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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 LENIYAH BUTLER,

21 Defendant.

Case No.: CR 23-449 SI

DEFENDANT'S SENTENCING
MEMORANDUM AND REQUEST FOR
DOWNWARD VARIANCE

REDACTED

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I. INTRODUCTION

Leniyah Butler was scared to death when she found herself in Crissy Field at the end of the night in a dark and remote place she did not recognize with no obvious means of escape. She was alone in a small car with a drunk and belligerent older man suffering from schizophrenia screaming at her. She had just performed a sex act, and now he was menacing her to get his money back. He threatened that he was going to “fuck” her and told her that transgender people like her “get killed.” They scrapped and tussled, and then he jumped out of the car, reached back in, grabbed her, and tried to pull her out of the car into the dark of the empty parking lot.

The jury rejected the government’s theory of the case and acquitted Leniyah of second-degree murder. Neither the government nor U.S. Probation appear to understand or respectfully credit the implications of the jury’s verdict. The jury determined that Leniyah was *sincere in her fear* of Hamza Walupupu but that she *misjudged* the threat he actually posed; alternatively, it determined that Leniyah was adequately provoked by Mr. Walupupu during the confrontation *in such a manner that might cause a reasonable person to kill*. See ECF No. 281 at 10-11 (jury instructions). That is the law and the reality of the verdict. Nowhere in the government’s entire sentencing memorandum, or the PSR, is there an acknowledgment or understanding of that fact.

The question for the Court now is what sentence to impose. Common sense and the law teach that we must take into consideration Leniyah’s background when we judge the decision she made in that moment, not only in assessing liability but in imposing sentence. The Court should also of course take into consideration Mr. Walupupu’s behavior and circumstances, and the loss to his family.

Leniyah would never have chosen to be at Crissy Field or on the Blade, had she enjoyed any choice in the matter. She endured extreme levels of physical and emotional violence and sexual abuse from birth. At a very young age, Leniyah showed symptoms of posttraumatic stress disorder (PTSD), including nightmares, emotional dysregulation, and hypervigilance. She behaved in elementary and middle school and then later in foster care group homes just like a child contending with severe sexual and physical abuse. Acceding to sexual assault for money was a strategy for survival that Leniyah learned from her mother, who forced Leniyah into sexual exploitation as a teenager through a combination of neglect, coercion, and abuse. Not surprisingly, it was Leniyah’s mother—her

1 trafficker—who Leniyah called in panic and fear immediately after she shot Mr. Walupupu. And it
 2 was her mother who urged Leniyah to flee and discard evidence in a manner that the government and
 3 U.S. Probation claim is “obstruction.” In fact, the government’s entire case—including its contention
 4 of obstruction—are based on Leniyah’s own admissions to the FBI. The government would not even
 5 know all the facts, but for the fact that Leniyah truthfully admitted them prior to even being
 6 arraigned.

7 Leniyah’s reaction on Crissy Field, and her efforts to explain what happened in response to
 8 hours of questioning by the FBI, were of course further limited by severe cognitive impairments.
 9 Both sides’ neuropsychological experts agreed that Leniyah’s cognitive and intellectual abilities rated
 10 “extremely low,” *i.e.*, the bottom one percent, and “borderline intellectual functioning.” Rizk Decl.,
 11 Ex. Z. Standardized IQ testing measured Leniyah’s ability to recall a story as equivalent to a seven-
 12 year-old, and her overall IQ score as equivalent to an average 10-and-a-half-year-old. *Id.* As the
 13 Supreme Court has made clear, courts must show particular leniency when sentencing young people
 14 who are “less mature and responsible than adults,” “more vulnerable or susceptible to negative
 15 influences,” and have a “more transitory” character as they grow up. *Jones v. Mississippi*, 593 U.S.
 16 98 (2021) (citing *Roper v. Simmons*, 543 U.S. 551, 570 (2005)).

17 Thus, to be clear: this is not a case where an adult defendant made a considered decision and
 18 intentionally committed a crime that hurt another person, as the government and the probation officer
 19 seem to think. According to the *jury*, this is a case where a traumatized youth made a split-second
 20 decision about her own safety that was sincere but turned out to be wrong; or was provoked in such a
 21 way that an ordinary and reasonable person might have killed in response. The sentencing decision
 22 revolves further around the adults and public agencies that failed to rescue an impaired and abused
 23 child who was trafficked and remained vulnerable to sexual and physical abuse by troubled older men
 24 like Mr. Walupupu.

25 The government has never understood this. The government’s sentencing memorandum
 26 repeatedly refers to the offense as a “murder” and the gun as “the murder weapon,” notwithstanding
 27 the verdict. *See* Gov’t Sent. Memo at 12, 15, 16, 18, 19. The government’s sentencing memorandum
 28 also repeatedly mischaracterizes the *mens rea*. *Cf.* Gov’t Sent. Memo at 2 (“Butler *callously* shot him

1 in the face” (emphasis added); *id.* at 18 (“Her confession shows ... the *callous and deliberate* manner
 2 in which she acted that night...” (emphasis added)). Evidently, the government does not understand
 3 the law: “Manslaughter is the unlawful killing of a human being *without malice.*” 18 U.S.C. §
 4 1112(a) (“Manslaughter,” statutory definition) (emphasis added). Leniyah shot him *out of fear, not*
 5 *malice*. The government’s sentencing recommendation should be afforded little weight because it
 6 does not understand and refuses to believe that most fundamental fact, which was the jury’s core
 7 judgment in this case.

8 There is, to be sure, little comfort in Mr. Walupupu’s side of the story. At the time, he was deep
 9 in alcohol abuse, unemployment, and a mental illness that left him delusional, disturbed, and
 10 profoundly paranoid. All evidence points to the sad fact that his family—like Leniyah’s, notably—
 11 did not accept his sexuality and could not accept his mental illness. Their statements to the Court,
 12 ignoring his mental illness, unemployment, and sexual preferences and habits, sadly, prove as much.
 13 Their statements to the Court also make clear that the government failed miserably in explaining to
 14 them the litigation process or what was likely to happen at trial—no surprise given that the
 15 government was (and is) equally in denial of the facts and the verdict.

16 The evidence at trial of course revealed that Mr. Walupupu, in his secret misery, had developed
 17 a habit of harassing, robbing, and sexually assaulting sex workers he picked up on the street,
 18 including the transgender Blade. The Court must reckon with all of this. The government and U.S.
 19 Probation do not, and their sentencing recommendations reflect it. Again, there is, quite literally, not
 20 a single mention of these important circumstances—which the government failed to discover,
 21 destroying their credibility and case in the eyes of the jury—in the *entire* PSR or *anywhere* in the
 22 government’s 25-page sentencing memorandum. Indeed, the government cannot even bear to
 23 acknowledge that Mr. Walupupu he drove drunk, the least of his offenses. In other words, law
 24 enforcement and the government continue to do what they did throughout every stage of this case:
 25 bury their heads in the sand to avoid inconvenient facts. The Court cannot do the same.

