reasons for a sentence reduction"); *United States v. Rodriguez*, 492 F. Supp.3d 306, 311 (S.D.N.Y. 2020) (Rakoff, U.S.D.J.), 2020 WL 5810161, at \*4 ("[T]he overwhelming evidence of [defendant's] total rehabilitation

weighs strongly in favor of a finding of extraordinary and compelling reasons”); *United States v. Osuna*, Case No. 02-CR-1327, 2008 WL 1836943, at \*2 (E.D.N.Y. Apr. 22, 2008) (reducing defendant’s sentence where “[d]efendant has maintained good conduct and has not been subject of disciplinary action during his entire period of incarceration”); *United States v. Millan*, 2020 WL1674058, at \*7 (S.D.N.Y. Apr. 6, 2020) (Preska, U.S.D.J.) (finding that Congress believed "rehabilitation is relevant to the question of whether a sentence should be reduced and that rehabilitation, when considered together with other equitable factors, could constitute, 'extraordinary and compelling reasons' for a sentence reduction").

In *Pepper v. United States*, 562 U.S. 476 (2011), the Supreme Court discussed the importance of considering evidence of post sentencing rehabilitation at a defendant’s resentencing. As the Court explained, “evidence of post sentencing rehabilitation may be highly relevant to several of the § 3553(a) factors. For example, evidence of post sentencing rehabilitation may plainly be relevant to ‘the history and characteristics of the defendant.’ Such evidence may also be pertinent to ‘the need for the sentence imposed’ to ‘afford adequate deterrence to criminal conduct,’ ‘protect the public from further crimes of the defendant,’ and ‘provide the defendant with needed educational or vocational training . . . . In assessing....deterrence, protection of the public and rehabilitation, there would seem to be no better evidence than a defendant’s post incarceration conduct.” *Pepper*, 562 U.S. at 491 (citations omitted). Post sentencing rehabilitation may also “critically inform a sentencing judge’s overarching duty under § 3553 (a) to ‘impose a sentence sufficient, but not greater than necessary.’” *Pepper*, 562



U.S. at 491 (citations omitted). See *United States v. Griffith*, 954 F. Supp. 738, 742-43 (D. Vt. 1997) (departing when defendant's rehabilitative progress "would not only be slowed, but utterly frustrated if [defendant] were incarcerated"); *United States v. Neiman*, 828 F. Supp. 254, 255-56 (S.D.N.Y. 1993) (departing downward in part because incarceration would result in a "setback in his rehabilitation" and "would interfere with rather than enhance [defendant's] prospect for rehabilitation.").

Following this guidance from the Supreme Court, the Court should give great weight to how Mr. Nicholson has conducted himself over the past fourteen years. He is not the same person who appeared before the Court for sentencing. He has devoted his life in prison to improving himself. The next phase of Mr. Nicholson's rehabilitation is allowing him to make greater amends for his wrongdoing, to begin working to make more and meaningful restitution. Congress has "empowered district courts evaluating motions for compassionate release to consider any extraordinary and compelling reasons for release that a defendant might raise." *Id.* Congress has imposed but one limitation:

"[R]ehabilitation . . . *alone* shall not be considered an extraordinary and compelling reason." *Brooker*, 976 F. 3d at 237-238 (emphasis in original). Making victims whole, and Mr. Nicholson's extraordinary commitment to working towards that goal, combined with his work ethic and abilities, and his fourteen years in prison to date, constitutes an aggregate extraordinary and compelling basis for relief. See Exhibit P ("despite having no realistic hope of ever being released from prison at a time when he could do anything meaningful with his life, Jim did everything in his power to rehabilitate himself."); Exhibit W ("He's put the work in to understand why he breached his integrity, he took

responsibility, is intensely remorseful and wants to right his wrong. He has the work ethic and aptitude to make restitution. He sorely wants that opportunity and we want him back in our lives.”).

*C. Mr. Nicholson's Background and Family Support Underscores His Resolve and Motivation to Work for the Benefit of Victims*

Mr. Nicholson was born in the Bronx, the oldest of three children. After his sister was born a year later, his family outgrew its one-bedroom apartment so his parents moved to Rockland County. Mr. Nicholson's father (now deceased) worked as a detective for the New York City Police Department, and his mother Cathy (now 81 years-old) worked as a school nurse. Cathy lives for the day that her son is released: "I have an even bigger fear of dying before my son is released from prison. The thought and hope of hugging my son as a free man is what keeps me going." Exhibit U; see Exhibit C. Mr. Nicholson's sister, Donna, lives in South Carolina and his brother, Kevin, in Nanuet. He has the extended family necessary for a seamless transition to liberty where he can tangibly make amends for his crime.

From a very young age, Mr. Nicholson had a strong work ethic; his capacity for industry is real. At the age of six he had a paper route, later cut lawns in the neighborhood, stocked shelves at a local convenience store, and worked continuously throughout high school as a security guard at Gleason Security and at Joint Regional Sewage Plant in Haverstraw. Every Sunday he attended church and volunteered for a literacy program. After graduating high school in 1984, Mr. Nicholson attended Stony Brook University, graduating in 1988 with a Bachelor of Arts in Economics. At Stony Brook he played on the rugby team, wrote for the school newspaper, and worked as a

resident assistant to help reduce the cost of his education. Exhibit C.

During summers in college, Mr. Nicholson commuted four hours round-trip by train every day from Rockland County to Manhattan working internships. Mr. Nicholson graduated from Stony Brook on a weekend in 1988 and started working that Monday in finance. Over the next two plus decades Jim's honeymoon was the only time he took a full week off from work. Exhibit C. John Kelly, a former colleague, who has known Mr. Nicholson for 27 years, knows from working with him that he "has an incredible work ethic:"

We worked together in the same office for seven of those ten years, and one thing I knew for sure, he would be the first one to arrive in the morning and the last to leave at night. He has an incredible work ethic and everyone held him in high esteem.

Exhibit Q. Mr. Nicholson's work ethic carried into his home life, devoting himself to his three sons born to him and his wife between 1997 and 2003. Mr. Nicholson was an involved father, racing home from work to be sure to help his sons with homework, reading to them at bedtime every night, attending all of their school functions, and coaching their soccer and little league teams. See Exhibit C. As Mr. Kelly writes:

I can't find the words to express how caring Jim is. I remember one occasion we were at a charity softball fundraiser for a local hospital. There were a lot of children in attendance, running around having fun. However, there was one boy standing off to the side, away from the other kids, looking glum. Jim didn't know him, but he went over, knelt down beside the boy, and befriended him. Jim called his sons over and introduced them to his new friend. Shortly afterwards, the boy was running around playing with the other children, all because Jim noticed, and cared.

Exhibit Q.

The lives of Mr. Nicholson's children attest to his example of industry and

commitment. Connor Nicholson graduated from the Naval Academy in Annapolis, Maryland in 2020. He is an officer and aviator in the United States Navy. As Connor puts it:

My father is a great man. He instilled true American values in me and my two younger brothers, Ryan and Patrick. Without his guidance, I would not have had the perseverance to attend and graduate from the United States Naval Academy. His letters and phone calls pushed me through many difficult challenges and obstacles. A difficult class load, along with rigorous track-and-field training regimen was demanding to say to least. Although he could not be there, my father's words kept me going . . . . During my time as a Midshipman, we had many exceptional speakers who preached the time-tested virtues of integrity, grit, and humility, all of these values were already inculcated in me by my father.

Exhibit V.

Ryan Nicholson who lives and works in Brooklyn, writes:

Since my father's incarceration he's literally written me at least one letter every week for the past 13 years. I look forward to getting them, as they're filled with love, wisdom and guidance. He usually writes about something I'm going through in life, offering encouragement and advice. Years ago, I started writing down some of my favorites.

For example, when I was having doubts about belonging in an advanced placement class, he wrote, "Ryan there will always be someone that has a higher IQ or is faster than you (I was running track at the time). You have no control over that. But you do have control over how hard you work. Always be the hardest working person in the room."

In response to a letter I wrote him, where I made fun of a kid in my class, he said, "Don't judge other people. It's just a way to make yourself feel superior or sanctimonious or whatever. Look for the good in others instead of finding fault. Don't ever say anything behind someone's back you're not comfortable saying to them in person."

Once, when I didn't help my mother shovel snow off the driveway, he wrote, "Find ways to do little things that show you care. Every day! Start with mom and your brothers and Mrs. Duffy next door, grandma and grandpa, and your friends at school. Daily acts of kindness brighten people's days. In a small way it makes the world kinder and better."

Exhibit Y.

Patrick Nicholson is a student at New Mexico State University. Among other things, Patrick writes:

I miss my father. I was only six years old when he went to prison, but before he did he always spent one-on-one time with my brothers and I. He'd let us pick what we wanted to do and then we'd head out for a day of adventure. At the time I loved animals, especially zebras, so I'd always ask to go to the zoo. My father made sure we went to plenty of them - the Bear Mountain Zoo, Bronx Zoo, Central Park Zoo, a zoo in Washington DC, one in Philadelphia and a few others. He'd take me to the library, where we'd go on a hunt for books about zebras. He made it so much fun.

Looking back now I can see my father was doing what he always does: encouraging my passions. When I enrolled in the film program at New Mexico State, he had me send him the catalog with the course descriptions. He was so excited you would have thought he was going. He sends me every article he sees on filmmaking. He once told me that if I can find a way to make a living at what I'm passionate about, it won't be a chore, going to work will be a joy. Above all else, I know my father wants one thing for me - to be happy.

Exhibit X.

*D. The Failing Health of Mr. Nicholson's Elderly Mother*

Compassion for Mr. Nicholson and his family provides a compelling reason to reduce his sentence. Acting on compassion for Mr. Nicholson and his family does not reduce compassion for the victims, but allows a rehabilitated and reformed defendant to care for his family, make meaningful restitution, and continue to pay back society outside of prison.

Mr. Nicholson is exceptionally close with his mother as he was with his father. On June 10, 2020, Mr. Nicholson lost his father James J. Nicholson to a long battle with Alzheimer's Disease. Exhibit U. He passed away in a nursing home for veterans in Westchester County that was locked down at the time due to COVID. Since her husband's

death, Mr. Nicholson's mother, Catherine, health has been in decline, and sadly, she now also has early onset dementia. Exhibit W; see Exhibits M, U. Catherine is 81 years old and lives alone in Rockland County. Dr. Howard Feldfogel, Catherine Nicholson's physician, writes that Catherine's "declining health" includes "memory loss, stress, Anxiety and Depression . . . [and] Acid reflux and inflammation of the esophagus which also flares up during her depression." Exhibit M; Exhibit U. Dr. Feldfogel confirms that, "[a]t this stage in Catherine's life she needs assistance with self care, medications, house keeping, shopping, and transportation to and from doctors appointments." Exhibit M; Exhibit U. See Exhibit I ("Sadly, his mother Cathy is now [af]fllicted with the same awful disease [dementia, from which afflicted Mr. Nicholson's late father]").

Catherine requires care in most aspects of her daily living. Mr. Nicholson is the best and most viable option for her daily care. Catherine's brother, James Mawdsley, passed away on March 5, 2022. Her son Kevin, a former 29-year veteran of the New York City Police Department, is currently the Corporate Director of Security for a major hotel chain, running their North American security operations. He travels extensively and is away for long stretches. Exhibit W. Her daughter Donna D'Antonio lives and works in South Carolina with her family.

Kevin Nicholson writes:

Since our father passed away my mother's health has been in decline. She is now 80 years old and sadly, she herself has early onset dementia along with other health issues. She's unable of taking care of herself. She's fallen on a number of occasions, forgets to take her medications, and in one instance forgot she left the stove on. Unfortunately, these instances are becoming more frequent.

I am not able to be there for my mother as I travel extensively for my job. I

have three children entering college and help support Jim's children. Our sister lives and works in South Carolina with her husband and daughter. If Jim's motion is granted, he is going to move in with our mother to take care of her.

Exhibit W.

Jim's sister writes:

[T]here is another reason we need Jim home - - to tend to my mother's needs. She is no longer capable of self care. Our mother is 81 years old, lives alone, and has early onset dementia. Sadly, we are reliving the nightmare we experienced with my father. We know how the disease progresses and how it ends.

I came up from South Carolina to visit for Christmas. When I had to leave, I feared for her safety. She is not capable of self-care. Jim living with her will alleviate my fears. We investigated getting a home health aide but there were a number of issues. First, my mother only trusts her children. Second, there is the affordability factor. Third, the agencies could not guarantee the same aide . . . . And finally, they only come for a few hours during the day. My mother needs someone there at all hours. She often wakes up confused. Reducing Jim's sentence to time served will help alleviate an extraordinary family crisis.

Exhibit F.<sup>4</sup>

Catherine Nicholson needs her son. She is elderly, frail, and suffers from dementia, osteoporosis, major depression/anxiety, anemia, and other maladies, including hypertension, hyperlipidemia, and myalgia. Her condition is unstable and deteriorating. Mr. Nicholson is the ideal candidate to comfort and care for Catherine in her waning years. Upon release, Mr. Nicholson would live in his mother's home and become her principal caretaker. *See United States v. Hasanoff*, Case No. 2020 WL 6285308 (S.D.N.Y. Oct. 27, 2020) (Wood, U.S.D.J.) (granting compassionate relief after defendant served seven years of an eighteen-year sentence to care for his mother); *United States v. Walker*, 2019 WL

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<sup>4</sup> Mr. Nicholson already has one option for employment if released, from the President and Chief Executive Officer of Ensa Systems Canada Inc., to work remotely from home as a researcher. Exhibit P.

5268752 (N.D. Ohio Oct. 17, 2019) (relief granted based on circumstances including failing health of the defendant's mother); *United States v. Bucci*, 409 F. Supp. 3d 1 (D. Mass. Sept. 16, 2019) (relief granted based on circumstances including the failing health of the defendant's mother).

*E. Mr. Nicholson's Custody During the Entire Sweep of the Pandemic*

Since the height of the pandemic and the availability of vaccines, release of qualifying inmates has not been as imperative, but nor is it irrelevant that an inmate was incarcerated during the pandemic's entire sweep. The conditions of Mr. Nicholson's confinement, with all the attendant health risks and restrictions, could not have been foreseen. Two years into the pandemic, Mr. Nicholson twice contracted the virus and suffered significant symptoms. As his medical records confirm, he qualifies for chronic care based on his hyperlipidemia, hypothyroidism and an enlarged prostate and is on medications including Levothyroxine, Tamsulosin, and Atorvastatin.

Courts have recognized that "[a] day spent in prison under extreme lockdown and in legitimate fear of contracting a once-in-a-century deadly virus exacts a price on a prisoner beyond that imposed by an ordinary day in prison," and "[w]hile such conditions are not intended as punishment, incarceration in such circumstances is, unavoidably, experienced or more punishing." *United States v. Lizardi*, 11-CR-1032, Docket No. 2532 at \*7, 2020 U.S. Dist. LEXIS 188147 (S.D.N.Y. Oct. 9, 2020) (Engelmayer, U.S.D.J.); *United States v. Rodriguez*, 492 F. Supp. 3d 306, 311 (S.D.N.Y. Sept. 30, 2020) (Rakoff, U.S.D.J.) (Citation omitted) ("the pandemic, aside from posing a threat to [a defendant's] health, has made [a defendant's] incarceration harsher and more



punitive than it would be otherwise have been the case. This is because federal prisons, as 'prime candidates' for the spread of the virus . . . have had to impose onerous lockdowns and restrictions that have made the incarceration of prisoners far harsher than normal.").

For similar reasons, in pending cases, courts have imposed materially lower sentences than otherwise based on the realities of custody during the pandemic.

*See e.g., United States v. Marmolejos*, Case No. 19-CR-626, Docket No. 25 at 32-33 (S.D.N.Y. Nov. 24, 2020) (Engelmayer, U.S.D.J.) (granting a sentence "farther below the guideline sentence it otherwise would have been on account of the conditions" caused by the pandemic); *United States v. Newton*, Case No. 18-CR-373, Docket No. 772 at 41 (S.D.N.Y. Sept. 25, 2020) (Sullivan, J) ("I do think that the conditions you've been living in over the past couple of years have been tough. You've lived through COVID. You've lived through a lockdown. You've lived through circumstances that in jail are even tougher than usual. And that also comes into my thinking what's an appropriate sentence.").

F. *Imprisonment of Fourteen Years is Itself a Significant Sentence*

The above-cited analysis under JSIN aside, fourteen years is not an insignificant sentence, even if not the period of custody imposed, and even without consideration of applicable credits. Still, no injustice to the community's interest in Mr. Nicholson's isolation is done by now fashioning a different sentence based on the constellation of circumstances presented here. *See, e.g., United States v. Clausen*, 2020 WL 4601247, at \*2 (E.D. Pa. Aug. 10, 2020) (a combination of factors, including rehabilitation and the length of the initial sentence, can establish extraordinary and

compelling reasons warranting a reduction); *United States v. Nafkha*, 2021 WL 83268, at \*5 (D. Ut. Jan. 11, 2021) (“the court finds extraordinary and compelling circumstances by viewing Mr. Nafkha’s situation holistically”).

Since *Brooker* and the pandemic, terms of imprisonment in this Circuit for even the most serious non-violent crimes appear to be trending downward, and not out of any misplaced sense of leniency. For example, in *United States v. Nicholas Genovese*, Case No. 18-CR-183 (S.D.N.Y. Feb. 11, 2020), Judge Pauley imposed a sentence of 140 months upon Genovese’s guilty plea to a securities fraud involving tens of millions of dollars, describing the defendant as “a danger to the community, truly a predator, unlike any I’ve encountered in more than 21 years on the bench.” Docket No. 81 at 82. Judge Pauley stressed the impact that Genovese’s crime had on his victims, many of whom submitted victim impact statements or spoke at sentencing. *See id* at 78 (“many trusting and decent individuals have been deeply injured by Mr. Genovese’s fraud, and a number of them may not recover from their financial and psychological losses.”). More, he had a substantial criminal history, including “17 arrests and nine convictions dating back to December 1989,” virtually all of which related “to fraud of one kind or another, with the dollar amounts escalating each time. *Id.*

The sentence of forty years imposed here is indisputably lengthy when compared with equally or even more substantial white collar crimes. Marc Dreier was sentenced upon his guilty plea to twenty years for running a \$400 million Ponzi scheme. *See United States v. Marc Dreier*, 09-CR-0085, Docket 84 (S.D.N.Y. July 17, 2009). After each causing unprecedented losses of over \$1 billion and then fighting the

government at trial, Jeffrey Skilling (Enron) and Bernard Ebbers (Worldcom) received sentences of 24 and 25 years imprisonment respectively [*see Skilling v. United States*, 561 U.S. 358, 375 (2010); *United States v. Ebbers*, 432 F. Supp. 3d 421, 433 (S.D.N.Y. 2020)], far less than the term imposed on Mr. Nicholson, who fell on his sword when charged, pled guilty, and forfeited his virtually every worldly possession

Sensibilities about sentencing white collar criminals appear to be evolving and many judges “faced with a top-level corporate fraud defendant in a very large fraud [have] concluded that sentences called for by the Guidelines were too high. This merging view suggests that the judiciary may see a disjunction between sentences imposed for fraud and the fundamental requirement of [18 U.S.C §3553(a)] that judges impose sentences ‘Sufficient, but not greater than necessary’ to comply with its objectives.” *See* Frank Bowman, *Sentencing High-Loss Corporate Insider Frauds After Booker*, 20 FED SENT’G REP 167, 169 (Feb. 2008). There is now a “widespread perception that the loss guideline is broken [and] leaves district judges without meaningful guidance in high-loss cases.” *United States v. Corsey*, 723 F. 3d 366, 378 (2d Cir. 2013) (Underhill, U.S.D.J., concurring). *See also United States v. Adelson*, 441 F. Supp. 2d 506, 515 (S.D.N.Y. 2006); *United States v. Kikumura*, 918 F. 2d 1084, 1111 (3d Cir. 1990).