26 The government does so while profoundly compounding the sentencing conundrum for the
 27 Court. President Trump and the U.S. Department of Justice have promised that they will punish
 28 Leniyah well beyond the bounds of the law if she is committed to the custody of the Bureau of

Prisons (BOP) by denying her hormones medication and housing her in a men's prison. With Executive Order No. 14168, the White House ordered BOP to do just that: Section 4(a) of the Order directs the Attorney General "shall ensure that males are not detained in women's prisons or housed in women's detention centers..." and in Section 4(c), directs that she "shall ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex." Rizk Decl., Ex. AA. The government's attorneys before the Court are bound to uphold and defend that policy and cannot offer the Court any assurances that Leniyah will not be housed in a men's prison, or that she will receive appropriate medical care. This is a mess of the government's own making. Undersigned counsel respectfully submits that the Court cannot grant the government's request to commit Leniyah to a prison sentence at BOP consistent with 18 U.S.C. § 3553(a)(2)(D) and the Eight Amendment.

Here, Leniyah respectfully asks the Court for a sentence of no more than 24 months followed by three years of supervised release. Leniyah has now spent a tenth of her entire life in the San Francisco County Jail in custody on this case. She has not been outside since 2023. She makes this recommendation to ensure that her sentence is served at the local jail, rather than BOP. Leniyah does so further recognizing the seriousness of the offense, the loss of Mr. Walupupu's life, and given that 24 months has already been a life-altering sentence for her.

II. BACKGROUND

A. Leniyah's early life.

Leniyah was born to Leslie Blueford and Rodney Jefferson. Leniyah's parents have also lived extremely difficult lives. Ms. Blueford's family was mired in extreme poverty, drugs, and commercial sex exploitation. [REDACTED]

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¹ See, e.g., Ramos, et al., “Traumatic stress and resilience among transgender and gender diverse youth,” *Child Adolesc. Psychiatr. Clin. N. Am.*, 32(4): 667–682 (June 2023), *available at* <https://pmc.ncbi.nlm.nih.gov/articles/PMC10914351/> (last accessed October 23, 2025).

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³ Although the government appears to continue to contend that “Tootsie” is not transphobic and is instead some kind of absurd moniker, there is no support for that contention. The defense searched carefully before trial and was unable to find any family member or friend of Leniyah who recalled Leniyah ever calling herself “Tootsie.” As the Court is aware, the defense also subpoenaed S.F.P.D. for all records related to Leniyah that contained the term “Tootsie” and there were no responsive records that explained the origin of officers’ use of the term. Instead, the slur was simply included in virtually all S.F.P.D. reports after Leniyah turned age 13, and then later adopted by the FBI case agents.

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When she turned 18, Leniyah wisely opted to accept Extended Foster Care programming support from juvenile probation, pursuant to AB12. The program provided her with case management, and financial support for independent housing. In exchange, Leniyah agreed to continue school, and remain in supporting programming with a therapist and other social services representatives. The program was largely successfully for Leniyah. She obtained an apartment with a roommate in the East Bay. Overcoming considerable instability at home, learning disabilities, and

⁶ A recent *New York Times* article detailed law enforcement's abandonment of child sex trafficking victims at the Blade in Los Angeles, noting: "More than half of the underage girls pulled from the Blade turned out to be from foster care. Even for those who were not runaways, the stories were the same: Traffickers had parked their cars in front of local group homes, waiting for a chance to approach." Rizk Decl., Ex. MM (Emily Nunn, *The New York Times Magazine*, "Can Anyone Rescue the Trafficked Girls of L.A. Figueroa Street? Inside the effort to pull minors from 'the Blade,' one of the most notorious sex-trafficking corridors in the United States," Oct. 26, 2025).

1 even severe cognitive impairments in many domains that were later documented by Dr. Amanda
 2 Gregory, Leniyah graduated from high school in 2022. PSR ¶ 71. [REDACTED]
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8 Throughout this period, although things had improved somewhat, Leniyah continued to engage
 9 in risky commercial sex exploitation for survival. Although she had recently earned her high school
 10 degree, Leniyah had no vocational training or employment prospects and has never held a normal
 11 job. She dreamed of becoming a cosmetologist, but had no realistic way of paying for the necessary
 12 schooling. She wanted any job—like something in retail—but she did not even know how to begin
 13 getting one. As Leniyah related to undersigned counsel: “nobody ever thought that was realistic for
 14 me.” *Id.*, ¶ 49. She felt trapped, and like most victims of child sexual abuse and sex trafficking,
 15 Leniyah simply did not have the resources or insight to extricate herself on her own.

16 Those risks continued to take a severe toll on Leniyah’s health and safety as a nineteen- and
 17 twenty-year old. In May 2023, after a Cinco de Mayo event sponsored by the City of San Francisco,
 18 she was attacked by some other young people; a video of the beating surfaced on social media and
 19 has been lodged with the Court. *Id.* Ex. V. It shows the severity and extent to which Leniyah was
 20 routinely battered. Nobody was arrested or prosecuted for the attack. As far as Leniyah and the
 21 defense team is aware, no person has ever been prosecuted for any crime committed against her at
 22 any point during her entire life. *Id.*, ¶ 50.

23 A month later, while the Cinco de Mayo incident still loomed large in Leniyah’s mind, she was
 24 again unexpectedly confronted at a City-sponsored Pride event by a woman named Kayla Davis and
 25 her friends. Leniyah was alone at the time. The initial confrontation was not observed by police and
 26 is not reflected in body camera footage, but other witnesses were present for it. According to the
 27 police report, police belatedly heard cries that somebody had used pepper spray, and officers ran into
 28 the crowd and were themselves impacted by the irritants. An officer identified Leniyah and

1 immediately tackled her to the ground. Ms. Davis attempted to punch Leniyah during the struggle
 2 and then kicked Leniyah while police had restrained her on the ground. *Id.*, Ex. W. Leniyah has
 3 plead not guilty and the case remains pending.

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 8 **C. Crissy Field.**

9 Mr. Walupupu was 32-years old Congolese immigrant who had been in the United States for
 10 many years at the time he died. Testimony at trial established that he was living with a family friend,
 11 Guershom Kahebe, at the time, and also borrowing Mr. Kahebe's car. Sadly, Mr. Walupupu was not
 12 doing well. Since 2020, his friends reported he had occasionally disappeared and lost contact with his
 13 family. He was suffering from perceived mental illness and delusions, and lost his job as a parttime
 14 security guard as a result. Although this had been going on for years, he eventually saw fit to seek
 15 medical care just months before he died. He was referred to a psychiatrist in September 2023, and the
 16 notes related the extent of his paranoia:

17 He says he went through a time "these people deal with lower government" "these things are
 18 real" and "people do these things to people". He ended up in shelter. He did not sleep last night,
 19 struggling to sleep, hearing voices. "Taking stuff out of me and putting stuff in me" This is
 20 affecting him in being able to provide or take care of himself. At the shelter "they did things to
 me" "Like magic" He felt like his "legs were burning" "this is something they did to me"
 "These people have influence"

21 [...]