Ebbers, for example, was charged with leading a massive accounting fraud as head of Worldcom, Inc., causing actual losses of more than \$2 billion, with collateral losses to shareholders reaching as high as \$200 billion. Ebbers was convicted after trial, but was sentenced to a below-guideline sentence of 300 months' imprisonment. When Judge Caproni granted compassionate release to Ebbers in 2020 for medical reasons, she

noted that his “25-year sentence was significantly longer than most sentences for white collar crimes - even considering the vast damage his crimes caused.” *United States v. Ebbers*, 432 F. Supp. 3d at 433.

Skilling, former head of Enron, was charged with a massive accounting fraud that caused actual loss of over \$2 billion, including bankrupting the retirement plan of thousands of employees. The markets plummeted as a result of the fraud as public confidence in corporate earnings generally was shaken, and accounting firm Arthur Anderson was forced to shut down, wiping out the equity of its partners and leaving thousands unemployed. Like Ebbers, Skilling consistently maintained his innocence and was convicted after trial. He was initially sentenced to 292 months' imprisonment. After the Supreme Court reversed his conviction for honest services fraud [*Skilling v. United States*, 561 U.S. at 358], Skilling was resentenced (with the government's consent) to 168 months' imprisonment. See *Ex-Enron Chief's Sentence Is Cut by 10 Years, to 14*, N.Y. Times (June 22, 2013).

John and Timothy Rigas caused the collapse of Adelphia Communications Corporation, once the nation's fifth largest cable company. The Rigases systematically misled analysts and regulators about Adelphia's financial condition, understated its debt by about \$1.6 billion, and siphoned off more than \$200 million for personal use. When the company was forced into bankruptcy in 2002, investors lost billions of dollars. Like Ebbers and Skilling, the Rigases were convicted after trial. They were initially sentenced to 180 and 240 months, respectively. In 2008, following the reversal of one count of bank fraud, they were resentenced to 144 and 204 months' imprisonment. *United States*

*v. Rigas*, 490 F. 3d 208 (2d Cir. 2007) (direct appeal); *United States v. Rigas*, 2008 WL 2544654 (S.D.N.Y. June 24, 2008) (on remand), *aff'd*, 583 F.3d 108 (2d Cir. 2009).

The defendant in *United States v. Illarramendi* engaged in a Ponzi scheme to defraud the SEC, investors, and creditors and was ordered to pay restitution in the amount of \$370,482,716.54. On January 25, 2015, Judge Underhill sentenced him to imprisonment of 13 years (156 months). See 2015 U.S. Dist. LEXIS 166102 (D. Ct. Dec. 11, 2015). The defendant in *United States v. Joseph Shereshevsky* was sentenced to a term of imprisonment of 21 years (262 months) for running “a massive Ponzi scheme” from 2003 until 2008. Shereshevsky had two prior felony convictions including for fraud, defrauded more than one thousand investors of approximately \$255 million,” involving a complex web of some 240 Wextrust affiliates operating in the Middle East, Africa, and the United States.” Judge Chin said that “Mr. Shereshevsky engaged in an egregious fraud, one that spanned some five years and impacted hundreds of people, many of whom I heard from in both cases, including small investors who lost their homes and pensions or savings. There was a human toll, and Mr. Shereshevsky acknowledged at sentencing, “he destroyed lives.” See 2020 U.S. Dist. LEXIS 104949 (S.D.N.Y. June 16, 2020).

The defendant in *United States v. Joseph Meli*, 2020 U.S. Dist. LEXIS, 77976 (S.D.N.Y. 2020), was sentenced to 78 months despite defrauding over 100 investors of over \$100 million through a multi-year fraud scheme based on misrepresentations that investor funds would be used for bulk purchases of tickets to live events for resale on the secondary market, which the defendant used to fund a lavish lifestyle. Judge Wood recounted the “enormous scale” and “heartbreaking” effect of Meli’s crime and described

Meli as being “among the most culpable of fraud defendants in the United States.” *Id.*

Courts within this Circuit and around the country have taken the length of a defendant’s sentence into consideration when evaluating what constitutes “extraordinary and compelling reasons” for the purpose of ruling on motions pursuant to Section 3582(c)(i)(A). Multiple courts have considered disparities with other sentences in granting reductions. *See, e.g., United States v. Cabrera*, 531 F. Supp. 3d 863, 870 (S.D.N.Y. 2021) (“[T]he extraordinary length of Cabrera’s sentence relative to his offense, especially given his negligible criminal history; the significant, unwarranted disparity between Cabrera’s sentence and his co-defendants; and Cabrera’s substantial evidence of rehabilitation . . . together, demonstrate extraordinary and compelling circumstances warranting a sentence reduction.”); *United States v Ramsay*, 538 F. Supp. 3d 407 S.D.N.Y. 2021) (a reduced sentence “is consistent with the § 3553 (a) factors” because of the defendants “youth at the time of his offense, his upbringing, and his evidence of rehabilitation,” together with the fact that his co-conspirators had since been paroled, but the defendant “meanwhile, is less than fifty years old; if this motion were denied, he could expect to live decades more behind bars. The Court sees no reasonable basis for such an extreme sentencing disparity.”).

The sentence in this case remains distinctly long when compared with these other cases not just because of its length but because of the stacking of two twenty-year counts of fraud to achieve it, a mechanism unique to this case. The need for that sentence should be revisited now under the extraordinary and compelling circumstances advanced herein and a re-evaluation of the sentencing factors as applied today.

G. *Mr. Nicholson's Extraordinary Commitment to Paying More Restitution Is a Compelling Reason for a Sentence Reduction.*

Mr. Nicholson is now 57 years-old; without a sentence modification he will likely be in his 70's when released from prison, making any kind of meaningful restitution to his victims an impossibility. Mr. Nicholson is deeply committed to his restitution order as he feels it is a tangible way that he can begin to right his wrong and continues his efforts at redemption. Every quarter for the past fourteen years, he has made payments toward restitution, but payments from inside prison are necessarily limited. As Mr. Nicholson explains:

My life now reflects not just the person that I want to be, but the person that I really feel like I am - - which is not perfect, but someone who tries very hard and cares very much about being honest, authentic and accountable. However, understanding where I went wrong, and dedicating myself to never violating my integrity again, is just one part of what I have to do. I also have an overwhelming need and obligation to make restitution to my victims. I don't *want* to make restitution. I *have* to make restitution. It is a tangible way that in some measure will allow me to right my wrong. To atone for my sin in a way that I haven't been able to obtain in a confessional booth. In order to truly cleanse my soul, I have to make reparations. I'm committed to doing the work outside of the booth. It's a driving force in my life.

Exhibit C.

The genuineness of Nicholson's desire to make restitution is echoed by friends and family. For example, Jessica Ensminger writes:

Jim has expressed to me innumerable times his desire to begin making restitution to the victims of his crime. Many would stick their head in the sand and avoid that obligation. Jim's running towards it. He's taken responsibility for his wrongdoing, been punished drastically, and now wants to atone for his wrongdoing. Making reparations is the next step towards taking responsibility. Jim's made it his life's mission.

Exhibit L.

Mac Parker, incarcerated with Mr. Nicholson at FCI Ray Brook between 2013 and 2017, and is now home, writes:

I have had many conversations with Jim about his crime. He always expressed genuine remorse for what he had done, and the financial and personal hardship he created for others. On multiple occasions we had serious discussions about his desire to make restitution to those he hurt by his crime, and how he would work toward this if released. One of the many points we talked about is how functionally impossible it is to make progress toward restitution for our crimes while we are incarcerated. I have since been released and am grateful for the opportunity to make restitution payments every month from my paychecks I am earning. I know Jim would dearly love to have a similar opportunity.

Exhibit Z.

*H. The Factors of Section 3553(a) Favor Relief*

The last fourteen years have allowed Mr. Nicholson to demonstrate clear and unambiguous confirmation of his remorse and contrition, backed up by concrete evidence of his rehabilitation, thereby demonstrating that they are genuinely and deeply felt. Nothing about this case or Mr. Nicholson's history suggests that he would be a danger to the community or otherwise militates against the requested relief under analysis of the factors of Section 3553(a).

The facts discussed above help establish, under the circumstances as they now exist, that a sentence of fourteen years is sufficient but not more than necessary to satisfy the purposes of sentencing. While the nature and circumstances of the offense required a significant sentence, Mr Nicholson's fourteen years in custody is itself substantial and proportionate to sentences imposed for defendants convicted of more sweeping criminal conduct. His criminal conduct should be considered in the context of his capacity and desire to work for the benefit of victims upon release, his extraordinarily productive conduct in custody, his rehabilitation, and his personal characteristics.



As the correspondents writing in Mr. Nicholson's support attest, Mr. Nicholson is redeemable and is known for acts of kindness and extending himself for others consistent with his intent to make meaningful restitution for his victims. For example, "Jim is kind and caring. I've always admired him and he was a role model for my sister and I growing up. No matter what was going on he looked out for us." Exhibit W. "Jim has a kind heart and has always made my husband and I proud as a child and throughout his adulthood . . . of his accomplishments, we were even prouder of who he is as a person. He is intelligent, hardworking, loving, caring and oozes goodness." Exhibit U. "On a personal note, Jim is gregarious and has a great sense of humor. He deeply cares for people. When my wife had medical issues, Jim was a rock for me covering for me at the office, and visiting us at the hospital every night, looking to help in any way he could." Exhibit Q. "Jim is a quality person, salt of the earth. He's kind, considerate, thoughtful and caring. If my daughter were to marry someone like Jim, or my son grows up to be like Jim, I'll be very happy." Exhibit AA ("I always admired how he stood up for the less popular, never letting anyone get picked on.").

There is zero chance of Mr. Nicholson re-offending. The BOP's PATTERN score also concurs, rating Mr. Nicholson in the lowest category for chance of recidivism. Exhibit B. Courts nationwide have acknowledged that the "positive correlation between age and recidivism" is "impossible to deny." *United States v. Nellum*, 2005 WL 300073, at \*3 (N.D. Ind. Feb. 3, 2005); U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* at 12 (2004) ("Recidivism rates decline relatively

consistently as age increases.”<sup>5</sup> Courts have recognized that defendants over the age of forty (like Mr. Nicholson, who is 57) have lower recidivism rates than younger defendants, and age is grounds for a lower sentence than would otherwise be imposed. *See United States v. Marzouca*, 2008 WL 2169517, at \*3-4 (E.D.N.Y Aug. 21, 2008) (reducing sentence from 292 months to time served based in part on defendant’s age of fifty years-old); *United States v. Carmona-Rodriguez*, 2005 WL 840464, at \*4 (S.D.N.Y April 11, 2005) (imposing a sentence shorter than that called for by the Guidelines on a 55-year-old defendant); *Nellum*, 2005 WL300073, at \*3 (imposing a sentence less than that called for by the Guidelines on a 57-year-old defendant).

Mr. Nicholson’s son Ryan wrote:

I’ve taken all of the bits of advice and wisdom my father’s given me over the years and applied it to my life. One thing he’s instilled in me is an uber belief in always improving and becoming better versions of ourselves. My father is a living testament to that philosophy. He’s learned from his ethical failure, and it will never happen again. Failures are often the best teachers and can be enormous gifts, catalysts for change. My father is a paragon of integrity, honesty and altruism. Keeping him in prison serves no further purpose.

Exhibit Y.

J. Martin Kerr, an attorney with 50 years of experience practicing law including as a prosecutor, writes:

With all due deference to this Court and the responsibility you have in ensuring that standards of justice are maintained for all in our society, I would respectfully recommend that Mr. Nicholson’s petition be granted. He has served approximately 13 years in federal prison and with his release it will still mean that he will have served a substantial number of years for his wrongdoing. I firmly believe that it is sufficient and a greater length of imprisonment is not necessary to meet the ends of justice.

Exhibit S.

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<sup>5</sup> Available at (found at [http://www/ussc.gov/research/research\\_publications/recidivism/200405\\_recidivism\\_criminal\\_history.pdf](http://www/ussc.gov/research/research_publications/recidivism/200405_recidivism_criminal_history.pdf))

Kevin Nicholson, Mr. Nicholson's brother, and 29-year law enforcement veteran for the NYPD, writes:

Jim is a good honest person. He made a poor choice when he didn't disclose the losses, but that's not inherently who he is. I've worked in law enforcement my entire adult life, and made innumerable arrests. Some people learn a hard lesson right away and others never get it, they have a criminal mindset. Without a shadow of a doubt Jim is in the former category. He's put the work in to understand why he breached his integrity, he's taken responsibility, is intensely remorseful, and wants to right his wrong. He has the work ethic and aptitude to make restitution. He sorely wants that opportunity and we sorely want Jim back in our lives.

Exhibit W.

Likewise, letters submitted by inmates Mr. Nicholson was incarcerated with confirm that his rehabilitation is extraordinary, and that the time he has already served is sufficient to accomplish that penological objective.

Mac Parker writes:

One of the great tragedies of our federal prison system is that there was no mechanism for recognizing, honoring, and adjusting the sentences of people like Jim Nicholson. In a sense, the message given to people like him has been that it doesn't matter what you do, how you conduct yourself as an inmate, and how you allow incarceration to humble and transform you.

I have not a single doubt that in a humane justice system, one that held the potential for parole for model inmates and humans, Jim Nicholson would be a prime candidate for recognition and early release. Thankfully, the First Step Act now provides such a mechanism. Since it has long been clear that Jim is a positive force in prison and in his life, I see him as highly deserving of a reduction in his sentence.

Exhibit Z.

Jesse Stark writes:

I have been clean and sober now for over three years. I wake up every morning, not looking to get high, but with goals of things I want to accomplish that day. I am now enrolled in college through North Country Community College to receive an Associate's Degree in Business Management. I can honestly say, without any doubt, that none of this

would have happened without Jim. I will always be eternally grateful for what he saw in me and for believing in me. Jim does not belong in prison. He is not like any of the people here. He sticks out like a sore thumb. He has his life together.

Exhibit AD.

As Mr. Nicholson writes the Court:

When I didn't disclose the initial loss, I foolishly justified my behavior. I rationalized, and truly believed at the time, that no one would get hurt - - what was the big deal? I stupidly believed I would make up for the loss the following month. But what I did was measure myself against a low or even a perverse bar. My thought process and ethical standard was wrong. I should have done what was right, because it was right. Not because of the mistaken belief that no one would get hurt. A basic principle that I lost sight of.

Exhibit C.

The community's interest in Mr. Nicholson's isolation should now yield to the financial interest of his victims. He has served significant time in custody, but his continued custody will not help victims recoup more of their loss. His release would reflect the reality of all the circumstances presented herein and satisfy the factors of Section 3553(a), but most important the interests of affected investors.

#### Conclusion

For all of these reason, the Court should grant the requested relief.

Dated: June 21, 2023

*/s/ Andrew J. Frisch*  
The Law Offices of Andrew J. Frisch, PLLC  
40 Fulton Street, 17<sup>th</sup> Floor  
New York, New York 10038  
646-349-7660  
*afrisch@andrewfrisch.com*

*Attorneys for James Nicholson*

**Response to Inmate Request to Staff**

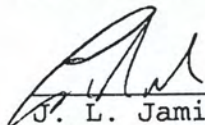
NICHOLSON, James  
Reg. No.: 61985-054  
Unit: GA

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This is in response to the request submitted on your behalf by your attorney, Andrew J. Frisch, dated December 20, 2022, in which your attorney requested a Compassionate Release/Reduction in Sentence, based on First Step Act, pursuant to 18 U.S.C 3624(g)(1)(b), on you working upon release for the benefit of investors affected by your crime.

Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the BOP, to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition, debilitated medical condition, status as a new law elderly inmate, an elderly inmate with medical conditions, or any other elderly inmate, the death or incapacitation of the family member caregiver of the inmate's child, or the incapacitation of the inmate's spouse or registered partner. Based upon a review of your request, you do not meet the criteria of this general guidance.

If you are not satisfied with this decision, you may appeal through the Administrative Remedy Procedure, within 20 calendar days of the date of this notice.

 *for*  
\_\_\_\_\_  
J. L. Jamison, Warden

3/29/23  
Date

The Law Offices of  
ANDREW J. FRISCH, PLLC  
40 Fulton Street, 17<sup>th</sup> Floor  
New York, New York 10038  
212-285-8000

December 20, 2022

*Via Email (OTV-ExecAssistant@bop.gov)  
and United States Mail*

Warden J.L. Jamison  
FCI Otisville  
P.O. Box 600  
Otisville, New York 10963

*Re: James Nicholson, 61985-054*

Dear Warden Jamison:

I am counsel to inmate James Nicholson, Number 61985-054. I respectfully submit this letter as an application for his compassionate release under the First Step Act (“FSA”), pursuant to 18 U.S.C. § 3624(g)(1)(b), on the condition that he work upon release for the benefit of investors affected by his crime.

Mr. Nicholson, now 56 years-old and in custody for almost thirteen years, is serving a sentence of forty years for securities, mail and investment advisor fraud. As part of the disposition of Mr. Nicholson’s case, he forfeited assets worth about \$40 million. His projected release date is 2043. Mr. Nicholson has the lowest possible pattern score. With credit for good time, Mr. Nicholson has served more than half of his sentence.

Mr. Nicholson’s capacity and desire to work for the benefit of affected investors, his mother’s failing health, his confinement during the full sweep of the pandemic, and his indisputable rehabilitation, all favor his release under *United States v. Brooker (Zullo)*, 976 F.3d 228 (2d Cir. 2020).