22 The voices are during the day, they are frequent, "It's like having someone around you who is
 invisible" hear someone speaking right next to you. He feels "they manipulate him" He feels
 they are familiar. They can do bad stuff to him.

23 Rizk Decl., Ex. BB at 1-2.

24 Presentation most consistent with schizophrenia unspecified vs delusional disorder, reporting
 25 delusions and voices for the past 3 years, not able to hold a job due to this, as well as being
 26 intermittently homeless. Currently not on any medication has never been on medications and
 declines medications at this time.

27 *Id.* at 6 of 9. He was of course prescribed a starter dose of Abilify, but the evidence showed that he
 28 never took the medication. All of it remained on his bedside table when the FBI searched his room.

Mr. Walupupu was also struggling with alcohol abuse. He had incurred a DUI in the past, and

1 the information he provided to his medical care providers indicated that he was actively struggling
 2 with the problem. Rizk Decl. Ex. CC at 3, 8 (“Patient unable to clearly quantify how much drinking
 3 on average; 6+ beers/night ‘drink to pass out’”). The night he died, Mr. Walupupu had a BAC of
 4 0.155%, and had likely consumed 8-9 alcoholic drinks in the hour prior to approximately 5:30 a.m.,
 5 when he took Leniyah to Crissy Field. Leniyah, by contrast, was sober.

6 This was not Mr. Walupupu’s first encounter with a sex worker, let alone a transgender sex
 7 worker. Defense investigation revealed evidence, including from Mr. Walupupu’s own text
 8 messages found on his phone, that he had carried on sexual relationships with men as well as
 9 transgender women. Months before, he had been involved in an extended confrontation with a sex
 10 worker in a hotel where he groped and tried to cheat the sex worker, who locked him out of her room
 11 and then pepper sprayed him. This all occurred in a seedy hotel room with drugs by the airport in
 12 Oakland from 2 a.m. to 10 a.m. in the morning. It appears from the body camera footage that Mr.
 13 Walupupu is almost too intoxicated and exhausted to hear or respond to Oakland Police Department
 14 officers when they arrive and try to interview him. *Id.*, Ex. X. Other transgender sex workers
 15 testified at trial how Mr. Walupupu made a habit of isolating, threatening, robbing, and sexually
 16 assaulting them after picking them up at the transgender Blade in Oakland. Mr. Walupupu’s own
 17 friends reported to the FBI that he had a habit of getting into confrontations with strangers while out
 18 at dance clubs, and also often carried a gun in his backpack. *Id.*, Ex. U.

19 Leniyah was a 20-year-old, Black, transgender woman when she was picked up by Mr.
 20 Walupupu, many years her senior, in a borrowed car. He picked her up at the “Blade” near the corner
 21 of Polk and Post Streets in San Francisco, where transgender sex workers are picked up by men.
 22 Leniyah was alone. Mr. Walupupu agreed to pay her \$100 for a “date.” She related that he kept
 23 making her “uncomfortable” and that she had a “nervous bad feeling in my body like, he gonna try,
 24 he gonna try you.”⁷ She tried to remain calm, but Mr. Walupupu did not actually have the money,
 25 and insisted on driving Leniyah roughly 20 minutes away, to Chrissy Field, despite her efforts to
 26 persuade him to park near the Trans Blade. He told her that he was taking her to a place where
 27

28 ⁷ All quotations are taken from the transcript prepared by the government. Rizk Decl., Ex. DD.

1 “nobody will see us” or “no one’s gonna know where we at.” Leniyah told law enforcement
2 repeatedly that he was acting so “weird” that at first she was feeling “uncomfortable,” and then got a
3 “bad feeling,” and then got “hella scared,” to the point that she was “shaking.” She repeated many
4 times during the interview that she felt it was either “me or him.” On the way to Chrissy Field, he
5 passed a bank ATM she pointed out, which reinforced her fear that “he’s trying me.” Finally, he
6 stopped at an ATM and withdrew \$100, which he eventually gave to Leniyah.

7 At Chrissy Field, she performed oral sex on him, and he ejaculated. Then “he wanted to fuck
8 me,” and she told law enforcement that she “burst out like, I’m Trans, and he tried to make it seem
9 like he didn’t know.” In reaction, he demanded his money back, started “yelling” at her, “bitch, get
10 out, da- da- da- da-.” He threatened her. She told agents she “blurred out,” meaning, “I could see
11 what’s goin’ on, but I wasn’t thinking.” There was physical “tussling,” he got out of the car, and tried
12 to physically pull her out of the car. “It was no, like- oh please, like - it was just smoke, like boom.”
13 She took a small gun from her purse and shot him. He died immediately. She was left “shaking.”
14 “And I’m like- this is not happening.” Eventually, she got out of the car and she spit his ejaculate on
15 the ground. She moved his body from the driver’s door entryway, took the keys, and drove away.

16 While driving away, Leniyah called her mother. Her mother answered the phone, got out of
17 bed, and met her at Kiska Road. Leniyah’s mother told her to destroy the evidence. Leniyah naively
18 related to agents: “It is crazy, like my mom is so smart. All she just told me throw everything away.”
19 This seemed to Leniyah like a better idea than burning the car. Her mother gave her some water and
20 “a little shirt or something” and told her to “clean the car off ... like, try to get your fingerprint.”
21 Leniyah took Mr. Walupupu’s backpack from his car because she had touched it too. Leniyah got
22 into her mother’s jeep and her mother drove away, abandoning Mr. Walupupu’s car. At Leniyah’s
23 mother’s house, her mother told her: “get that evidence out of my house.” Leniyah threw out her
24 dress and her shoes. She wanted to keep her purse, but her mother told her to throw it away. She
25 briefly looked in Mr. Walupupu’s backpack and saw a laptop and phone in it, all of which they threw
26 away in a garbage bag near a homeless encampment. Leniyah was arrested at her mother’s house by
27 an FBI team less than ten days later, and elected to answer questions truthfully for over two hours
28 until the agents had nothing more to ask her.

III. PRESENTENCE REPORT & GUIDELINES

The Sentencing Guidelines should be calculated as follows:

Base Offense Level, U.S.S.G. § 2A1.3(a).....	29
Acceptance of Responsibility, U.S.S.G. § 3E1.1.....	-3
Total Offense Level.....	26
Criminal History Category.....	I
Guideline Range.....	63-78 months

The defense's substantive objections to the PSR have mostly been resolved, however it maintains the objections noted in the PSR and offers the following arguments.