*A. Letters from Investors*

While Mr. Nicholson’s conduct during his incarceration has been and remains exemplary, and while personal and family circumstances themselves warrant compassion and his release, this application starts with investors affected by Mr. Nicholson’s crime and their accompanying letters in support. The letters are addressed to Mr. Nicholson’s sentencing judge as a matter of formality, but they are submitted here in the first instance with the hope that judicial review will be unnecessary. These victims support Mr. Nicholson’s application because they believe - - as victims of the crime - - that any chance of any victims receiving any additional

meaningful restitution turns exclusively on Mr. Nicholson's capacity to be working for their benefit. The community's interest in Mr. Nicholson's isolation has been served by his substantial term in custody, but that interest is now tempered and should yield to their desire to receive more restitution, a factor of which *Brooker's* broad sweep permits consideration.

Highlights of the letters, set forth here alphabetically by investor's name, are provided here:

1. *Mary Ciorra*

[Mr. Nicholson] wants nothing more than to be able to make amends by dedicating himself to making restitution . . . .

Jim is committed to making restitution. And I've seen his work ethic since he was a child. I can still remember Jim at the age of six with a satchel full of newspapers, that was about half his size and weight, as he delivered them door-to-door. A few years later he was mowing just about everyone's lawn in the neighborhood while also stocking shelves at the Kwik Stop in a nearby shopping center. Jim has worked his entire life and now wants to apply his work ethic to atone for his wrongdoing by paying back shareholders. America is a place where second chances and fresh starts should be celebrated and championed. I urge you to grant Jim's motion. Give the shareholders the opportunity for restitution and Jim the ability to redeem himself and prove his ethical failure was an aberration. You will not regret it.

Exhibit A.

2. *Carl D'Antonio*

Fulfilling his restitution order won't be easy, but it's part of the punishment, and will greatly benefit the victims. Some might say that making restitution is impossible. That is not true. The only way that it is impossible is if this motion is denied and he remains incarcerated. Anyone that knows Jim, is familiar with his work ethic, and understands how committed he is to his restitution order, won't doubt for a second that he will make meaningful restitution.

Exhibit B.

3. *Maureen Delehanty*

I am requesting that you grant James Nicholson's motion which will allow him to begin working to make restitution to the victims of his crime.

Mr. Nicholson has taken full responsibility for his actions, has been severely punished,

learned hard lessons, and now wants to dedicate himself to paying investors back. To my husband and I this seems like a no brainer.

Exhibit C.

4. *John Friedman*

My father and I were shareholders in Westgate Capital Funds. We did receive a portion of our money back as a result of the \$30 million Mr. Nicholson paid, but I know Jim sorely wants to work to make further restitution payments. I have known Jim for many years, and he is fully committed to achieving his goal. He's made it his mission in life.

Exhibit D.

5. *Barbara Kostewich*

[W]e are vigorously supporting his motion for release from prison. We held a family meeting, and although our reasoning varied, everyone universally agreed we should support Jim. We have unique insight into this case, including a nephew who was an employee of Westgate Capital . . . . If Jim remains incarcerated, he has no ability to pay restitution beyond what he has already paid. Something we know he sorely wants to do and will work tirelessly towards.

Exhibit E.

6. *Frances Sotire*

Paying his debt to society has not only been met, it's abstract, paying his debt to shareholders is real and tangible. That in itself is likely a life sentence, but one that better serves all parties - the victims, the community, society, the taxpayer, as well as Jim and his family.

Exhibit F.

7. *Anthony Vitale*

[W]hen [Jim] asked himself "How can I fix it? he wholeheartedly committed himself to making restitution. Jim will be utterly relentless in his focus to make victims whole. And as an investor in Westgate's funds, I want him home, working for me so to speak, making restitution.

Exhibit G.



*B. Mr. Nicholson's Work in Custody Underscores His Capacity for and Resolve to Work for the Benefit of Victims*

During Mr. Nicholson's nine years at FCI Ray Brook (before transfer to FCI Otisville and restrictions caused by the pandemic), he tutored and mentored inmates and taught classes sometimes on his own time. Mr. Nicholson taught a class in entrepreneurship in conjunction with Defy Ventures, a not-for-profit that helps formerly incarcerated inmates start businesses and find employment. He created and implemented a program called Fatherhood First, a parenting course that encouraged and helped inmates to bond with and be good fathers to their children. He started a biblio-learning program he named the University of Books, curating a diversified list of 150 mostly educational non-fiction books. He wrote the descriptions and exams for each book and administered tests. To complete the program, inmates were required to read fifty books. Mr. Nicholson taught courses in finance, character development, and curiosity. Mr. Nicholson informally tutored inmates studying for graduate equivalency degrees even after the pandemic limited more robust activities.

These activities are not proffered as a list of accomplishments, but to demonstrate the reliability of Mr. Nicholson's resolve and determination to work for the benefit of victims if released. He is not just talking the talk, but has shown that he walks the walk with actual performance. His motivation to work for victims is genuine.

*C. Mr. Nicholson's Background and Family Support Underscores His Resolve and Motivation to Work for the Benefit of Victims*

Mr. Nicholson was born in the Bronx, the oldest of three children. After his sister was born a year later, his family outgrew its one-bedroom apartment so his parents moved to Rockland County. Mr. Nicholson's father (now deceased) worked as a detective for the New York City Police Department, and his mother Cathy (age 80) worked as a school nurse. Cathy lives for the day that her son is released: "I have an even bigger fear of dying before my son is released from prison. The thought and hope of hugging my son as a free man is what keeps me going." Exhibit H. Mr. Nicholson's sister, Donna, lives in South Carolina and his brother, Kevin, in Nanuet. He has the extended family necessary for a seamless transition to liberty where he can tangibly make amends for his crime.

From a very young age, Mr. Nicholson had a strong work ethic; his capacity for industry is real. At the age of six he had a paper route, later cut lawns in the neighborhood, stocked shelves at a local convenience store, and worked continuously throughout high school as a security guard at Gleason Security and at Joint Regional Sewage Plant in Haverstraw. Every Sunday he attended church and volunteered for a literacy program. After graduating high school in 1984, Mr. Nicholson attended Stony Brook University, graduating in 1988 with a Bachelor of Arts in Economics. At Stony Brook he played on the rugby team, wrote for the school newspaper, and worked as a resident assistant to help reduce the cost of his education.

During summers in college, Mr. Nicholson commuted four hours round-trip by train every day from Rockland County to Manhattan working internships. Mr. Nicholson graduated from Stony Brook on a weekend in 1988 and started working that Monday in finance. Over the next two plus decades Jim's honeymoon was the only time he took a full week off from work. A former colleague, who has known Mr. Nicholson for 27 years, knows from working with him that he "has an incredible work ethic:"

We worked together in the same office for seven of those ten years, and one thing I knew for sure, he would be the first one to arrive in the morning and the last to leave at night. He has an incredible work ethic and everyone held him in high esteem.

Exhibit I. Mr. Nicholson's work ethic carried into his home life, devoting himself to his three sons born to him and his wife between 1997 and 2003. Mr. Nicholson was an involved father, racing home from work to be sure to help his sons with homework, reading to them at bedtime every night, attending all of their school functions, and coaching their soccer and little league teams. As Mr. Kelly writes:

I can't find the words to express how caring Jim is. I remember one occasion we were at a charity softball fundraiser for a local hospital. There were a lot of children in attendance, running around having fun. However, there was one boy standing off to the side, away from the other kids, looking glum. Jim didn't know him, but he went over, knelt down beside the boy, and befriended him. Jim called his sons over and introduced them to his new friend. Shortly afterwards, the boy was running around playing with the other children, all because Jim noticed, and cared.

Exhibit I.

The lives of Mr. Nicholson's children attest to his example of industry and commitment. Connor Nicholson graduated from the Naval Academy in Annapolis, Maryland in 2020. He is an officer in the United States Navy and currently attending flight school in Pensacola, Florida. As Connor puts it:

My father is a great man. He instilled true American values in me and my two younger brothers, Ryan and Patrick. Without his guidance, I would not have had the perseverance to attend and graduate from the United States Naval Academy. His letters and phone calls pushed me through many difficult challenges and obstacles. A difficult class load, along with rigorous track-and-field training regimen was demanding to say to least. Although he could not be there, my father's words kept me going . . . . During my time as a Midshipman, we had many exceptional speakers who preached the time-tested virtues of integrity, grit, and humility, all of these values were already inculcated in me by my father.

Exhibit J.

Ryan Nicholson who lives and works in Philadelphia, writes:

Since my father's incarceration he's literally written me at least one letter every week for the past 13 years. I look forward to getting them, as they're filled with love, wisdom and guidance. He usually writes about something I'm going through in life, offering encouragement and advice. Years ago, I started writing down some of my favorites.

For example, when I was having doubts about belonging in an advanced placement class, he wrote, "Ryan there will always be someone that has a higher IQ or is faster than you (I was running track at the time). You have no control over that. But you do have control over how hard you work. Always be the hardest working person in the room.

In response to a letter I wrote him, where I made fun of a kid in my class, he said, "Don't judge other people. It's just a way to make yourself feel superior or sanctimonious or whatever. Look for the good in others instead of finding fault. Don't ever say anything behind someone's back you're not comfortable saying to them in person."

Once, when I didn't help my mother shovel snow off the driveway, he wrote, "Find ways to do little things that show you care. Every day! Start with mom and your brothers and Mrs. Duffy next door, grandma and grandpa, and your friends at school. Daily acts of kindness brighten people's days. In a small way it makes the world kinder and better."

Exhibit K.

Patrick Nicholson just completed his freshman year studying film at New Mexico State University. Among other things, Patrick writes:

I miss my father. Before he went to prison, he spent lots of one-on-one time with my brothers and I. He'd let us pick what we wanted to do, and then we'd head out for a day of adventure. At the time I loved animals, especially zebras, so I'd always ask to go to the zoo. My father made sure we went to plenty of them - the Bear Mountain Zoo, Bronx Zoo, Central Park Zoo, a zoo in Washington DC, one in Philadelphia and a few others. He'd take me to the library, where we'd go on a hunt for books about zebras. He made it so much fun.

Looking back now I can see my father was doing what he always does: encouraging my passions. When I enrolled in the film program at New Mexico State, he had me send him the catalog with the course descriptions. He was so excited you would have thought he was going. He sends me every article he sees on filmmaking. He once told me that if I can find a way to make a living at what I'm passionate about, it won't be a chore, going to work will be a joy. Above all else, I know my father wants one thing for me - to be happy.

Exhibit L.

As for Mr. Nicholson's crime, his son Ryan writes:

My Father later explained it to me in a way I could understand. He didn't make excuses. He didn't blame anyone. He took full responsibility. He expressed deep sorrow for what he had done to my brothers and I and the shareholders of his company. He said his ethical failure would never happen again and he told me all the steps he was taking to make himself a better person. He used it as a teaching lesson for my brothers and I.

Exhibit K.

*C. The Failing Health of Mr. Nicholson's Elderly Mother*

The health of Mr. Nicholson's mother, Catherine, has been in decline, and she now has early onset dementia. She is 80 years old and lives alone in Rockland County. Her physician writes that she suffers from memory loss, stress, anxiety and depression, high blood pressure, and acid reflux and inflammation of the esophagus which flares up during her depression. Exhibit M. The doctor confirms that "[a]t this stage in Catherine's life she needs assistance with self care, medications, housekeeping, shopping, and transportation to and from doctor's appointments." Exhibit M. The prognosis is for her mental and physical faculties to continue to materially decline. Catherine requires daily care, but Mr. Nicholson's siblings are not in the best position to provide it. Catherine's brother, James Mawdsley, passed away in 2022. Her son Kevin is currently director of corporate security for a hotel chain and must travel extensively. Her daughter lives in South Carolina. Mr. Nicholson is the ideal candidate to comfort and care for Catherine in her waning years. Upon release, Mr. Nicholson would live in his mother's home and become her principal caretaker. Multiple people have assured him of employment that would enable him to make tangible amends for his crime by making money for victims.

*D. Mr. Nicholson's Custody During the Entire Sweep of the Pandemic*

Since the height of the pandemic and the availability of vaccines, release of qualifying inmates has not been as imperative, but nor is it irrelevant that an inmate was incarcerated during the pandemic's entire sweep. The conditions of Mr. Nicholson's confinement, with all the attendant health risks and restrictions, could not have been foreseen. Two years into the pandemic, Mr. Nicholson twice contracted the virus and suffered significant symptoms. As his medical records confirm, he qualifies for chronic care based on his hyperlipidemia, hypothyroidism and an enlarged prostate and is on medications including Levothyroxine, Tamsulosin, and Atorvastatin.

*Conclusion*

Mr. Nicholson's isolation and imprisonment should now yield to the financial interest of his victims. He has served significant time in custody, but his continued custody will not help victims recoup more of their loss. His compassionate release would reflect the reality of all the circumstances, but most important the interests of affected investors.

Very truly yours,

/s/ Andrew J. Frisch

Andrew J. Frisch

Enclosures  
(sent by U.S. Mail)

MALE PATTERN RISK SCORING						
Register Number:		61985-054	Date: 9/15/2021			
Inmate Name:		NICHOLSON, James				
MALE RISK ITEM SCORING		CATEGORY	GENERAL SCORE	Enter Score	VIOLENT SCORE	Enter Score
1. Current Age 51-60 Click on gray dropdown box to select, then click on dropdown arrow		> 60	0	7	0	4
		51-60	7		4	
		41-50	14		8	
		30-40	21		12	
		26-29	28		16	
		< 26	35		20	
2. Walsh w/Conviction	No	No	0	0	0	0
3. Violent Offense (PATTERN)	No	No	0	0	0	0
		Yes	5		5	
4. Criminal History Points 0 - 1 Points		0 - 1 Points	0	0	0	0
		2 - 3 Points	8		4	
		4 - 6 Points	16		8	
		7 - 9 Points	24		12	
		10 - 12 Points	32		16	
		> 12 Points	40		20	
5. History of Escapes	None	None	0	0	0	0
		> 10 Years Minor	2		1	
		5 - 10 Years Minor	4		2	
		< 5 Years Minor/Any Serious	6		3	
6. History of Violence	None	None	0	0	0	0
		> 10 Years Minor	1		1	
		> 15 Years Serious	2		2	
		5 - 10 Years Minor	3		3	
		10 - 15 Years Serious	4		4	
		< 5 Years Minor	5		5	
		5 - 10 Years Serious	6		6	
		< 5 Years Serious	7		7	
7. Education Score	HS Degree / GED	Not Enrolled	0	-4	0	-2
		Enrolled in GED	-2		-1	
		HS Degree / GED	-4		-2	
8. Drug Program Status	No DAP Completed	No DAP Completed	0	0	0	0
		NRDAP Complete	-3		-1	
		RDAP Complete	-6		-2	
		No Need	-9		-3	
9. All Incident Reports (120 months)	0	0	0	0	0	0
		1	1		1	
		2	2		2	
		> 2	3		3	
		0	0		0	
10. Serious Incident Reports (120 months)	0	0	0	0	0	0
		1	2		2	
		2	4		4	
		> 2	6		6	
		0	0		0	
11. Time Since Last Incident Report 12+ months or no incidents	12+ months or no incidents	12+ months or no incidents	0	0	0	0
		7-12 months	2		1	
		3-6 months	4		2	
		<3	6		3	
12. Time Since Last Serious Incident Report 12+ months or no incidents	12+ months or no incidents	12+ months or no incidents	0	0	0	0
		7-12 months	1		1	
		3-6 months	2		2	
		<3	3		3	
13. FRP Refuse	NO	NO	0	0	0	0
14. Programs Completed	> 10	0	0	-8	0	-4
		1	-2		-1	
		2 - 3	-4		-2	
		4 - 10	-6		-3	
		> 10	-8		-4	
15. Work Programs	0 Programs	0 Programs	0	0	0	0
		1 Program	-1		-1	
		>1 Program	-2		-2	
Total Score (Sum of Columns)			General:	-5	Violent:	-2
General/Violent Risk Levels			General:	Minimum	Violent:	Minimum
OVERALL MALE PATTERN RISK LEVEL			Minimum			

## **IN THE PETITIONER'S OWN WORDS**

It's never easy to write about a failure, but it was an enormous ethical failure that led to my imprisonment. I caused a lot of people hardship, grief, uncertainty and financial struggles. I live with that pain every day. I am deeply ashamed of my conduct. I did not live up to my own ethical standards. It's not how I was raised. And at my core, it's not who I am.

Following my arrest, I did a lot of thinking, reflecting and soul searching. I began a genuine introspective investigation in an effort to understand why I didn't live up to my own ideals, and what I could learn from my failure. My life in those first few weeks, months and years was filled with writing notes and filling binders.

When I didn't disclose the initial loss, I foolishly justified my behavior. I rationalized, and truly believed at the time, that no one would get hurt. It wasn't done out of malice or to steal, I stupidly believed I would make up the loss the following month. But what I did was measure myself against a low or even a perverse bar. My thought process and ethical standard was wrong. I should have done what was right, because it was right. Not because of the mistaken belief that no one would get hurt. A basic principle that I lost sight of.

In September of 2008, when Lehman Brothers declared bankruptcy and Westgate Capital suffered devastating losses, my values were tested and I failed. A humiliating gap opened up between my professed values and my values in practice. I panicked, concealing deep despair. The thought of telling people I had lost all of their money brought on gut wrenching nausea. I never made a definitive decision not to, I just kept procrastinating the inevitable and stupidly put it off day-by-day-by-day, compromising my integrity all along the way.

I had always thought of myself as an honest, dependable person with a good set of core values. And for most of my life that was true. It's one of the reasons people were shocked that I didn't disclose the losses. But when I reflected on my ethical failure, I realized I never gave the moral part of my nature much thought. I took it for granted. Honesty and integrity were drilled into me since I was a child. I certainly had the right role models. My father was the most honest man I've ever met. I can't think of a single instance of him telling so much as a white lie. But with the benefit of hindsight, I now realize I had slipped into a self-satisfied moral mediocrity. I had started to grade myself on a forgiving curve. As long as I wasn't hurting anyone, it must be good enough. In the process I ended up turning myself into something a little less impressive than I originally expected.

For my entire life I have always had a high achievement orientation - athletically, academically, and professionally. The memorandum submitted in support of my motion lays out some of my personal history and examples of my work ethic. Motivation for that comes in two ways: intrinsically and extrinsically. I was certainly intrinsically motivated - personal growth, satisfaction of doing a good job, helping others develop, finding meaning from efforts,

mastering a craft. And the extrinsic rewards also provided me with motivation – monetary compensation, having power, public recognition, and social status. However, retrospectively, at some point my balance got out of kilter. I started to lean too much toward extrinsic motivators. It wasn't always that way, the shift was subtle, I didn't even recognize it, but I began to look for positive validation from the outside world. With the benefit of hindsight, I also realized I had invested too much of my self-worth in the success of Westgate Capital. I had intertwined my feelings of self-worth with my professional success. Too much of my identity was based on what I did for a living. Looking back now from a higher level, I was pretty pathetic to rely on labels and easy cliches to define my identity.