First, the probation officer refused to include any information about Mr. Walupupu's background or behavior that ran contrary to the government's theories at trial. Obviously, the probation officer is not a lawyer, did not consider the Court's rulings finding the evidence relevant and probative, and was not actually present for the trial where the jury found it compelling. The PSR's assessment of the offense conduct should therefore be largely disregarded as it is entirely inconsistent with the law that applied in this case.

Second, it is apparent that the probation officer does not understand the theories of "imperfect self-defense" or "heat of passion" that constitute voluntary manslaughter. The summaries of the evidence provided in the PSR reflect as much. So does the probation officer's flawed "reasoning" used to justify a lengthy sentence. *See, e.g.*, PSR Sentencing Recommendation, at 2 ("She has argued she was in fear for her life and used lethal force to protect herself. The jury, however, did not acquit her based on a complete self-defense argument, and convicted her of voluntary manslaughter."). The probation officer does not recognize that the jury apparently credited Leniyah's statement, found it accurate, and her fear to be sincere, but felt she had made a mistake in gauging the threat, or was provoked to such a degree that she overreacted like an ordinary person might. Since this is all lost on the probation officer, she does not understand the credibility and culpability findings made by the jury, and her recommendation is untethered from the jury's verdict.

Third, Leniyah should be granted full credit for accepting responsibility under U.S.S.G. § 3E1.1. Here, the probation officer ultimately acknowledges that, "The Court presided over the trial and is in the best position to determine the applicability of acceptance of responsibility in this case."

1 Nevertheless, she sides with the government, as she does on every other issue she does not
 2 understand: “The government also objects to a reduction for acceptance of responsibility. Therefore,
 3 a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1 was not applied.” PSR
 4 Sentencing Recommendation at 3.

5 To restate the obvious, the *entire prosecution* rested on Leniyah’s exhaustive pre-arraignment
 6 statement to the FBI. The government moved her entire statement (minus passages ordered removed
 7 by the Court) into evidence, sponsored it before the jury, and argued it was true and inculpatory.⁸
 8 Although the government now wants to disrespect the jury’s verdict by simply ignoring it, the jury
 9 necessarily found Leniyah’s statement to be credible and truthful—and drew different ultimate legal
 10 conclusions from the government’s attorneys. Once again, it is relevant that the government and the
 11 probation officer do not appreciate that voluntary manslaughter is a crime that can only be committed
 12 “without malice.” Nevertheless, they point to statements in jail calls (which the jury heard) and
 13 statements by Leniyah to the FBI (which they also heard) that they claim shows a “lack of remorse”
 14 from Leniyah. Their rush to impose maximal judgement defies common sense and runs contrary to
 15 the jury’s verdict. This was a horrible and unexpected event for Leniyah and she reacted sincerely,
 16 and/or in a way that a reasonable person might have—that was the jury’s verdict. She admitted
 17 truthfully what happened immediately when arrested before she even came to court or consulted with
 18 a lawyer. That she did so, with the recall and IQ of a minor, is fairly extraordinary.

19 Realistically speaking, there is no theory of liability for voluntary manslaughter under which
 20 the jury could have found that Leniyah lied about the facts, or showed malice toward Mr. Walupupu.
 21 To find liability under an imperfect self-defense theory, the jury necessarily found: “1. Leniyah
 22 actually believed that she was in imminent danger of being killed or suffering great bodily injury; and
 23 2. Leniyah actually believed that the immediate use of deadly force was necessary to defend against
 24 the danger.” ECF No. 281 at 10. To find liability alternatively under a “heat of passion” theory, the
 25 jury necessarily concluded that Leniyah killed Mr. Walupupu because she was “provoked by fear,
 26 rage, anger or terror” and that the provocation was “such as might arouse a reasonable and ordinary
 27

28 ⁸ Notably, the government is *not* arguing that Leniyah perjured herself in statements to the agents.

1 person to kill someone.” *Id.* at 11. In other words, as the defense argued in closing: any person might
 2 have reacted in the way Leniyah did, and any woman would have been terrified of what Mr.
 3 Walupupu was doing.

4 Comment 1 to U.S.S.G. § 3E1.1 states that the Court may consider non-exhaustive
 5 considerations in making a determination regarding acceptance of responsibility:

- 6 (A) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully
 7 admitting or not falsely denying any additional relevant conduct for which the defendant is
 8 accountable under §1B1.3 (Relevant Conduct). Note that a defendant is not required to
 9 volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to
 10 obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant
 11 conduct beyond the offense of conviction without affecting his ability to obtain a reduction
 under this subsection. However, a defendant who falsely denies, or frivolously contests,
 relevant conduct that the court determines to be true has acted in a manner inconsistent with
 acceptance of responsibility;
- 12 (B) voluntary termination or withdrawal from criminal conduct or associations;
- 13 (C) voluntary payment of restitution prior to adjudication of guilt;
- 14 (D) voluntary surrender to authorities promptly after commission of the offense;
- 15 (E) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the
 offense;
- 16 (F) voluntary resignation from the office or position held during the commission of the
 offense;
- 17 (G) post-offense rehabilitative efforts (e.g., counseling or drug treatment); and
- 18 (H) the timeliness of the defendant’s conduct in manifesting the acceptance of responsibility.

19 To the extent these factors are applicable here, most of them favor Leniyah. The first factor, and the
 20 most important by far of course, is truthfully admitting the conduct, which Leniyah indisputably did.
 21 There is no serious question that Leniyah admitted every fact that the jury found supported a
 22 conviction. Neither Leniyah nor her attorneys falsely or frivolously denied any relevant conduct. The
 23 first factor thus strongly favors affording credit for acceptance. The second, and third factors, (B) and
 24 (C), do not apply here, nor does (F). The fourth, (D), disfavors credit for acceptance, because
 Leniyah did not voluntarily surrender. Factors (G), and (H), however, all favor granting her
 acceptance of responsibility.

25 In particular, factor (H) concerns the timeliness of the defendant’s conduct in accepting
 26 responsibility. To be clear, Leniyah actually sought a plea agreement from the government in which
 27 she proposed to plead guilty to voluntary manslaughter prior to trial, and the government refused to
 28 even consider such a plea. *See Rizk Decl.*, Ex. EE. This is beyond dispute, as the attached letter

documents. The letter shows that Leniyah offered to plead guilty on exactly the same terms that are now present before the Court. As undersigned counsel wrote to the U.S. Attorney in summarizing Leniyah's offer and the request for a meeting:

Leniyah is charged with second degree homicide, 18 U.S.C. § 1111. She was never offered a plea agreement by the government at the outset of the case. To the assigned AUSAs and General Crimes, we proposed a plea agreement under Rule 11(c)(1)(B) that contemplates: Leniyah pleading to a violation of voluntary manslaughter, 18 U.S.C. § 1112; and, Guidelines calculated pursuant to the applicable manslaughter guideline, U.S.S.G. § 2A1.3, with a Base Offense Level of 29, a -3 adjustment for acceptance of responsibility, and a resulting Offense Level of 26. Without agreement, the parties tentatively believe Leniyah is in Criminal History Category I. The resulting Guideline range would be 63-78 months. The defense offered to further negotiate a sentence.

Id. The U.S. Attorney refused the meeting and instead subsequently made a “counteroffer” that involved Leniyah pleading guilty to second-degree murder, admitting obstruction of justice, and not receiving credit for acceptance of responsibility, where Leniyah could not ask for less than 12 years, and the government could ask for up to 20 years of imprisonment. Rizk Decl., Ex. FF. Obviously, as we pointed out to the government, Leniyah would do much better if she did not accept their agreement and plead open. The government's further “counteroffer” was all the same terms, but to a range of 10 to 23 years—once again, not a real offer because Leniyah would be way better off by pleading guilty without such an agreement. Rizk Decl., Ex. GG. Of course, the government never even engaged Leniyah's offer to plead guilty to voluntary manslaughter before trial. Accordingly, her offer to plead guilty to the offense of conviction well before trial under factor (H) also strongly favors giving her credit for acceptance of responsibility. The case law agrees. *See, e.g. United States v. McKinney*, 15 F.3d 849, 852-53 (9th Cir. 1994) (acceptance of responsibility present when defendant offered to plead guilty, but was rejected by prosecution). The government has no answer.

The case law agrees. *See, e.g. United States v. McKinney*, 15 F.3d 849, 852-53 (9th Cir. 1994) (acceptance of responsibility due when a defendant admitted all relevant facts upon arrest, and offered to plead guilty, but was rejected). That is so because “[w]here a defendant manifests a genuine acceptance of responsibility for his actions, he is entitled to the reduction even if he does not plead guilty.” *Id.* at 852 (citing U.S.S.G. § 3E1.1 App. Note 2, for the proposition: “Conviction by trial, however, does not automatically preclude a defendant from consideration for such a

1 reduction.”). In *McKinney*, the most recent case in a long line of decisions: “[i]mmediately after his
 2 arrest, McKinney truthfully identified himself and told the arresting officers where the gun used in
 3 the robbery was located. At the police station, he confessed to committing the robbery and explained
 4 how he acquired the gun used in the robbery.” *Id.* at 853. Then, prior to trial, he sought to plead guilty
 5 to two counts before trial and the Court inexplicably refused to allow him to do so.⁹ *Id.* (“McKinney
 6 attempted to plead guilty before trial.”). He put on little defense at trial, prompting the Court of
 7 Appeals to note: “This is hardly the kind of defense that refutes the strong inference that McKinney
 8 accepted responsibility.” *Id.* The same is true here, of course: Leniyah put on a defense that rested
 9 upon all of the relevant facts she had truthfully admitted. She never denied what happened. She
 10 maintained that she was in fear, and the jury believed her, but second-guessed her reaction. The
 11 *McKinney* Court then went on to *reject* the government’s false premise that acceptance should only
 12 be awarded post-trial “where the trial is limited to issues unrelated to factual guilt.” *Id.* at 853.

13 As *McKinney* goes on to point out, the Circuit Court has also found acceptance appropriate “in
 14 cases where the defendant’s contrition seemed far less genuine than McKinney’s.” *Id.* As the Court
 15 explained: “For example, in *United States v. Johnson*, 956 F.2d 894, 904 (9th Cir.1992), we vacated
 16 a sentence and instructed the district court to consider whether a defendant was entitled to the
 17 reduction where she pled not guilty only *because she could not obtain a favorable plea bargain.*” *Id.*
 18 at 853 (emphasis added). “Unlike McKinney, the defendant in Johnson could have entered a plea of
 19 guilty any time she wanted to; *she only chose not to because she could not strike a deal on favorable*
 20 *terms.*” *Id.* (emphasis added). The *McKinney* Court then went on to give even more examples. *See id.*
 21 at 853-54 (citing *United States v. Rodriguez*, 975 F.2d 999, 1008 (3rd Cir.1992) (vacating sentence
 22 for consideration of acceptance of responsibility reduction where defendants had gone to trial after
 23 the government revoked its plea bargain agreement)). Further: “In *United States v. Hill*, 953 F.2d
 24 452, 461 (9th Cir.1991), we upheld a grant of the reduction because the district court found that the
 25 defendant was sincerely contrite despite the fact that his expression of remorse came at the ‘eleventh
 26

27
 28 ⁹ He offered to plead to two of three counts, and the record did not disclose why not the third count, but the Court of Appeals noted that “guilty on these counts would almost necessarily entailed guilty on Count One.” *Id.* at 851 n.2.

hour’—his sentencing hearing.” *Id.* at 854.

In sum, this is the “rare” case in which the defendant should be granted acceptance of responsibility after a trial. It would be reversible error under the Ninth Circuit’s precedents to deny Leniyah credit for acceptance of responsibility given her exhaustive statement upon her arrest, her offer to plead guilty to voluntary manslaughter prior to trial, which was rejected and met with only unreasonable and empty counters, and (finally) hearing from her at the sentencing hearing.

Finally, a technical point: in sentencing Leniyah, the Court should afford her credit for all three acceptance points, via a downward variance if necessary, even if the government disagrees and refuses to make a motion granting Leniyah credit for the third acceptance point under § 3E1.1(b). The government is supposed to control the third point on the premise that “the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial.” U.S.S.G. § 3E1.1, App. Note 6. Here, however, the foregoing record makes clear that it was the government that forced a trial by insisting on a plea to a count on which the jury acquitted Leniyah, while refusing to even consider a plea to the lesser-included offense that was the jury’s verdict. Thus, even if the Court can technically only award two points, the Court should consider the effective Guidelines to include all three points for acceptance of responsibility because Leniyah did absolutely everything within her power to admit the truth and take responsibility immediately upon her arrest, and formally by way of a plea, well before trial, and it was the government that denied her that opportunity.

For all these reasons, this is the “rare” case in which the defendant should be granted acceptance of responsibility after a trial.

Fourth, the defense rigorously objects to the probation officer’s imposition of an increase for “obstruction of justice” under U.S.S.G. § 3C1.1. The probation officer offers little to no analysis or reasoning other than her bare personal conclusion. PSR Sentencing Recommendation, at 2 (“The undersigned believes the defendant’s actions were willful and material.”). The government’s position is similarly long on personal judgment and attorney argument but short on analysis of the evidence, *cf.* Opp. at (“She is personally responsible for all of that.”), again apparently informed by the mistaken premise that this was a malicious crime, rather than an over-reaction to an unexpected threat

1 as the jury found.