I've taken to heart the adage, find truth in trials and lessons in mistakes. My failure imparted wisdom that I'll draw upon for the rest of my life. It led to introspection and growth, and my values and priorities truly got internalized. It made me a better human being. More principled. More compassionate. More self-aware. Pain can be a highly effective instructor. The pain I feel from having violated trust, from hurting people financially, from negatively changing the trajectory of my children's lives, from burdening my parents with the sorrow of watching their eldest son be sent to prison, and from not being there for my father in the final years of his life as he succumbed to Alzheimer's, will always be with me. It never leaves. It will never allow me to impeach my integrity or breach a trust again.

My life now reflects not just the person that I want to be but the person that I am – someone who is committed and cares very much about being honest, authentic and accountable. However, understanding, learning and growing from my mistakes was just one part of what I had to do. I have an enormous obligation to the victims to do everything in my power to right my wrong. I wrote apology letters to every shareholder, but simply apologizing is not enough. A critical component is making everyone whole. I am driven by a deeply embedded sense of responsibility to make restitution to the people I wronged. It's up to me to correct my failure. Making amends is a driving force in my life. If you've ever made a mistake or wronged someone and with every fiber of your being you wanted to make it right, you'll have a sense of how I feel.

Your Honor, this experience profoundly impacted me in other ways beyond clarifying and internalizing my values and priorities. I found purpose. Or in some strange way it found me. At my sentencing you said "you had every opportunity." I didn't fully comprehend what you meant at the time. I grew up in modest circumstances in a working-class neighborhood and I created many of the opportunities I had by working hard. But what I did have was two loving parents. My experience in prison has brought me to understand that not everybody has that. Not everyone grew up in a stable home environment. It was eye opening and has irrevocably changed me.

Throughout my years in prison, I've done as much as I can to help those who grew up in disadvantaged situations, or who have fallen prey to addiction, or simply needed guidance. It's not for purely altruistic reasons, selfishly I feel like for every person that I help I am overriding



those that I hurt. I now have an ingrained understanding that, in the end, one's legacy in life is everyone we've harmed and helped. My goal is to make the ratio of those I help *boundlessly* higher than those I hurt. I have come to more fully appreciate that to have a full and meaningful life, we have to have things in our lives that are bigger than ourselves. I studied character development. I researched numerous ethicists like TM Scanlon and delved into the psychology of morality and integrity. I read *The Road to Character* by David Brooks and *Mistakes Were Made (but not by me)* written by noted psychologists Carol Tavris and Elliot Aronson; and many others. I taught an entrepreneurship class to other inmates in conjunction with *Defy Ventures*, a non-profit that helps formerly incarcerated men start their own business and, in some cases, find employment. I created and implemented a program called *Fatherhood First*, a parenting course that encouraged and helped inmates to bond with and be a father to their children. I started a biblio-learning program I named the *University of Books*, curating a diversified list of 150 mostly non-fiction books that were educational and thought provoking. I wrote the descriptions and exams for each book and administered tests. To complete the program the men were required to read fifty books. I taught an Introduction to finance course, character development course, and curiosity classes.

If given the opportunity I plan on contacting Geoff Canada from the Harlem Children's Zone or a similar organization that will allow me to volunteer and use my perspectives and insights to make a difference in the lives of at-risk children. I've witnessed the far too often end result when disadvantaged children don't get a fair chance, and I've also felt firsthand the impact my absence has had on my own children. It is a cause that has hit close to home and I know I can have a positive impact. My ethical failure would be a true, complete failure, if I did not take the lessons from this and make something audaciously good come from it.

Over the past 14 plus years I have suffered. Many times, I bumped up against what I believed to be my threshold for pain. It starts with the fact that I hurt so many people financially. I am not a person that ever wants to hurt another, in any way. Ever. It's just not who I am, and the guilt is overwhelming. I also know I've missed many of the most cherished moments in a father's life, and I have to live with the nagging remorse that I'll never have a chance to recreate them. When our children grow up, they stay grown up forever. I've been incarcerated most of Connor, Ryan and Patrick's lives. Knowing that I robbed them of the father they so richly deserve eats at me daily. When we bring children into this world we have a deep responsibility and make a profound commitment to love, care and nurture them. Probably most of us love our children even more than ourselves, and we do what we can to provide for their futures. There is no greater pain than having let a child down. Not being there when they need you. If there's an antidote for these sorrows, I know I haven't found it.

Since I've been incarcerated, I've had aunts, uncles, cousins, friends and neighbors that have passed away. My father's death from Alzheimer's brought me the most anguish. I wasn't there for him in the final 11 years of his life. I never got to see him for the final four years. I wish you knew my father, he was an amazing man, and the best father anyone could ask for. I never

got to tell him how much he meant to me and how much I loved him. To this day I think about my father and I just want to hug him.

Now my mother is suffering from Alzheimer's. This might hurt even more because I know where this is heading. My mother's been there for me in every way, throughout my entire life, and now she needs me. The thought of not being there for her in whatever time she has left is painful.

Your Honor, I'm asking for mercy. Not strictly for mercy's sake, but to allow me to work towards making restitution to my victims; to care for my mother; to reunite with my children; and to become a productive contributing member of society. I want to live a life I'm proud of. And that starts with making amends for something I'm not proud of. I do not want my ethical failure to be my last and defining chapter in this world. *It is not who I am.* I have a lot of good in me. I have a meaningful contribution to make to society. And if given a second opportunity, I want to do something important with it. I will go on to write new chapters, better chapters, and happier chapters.

Thank you for your consideration.

Sincerely and Respectfully submitted,

James M. Nicholson

Circuit Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Mary Ciorra  
15 Popular Road  
Gamerville, NY 10923

Dear Judge Sullivan,

My name is Mary Ciorra, my son Michael and I were shareholders in Westgate Capital funds, and I'm writing to strongly support Jim Nicholson's motion for compassionate release.

I have known Jim since he was a child. He grew up a few houses down the street and was friends with my sons Paul, Michael and Anthony. We had a pool at our house which was the playground of the kids in the neighborhood, especially during the summer when they were off from school. Of all the children that congregated to our house, Jim was the sweetest and most polite boy of the bunch. His parents Jim Sr and Cathy raised wonderful children.

After Jim graduated from college he moved out of the neighborhood, but frequently returned to visit his parents, and he always stopped by to check on my husband Fred and I. There is one period in particular I vividly remember. Jim was working and living in the city when his father Jim Sr, who was in the military, reserves, got activated to serve in Desert Storm under George Bush Sr. Like the devoted son that he is, Jim came every weekend to check on Cathy and mow her lawn. At the time my husband Fred was hospitalized after triple bypass surgery. Fred normally mowed our lawn but it was like a jungle, overgrown because of his medical issues. One weekend Jim stopped by to say hello as I was on my way out the door to visit Fred in the hospital. He offered to mow my lawn. I told him not to bother that my oldest Paul would be by next weekend to take care of it. When I got back from the hospital that night my lawn was freshly mowed, and there were two bags of groceries on my stoop. It brought tears to my eyes. That is the kind of person Jim is. Helping others is in his DNA.

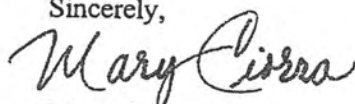
Judge Sullivan, I'm assuming that while you deliberate Jim's motion, whether it's the prosecutor or an angry shareholder, some will try and paint Jim as evil incarnate. *That is absurd, absolutely false, and not based on fact.* He is a kind and thoughtful man. Jim sent heartfelt, handwritten apology letters to every shareholder. I believe he wrote close to three hundred letters. Someone doesn't do that if they don't care. He cares greatly and wants to make amends. While it's true Jim showed poor judgement when he didn't disclose the losses, it is not indictive of his overall character. We are all so much more than the worst thing we've ever done in our lives.

I believe that when people make mistakes, they can learn from them and become better human beings as a result. I also believe it is possible to both hold people accountable and be open to the possibility of change. Jim has been held accountable – he's been severely punished in so many ways. He's also taken full responsibility and is intensely remorseful. And most importantly, the experience led to a period of introspection and growth, where his values and priorities truly got internalized. And now he wants nothing more than to be able to make amends by dedicating himself to making restitution. Not only is he personally committed to making

restitution, it is the type of crime where restitution can be made. In 2019 my son Michael was murdered in Connecticut, stabbed to death. Unfortunately, I know all too well that a murderer can never give me my son back. But in a financial crime, restitution can be made. Shareholders can be made whole.

Jim is committed to making restitution. And I've seen his work ethic since he was a child. I can still remember Jim at the age of six with a satchel full of newspapers, that was about half his size and weight, as he delivered them door-to-door. A few years later he was mowing just about everyone's lawn in the neighborhood while also stocking shelves at the Kwik Stop in a nearby shopping center. Jim has worked his entire life and now wants to apply his work ethic to atone for his wrongdoing by paying back shareholders. America is a place where second chances and fresh starts should be celebrated and championed. I urge you to grant Jim's motion. Give the shareholders the opportunity for restitution and Jim the ability to redeem himself and prove his ethical failure was an aberration. You will not regret it.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ciorra". The signature is written in black ink and is positioned above the printed name.

Mary Ciorra

Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

(date) *August 26, 2022*

Carl D'Antonio  
1577 Cambria Court  
Lake Wylie, South Carolina 29710

Dear Judge Sullivan,

I am writing strongly advocating for a reduction in Jim Nicholson's sentence. I am a victim of Jim's crime, but fully support his petition. Jim has been punished in so many ways, including being incarcerated for almost 14 years, missing his children grow up, losing the career he dedicated his life to, and so much more. It is time for Jim to come home so he can make restitution to those of us that lost money.

Fulfilling his restitution order won't be easy, but it's part of the punishment, and will greatly benefit the victims. Some might say that making restitution is impossible. That is not true. The only way that it is impossible is if this motion is denied and he remains incarcerated. Anyone that knows Jim, is familiar with his work ethic, and understands how committed he is to his restitution order, won't doubt for a second that he will make meaningful restitution.

Judge Sullivan, if you deny Jim's motion, it will result in two unjust outcomes. One, Jim will, in essence, be incarcerated for the rest of his life. He is not someone that deserves a life sentence. He is a good, kind, loving and caring man that's never so much as jaywalked in his life. And two, the victims will be denied any chance of restitution beyond the \$30 million that Jim already made. As a victim, I for one, would like him home paying restitution. For the sake of the victims, please grant this motion.

Thank you.

Sincerely,

Carl D'Antonio



Donna D'Antonio  
1141 Amesbury Court  
Apt. 302  
Clover, S.C. 29710  
January 7, 2023

Circuit Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Dear Judge Sullivan:

My name is Donna D'Antonio. I am writing in strong support of a reduction in James Nicholson's 40 year prison sentence. The circumstances in his case are extraordinary and compelling and exactly what congress had in mind when they overwhelmingly passed the First Step Act.

My brother Jim is kind and caring to the core. As children growing up he always looked out for me. Whether it was kickball or whiffleball, he picked me first, even though my talent didn't warrant it. As we got older he was always protective and helpful in every way possible. I recall one occasion when my girlfriends and I were coming home late from a concert when we got a flat tire. Without hesitating, I knew who to call. Jim got out of bed and drove down the Garden State Parkway, and repaired our flat. He always had a smile on his face and always happy to help.

When I got married, Jim was in my wedding party and when my daughter Jamie was born, I asked him to be godfather. Jim spoiled her with time, attention and love. On one trip to the Bronx Zoo, Jamie wouldn't leave Uncle Jim's side. For most of the day, Jim walked around with her on his shoulders. His back must have been killing him, but his niece loved it, and that's all that mattered to him.

Jim's kindness and caring extend well beyond his family to everyone he meets. If it is in his power to help you, he will. Even in prison he mentors and tutors, helping inmates in any way he can. For instance, there is one man from Texas that struggles to read and write. Jim has become a father like figure to him. Tutoring him and helping him compose letters to his family. There are many examples of men writing Jim after they got out of prison, thanking him for making it possible to have a better life.

I have always been proud to say Jim is my brother. I am also proud of the way my brother has handled what is by far the lowest moment in his life. A 40 year prison sentence would crush the soul of most men. My brother was devastated but he took responsibility. He looked in the mirror and said "this is not who I am. This will never happen again". He took the steps necessary to understand why he made the mistakes he did. He is now the most principled man I know, giving bodily form to the term "moral excellence". And now he is looking to use his prolific work ethic to redeem himself, specifically to make restitution. I know my brother, he is determined to right his wrong and will have a never ending drive in pursuit of that goal. He wants to leave his mark on this world for his contributions not his crime.

Our entire family longs for Jim to come home. I am in daily contact with my nephews (Jim's sons) – Connor, Ryan and Patrick. They always tell me how much they miss their father. His absence has left a huge hole in their hearts. Jim was an attentive father, always making time for them, helping with their homework, attending school plays and activities and coaching their baseball and soccer teams.


Donna D'Antonio  
1141 Amesbury Court  
Apt. 302  
Clover, S.C. 29710  
January 7, 2023

There is another reason we need Jim home – to tend to our mother's medical needs. She is no longer capable of self care. Our mother is 81 years old, lives alone, and has early onset dementia. Sadly, we are reliving the nightmare we experienced with our father. We know how this disease progresses and how it ends.

I came up from South Carolina to visit my mother for Christmas. When I had to leave, I feared for her safety. She is not capable of taking care of herself. Jim living with her will alleviate my fears. We investigated getting a home health aide but there were a number of issues. First, my mother only trusts her children. Second, there is the affordability factor. Third, the agencies could not guarantee the same aide. My mother is 81 years old, with her medical condition, catching covid will kill her. Having strangers traipsing in and out of the house during a global pandemic is a nonstarter. And finally, they only come for a few hours during the day. My mother needs someone there at all hours. She often wakes up confused. Reducing Jim's sentence to time served will help cure and extraordinary family crisis.

Judge Sullivan, thank you for your consideration. I am hoping and praying that you use your discretion to reduce Jim's sentence. I cannot imagine anyone more deserving of a second chance than Jim. Our mother is in need and the victims should be given the opportunity to be paid restitution. If I can answer any further questions, please do not hesitate to contact me.

Sincerely,



Donna D'Antonio

**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 01523720

Dept. of Justice / Federal Bureau of Prisons

Team Date: 03-09-2022

Plan is for inmate: NICHOLSON, JAMES 61985-054

Facility:	OTV OTISVILLE FCI	Proj. Rel. Date:	04-07-2043
Name:	NICHOLSON, JAMES	Proj. Rel. Mthd:	GOOD CONDUCT TIME
Register No.:	61985-054	DNA Status:	RBK02391 / 01-07-2011
Age:	55		
Date of Birth:	05-06-1966		

**Detainers**

Detaining Agency	Remarks
NO DETAINER	

**Current Work Assignments**

Fac	Assignment	Description	Start
OTV	WK POOL AM	WORK POOL - 6:00 11:00	06-22-2021

**Current Education Information**

Fac	Assignment	Description	Start
OTV	ESL HAS	ENGLISH PROFICIENT	02-17-2011
OTV	GED HAS	COMPLETED GED OR HS DIPLOMA	02-17-2011

**Education Courses**

SubFac	Action	Description	Start	Stop
OTV		FACTORS AFFECTING MOTIVATION	03-04-2022	CURRENT
OTV GP	C	MONEY AND BANKING	08-27-2019	04-01-2020
RBK	C	UNDERSTANDING THE STOCK	05-28-2019	07-16-2019
RBK	C	PUBLIC SPEAKING	01-15-2019	03-28-2019
RBK	C	UNDERSTANDING THE STOCK	06-12-2018	07-10-2018
RBK	C	PARENTING PROGRAM PART 1	01-09-2017	02-22-2017
RBK	C	PARENTING PROGRAM PART 2	10-25-2016	11-30-2016
RBK	C	PARENTING PROGRAM PART 1	09-19-2016	10-24-2016
RBK	C	DEFY VENTURES,CEO OF YOUR LIFE	01-08-2016	06-14-2016
RBK	C	INFORMATIONAL JOB FAIR	04-24-2016	04-30-2016
RBK	C	CROSS TRAINING	08-31-2014	10-03-2014
RBK	C	HEALTHY RELATIONSHIPS PROGRAM	04-07-2015	07-28-2015
RBK	C	UNDERSTANDING CHILD SUPPORT	03-31-2015	04-02-2015
RBK	C	CREDIT BOOSTER	03-03-2015	03-30-2015
RBK	C	HOW TO START A NON-PROFIT ORG	02-02-2015	02-23-2015
RBK	C	FAIR SHAKE RESOURCES INFO	11-04-2014	11-05-2014
RBK	C	MEMOIR WRITING	08-14-2014	10-16-2014
RBK	C	SUSPENSE WRITING - AIR	02-07-2014	05-07-2014
RBK	C	CONVERSATIONAL SPANISH - ACE	12-04-2013	01-27-2014
RBK	C	7 HABITS OF EFFECTIVE PEOPLE	09-13-2013	11-13-2013
RBK	C	MUSIC THEORY I	07-28-2012	09-22-2012
RBK	C	BASS CLASS	06-16-2012	07-10-2012
RBK	C	MUSIC THEORY I	06-02-2012	06-16-2012
RBK	C	BASS CLASS	05-12-2012	05-19-2012
RBK	C	CREATIVE NONFICTION/ X4161	08-02-2011	10-13-2011
RBK	C	VICTIM IMPACT,TUES 9:30,EXT669	02-28-2011	09-01-2011
RBK	C	FICTION WRITING/PHILLIPS X4161	05-03-2011	06-07-2011

**Discipline History (Last 6 months)**

Hearing Date	Prohibited Acts
** NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS **	

**Current Care Assignments**

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	01-19-2011
CARE1-MH	CARE1-MENTAL HEALTH	02-08-2011

**Current Medical Duty Status Assignments**




**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 01523720

Dept. of Justice / Federal Bureau of Prisons

Team Date: 03-09-2022

Plan is for inmate: NICHOLSON, JAMES 61985-054

Assignment	Description	Start
C19-RCVRD	COVID-19 RECOVERED	02-16-2022
NO PAPER	NO PAPER MEDICAL RECORD	01-05-2011
REG DUTY	NO MEDICAL RESTR-REGULAR DUTY	01-19-2011
YES F/S	CLEARED FOR FOOD SERVICE	01-02-2013

**Current Drug Assignments**

Assignment	Description	Start
ED COMP	DRUG EDUCATION COMPLETE	05-24-2011

**FRP Payment Plan**

Most Recent Payment Plan
--------------------------

**FRP Assignment: PART FINANC RESP-PARTICIPATES Start: 01-20-2011**
**Inmate Decision: AGREED \$25.00 Frequency: QUARTERLY**
**Payments past 6 months: \$50.00 Obligation Balance: \$120,013,152.5**
**Financial Obligations**

No.	Type	Amount	Balance	Payable	Status	
1	ASSMT	\$300.00	\$0.00	IMMEDIATE	COMPLETEDZ	
** NO ADJUSTMENTS MADE IN LAST 6 MONTHS **						
2	REST FV	\$140,922,822.57	\$120,013,152.52	IMMEDIATE	AGREED	
Adjustments:		Date Added	Facd	Adjust Type	Reason	Amount
		03-09-2022	OTV	PAYMENT	INSIDE PMT	\$25.00
		12-11-2021	OTV	PAYMENT	INSIDE PMT	\$25.00

**FRP Deposits**
**Trust Fund Deposits - Past 6 months: \$1,334.05 Payments commensurate ? Y**
**New Payment Plan: \*\* No data \*\***
**Current FSA Assignments**

Assignment	Description	Start
FTC ELIG	FTC-ELIGIBLE - REVIEWED	11-25-2019
N-ANGER N	NEED - ANGER/HOSTILITY NO	03-10-2022
N-ANTISO N	NEED - ANTISOCIAL PEERS NO	03-10-2022
N-COGNTV N	NEED - COGNITIONS NO	03-10-2022
N-DYSLEX N	NEED - DYSLEXIA NO	05-30-2021
N-EDUC N	NEED - EDUCATION NO	03-10-2022
N-FIN PV N	NEED - FINANCE/POVERTY NO	03-10-2022
N-FM/PAR N	NEED - FAMILY/PARENTING NO	03-10-2022
N-M HLTH N	NEED - MENTAL HEALTH NO	03-10-2022
N-MEDICL N	NEED - MEDICAL NO	03-10-2022
N-RLF Y	NEED - REC/LEISURE/FITNESS YES	03-10-2022
N-SUB AB Y	NEED - SUBSTANCE ABUSE YES	03-10-2022
N-TRAUMA N	NEED - TRAUMA NO	03-10-2022
N-WORK N	NEED - WORK NO	03-10-2022
R-MIN	MINIMUM RISK RECIDIVISM LEVEL	03-10-2022

**Progress since last review**

CSW/TM: Sentry shows he is currently participating in FACTORS AFFECTING MOTIVATION since 03-04-2022. Certificates in file to date: Victim Impact Class in 09/2011, Money & Banking ACE class in 04/2020, and AARP Finances 50+ in 07/2021. BC & SSC in file.

Inmate not currently participating in any FSA programs.

Inmate completed the following FSA programs: HOUSES OF HEALING COMP on 06-20-2020, DRUG EDUCATION COMPLETE on 05-24-2011, and AARP FOUNDATION FINANCE COMP on 09-11-2021.

**Next Program Review Goals**

CSW/TM: No Unit Team recommendations NO Financial Need.

No noted recommendations in Feedback from Psychology, Education, nor Health Services.



## Individualized Needs Plan - Program Review (Inmate Copy)

SEQUENCE: 01523720

Dept. of Justice / Federal Bureau of Prisons

Team Date: 03-09-2022

Plan is for inmate: NICHOLSON, JAMES 61985-054

Inmate not currently on any FSA Program WAIT list.

Below list are the remainder of EBRR or PA programs by Department, speak to the individual department for YES needs:

PSYCH: EBRR - Anger Management, Basic Cognitive Skills, Cognitive Process Therapy, Criminal Thinking, Dialectical Behavior Therapy, Emotional Self-Regulation, Illness Management and Recovery, National Parenting from Prison Program, Non-Residential Drug Treatment Program, Seeking Safety, Social Skills Training (SST) for Schizophrenia, and Threshold.

PA - Alcoholics Anonymous, Brief CBT for Suicidal Individuals, CBT for Eating Disorders, CBT of Insomnia, CBT for Prison Gambling, Disabilities Education Program, Embracing Interfaith Cooperations, Franklin Covey 7 Habits on the Inside, Houses of Healing: A Prisoner's Guide to Inner Power and Freedom, K2 Awareness Program, Mindfulness-Based Cognitive Therapy, Narcotics Anonymous, PEER, Resilience Support, Sexual Self-Regulation, Soldier On, START Now, Trauma Education, Victim Impact: Listen and Learn, and Wellness Recovery Action Plan.

EDC: EBRR - Bureau Literacy Program and Occupational Education Programs.

PA - English-as-a-Second Language, Hooked on Phonics, Supported Employment, and Ultra Key 6: The Ultimate Keyboarding Tutor.

Medical: PA - A Matter of Balance, Arthritis Foundation Walk with Ease, Brain Health as You age: You can Make A Difference, Getting to Know your Healthy Aging Body, Health and Wellness Throughout the Lifespan, Healthy Steps for Older Adults, Living a Health Life with Chronic Conditions, Managing Your Diabetes, National Diabetes Prevention Program, Service Fit, and Talking with Your Doctor - Guide for Older Adults.

Unit Team: EBRR - Money Smart for Adults

PA - AARP Foundation Finances 50+, and Money Smart for Older Adults.

### Long Term Goals

Continue saving \$5/month for release needs. Recommend utilizing Pre-Release account.  
Account balance: \$412.47  
Pre-Release balance: \$0.00

### RRC/HC Placement

### Comments

Restitution off by \$300.00. key error Balance \$120013702.48

#### Religious Services

01-09-2022: Inmate James Nicholson continues to be a model Catholic here in this place. His active faith, concern for others and vital prayer life are an inspiration to our community. Deacon Davis

01-31-2021: I have known Nicholson since September 2019. Since this time he has been an active participant in the life of the Chapel, especially attending services before COVID-19 and continuing with religious services after they shifted to his housing unit. He has been very involved in prayer, especially the Rosary individually and corporately. Within the past year Nicholson completed three classes that I have facilitated Houses of Healing as well as first and second parts of the Forgiveness class. Nicholson has shown himself to be a mature member of our community who is known for faith and kindness. Deacon J. Davis, Staff Chaplain

08-29-2020: This quarter inmate Nicholson has worked diligently in study on the topic of forgiveness, attaining completion status for the second of two courses on this topic. Our class this quarter has been through correspondence. Via the Forgiveness Project, we have looked into the lives of various people who have been dealt difficult situations and have all practiced some form of forgiveness. Deacon Davis

06-21-2020: For the past three months it has been my privilege to convene a class based on essays of the Forgiveness Project. Throughout this experience inmate Nicholson was an active participant in our discussion circle, sharing his insights and listening to others with sensitivity. Deacon Davis



**Individualized Needs Plan - Program Review (File copy)**

SEQUENCE: 01523720

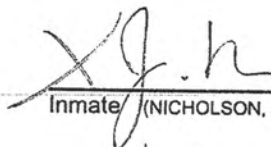
Dept. of Justice / Federal Bureau of Prisons

Team Date: 03-09-2022


Plan is for inmate: NICHOLSON, JAMES 61985-054

Name: NICHOLSON, JAMES  
Register No.: 61985-054  
Age: 55  
Date of Birth: 05-06-1966

DNA Status: RBK02391 / 01-07-2011

  
\_\_\_\_\_  
Inmate (NICHOLSON, JAMES. Register No.: 61985-054)  
  
3/9/22  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Unit Manager / Chairperson

  
\_\_\_\_\_  
Case Manager

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Maureen Delehanty  
967 8<sup>th</sup> Ave. S  
Naples, FL 34102

Dear Judge Sullivan,

My name is Maureen Delehanty and I was an investor in Westgate Capitals funds. I am requesting that you grant James Nicholson's motion which will allow him to begin working to make restitution to the victims of his crime.

Mr. Nicholson has taken full responsibility for his actions, has been severely punished, learned hard lessons, and now wants to dedicate himself to paying investors back. To my husband and I this seems like a no brainer. He's not getting off scot-free as he's been incarcerated for the equivalent of 20 years. An extremely long time. He has also missed his children grow up. As a parent I cannot think of any punishment worse than that.

I'd also like to point out that Mr. Nicholson has not led a life of crime. He's a good, decent man that made a terrible mistake and now wants to dedicate his life to correcting it. Please grant Mr. Nicholson's motion. Please allow the victims to start being paid back and Mr. Nicholson the opportunity to earn redemption.

Sincerely,

  
Maureen Delehanty

Susan DuBeck.  
411 Glenway Road  
Glenside, PA 19038

Dear Judge Sullivan,

I write to urge you to grant James Michael Nicholson's motion for a reduction of sentence.

Jim is my first cousin. Family gatherings allowed Jim and I to grow quite close and I always remember how time with his immediate and extended family was so very important to him.

Jim acknowledges that his crime was not insignificant. He says quite often that he is the only person to blame and he takes full responsibility. His over thirteen years of incarceration has also provided necessary space for self-reflection. Indeed, he recognizes how his actions created severe emotional and financial burdens for his victims and their families, as well as his own. No doubt he is going to continue carrying the consequences of these burdens forever.

Although these burdens weigh on him every day, they also serve as motivation for him to use his time in prison as productively as possible. Jim has taught classes, provided mentorship and individual tutoring to fellow inmates to ensure they don't repeat their mistakes. Jim has helped nearly 100 inmates earn their GED's so when they are released, they will have a better life. These few examples reinforce how Jim is using his skills to create positive changes and a better life for others as well as himself.

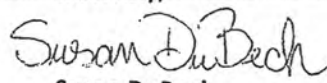
I speak to Jim's children often, and they so badly want their father back in their lives, a role Jim is eager to fill. Jim's father, a former United States Marine and NYPD detective has died from dementia. Sadly, his mother Cathy is now inflicted with the same awful disease. Cathy is in dire need of Jim's help. I myself have cancer and the prognosis is not favorable. I hope and pray I get to see Jim soon.

Jim has a strong family support system that will help him transition seamlessly into society. Our extended family and Jim's friends are eager to help in any way we can. Jim is eager to obtain employment so he can begin to repay his victims. His forty-year sentence, however, is too long and prevents him from taking ownership and accountability in a meaningful way.

Jim knows that his response to his mistakes will define him for the rest of his life and legacy. If given the opportunity, I know from the bottom of my heart that it would not be a mistake. His family misses him and is ready and willing to embrace him back into society. Judge Sullivan, I'm asking you to please grant Jim's motion.

I thank you for your time and consideration. If you have any follow-up questions, please do not hesitate to contact me at

Sincerely,

  
Susan DuBeck

Dear Judge Sullivan,

I am Martin Ekwebelem. My home is in Nigeria. I was in prison with Mr. Nicholson in Ray Brook, New York in 2011-2013. Mr. Nicholson is a wonderful, kind, caring man. It was a blessing from God that I was able to meet him. Every Tuesday and Thursday night Mr. Nicholson taught me. I learned things I never would be able to without his help. He helped me with plan for my business. I now feed my family with the money I earn from my business. He always told me how important my children and family are. He also tells me how important it is to always learn for my whole life. I take classes at the learning center in my village and I think of Mr. Nicholson every time I go. I ask Mr. Nicholson if I can pay him. He always tell me no. He tells me to help someone that I can help. Mr. Nicholson does not belong in prison. He was not like others. He has so much good in him. Please help him the same way he helped me and my family.

God Bless,

Martin Ekwebelem

A handwritten signature in cursive script that reads "Martin Ekwebelem". The signature is written in black ink and is positioned below the typed name.

Dear Mr. Sullivan,


My name is Miriam Ekwebelem. I live in Nigeria. My husband is Martin Ekwebelem was incarcerated in the United States with Mr. Nicholson until he returned home to me and our children. I cannot say enough good things about Mr. Nicholson and how he helped my husband and our family.

It was very hard for the time that my husband was away from us. Martin was very depressed. My children and I struggled financially. I distinctly remember the time when Martin met Mr. Nicholson. I received an e-mail from my husband and his whole attitude had changed. In the e-mail he was excited. Mr. Nicholson was teaching him math and writing. When Martin called me on the telephone he told me that Mr. Nicholson really cared. It was not his job to teach, but Mr. Nicholson did it on his own time. Mr. Nicholson was patient. My husband does not have a high level of education. Martin told him his dream of his business he wanted when he went home. Mr. Nicholson helped him with it. He gave my Martin confidence that he could do it. He is doing that business today and supporting our family very well.

But Mr. Sullivan, the most important thing I will be forever thankful to Mr. Nicholson for. He would tell Martin how important it was for him to spend time with our children. He taught him how important a father was in their lives. That he could never do anything illegal again. He could not leave his children without a father. The children were my job. Now he is a wonderful father. He spend time with our children every day. He tells me Mr. Nicholson taught him the importance of this. Martin did not know his father.

Please Mr. Sullivan, show mercy on Mr. Nicholson. He is a very good man. Thank you and God bless you and your family.

Sincerely,

  
Miriam Ekwebelem

January 21, 2023

Honorable Richard J. Sullivan  
U.S. Southern District, New York  
Daniel Partrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Jessica Ensminger  
48 Sister Street  
Canton, PA 17724

Dear Judge Sullivan,

My name is Jessica Ensminger. You may remember me. Over the years I've written you letters from time to time expressing frustration at the length of Jim Nicholson's sentence. The catalyst usually was after I read yet another article about a violent felony or murder where a career recidivist received a sentence that was a fraction of Jim's. To be truthful, I had to resist writing to you many, many other times, as most every sentence is shorter than Jim's.

I apologize for writing those letters, my intention was not to be a pain in the neck. But if you ever felt there was a great miscarriage of justice that just made your blood boil, and you wanted to scream from every mountain top, you'll know how I feel. After I sent you one of my letters, you thought I was asking you for a hearing. You mailed me an order denying the request as your hands were tied. The order stated that "individuals may only be resentenced in very limited circumstances." We now have one of those circumstances. Thanks to the First Step Act, Congress rightfully put the discretion back in judges hands if extraordinary and compelling reasons exist. *And they certainly do here.*

I want to start off by saying, in no way shape or form am I taking away from the seriousness of Jim's crime. It was extremely serious. Jim will be the first to tell you it was inexcusable. He made poor choices that he deeply regrets and he deserves to be punished. But 40 years is draconian and beyond what is reasonable and necessary.

Jim is a quality person. Salt of the earth. He's kind, considerate, thoughtful, and caring. If my daughter were to marry someone like Jim, or if my son grows up to be like Jim, I'll be very happy.

I attended Jim's sentencing and read the government's submissions. Their narrative was deceitful, characterizing Jim in a manner that bore no resemblance to reality – personally and factually. The Court, as it does in every case, relies on the government's obligation to make only truthful and complete representations to it. In this instance the government failed at that obligation. (I'd be happy to expound on that if the Court would like, but I know the purpose here isn't to relitigate.)

The manner in which the government portrayed Jim reminds me of a milestone event that gripped our country for weeks. Do you remember when Justice Kavanaugh was nominated to the Supreme Court by President Trump? Democrats did not want him on the bench so they went into full blown battle mode. The weeks leading up to the Senate confirmation hearing and the hearing itself were a circus. Mr. Kavanaugh was



accused of everything under the sun. All kinds of dubious claims were made. I don't know Justice Kavanaugh personally, but I highly doubted the veracity of many of the accusations. It seemed as though many of the imputations were fabrications, embellishments, and simply blown out of proportion. A small kernel of truth was taken, for instance, that he liked to have a few beers, or was at a party in high school, and suddenly he's a raging alcoholic and rapist. It was all done with a goal of keeping Justice Kavanaugh off the bench. I highly doubt that he was portrayed accurately.

I feel like that same thing happened to Jim. I understand it's not an apples-to-apples comparison, but there are similarities. Jim was not portrayed accurately. The government took kernels of truth (wrongdoing) and then embellished and manipulated the facts to achieve a desired narrative. Their job was made easier because at the time the public vitriol for the American financial sector was at a fever pitch, the Great Recession loomed over the entire economy, and Madoff was all over the media 24/7.

When it comes to Justice Kavanaugh, I highly doubt he was portrayed accurately. When it comes to Jim Nicholson, I know him, I can say for a fact, without a shadow of a doubt, he was not portrayed accurately. Unfortunately, unlike Justice Kavanaugh, Jim didn't have a team of top-notch experienced attorneys, PR executives, coaches, and the support of the RNC to fight back. He was overwhelmed and sat at his sentencing like a deer in the headlights, stunned and scared, simply wanting to take responsibility.

The length of Jim's sentence along makes this case extraordinary and compelling. The sentences imposed on even the most egregious, highest profile, large-dollar fraud cases have all received sentences that are a fraction of Jim's. The dollar amounts are multiples and most of the defendants did not take responsibility like Jim did.

For example:

Defendant	Case No.	Approximate Loss Amount	Sentence
Charles W. McCall McKesson-HBOC Chairman of the Board	00-CR-505 WHA (N.D. Cal.)	\$8.6 billion	120 months (no cooperation)
Walter A. Forbes (Cendant CEO)	02-CR-264 AHN (D.Conn.)	More than \$1 billion	151 months (no cooperation)
Timothy J. Rigas (Adelphia CFO)	02-CR-1236 LBS (S.D.N.Y)	More than \$100 million	204 months (no cooperation)
John Rigas (Adelphia CEO)	02-CR-1236 LBS (S.D.N.Y)	More than \$100 million	144 months (no cooperation)
Bernard J. Ebbers (WorldCom CEO)	02-CR-1144 BSJ (S.D.N.Y)	More than \$1 billion	300 months (no cooperation)
Sanjay Kumar (Computer Associates CEO)	04-CR-846-ILG (E.D.N.Y)	More than \$400 million	144 month (no cooperation)

Jeffrey K. Skilling (Enron CEO)	04-CR-025 (S.D. Tex.)	More than \$80 million	168 months (no cooperation)
Samuel "Mouli" Cohen	10-CR-547 CRB (N.D. Cal.)	\$31 million	264 months (no cooperation)
Ebrahim Shabudin (United Commercial Bank Chief Credit Officer)	11-CR-664-JSW (N.D. Cal)	\$677 million	97 months (no cooperation)
John Geringer	12-CR-888 EJD (N.D. Cal)	Approx. \$45 million	140 months (no cooperation)
Christopher Luck	12-CR-888-EJD (N.D. Cal)	Approx. \$45 million	130 months (no cooperation)
Sean Clark Cutting (Sonoma Valley Bank CEO)	14-CR-139 SI (N.D. Cal)	\$47 million	100 months (no cooperation)
Elizabeth A Holmes (Theranos CEO)	18-CR-00258 EJD	More than \$900 million	132 months (no cooperation)

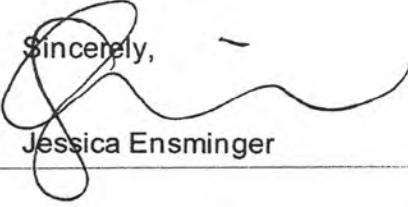
Jim is a decent hard-working guy. Him and his family are lovely people. Jim has three wonderful sons who he does his best to father from behind prison walls. They miss him terribly. Over the holidays I got to see Jim's mother Cathy. She's the sweetest woman you could ever meet. I had to resist talking about Jim because it will bring tears to her eyes. She has Alzheimer's now and you can see the effects.