2 As an initial matter, everyone agrees that Leniyah did not commit obstruction in any of the
3 usual, clear-cut ways. She did not threaten a witness, juror, etc.; she did not commit or suborn
4 perjury; she did not produce false evidence of any kind; she did not try to escape custody; she did not
5 provide material false information to the court, or a law enforcement officer, or the probation officer,
6 fail to follow a court order, or threaten a victim. U.S.S.G. § 3C1.1, App. Note 4(A)-(C), (E)-(K).
7 Fleeing arrest is not obstruction. U.S.S.G. § 3C1.1, App. Note 5. Instead, the claim here is much more
8 marginal and turns entirely on the premise that Leniyah destroyed material evidence and thus
9 impaired the FBI's investigation.

10 This, of course, makes no sense. It is effectively dispositive that the entire government case
11 rested on Leniyah's statement, including, absurdly, the very claims of obstruction. The only reason
12 the government knows that Leniyah followed her mother's directions and discarded her clothes and
13 Mr. Walupupu's backpack, and attempted to wipe down the car, is because Leniyah truthfully
14 admitted as much to the government immediately upon being arrested. The correct lens for this is
15 indeed *materiality*. The Commentary to the Guidelines clarify that destroying or concealing evidence
16 only constitutes obstruction for purposes of § 3C1.1 if the evidence "is material to an official
17 investigation," and "shall not, standing alone, be sufficient to warrant an adjustment for obstruction
18 unless it resulted in a material hindrance to the official investigation or prosecution of the instant
19 offense." U.S.S.G. § 3C1.1, App. Note 4(D).

20 The government is unable to identify any materiality or point to any actual hindrance. Both the
21 probation officer and the government appear to focus on the loss of DNA evidence from Mr.
22 Walupupu's borrowed car, and his lost backpack, and Leniyah's discarded clothing. That evidence
23 would only be material if the identification of Leniyah via DNA or her clothing were at issue. In fact,
24 the FBI learned of Ms. Blueford and Leniyah's identity by immediately identifying Ms. Blueford's
25 SUV's license plate at the same time they found Mr. Walupupu's abandoned car. And, even more
26 importantly, Leniyah admitted exactly what she did, and the government was able to play her
27 statement to prove as much to the jury. Identity, and what Leniyah did, was not disputed, and, if
28 anything, Leniyah's candid admissions helped, not hindered, the government's case.

Neither probation nor the government even seek to explain how the collection of DNA was actually impaired. The fact is it wasn't. The government swabbed various parts of the car—even though it had been left out for several days in the rain with the windows open—and still found Leniyah's DNA on the passenger side interior door handle, the passenger seat buckle, the front passenger window, the interior passenger door, and the front passenger floorboard. the Rizk Decl., Ex. HH. The only place where Leniyah's DNA was not found in the car was one of the seat. *Id.* The government presented all of this evidence to the jury through its DNA lab technician Kelley Fracchia. Rizk Decl., Ex. II at 667-69. Accordingly, on the merits, there is not even a colorable good faith argument that Leniyah somehow materially impeded the government's investigation or prosecution by wiping down the car at her mother's direction. Frankly, the government and the probation officer are simply misleading the Court through their inattention to the evidence.

Ultimately, it is the government's burden to prove that a defendant willfully destroyed material evidence that hindered an investigation or prosecution in order to apply the enhancement of obstruction. *United States v. Garcia*, 135 F.3d 667, 670 (9th Cir. 1998). There is no other evidence whatsoever in the record or the PSR that indicates that the loss of DNA, or various personal belongings, somehow slowed or impaired the government's investigation in any meaningful way. Appearing to confuse the concept of attempt with materiality, both the probation officer and the government emphasize that obstruction need not be successful, which is true, but not at issue here—again, because Leniyah admitted every single material fact. Further, the government cannot credibly complain that it was deprived of additional forensic evidence in a trial where its competence was questioned. The fact that the government failed to competently investigate and present other evidence in the case—such as Leniyah's DNA under Mr. Walupupu's nails, which the government tried to hide, or Mr. Walupupu's mental illness, medication, and history of assaulting and robbing other sex workers, which the government did not investigate at all—does not make the loss of personal belongings that would have identified Leniyah material.

On top of all this, it is undisputed that Leniyah's mother told her to destroy the evidence, which, given the context, also calls into question whether the obstruction was willful. Consistent with her impaired development, Leniyah naively told agents: "It is crazy, like my mom is so smart. All she

1 just told me throw everything away.” Rizk Decl., Ex. DD at 97. This seemed to Leniyah like a better
 2 idea than burning the car, which of course she did not actually do (or take any steps to do). *Id.* It was
 3 also her mother who directed her to wipe down the car. According to her statement, Leniyah’s mother
 4 gave her some water and “a little shirt or something” and told her to “clean the car off ... like, try to
 5 get your finger print.” *Id.* At Leniyah’s mother’s house, her mother told her: “get that evidence out of
 6 my house.” *Id.* Leniyah threw out her dress and her shoes, at her mother’s direction. She wanted to
 7 keep her purse, but her mother told her to throw it away. *Id.* The same is true for Mr. Walupupu’s
 8 backpack: she followed her mother’s lead. *Id.*

9 Both of the defense’s experts Dr. Bath (a psychiatrist) and Ms. Bruder (a trafficking and
 10 commercial sex exploitation expert) opined that Leniyah was sex trafficked as a minor and
 11 emotionally abused by her mother. Her mother forced her onto the street by coercion, neglect,
 12 manipulation, and other tactics. She demanded that her children make payments to her for basic
 13 necessities and sex trafficking was one the children obtained money to pay her. Leniyah’s mother’s
 14 household was itself violent and unsafe for the children throughout Leniyah’s childhood. Dr. Bath
 15 and Ms. Bruder recognized that Leniyah has a “trauma-bonded relationship” with her mother as a
 16 result of Leniyah’s mother’s role as her trafficker and abuser. Dr. Bath’s opinion is:

17 My opinion is that Leniyah has formed a trauma bond with her mother and that this bond
 18 formed over years of Leniyah’s mother manipulating and victimizing her. Trauma bonding is
 19 the term used to describe the psychological connection that sometimes forms between a victim
 20 and an abuser, often in the context of an abusive relationship, such as family relationships that
 21 encompass abuse or neglect, and those that involve sex trafficking, especially of minors. These
 22 relationships are often characterized by a power imbalance between victim and abuser, and
 intermittent reinforcement. It can be very difficult for the victim in such a relationship to
 process feelings of emotional or physical abuse, especially if the abuser offers periodic love or
 positive reinforcement—a phenomenon that helps to maintain the traumatic bond over time.