Jim has expressed to me innumerable times his desire to begin making restitution to the victims of his crime. Most people would stick their head in the ground and avoid the obligation. Jim's running towards it. He's taken responsibility for his crime, been punished drastically, and now wants to atone for his wrongdoing. Making reparations is his next step towards taking responsibility. Jim's made it his life's mission.

Judge Sullivan, please use your discretion in the interest of justice and compassion to reduce Jim's sentence to time served. *You will not regret it.* I want to write you letters telling you about all of the good things Jim is accomplishing because you gave him a second chance at life. I promise you; he will make a difference and do something important with his second chance.

Thank you.

Sincerely,

  
Jessica Ensminger



Clarkstown Medical Associates  
200 East Eckerson Rd Suite 160  
New City, NY 10956-7153  
Phone: (845)352-5900  
Fax: (845)352-1142

01/10/2023

Catherine Nicholson  
11 Mountainview Ln  
Garnerville, NY 10923-

To Whom it May Concern,

Catherine Nicholson is member of my practice. Due to her declining health, memory loss, stress, Anxiety, and Depression. she would benefit emotionally and physically by having her son at home with her James Nicholson (DIN) 61985054. At this stage in Catherines life she needs assistance with self care, medications, house keeping, shopping, and transportation to and from her doctors appointments. She is being treated with medications such as Xanax to help better control her emotions. Catherine lives alone and during this pandemic she has progressively become more depressed and her blood pressure has been elevated to a point where her medication had to be increased. She also suffers from Acid reflux and inflammation of the esophogus which also flares up during her depression.

If you have any questions please call 845-352-5900.

Sincerely,



Howard Feldfogel, MD  
**Clarkstown Medical Associates**  
200 East Eckerson Rd  
Suite 160  
New City, NY, 10956-7153  
Phone: (845)352-5900

Honorable Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

John Friedman  
214 E. 85<sup>th</sup> St. Apt. 5C  
New York, NY 10028

Dear Judge Sullivan,

I'm writing to fully and emphatically support Jim Nicholson's petition for a sentence reduction.

My father and I were shareholders in Westgate Capitals funds. We did receive a portion of our money back as a result of the \$30 million Mr. Nicholson paid, but I know Jim sorely wants to work to make further restitution payments. I have known Jim for many years, and he is fully committed to achieving his goal. He's made it his mission in life.

Judge Sullivan, I ask that you grant Jim's petition, for the sake of the victims. For the sake of Jim's children - Connor, Ryan and Patrick. For the sake of his mother - Cathy. And for Jim's sake so he can make amends for his mistakes. Knowing Jim the way I do, he will make so much good come from this. Please grant his petition.

Thank you.

Sincerely,

*John Friedman*

John Friedman

Jordan B. Halem  
8968 Mercedes Ave.  
Arleta, CA 91331

Honorable Richard J Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

01/02/2023

Dear Judge Sullivan:

I am writing you this letter in support of Jim Nicholson's petition for a reduction of his sentence. I'm sure that I am one of many letters that Jim will provide to you, but I think I have a very unique perspective of who Jim is and how he is as a person.

You see, I met Jim in 2010 when I was also locked up at MCC-Manhattan. Jim was actually one of the very first people I met there. I was incarcerated for a drug offense and like Jim, my life took a very unexpected turn of events.

I was once a lawyer practicing in Miami, but after trying crystal meth for the very first time, I developed a severe addiction that led me down the wrong path. Soon thereafter, I began transporting crystal meth between L.A., New York and Miami, in part, to support my drug habit. Fast forward a few years later, and I found myself locked up in New York and facing a 20-year sentence.

I was scared, disappointed in myself, and very ashamed. Somewhere along the way, my life just completely unraveled and came apart. I didn't know how I would ever turn my life around. I had disappointed my friends, my family and especially myself.

The Judge on my case was Judge Sidney Stein and I remember walking into the sentencing and being absolutely terrified. But it was also at this time that I heard words come from Judge Stein that had a deeply profound affect on me. At sentencing, Judge Stein said that, although I committed this crime, he believed in me and he believed I had something to offer society. He literally said, "I'm not going to take this man's life away." Judge Stein sentenced me to 7 years in prison despite the prosecutor calling for 20. As crazy as it sounds, it was the first time in my life that someone actually believed in me.

I was released at the end of 2014 and I have since completely turned my life around. Not only do I still consistently attend AA meetings, I have since opened up two barber shops in West Hollywood, got married last year and became a first-time home owner with my partner. I was even featured in a magazine article here in L.A detailing my fall into meth and my struggles to put my life back together. Now, my life is completely different. And honestly, I owe it all to Judge Stein. All it took was for one person to believe in me to help set me on the right path.

I tell you all of this because I know that Jim would also be a productive member of society should you decide to reduce his sentence. That first year I was locked up with Jim, I heard how much he regretted his actions. Like me, he was disappointed in himself, ashamed and deeply regretful. In the hours and hours that Jim and I spoke, Jim talked only of his regrets and shame. I also saw how Jim behaved in that environment and I can tell you that Jim was always the person that I could turn to for advice. It was Jim who always gave me encouragement even in those darkest of times.

Over the years, Jim and I have stayed in touch through email and letters. And what strikes me most is that, for Jim, he still lives in that shame and regret for his past actions. I feel for him because I was able to make amends for my actions after 7 years while Jim received a 40-year sentence. But even now, when things go wrong for me or there's a hardship I'm going through in my life, it's Jim I turn to for advice and help so that I may stay on the right path.

I truly believe that, like me, Jim would not only be a productive member of society, but be someone who is there for and helps others. He has now spent over 14 years in prison and I know that Jim has used this time to grow, mature and evolve.

I know that Jim made some horrible mistakes in his life which he has paid dearly for. I did as well. But I was given a second chance by Judge Stein and his words at sentencing resonate in my mind every single day of my life. And I know they would for Jim too. Sometimes, we just need someone to believe in us.

Sincerely,

Jordan Halem

**ENSA SYSTEMS CANADA INC.  
1467 ROYAL YORK ROAD  
ETOBICOKE, ON, M9P 3B3, CANADA (438) 988 5558**

TORONTO, JANUARY 10, 2023

SUBJECT: REFERENCE LETTER FOR JAMES NICHOLSON

Honorable Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 17724

Dear Judge Sullivan,

I am writing you in strong support of Jim Nicholson's petition for a reduction of his sentence. I've known Jim for many years, and I wish I could express just how good a person he is. Not only is he a loving family-man, but he's also someone I turn to for guidance. He's helped me in many ways throughout my life. Jim is a genuine and caring friend.

When you look at the totality of Jim's life, it is admirable. He always treats everyone with kindness, respect, and empathy. He works hard at everything he does. And when he did make an awful mistake, he handled it the right way. At no point did he ever seek to justify, diminish, or detract from the serious nature of his offense. He unequivocally took responsibility. And despite having no realistic hope of ever being released from prison at a time when he could do anything meaningful with his life, Jim did everything in his power to rehabilitate himself.

He didn't run from his failure, but instead, talked about it openly and introspectively analyzed what went wrong, and learned from it. Jim used his crucible to make himself a better person. To many, principles, values, integrity, honesty, and compassion are words they pay lips service to, but to Jim they have deep meaning. He's internalized and consciously lives his core values every day. I wholeheartedly believe in Jim, his character, and who he is as a human being. So much so that I've offered him a job if he should be released.

People grow, mature, evolve and learn hard lessons, and because conditions and circumstances change, it's virtually impossible to make sound decisions when first imposing a sentence about precisely how long someone should spend behind bars.

**ENSA SYSTEMS CANADA INC.  
1467 ROYAL YORK ROAD  
ETOBICOKE, ON, M9P 3B3, CANADA (438) 988 5558**

But that is exactly how the federal criminal justice system works. Judges are required to act as if they are omniscient and the prison terms they impose are for all intents and purposes final. But thankfully that has changed with the passing of the First Step Act. The discretion, as it should be, is now in the hands of the judiciary to make changes when circumstances warrant it. And they certainly do here!

Jim has taken responsibility for his crime, has been *severely* punished, and wants nothing more than to atone for his mistakes. If there is anyone on this planet that deserves an opportunity at redemption, is Jim. Judge Sullivan, please use your discretion and reduce Jim's term of imprisonment to time served.



Yours Sincerely,

Sean Serdar Kalaycioglu, PhD, MBA, LLB, LLM  
President and CEO



**ENSA SYSTEMS CANADA INC.  
1467 ROYAL YORK ROAD  
ETOBICOKE, ON, M9P 3B3, CANADA (438) 988 5558**

TORONTO, JANUARY 10, 2023

SUBJECT: REFERENCE LETTER FOR JAMES NICHOLSON

Honorable Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 17724

Dear Judge Sullivan,

I am writing this letter to confirm that we have extended James Nicholson an employment offer to work for Ensa Systems Canada Inc. remotely from home. He will be working as a researcher which will allow him the flexibility to work on his projects while also tending to his mothers' medical needs. The combination of Mr. Nicholson's work ethic, business, and life experiences will make him a valuable asset.

Yours Sincerely,



Sean Serdar Kalaycioglu, PhD, MBA, LLB, LLM  
President and CEO

---

January 15, 2023

Judge Richard J. Sullivan  
Daniel Patrick Moynihan U.S. Courthouse  
800 Pearl Street  
New York, NY 10007

John Kelly  
157 West 57th Street  
New York, NY 10019

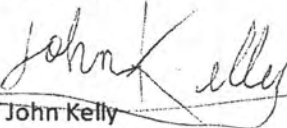
Dear Judge Sullivan,

My name is John Kelly. I'm writing to support my friend and former colleague, Jim Nicholson. I have known Jim for twenty-seven years and worked with him in a professional capacity for ten. In my ten years of working with Jim he was always honest and forthright. We worked together in the same office for seven of those ten years, and one thing I knew for sure, he would be the first one to arrive in the morning and the last one to leave at night. He has an incredible work ethic and everyone held him in high esteem.

On a personal note, Jim is gregarious and has a great sense of humor. He deeply cares for people. When my wife had medical issues, Jim was a rock for me, covering for me at the office, and visiting us at the hospital every night, looking to help in any way he could. One evening he took my kids out for pizza so I could speak to the doctors and spend time alone with my wife. I can't find the words to express how caring Jim is. I remember one occasion we were at a charity softball fundraiser for a local hospital. There were a lot of children in attendance, all running around having fun. However, there was one boy standing off to the side, away from the other kids, looking glum. Jim didn't know him, but he went over, knelt down beside the boy, and befriended him. Jim called his sons over and introduced them to his new friend. Shortly afterwards, the boy was running around playing with the other children, all because Jim noticed, and cared.

Jim's a loving father, thoughtful son, caring brother, and supportive friend. Him and his family are some of the nicest, down-to-earth, principled people you will ever meet. Jim's never been in trouble in his life. And if you reduce his sentence to time served, he never will be again. 40 years just boggles my mind when you take into account the totality of Jim's life, who he is as person and all of the good he has done. Allow him to reunite with his sons, care for his mother in the remaining years she has left, pay restitution to the victims of his crime, and make this world a better place.

Sincerely,

  
John Kelly

Chambers of the Honorable  
Judge Richard Sullivan  
United States District Court  
For the Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: **James Nicholson No: 09-cr414**

January 26, 2023

Dear Judge Sullivan,

I am writing you in support of Jim Nicholson's motion for a reduction of sentence. I first met Jim in June of 2014 at FCI Ray Brook and now count him as one of my very best friends. To fully understand and appreciate who Jim is, one must first understand how desperate I was to find someone who shared *similar values and a passion for redeeming what remains of our lives*. In 2014, I was serving a 25 year prison sentence for multiple armed bank robberies driven in large part by a severe addiction to oxycontin. I now embrace the process of sobriety and recovery as if my life depends on it. It does! ***Jim has played an instrumental role in my continued sobriety and success.*** Jim with his huge heart and a touch of naivete engages many inmates who are actively mired in their addictions. He often asks my opinion and quite honestly, I have attempted to dissuade him from extending himself to what I surmise are addicts simply trying to manipulate him. Amazingly, Jim does not give up easily. He is exasperatingly full of empathy and offers counsel to many. *Often, he believes more in others than they believe in themselves.*

For all of this, Jim is much beloved by the inmate population regardless of race, creed, religion, or even gang affiliation. It is not uncommon to see Jim walking the track surrounded by what looks to be a sea of tattooed hardened convicts. One might be concerned for Jim's safety in these moments, but he engages them and they likewise enjoy his presence. Jim very candidly asks about their backgrounds, family history, and what led them to prison. He constantly looks for opportunities to help. When I see Jim out on the prison yard mingling with groups of men most people would fear or shun, I am proud to call Jim my friend.

Over the years I have personally watched Jim write letters for inmates who are illiterate. Jim has shared with me his outright shock that there are people who cannot read or write despite their having completed high school or a GED. In response, Jim has single handedly without any help from the institution created a small library of books and established a curriculum titled, "University of Books". Jim, without any hint of seeking praise or recognition from others has quietly offered this program to anyone interested. I have on many occasions urged him to acquire a memorandum from staff documenting and corroborating his prodigious volunteer work around here and he always rejects this advice as if it implicates a nefarious or underhanded gesture. Jim simply refuses to pander or seek accolades. It's this type of character that defines who Jim is today. Jim's attitude is, *if he is going to help others, then that's what he is going to do.* He will not ask to be recognized as such - he sees it as manipulative and lacking integrity.

Over the years I depended on Jim to help me navigate the remaining months of my sentence (I was released in July of 2022). At it's best, prison is largely an environment of men who are spiritually, emotionally, and intellectually struggling to make sense of their circumstances. The deficits that are inherent to this population are overwhelming. ***Prison is largely a place where most people get worse.*** The notion that rehabilitation is the general trend in there is a false narrative. Jim represents a bright light of character and kindness that sets him apart. And, what truly separates him is his dedication to integrity, married with his incessant drive to help others without any possibility for accolade or personal benefit.

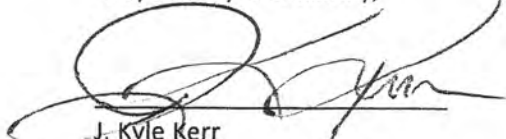
In spite of Jim's eye-popping 40-year sentence, he never wallows in self-pity or even mentions it. In fact, most of us after meeting Jim are shocked and horrified to learn of his sentence. He doesn't walk or talk like a man who is serving what amounts to a life sentence. It saddens me that for all that Jim has to offer, combined with the totality of Jim's life prior to prison, that the federal judiciary has seen fit to throw him away. Something is not right about his length of sentence. I know what it is to be a rotten human being who needed and deserved to be locked up for a long time. I have heard Jim on countless occasions express a gut wrenching soulful regret for his criminal behavior. Hardly a day goes by that he doesn't lament the hardship he personally brought on others.

It is said that "the arc of moral history is long, but bends towards justice." It is my greatest hope that you will help Jim by reducing his sentence. His sentence is draconian and unjust. No nation, people, or community in their right mind would throw a person like Jim away. His present sentence of 40 years is a gross violation of common sense and exponentially more than what is necessary. I would hope that we are still a nation that believes in second chances. This is all Jim needs.

Jim has spent over 14 years of his life locked up in a medium-security prison. Having watched his father fade away to the ravages of Alzheimer's and ultimately passing away several years back. Jim also has three sons, one who has recently graduated from the U.S. Naval Academy. These young men deserve a father in their lives.

This nation has prided itself as a beacon of light for human enlightenment in the administration of justice. No one is suggesting that Jim did not deserve a severe sentence - 10 years, or 15 years is a severe sentence. ***40 years is a life sentence disguised as justice.*** I am personally begging this court to not succumb to the fear, anger and need for revenge that would deny Jim the opportunity.

Respectfully & Sincerely,



J. Kyle Kerr

4802 NE Pebble Beach St.  
Lee's Summit, Mo. 64064

**J. MARTIN KERR**  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW  
400 WEST KANSAS AVENUE  
INDEPENDENCE, MISSOURI 64050

(816) 461-1380  
FAX (816) 461-0774

January 12, 2023

Honorable Richard J. Sullivan  
U. S. Southern District of New York  
Daniel Patrick Moynihan U. S. Courthouse  
500 Peal Street  
New York NY 10007

Re: James Nicholson – Inmate No. 6195-054  
FCI Otisville  
P. O. B ox 1000  
Otisville NY 10963

Dear Judge Sullivan:

I am writing on behalf of James Nicholson strongly recommending this his compassionate release petition be granted. After having other personal reasons to visit the Ray Brook FCI facility, I had the opportunity to come into contact with Mr. Nicholson. After having met him on several occasions I had the further opportunity to discuss his case with him and some of the facts surrounding that matter. Although I did not enter into a professional relationship with him, I was taken by his story and his demeanor and overall attitude in regards to his situation that I was compelled to look further into his case and the 40-year sentence that he is serving.

I feel compelled by the information gained and in the interests of justice as an attorney that I respond on his behalf accordingly.

I am a licensed attorney in Missouri and the United States District Court for the Western District of Missouri where I have practiced law for 50 years. I am a former prosecuting attorney and have been a founding member and past resident (1983) of the Missouri Association of Criminal Defense Lawyers. My criminal defense practice spans 47 years. I have represented defendants charged with everything from speeding tickets to capital murder. I have served in the U.S.M.C. (discharged 1968) and fully believe in the principles of the rule of law and that our system of justice is the bedrock of our American life. I also believe that Congress passed the First Step Act to give the judiciary the power to effect justice in cases like Mr. Nicholson's.

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I have thoroughly reviewed Mr. Nicholson's case. I am aware that he is presently serving a 40-year sentence and has served over 14 years (20 years with earned good time credits) of that sentence to this date. Based upon my review of this case and his sentence and the

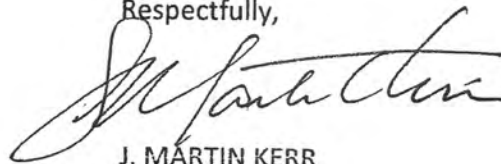
circumstances surrounding this matter and Mr. Nicholson's past lifetime experiences, I have no hesitation in reaching the ardent conclusion that there is sufficient basis for the Court to grant Mr. Nicholson's petition. I find it especially compelling when you factor in the totality of Mr. Nicholson's previous lifetime behavior, his extraordinary rehabilitation, his family circumstances, the conditions of confinement caused by Covid, the government's arguable pretrial Sixth Amendment violation, and Mr. Nicholson's intense desire and ability to meet his restitution obligation.

With all due deference to this Court and the responsibility you have in ensuring that standards of justice are maintained for all in our society, I would respectfully recommend that Mr. Nicholson's petition be granted. He has served approximately 14 years in federal prison and with his release it will still mean that he will have served a substantial number of years for his wrongdoing. I firmly believe that it is sufficient, and a greater length of imprisonment is not necessary to meet the ends of justice.

Based upon my 50 years of experience in practicing law in multiple jurisdictions, and my extensive review of this case and the attendant facts and circumstances surrounding it, I would assert that Mr. Nicholson's plea is fair and just and will result in an equitable sentence in this matter. This attorney accords full respect for the Court's sentence in this case and its obvious concern for the victims of Mr. Nicholson's wrongs, as well as serving as a deterrent to others. Circumstances can lend wisdom to reviewing past decisions, not that the decision was wrong at the time, but that perhaps justice now calls for something different.

I have no monetary interest in Mr. Nicholson's case, and my plea is rendered only in the hope to affect a just and appropriate sentence for someone whose life otherwise is for all practical purposes discarded. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Martin Kerr", written in a cursive style.

J. MARTIN KERR

JMK:csk

Circuit Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Barbara Kostewich  
27 Cedar Ave.  
Pearl River, NY 10965

Dear Judge Sullivan,

My family and I were victims of Jim Nicholson's crime; however, we are vigorously supporting his motion for release from prison. We held a family meeting, and although our reasoning varied, everyone universally agreed we should support Jim. We have unique insight into this case, including a nephew who was an employee of Westgate Capital. There are four primary reasons we ask that you grant this motion:

1) If Jim remains incarcerated, he has no ability to pay restitution beyond what he has already paid. Something we know he sorely wants to do and will work tirelessly towards.

2) The second point is one my nephew made: Westgate Capital's demise and the majority of the investors' losses can be attributed to the widespread collapse of the housing market and banking industry in 2008. Lehman Brothers' bankruptcy ushered in the greatest financial crisis since the Great Depression. Many financial institutions and even the banking system only survived after huge intervention by the government. This was an emotionally charged period in our history resulting in a public outcry for indictments. This does not diminish Jim's wrongdoing, it played a part in Westgate Capital's losses, but so did market forces. Nuance that should be taken into consideration.

3) Jim has already been incarcerated for 14 years. Any humane society considers this a substantial punishment. And the punishment has extended far beyond his loss of freedom. Everyone in our family universally agreed that Jim has paid a steep price and already been harshly punished.

4) Jim is a decent hard-working man who treats everyone he meets with respect and kindness. He's not a threat to society. Jim's incarceration has had a profound impact, and he's used it as fuel to make himself a better person. He has a clear understanding of his values, and is motivated to prove that his moral failure was an aberration.

Your Honor, I hope that you will take all of these factors into consideration as well as Jim's humanity. My family and I encourage and fully support you granting this motion.

Thank you.

Sincerely,

*Barbara Kostewich*

Barbara Kostewich

11 Mountain View Lane  
Harnerville, N.Y.  
January 10, 2023

Honorable Richard J. Sullivan  
U.S. Southern District of N.Y.  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, New York 10007

Dear Judge Sullivan,

My name is Catherine Nicholson, and I am writing on behalf of my son Jim, myself and our entire family. I am respectfully requesting that you use your discretion to reduce Jim's sentence to time served. I am in dire need of his help in my daily living.

I lost my husband Jim to Alzheimer's in June 2020. He was a good man, a former New York City Detective and a Marine who fought two wars defending our democracy. My husband was an old fashion throwback. God, family and country were engraved in his heart. We were married 55 years and together we raised a wonderful family.

The final years of my husband's life were very difficult as the dementia stole his mind and memories and eventually went after him physically leaving him wheel chair bound and he did not recognize his children or grandchildren. Sadly I also have dementia and am heading down that same road. It scares me as I do not want to be a burden to my family. I have a bigger fear of dying before my son is released from prison. The thought of and hope of hugging my son as a free man is what keeps me going.



my son Jim does not belong in prison for 40 years. I say that not only as his mother but objectively I know him better than anyone. Jim has a kind heart and has always made my husband and I proud as a child and throughout his adulthood. He was always a moral, respectful, kind, giving, caring, studious, loving person. He was a happy child with lots of friends, and did well in school and was always involved in sports. He was always goal oriented and worked hard to achieve his goals. In high school he was "All County" and "All State" long distance runner. That did not happen by accident, he outworked everyone, getting up before school to run and then again after school at practice. He also balanced many jobs in high school. During the summer he worked 7AM - 3PM shift at Joint Regional Sewage Plant followed by 4PM - 12PM shift as a Security Guard. Jim attended Stony Brook University graduating with a degree in Economics. While in college he worked as an R.A., played on the Rugby team and worked on the school newspaper. During the summer he worked on the floor of the Stock Exchange.

Jim graduated on a weekend and the following Monday he started work at Shearson Lehman Hutton. He was always a hard worker. Despite the long hours he spent at the office he still volunteered for Catholic Children services and tutored in a County Literacy Program. Jim coached

Little League and Soccer and most importantly he was a wonderful father to his three sons Connor Ryan and Patrick. Jim has always been the love of their lives and they are anxious for him to be home.

While Jim has a big heart, and as proud as my husband and I always were of his accomplishments, we were even prouder of who he is as a person. He is intelligent, hard working, caring and he oozes goodness.

Jim has always lived his life with purpose. Even while incarcerated he does much good teaching, mentoring, and tutoring. He started a bible learning program called The University of Books and a parenting program so when the inmates are released they will have parenting skills. Jim also worked on improving himself. He knew he made a terrible mistake, but committed himself to making sure it never happens again. Every week he gave me titles of books to send him on character development, morality and ethics. Jim used adversity to make himself a better person.

When I watch the news I see career felons killing N.Y.P.D. police officers, muggings, shootings in Times Square etc. Criminals with 17 felon convictions are out on bail and committing more violent crimes in the city so I do not need to go on. I am not diminishing the seriousness of Jim's offense but does he really need a life sentence. Jim never even had a speeding ticket nor was he ever in trouble with the law. He wants to make good to his clients that lost money and he can not do it while incarcerated.

Please give him a second chance and you will not regret it. I have been waiting over 14 years for him to come home and now I need him more than ever to help me with my medical issues. I use to visit him every week but the prison was shut down due to Covid. Judge Sullivan please allow me to live the remainder of the time God gives me on this earth with my son Jim. I am 81 years old and need him with me.  
Thank you and God bless.

Sincerely,  
Catherine Bucholson

Honorable Richard J. Sullivan

Lieutenant Junior Grade Connor J. Nicholson

U.S. Southern District of New York

23 January 2023

Daniel Patrick Moynihan Courthouse

2517 Luzius Drive

500 Pearl Street

Corpus Christi, Texas 78418

New York, New York 10007

Dear Judge Sullivan,

My name is Connor James Nicholson, I am a Naval Officer currently training in Corpus Christi, TX to become a United States Naval Aviator. I am writing to you on behalf of my father, James Nicholson, who is serving a 40-year sentence.

I was 11 years old when my father was arrested. Needless to say it was difficult on my brothers and I. We lost an amazing father in our day-to-day lives. He has done everything in his power to be there for us from a distance, but we miss him dearly.

My father is a great man. He instilled true American values in me and my two younger brothers, Ryan and Patrick. Without his guidance, I would not have had the perseverance to attend and graduate from the United States Naval Academy. His letters and phone calls pushed me through many difficult challenges and obstacles. A difficult class load, along with a rigorous track and field training regimen was demanding to say the least. Although he could not be there, my father's words kept me going. He writes us letters of encouragement and provides a guiding presence whenever we need it.

During my time as a Midshipman, we had many exceptional speakers who preached the time-tested virtues of integrity, grit, and humility, all of these values were already instilled in me by my father. He embodies these values. Even in prison, my father has abided by the lessons he provided us. He has initiated many programs, teaches classes, tutors and mentors a multitude of inmates. My father committed a crime, but he's learned from his mistakes, and has become an even more principled man. He has used it as a teaching lesson for my brothers and I.

I have so many distant memories with my father: Playing hide and seek in the house. Coming up to bat in little league, my dad behind the batting cage, reminding me to keep my head in there, just like he did when I was at the Naval Academy. I also have so many painful memories of big events in my life that my father could not attend. When I medaled in the New Jersey state track and field championships I found myself searching for him in the stands. My father could neither attend my middle and high school graduations, nor my Naval Academy Commissioning. Thinking about it saddens me. It would mean the absolute world to me if my father could attend my graduation from flight school when I get my wings of gold. I know my brothers and I will cry tears of joy when he comes home. I sometimes let myself day dream about hugging him.

As a Federal Judge you earned an incredibly powerful level of discretion. I know you have a lot of factors to weigh, but *no ones* needs are served by keeping my father incarcerated. Certainly not mine and my family's. My grandmother is 81 and her health is declining. She's in dire need of my father's help. My brothers and I need our father back in our lives. The victims' needs will not be served. There's a time for punishment and then time to atone. My father has been punished and is committed to righting his wrong and making restitution. Society's needs are one not served. My father has so much good to give. And in terms of deterrence, 14-years is a

long time! (the equivalent of 20 years with the good time credits he's earned) Nobody on this planet is going to say "only" 14 years in prison, while also missing out on their children growing up during their most formative years.

The finest gift a judge can give is to bring someone back to life. To return a father, son, brother and friend. And also granting my father the opportunity to make restitution. It's about failure and redemption. Judge Sullivan, please use your discretion to reduce my father's sentence to time served. Thank you!

Very Respectfully,

Connor James Nicholson  
LTJG USN



January 10, 2023

Honorable Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan U. S. Courthouse  
500 Pearl Street  
New York, NY 10007

Kevin Nicholson  
9 Green Oval  
Nanuet, NY 10954

Dear Judge Sullivan,

I am writing in strong support of my brother James Nicholson (Jim) motion for a reduction of his 40-year prison sentence. To fill you in on a little bit about my background, I worked for the New York City Police Department for 29 years, retiring in the rank of Inspector. I'm currently the Corporate Director of Security for a hotel chain, running their North American security operations. My brother Jim and I are very close. We grew up in the same house, shared the same bedroom and were the best man at each other's weddings. I'm the godfather to Jim's oldest son Connor and Jim is the godfather to my oldest Tyler. There is no one more qualified than I to speak to Jim's character.

I had always admired Jim. Growing up he was a role model for my sister and I. He's kind and caring, and no matter what he had going on he looked out for us. I remember one occasion when Jim was a senior at Stony Brook University and I was attending Oneonta. I broke my jaw in a collision playing centerfield in an intramural softball game. When Jim heard the news he went straight to one of his professors to see if he could reschedule an exam, then left immediately, holding his breath hoping his old rickety 1977 Ford Pinto would make it from East Long Island to Oneonta in upstate New York. He made it and stayed overnight in the hospital while my jaw was being wired shut. Jim was always there for us. A few days later he drove me home and then returned to Stony Brook to take his exam.

Jim is a good man. He made a poor choice when he didn't disclose the losses but that's not inherently who he is. I've worked law enforcement my entire adult life and made innumerable amounts of arrests. Some people learn from a hard lesson right away and others never get it, they have a criminal mindset. Without a shadow of a doubt Jim is in the former category. He's put the work in to understand why he breached his integrity, he took responsibility, is intensely remorseful and wants to right his wrong. He has the work ethic and aptitude to make restitution. He sorely wants that opportunity and we want Jim back in our lives.

June 10, 2020 was a tough day for our family. Our father Jim passed away after a long battle with Alzheimer's. For years my mother and father made the five hour drive to visit Jim at FCI Ray Brook for the weekend. I watched our father from a prison visiting room slowly succumb to dementia. As the dementia reached its advanced stages our father was confined to a nursing home. He could no longer visit Jim because my mother was unable to lift him. Jim put in for a closer to home transfer, in the hopes that our father could be wheeled in for a day visit. By the time the transfer took place, Covid-19 had set in and visitors were shut down. Our father passed away, never getting to see his son for the final years of his life. It eats at my brother every day, his eyes well up and when he tries to talk about it. Jim never got to have closure, to hold him, to tell him how much he meant to him.


Since our father passed away, our mother's health has been in decline. She is now 80 years old and sadly, she herself has early onset dementia, along with other health issues. She's incapable of taking care of herself. She's fallen on a number of occasions, forgets to take her medication, and in one instance, forgot she left the stove on. Unfortunately, the instances are becoming more frequent.

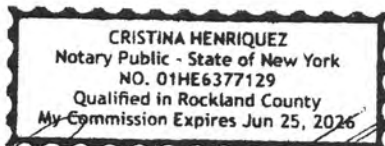
I am not able to be there for my mother as I travel extensively for my job. I have three children entering college and help support Jim's children. Our sister lives and works in South Carolina with her husband and daughter. If Jim's motion is granted he is going to move in with our mother to take care of her.

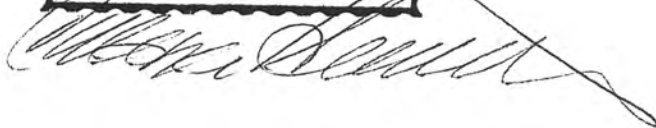
Judge Sullivan, Jim's case is extraordinary and compelling in so many ways. Please use the discretion Congress vested you with for these exact types of situations. Jim has been imprisoned for 14 years and has suffered in so many ways that extend beyond the loss of his freedom. He has accepted his responsibility, rehabilitated himself, helped so many while incarcerated, and is beyond ready to begin making meaningful restitution. Let him care for our mother and reunite with all of us that love him so much.

Thank you.

Sincerely,

  
Kevin Nicholson







AFFIDAVIT

Affiant, Kevin Nicholson, being duly sworn, deposes and says:

1. I, Kevin Nicholson being of sound mind and body, over the age of eighteen years and fully competent to making this affidavit, do hereby certify under the penalty of perjury, that the following factual statements , are within my personal knowledge and is true and correct to the best of my knowledge.
2. I worked for the New York City Police Department for 29 years, retiring in the rank of Inspector. I'm currently the Corporate Director of Security for a hotel chain, running the North American security operations. My job requires me to travel extensively, as a result there are many occasions I am not able to be there to tend to my mother's personal and medical needs. My sister Donna Dantonio resides and works in South Carolina with her husband and daughter. My brother James Nicholson is the only available caregiver for our mother Catherine Nicholson.

I, Kevin Nicholson, do hereby certify under the penalty of perjury that the foregoing is true and correct and within my personal knowledge.

Sign, Sworn, and executed on

1/14/2023

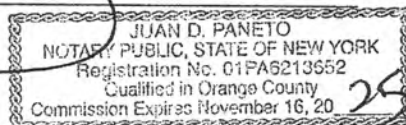
*Kevin Nicholson*

Kevin Nicholson, Affiant

Subscribed and sworn to

Before me on January 14, 2023

Notary Public



January 13, 2023

Honorable Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Patrick Nicholson  
New Mexico State University  
532 North Campus Housing  
Las Cruces, New Mexico 88003

Dear Judge Sullivan,

I am Patrick Nicholson. I'm a student at New Mexico State University and I'm writing to tell you about my father, James Nicholson.

I miss my father. I was only six years old when he went to prison, but before he did he always spent one-on-one time with my brothers and I. He'd let us pick what we wanted to do and then we'd head out for a day of adventure. At the time I loved animals, especially zebras, so I'd always ask to go to the zoo. My father made sure we went to plenty of them – the Bear Mountain Zoo, the Bronx Zoo, the Central Park Zoo, a zoo in Washington D.C., one in Philadelphia, and a few others. He'd take me to the library, where we'd go on a hunt for books about zebras. He made it so much fun.

Looking back now I can see that my father was doing what he always does: encouraging my passions. When I enrolled in the film program at New Mexico State, he had me send him the catalog with the course descriptions. He was so excited you would have thought he was going. He sends me every article he sees on filmmaking. He once told me if I can find a way to make a living at what I'm passionate about, it won't be a chore, going to work will be a joy. Above all else, I know my father wants one thing for me – to be happy.

When my father was arrested, he talked to me and my brothers about it openly, honestly and introspectively. He always asked us if we had any questions. He made sure we derived lessons from it, and I believe the experience shaped him and made him a better person.

In one of my film directing classes we were taught methods to bring out emotions in actors. If the scene called for an actor to cry, the actor should think of something sad in their life, and use that emotion for the scene. If I was directing my father, it would be easy. Him thinking about not being in me and my brothers day-to-day lives will easily bring him to tears. But the truth is, my dad was a better, more engaged father from behind prison walls than many other fathers I know that were present in their kids lives. He did everything humanly possible and we always knew how much he loved us.

My grandmother and my uncle Kevin are helping me out with college expenses. We have a very close family and we're always there for each other. My grandmother now has Alzheimer's and she needs my father to be there for her. Her health has been declining for a couple of years now, and she's no longer able to care for herself. Not only does my grandmother need my father, my brothers and I do also. He's been absent for far too long from our lives. If I was directing myself, and I needed to elicit tears of joy for a scene, I would imagine my father at my college graduation. He's missed every major milestone in my life since I was six years old, please allow him to be there for this one.

Sincerely,



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Patrick Nicholson

January 14, 2023

The Honorable Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Ryan Nicholson  
2152 N. Carlisle Street  
Philadelphia, PA 19121

Dear Judge Sullivan,

My name is Ryan Nicholson. Jim Nicholson is my father. I say that proudly.

My father was arrested over 14 years ago. I was eight years old at the time and to say it was traumatic would be an understatement. I didn't understand why my dad had been taken from me. My father later explained to me in a way I could understand. He didn't make excuses. He didn't blame anyone. He took full responsibility. He expressed deep sorrow for what he had done to my brothers and I and the shareholders at his company. He said his ethical failure would never happen again and he told me all the steps he was taking to make himself a better person. He used it as a teaching lesson for my brothers and I.

Since my father's incarceration he's literally written me *at least* one letter every week for the past 14 years. I look forward to getting them, as they're filled with love, wisdom and guidance. He usually writes about something I'm going through in life, offering encouragement and advice. Years ago, I started writing down some of my favorites.

For example, when I was having doubts about belonging in an advanced placement class, he wrote, "Ryan, there will always be someone that has a higher IQ or is faster than you (I was running track at the time). You have no control over that. But you do have control over how hard you work. Always be the hardest working person in the room."

In response to a letter I wrote him, where I made fun of a kid in my class, he said, "Don't judge other people. It's just a way to make yourself feel superior or sanctimonious or whatever. Look for the good in others instead of finding fault. Don't ever say anything behind someone's back you're not comfortable saying to them in person."

Once when I didn't help my mother shovel the snow off the driveway, he wrote, "Find ways to do the little things that show you care. Every day! Start with your mom and brothers, Mrs. Duffy next door, and grandma and grandpa. Daily acts of kindness brighten peoples days. In a small way it makes the world kinder and better."