23 Rizk Decl., Ex. U. Ms. Bruder opined that due to the trauma-bonded relationship, Leniyah’s mother
 24 held an extraordinary amount of control and suasion over Leniyah. Leniyah’s behavior after the
 25 shooting is a classic example of a trafficking victim’s response to their trafficker’s demands and
 26 directions, according to Ms. Bruder:

27 It is my opinion that this trauma bond has significantly influenced her behavior, including her
 28 actions following the homicide of Hamza. After the incident, Leniyah’s immediate response
 was to contact her mother and follow her instructions, despite knowing it was wrong. This
 behavior reflects patterns identified in the literature, where unhealed trauma bonds drive

1 individuals to prioritize loyalty to their trafficker over their own wellbeing or ethical reasoning.
 2 Rizk Decl., Ex. T. Leniyah was also candid herself while talking on the phone in jail about her
 3 mother's influence over her at a time when she did not know what to do:

4 I was like- it was fucking with my mind so bad, so hard. I was so stressed out and I was trying
 5 to ask my mom. I was waiting for my mom to tell me what was the right advice, you know
 6 what I mean? Was the right thing to do for me? I kept asking her, what should I do? Should I
 call the police? You know what I mean? But it's like no. She was like, you know what I mean?
 But I was just waiting for her to tell me the right thing to do.

7 Rizk Decl., Ex. JJ. Given that Leniyah was operating with the IQ and cognitive abilities of a roughly
 8 ten-year-old, and dealing with a family member who trafficked her as a child, emotionally abused
 9 her, neglected her, and was housing her at the time, the facts and the expert literature in the fields of
 10 psychiatry and sex-trafficking support the conclusion that Leniyah's mother was responsible for the
 11 obstructive conduct, not Leniyah.

12 Probation and the government have no answer to this significant body of expert opinion and
 13 supporting evidence, other than to assert their own lay opinions about who is to blame. *See e.g.*,
 14 Gov't Sent. Memo. At 16 ("Even if there is a power imbalance with her mother, even one greater
 15 than the typical mother-daughter power balance that is present in almost all mother-daughter
 16 relationships, that does not exonerate her of all personal responsibility."). That is no evidence, just
 17 argument. It is the government's burden to prove obstruction, including materiality and willfulness,
 18 by a preponderance of the evidence, and here it cannot come close.

19 **IV. ARGUMENT**

20 Courts have an overarching obligation to impose sentences that are sufficient but not greater
 21 than necessary to achieve the goals of § 18 U.S.C. § 3553(a). *Kimbrough*, 552 U.S. at 101 (2007).
 22 Although they provide a starting point and should be respectfully considered, the Guidelines are not
 23 mandatory and should not be accorded more weight than the other section 3553(a) factors. *Gall v.*
 24 *United States*, 552 U.S. 38, 50 (2007); *see also United States v. Carty*, 520 F.3d 984, 991 (9th Cir.
 25 2008) (en banc). Importantly, not only are the guidelines not mandatory, "they are also not to be
 26 presumed reasonable." *Nelson v. Arizona*, 555 U.S. 350, 352 (2009) (emphasis added); *see also Rita*
 27 *v. United States*, 551 U.S. 338, 350-51 (2007). Instead, the Court must consider the Guidelines range,
 28 the nature and circumstances of the offense, the history and characteristics of the defendant, and the

1 need to avoid unwarranted sentence disparities among similarly situated defendants. 18 U.S.C. §
 2 3553(a)(1), (a)(4) and (a)(6). In crafting a sentence that is “sufficient, but not greater than necessary,”
 3 to comply with the purposes set forth in 18 U.S.C. § 3553(a), the Court must also consider the need
 4 for the sentence imposed: (A) to reflect the seriousness of the offense, to promote respect for the law,
 5 and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct;
 6 (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with
 7 needed educational and vocational training, medical care, or other correctional treatment in the most
 8 effective manner. 18 U.S.C. § 3553(a)(2).

9 Several matters warrant the Court’s consideration in connection with the § 3553(a) factors and
 10 Leniyah’s request for a custodial sentence of no more than 24 months:

11 *First*, as to the circumstances of the offense and Leniyah’s personal history, a sentence of
 12 longer than 24 months would be greater than necessary. Leniyah recognizes that voluntary
 13 manslaughter is a serious conviction, even though it is not in the same league as second-degree
 14 murder. Leniyah shot Mr. Walupupu out of fear, not malice. The jury’s verdict means it viewed her
 15 actions as sincere but unreasonable, or reasonably provoked. The government and the probation
 16 officer fail to understand or honor the jury’s verdict and thus make recommendations that are closer
 17 to the Guidelines for second-degree murder (168 months on the low end, with acceptance) than
 18 voluntary manslaughter (63 months on the low end, with acceptance).

19 The fact that Mr. Walupupu died does not and should not alter the Court’s starting point with
 20 the Guidelines at 63 months, however. That is the baseline recommended sentence with acceptance of
 21 responsibility for voluntary manslaughter—an offense that always and necessarily involves a death—
 22 because the offense is less culpable than homicide, *i.e.*, an unlawful killing *with malice*. Notably, the
 23 statutory maximum is 15 years—lower than the statutory maximum for even wire fraud under 18
 24 U.S.C. § 1343, and virtually all illegal drug sales under 21 U.S.C. § 841. The government and the
 25 probation officer appear to assume that the Court should not sentence at or below the low-end of the
 26 Guidelines because there is a victim who has died, but logically-speaking, of course, that makes no
 27 sense. The Court should exercise its judgement as a neutral to recognize as much. The Guidelines are
 28 far lower because the offense involves a mistaken fear or a reasonable response to a severe

1 provocation by the victim. Candidly, absent a finding of obstruction, the defense does not find
 2 anything in the record here that would justify going above the low end of the Guidelines because the
 3 facts of this case are not aggravated in any way that is unusual for a voluntary manslaughter case.

4 Rather, the question ought to be whether, and to what extent, the Court varies down from the
 5 recommended range given the circumstances. On this score, Leniyah's background is undeniably
 6 extremely mitigating and Mr. Walupupu—although it may be ungracious to say, it must be said—is
 7 not an especially sympathetic victim. Take, by contrast, the actually innocent victim in *United States*
 8 *v. Arnold Low*, 23-CR-439 JD (discussed further below), in which an 82-year-old white male
 9 defendant drunkenly hit and killed a 44-year-old who was a former national champion cyclist who
 10 was riding his bike in the Presidio. Rizk Decl., Exs. KK & LL. To Judge Donato's dismay, the same
 11 prosecutor in this case agreed that Mr. Low should receive a misdemeanor and probation for killing
 12 that innocent cyclist, not a felony. The reality is that Mr. Walupupu was not peacefully riding his bike
 13 in the Presidio when he was killed; he was indulging in his criminal *modus operandi* of isolating,
 14 sexually assaulting, and cheating or robbing unwitting sex workers through threats of force. While
 15 counsel appreciates that his death is arguably more tragic because he was misguided in his behavior
 16 because he was broke, drunk, and mentally ill, those circumstances certainly should not be held
 17 against Leniyah, who was just trying to survive and go home.