One of the best ways he explained the circumstances of being in prison so I would understand it, "Ryan, when you're in school you learn the lessons first, and then you take a test. Sometimes in life we're tested, and the lessons come afterwards."

Throughout his incarceration my father has taken an interest in everything we do. In school I was learning to play the saxophone and my brother Patrick the piano. My father would schedule "concerts" over the phone. He'd tell us what time he was going to call and we'd have it all set up. My father encouraged us, no matter how awful we sounded. And we were pretty awful. He called me after every exam, sporting event, and sometimes simply to tell me he loved me.

I know it pains my father for not being there for us growing up, but I also know he did the best job he could given the circumstances. There's nothing he wouldn't do for my brothers and I. His love was always tangible, even from afar.

I've taken all of the bits of advice and wisdom my father's given me over the years and applied it to my life. One thing he's instilled in me is an uber belief in always improving and becoming better versions of ourselves. My father is a living testament to that philosophy. He's learned from his ethical failure, and it will never happen again. Failures are often the best teachers and can be enormous gifts, catalysts for change. My father is a paragon of integrity, honesty and altruism. Keeping him in prison serves no further purpose.

Another lesson my father taught my brothers and I, was never expect anything to be handed to us in life, we have to earn it. My father has worked hard and earned a second chance in life. The First Step Act was created to reduce incarceration for people like my father. He will do so much good with the opportunity. Judge Sullivan, please reduce my father's sentence to time served. It will be the happiest day of my life.

Sincerely,

A handwritten signature in black ink that reads "Ryan Nicholson". The signature is written in a cursive, flowing style with a long horizontal flourish extending to the right.

Ryan Nicholson

Mac Parker  
56 Northfield St., Apt. #2  
Montpelier Vt. 05602

**Regarding Jim Nicholson:**

From October 1, 2013 to September 26, 2017, I served time as an inmate in Ray Brook Federal Correctional Institution (FCI) near Lake Placid New York. During these nearly four years in Ray Brook, I had the honor of meeting and becoming friends with Jim Nicholson.

From the first time I met him in the dining hall, it was obvious that Jim was not only an extraordinary inmate, but an extraordinary person. Despite serving an onerous 40 year sentence, he was consistently upbeat, creative in how he served his time, and always helpful in serving fellow inmates. He taught more classes than any other inmate I knew, from a regular parenting group, to how to start a business upon reentry into society. He also developed and ran a program which he called "The University of Books," to open the world of literature to the prison population. He was always looking for ways he could help or raise the sights of those around him. While "respect" is an important part of the prison code, Jim always seemed to elevate this to a whole other level.

I always found it remarkable how Jim maintained his integrity and positive attitude in a community that can be hard on both. He was a leader in a powerful sense of the word, consistently doing his very best to use whatever skills or abilities he might have for the benefit of others.

I had many conversations with Jim about his crime. He always expressed genuine remorse for what he had done, and the financial and personal hardship he created for others. On multiple occasions we had serious discussions about his desire to make restitution to those hurt by his crime, and how he would work toward this if released. One of the many points we talked about is how functionally impossible it is to make any progress toward restitution for our crimes while we are incarcerated. I have since been released, and am grateful for the opportunity to make restitution payments every month from the paychecks I am earning. I know that Jim would dearly love to have a similar opportunity.

One of the great tragedies of our federal prison system is that there was no mechanism for recognizing, honoring, and adjusting the sentences of people like Jim Nicholson. In a sense, the message given to people like him has been that it doesn't matter what you do, how you conduct yourself as an inmate, and how you allow incarceration to humble and transform you.

I have not a single doubt that in a humane justice system, one that held the potential for parole for model inmates and humans, Jim Nicholson would be a prime candidate for recognition and early release. Thankfully, the First Step Act now provides such a mechanism. Since it has long been clear that Jim is a positive force in prison and in his life, I see him as highly deserving of a reduction in his sentence.

I can tell you from first-hand experience that Jim is an exceptional person, and one who would make the most of an opportunity to be a productive, contributing member of society. He has atoned for what he did, learned from it, and done his very best to give back and make amends in every way he can, given the limits of incarceration.

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I recommend and plead in the strongest terms that he be recognized for how he is conducting himself while incarcerated, and be granted a reduction in his sentence to time served so that he may

bring his many talents, and the wisdom he has gained from his mistakes, to the larger world outside prison.

I realize that I too am someone who was convicted of a crime, so my perspective on this matter may not be viewed by some as valid or carrying much weight. I understand and accept this. By the same token, under our present system, it may well be that fellow inmates are the ones close enough to see the deep transformations and the true quality of a person that can emerge while locked up.

I sincerely and without reservation view Jim Nicholson as a worthy and remarkable citizen by any standard, and I truly hope that you will see your way clear to grant him the sentence reduction I believe he so richly deserves.

Thank you for your consideration. If there is any further witness or testimony I can bring to this deliberation, please don't hesitate to contact me.

Sincerely, and With Thanks,

A handwritten signature in cursive script that reads "Mac Parker". The signature is written in black ink and is positioned above the typed name and address.

Malcolm H. (Mac) Parker  
56 Northfield St., Apt.#2  
Montpelier, VT 05602

January 18, 2023

Honorable Richard J. Sullivan  
U.S. Southern District, New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Peal Street  
New York, NY 10007

Michael Plunkett  
10 Claremont Road  
Fort Lee, NJ 07024

Dear Judge Sullivan,

I am writing in strong support of a reduction of Jim Nicholson's 40-year sentence.

Jim is a kind hearted, salt of the earth human being. I have known him since 1984, when we attended and graduated from Stony Brook University together. Jim was the resident assistant (RA) on our hall of 40 students in Irving building. From the first day I met Jim our freshmen year, his leadership skills were readily apparent. He was always organized and prepared. Unlike the rest of us, he never had to pull all-nighters studying because he kept up with the coursework all semester. When someone missed a class and needed the notes, Jim had them. He always made himself available to anyone that was struggling with a course and needed help.

The composition of our college dorm was like many others, a diverse mixture of stereotypical jocks, nerdy honor students, and partiers; of all races and creeds. One thing that stood out about Jim, he saw the good in each person. I always admired how he stood up for the less popular, never letting anyone get picked on. Everyone respected Jim, and as a result of his leadership, we had a cohesive, close, tight-knit group of guys. Even after graduation, Jim was the linchpin that kept everyone in contact.

Jim is a good, hardworking family man. He showed poor judgement when he didn't disclose the losses, he regrets that with every fiber of his being. He took responsibility, is deeply remorseful, and yearns to make amends. I'm very familiar with Jim's work ethic, he has the ability, and most importantly, the burning desire to atone for his crime. If given the opportunity, he will make restitution.

I know I've done things in my life I'm not proud of. I believe most people have done something in their life they regret and wish they could take back. We're all human and prone to errors in judgement. But Jim does not have a history of bad judgement. If anything, just the opposite, he's always done the right thing. Even in college, any time we pondered diving into youthful hijinks, Jim was always our conscious. He's lived an upstanding and admirable life.

Jim has been incarcerated for 14 years. That is a *long time*. And he's been punished in so many ways that go beyond the loss of his freedom: he missed his children grow up, lost the career that he loved and dedicated his life to, and sadly, he's lost a number of family members while incarcerated, including his father. Jim is a good person who is deserving of mercy. His mother's health is failing and Jim is the only person that can attend to her needs. This case is the poster child for what Congress had in mind when they overwhelmingly passed the First Step Act. Please use the courts discretion and resentence Jim to time served.

Thank you.

Sincerely,



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Michael Plunkett

March 23, 2022

Honorable Richard J. Sullivan  
U.S. Southern District New York  
Daniel Patrick Moynihan U. S. Courthouse  
500 Pearl Street  
New York, NY 10007

Dear Judge Sullivan

My name is Frances Sotire and I am one of the victims of Jim's crime. I had a significant amount of my net worth in Westgate Capital's funds. As a result of the loss, I was forced to sell my house and downsize to a coop. Having said that though, I am still *strongly advocating* for a reduction of Jim's sentence to time served.

I'm assuming the government will be notifying victims, encouraging us to write the Court, to scream for Jim to spend the rest of his life in prison. Many of those letters will come from a place of emotion, which is understandable. They lost money and they want someone to hang. It's unlikely that the passage of time will have diminished their anger. However, any of those letters that characterizes Jim Nicholson as "evil" or "calculating" or "callous", is simply not the facts. Nothing could be further from the truth. If anything, it's the polar opposite. He cares deeply and is profoundly remorseful. I've exchanged letters with Jim and visited him in prison, his contrition is genuine.

Jim's sentence is *excessive*. I've done a significant amount of research and every sentence for similar crimes and far worse, received a fraction of the time. The disparity strikes at the very heart of fairness. And there are many factors in Jim's case. For instance, Westgate Capital was not started or run as a means to steal money from people. Does that matter? Of course, it does. Is there a difference between murder and manslaughter? Intent matters.

Jim is a good, kind, thoughtful person who definitely would be an asset on the outside giving back financially and proving his worth to those he failed 14 years ago. I went to visit Jim in prison in 2011 and back then he expressed genuine remorse, contrition and acceptance of responsibility, over a decade before the First Step Act passed, his motion was contemplated, or even thought possible. With the passage of time, I hope the Court recognizes that Jim committed a crime, but is not a criminal. (Hopefully, you know what I mean by that). He made a terrible mistake but he's learned from it, rehabilitated himself and helped many people while incarcerated.

Judge Sullivan, I'm aware that you have to weigh a lot of factors like deterrence, the seriousness of the crime, and paying his debt to society. But those sentencing factors have been met. Jim has been incarcerated for 19 years with good time credits. Paying his debt to society has not only been met, it's abstract, paying his debt to shareholders is real and tangible. That in itself is likely a life sentence, but

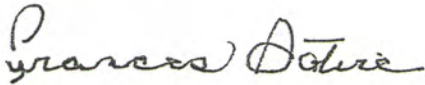


one that better serves all parties – the victims, the community, society, the taxpayer, as well as Jim and his family.

Jim is committed to his restitution order. By sentencing him to time served will allow him to make a meaningful contribution to an obligation that he takes seriously. Everyone will be better for it. And, very importantly, a reduction is in accord with intent when both chambers overwhelmingly passed the First Step Act. It also upholds the values of compassion, decency and second chances that our country holds dear.

Judge Sullivan, I ask that you please use your discretion to resentence Jim to time served. Thank you.

Respectfully,

A handwritten signature in cursive script that reads "Frances Sotire".

Frances Sotire

2802 Meadowoods Drive

East Meadow, NY 11554

January 18, 2023  
Honorable Judge Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Mitchell Spearman  
975 Anderson Hill Road  
Rye Brook, NY 10573

Dear Judge Sullivan,

I'm writing this letter imploring you to reduce Jim Nicholson's sentence to time served. I was a victim of his crime but I feel strongly that Jim not only deserves a second chance, but that he will use the time productively. Jim is committed to atoning his wrongdoing and working relentlessly towards paying restitution.

Very few people are irredeemable. And Jim's life should not be thrown away. He is a good and decent man. He's used his time in prison to strengthen and recommit himself to the middle-class values in which he was raised - of integrity, hard work and humility. He's reflected on his mistakes and has become a better, stronger, and more morally centered human being. In fact, he's done more than make himself a better person, he's used his abilities to benefit other inmates around him - inmates who might in turn, improve themselves. Jim has a passion for helping people. I believe, with absolute certainty, that Jim will not only live the rest of his life as a productive contributing member of society, but he will be a force for good.

In closing, I want to reiterate that Jim is fearlessly dedicated to redeeming himself, to making his victims whole. He fell down, has gotten up, learned from his mistakes, and now wants to make it right. The victims like myself will benefit greatly. Justice will have been served. And the United States, which holds itself out to the rest of the world as a shining beacon of decency and respect for human rights and the dignity of human beings, will live up to its professed ideals. I ask that you please reduce Jim Nicholson's sentence to time served.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Spearman". The signature is written in black ink and is positioned above the printed name.

Mitchell Spearman

JESSE STARK  
Reg. No. 13298-040  
F.C.I. Ray Brook  
P.O. Box 900  
Ray Brook, NY. 12977

Honorable Richard J. Sullivan  
U.S. Southern District, New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY. 10007

January 15, 2023

Dear Judge Sullivan,

My name is Jesse Stark. I am writing in support of Jim Nicholson's motion for a sentence reduction.

Let me tell you how Jim has profoundly changed my life. Prior to meeting Jim, I was drifting through life. Drowning might be a better word. I was addicted to drugs. Constantly in and out of prison. I have 11 felony convictions. I met Jim at F.C.I. Ray Brook when we were in the same unit. I was doing in jail what I've been doing my entire life - getting high every day and floating aimlessly with no direction. I didn't know Jim real well. He was this nice guy who helped alot of people. One day he approached me to tell me his cellmate was leaving, and would I like to move in with him? This sounded good to me. I was in a six-man cell and Jim was in a two-man cell. Little did I know, Jim invited me because he had a goal to get me off drugs. I was smoking K-2 everyday, all day, always high. Jim initially set me down and talked to me about how drugs were destroying my life. I didn't even want to hear it. All I cared about, was my next high. Jim was very persistent. I still can't believe he didn't give up on me. Sometimes he would give me a heart-to-heart talk, and other times he'd walk in the cell - I'd be high as a kite - and he'd get in my face yelling at me. He was trying anything to reach me. I'd promise him that I would quit time and time again, only to get high hours later. He stayed on me - relentlessly. I was running up debts that I couldn't pay, and always in and out of the hole. And Jim was constantly pointing out how the root cause of all my problems was my drug use. I never had anyone in my life that cares as much as he does. In a way, he became a father figure to me when my own father is not here. Eventually I promised him I would quit, without being sure that I could. After 24 hours of not using drugs, Jim gave me a big hug, literally, and told me how proud of me

he was. No one in my life has ever told me that they were proud of me. Jim continued to reinforce how well I was doing. In those early days, I didn't use drugs because I was afraid of disappointing him. After a month of sobriety, I came back to the cell one day and Jim had cake and sodas out, as if it were someones birthday. He gave me a party to celebrate my one month of being sober. I'm getting teary eyed as I think about it. Jim continues to celebrate my milestones.

Getting me off drugs, by itself, was life changing, but Jim did a lot more than that. He started a reading program at F.C.I. Ray Brook called the "University of Books." I never read any books for leisure time because I was too worried about getting high. He came to me one day and handed me a book and said, "You're enrolled in the University of Books. You have two weeks to read that." I reluctantly (that's stating it mildly) read the book. When I was done, he gave me another. What started out as a chore - reading - I have now developed a love for. I can't get enough of it. At night, when Jim would get up to turn off the lights, I'd tell him I'm going to read a little bit more. Jim jokingly replied, "Why did I get you started reading?"

There's something else that Jim did for me that tops all of that. I have two sons, with two different mothers, and I hadn't spoken to them in years. Jim reunited me with my two sons. Jim started a program at F.C.I. Ray Brook called "Fatherhood First." One day he walked into our cell, and as I've now learned he's apt to do, he told me, "You're enrolled in the Fatherhood First program. Be there Tuesday night." I attended the program and Jim drove home to everyone, not just me, how important it was that we had to be a part of our children's lives. I had nine million excuses why I couldn't - their mothers hate me, I barely know my sons, I don't know what to say, etc., etc. Jim looked at me and said, "That's great, we're writing them letters anyway." He made me sit down and write letters every week. When my sons Jordan and Cameron replied, I was estatic. Jim told me to call them. I had more excuses - one of them quite legitimate - I didn't have money for the call. Jim put money on my phone so I could call them. When the holidays rolled around, Jim put me in touch with a woman that arranged to have a gift from me sent to them. I'm now in regular contact with both my sons, all thanks to Jim. I wouldn't have done this without his help. It is the best gift that Jim could ever give me.

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I have been clean and sober now for over three years. I wake up every morning, not looking to get high, but with goals of things I want to accomplish that day. I am now enrolled in college through North Country Community College to receive an Associates Degree in Business Management. I

can honestly say, without any doubt, that none of this would have happened without Jim. I will always be eternally grateful for what he saw in me and believing in me.

Jim does not belong in prison. He is not like any of the people here. He sticks out like a sore thumb. He has his life together. I really wish I could be a tenth of what he is.

Your Honor, please use your discretion to reduce Jim's sentence. If anyone deserves a second chance in life, it is Jim. He is one of the few people who would not squander the opportunity.

Sincerely,

Jesse Stark

*Jesse Stark*

August 8, 2022

Honorable Richard J. Sullivan  
U.S. Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007

Anthony Vitale  
95 Westentry Rd  
Staten Island NY 10304

Dear Judge Sullivan,

My name is Anthony Vitale. I lost money in Westgate Capitals funds, but I am writing in full support of Jim Nicholson's motion for compassionate release. He has already been severely punished, by any measure, and everyone's interests will be better served having him home making restitution to his victims.

I have known Jim for many years. He is a good person who made some bad decisions. Jim's ethical failure was an aberration and not indicative of his character. But when we do make mistakes, it's what we do next that matters. There are all kinds of ways to go through failure. One is you get knocked down, you lie there, you cry and whimper and you lapse into self-pity or you blame other people. The other is you get up on your feet again and you learn from your failure. You ask yourself? What went wrong? How can I fix it? Without question, Jim is in the latter category.

When Jim asked himself "What went wrong?", it led to a period of introspective growth. His values truly got internalized and his priorities became crystal clear. Integrity is not something we "have" (or not). It's something that we continually aspire to develop, to deepen and to live up to. Jim has a personal commitment to always act with integrity- to live up to his values

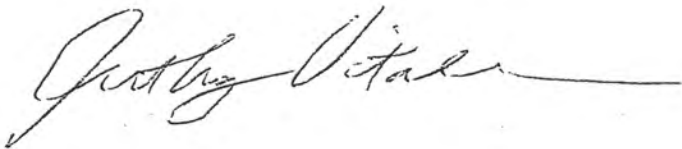
and to be authentic, honorable, honest and trustworthy in his dealing with everyone in his life.

When he asked himself "How can I fix it?", he wholeheartedly committed himself to making restitution. Jim will be utterly relentless in his focus to make victims whole. And as an investor in Westgate's funds, I want him home, working for me so to speak, making restitution.

Our country is about second chances, and given those who are genuinely remorseful and have learned from their mistakes, an opportunity to redeem themselves. Jim has earned that opportunity. Judge Sullivan, please grant Jim's motion. For the sake of us victims, for Jim and his family, and for a society that will be stronger with Jim as a contributing member.

Sincerely,

Anthony Vitale

A handwritten signature in cursive script, reading "Anthony Vitale", followed by a long horizontal flourish line extending to the right.