18 Leniyah's personal circumstances also counsel in favor of lenience. Without belaboring the
 19 point further, Leniyah's history warrants a significant downward variance. [REDACTED]

20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

Science and the law support showing leniency to youth like Leniyah, rather than blaming them for this misbehavior and impulsive decision-making, as the government and probation officer do. Research into adolescent brain development indicates that adolescents' brain functioning is different from either children or mature adults: (1) they lack mature capacity for self-regulation in emotional situations; (2) they have heightened sensitivity to external influences, such as peer pressure and immediate incentives; and (3) they show less ability to make judgments and decisions that require future orientation.¹⁰ Notably, the pre-frontal cortex—the area of the brain associated with higher order cognitive processes and executive functioning tasks such as goal-directed behavior, including planning, thinking ahead, self-regulation, and impulse control—is among the last areas of the brain to mature. Those skills are notably lacking during adolescence.

At the same time that they lack these higher-order cognitive skills, adolescents experience a rapid growth in “reward-seeking” development, resulting in difficulty with impulse-control.¹¹ Because of the rapid increase in brain matter in the reward-seeking area of the brain during puberty, in conjunction with the much more gradual development in the self-control area, adolescents tend to lack the self-control to regulate or suppress impulses. *Id.* The imbalanced influence of the emotional network also has been linked to mood instability, impulsivity, and overreliance on emotion in making decisions. *Id.* There is a great deal of research to support this theory and it has been demonstrated in a variety of adolescent-developing populations. Antisocial or criminal behavior by adolescents often is

¹⁰ National Research Council, “Reforming Juvenile Justice: A developmental Approach” (2013), available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/reforming-juvenile-justice-developmental-approach> (last accessed Oct. 20, 2025).

¹¹ Samantha Schad, *Adolescent Decision Making: Reduced Culpability in the Criminal Justice System and Recognition of Capability in Other Legal Contexts*, 14 J. Health Care L. & Pol. 375 (2011), available at <http://digitalcommons.law.umaryland.edu/jhclp/vol14/iss2/5> (last accessed Oct. 20, 2025).

1 not accompanied by an understanding or appreciation of the impact on others, or the apparent risks or
 2 consequences of the behavior.

3 The Supreme Court has repeatedly recognized the relevance of youth and immaturity in
 4 sentencing. Specifically, the Court held that adolescents are less culpable because their “lack of
 5 maturity and [] underdeveloped sense of responsibility” leads to recklessness, impulsivity, and
 6 heedless risk-taking, *Roper v. Simmons*, 543 U.S., 551, 569 (2005), they are more susceptible “to
 7 negative influences and outside pressures,” *id.*, and fundamental differences in their brain
 8 development make them less able to understand consequences or control their behavior, *Graham v.*
 9 *Florida*, 560 U.S. 48, 68 (2010). The Court also noted the significance of peer pressure or negative
 10 external influences on adolescent brain development, “Numerous studies post-*Graham* indicate that
 11 exposure to deviant peers” contributes to crime among young people. *Miller v. Alabama*, 567 U.S.
 12 460 (2012) (quoting J. Lawrence Aber, *et. al.* as Amici Curiae, 26–27 (2012)). The Court has rested
 13 its decisions “not only on common sense—on what ‘any parent knows’—but on science and social
 14 science as well.” *Id.* at 471. Indeed, science supports the Court’s reasoning that “transient rashness,
 15 proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’
 16 and enhance[] the prospect that, as the years go by and neurological development occurs, his
 17 ‘deficiencies will be reformed.’” *Id.* at 472 (quoting *Graham*, 560 U.S. at 68; *Roper*, 543 U.S., at
 18 570).

19 Furthermore, in 2017, the United States sentencing commission produced its first report on
 20 “youthful offenders.”¹² The commission explained that brains continue to develop until
 21 approximately age twenty-five, and that developmental differences relevant to sentencing generally
 22 persist until around that age. *Id.* at 5. In yet another example, California now grants a “youth offender
 23 parole hearing” to one who received a maximum (including life) sentence if that person committed
 24 the offense at ages eighteen to twenty-five. *See* Cal. Pen. Code § 3051.

25 Here, Leniyah is particularly deserving of leniency given her severely impaired development.
 26

27
 28 ¹² U.S. Sent. Comm., “Youthful Offenders in the Federal System,” 2017, at 2, *available at*
[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf)
[publications/2017/20170525_youthful-offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf) (last accessed Oct. 22, 2025).

1 There can be no serious question that Leniyah was limited in her ability to respond to what happened
 2 at Crissy Field and regulate her response as an adult, or even an older child or adolescent or teenager,
 3 would do. As the Court knows, she has the overall IQ of a young minor, significant verbal
 4 impairments, and severely impaired executive functioning. In other words, as Dr. Gregory explained,
 5 she would have “difficulties with weighing options and adequately considering potential outcomes to
 6 behavior, inhibiting behavioral impulses, processing and organizing complex information, and
 7 changing strategy when the current approach is ineffective.” Rizk Decl., Ex. Z.

8 The Court must show Leniyah leniency for these impairments, which were not her fault, and
 9 which she contends with every day. It is no answer for the government to say that the jury also
 10 considered this information. That is true, and the jury rendered a lesser verdict as a result. But the
 11 information of course still has heavy bearing on sentencing—and not just for weighing culpability,
 12 although it is certainly highly relevant to that issue. The Court must also consider how Leniyah could
 13 possibly keep herself safe at a prison, if the Court were to sentence her to a prison sentence. BOP
 14 facilities, especially men’s prisons, are not the same as local jails like San Francisco County Jail.
 15 They are *much* rougher and more dangerous because they are populated with inmates who received
 16 serious prison sentences, not those who have been jailed temporarily for more minor offenses. A
 17 federal men’s prison is no place for a child, to say the least. The Court *must* confront this reality.

18 Thus, while this case is certainly tragic from virtually every angle, that does not justify a
 19 sentence at or above the Guidelines for Leniyah. A downward variance is warranted given the
 20 circumstances of the offense, Leniyah’s background, and her severely impaired development.

21 *Second*, just punishment, deterrence, and public safety considerations, support the requested
 22 sentence of no greater than 24 months. Even a 24-month sentence is an extraordinarily long sentence
 23 for a twenty-two year old, and it has already changed Leniyah’s life and perspective. It is guaranteed
 24 to be extremely punitive. An even longer sentence risks being profoundly counterproductive, given
 25 Leniyah circumstances. An even longer sentence would sink her deeper into poverty, potentially
 26 threaten her ability to have meaningful relationships and a family, and profoundly demoralize her at a
 27 time in her life when she needs to be mustering her energy to begin again. There is no need for a
 28 multiyear prison sentence to adequately punish a twenty-year-old with the cognitive abilities of a

1 young child.

2 As to public safety and deterrence considerations, the defense respectfully submits that the
3 recommended sentence is sufficient. Incarcerating Leniyah will not ensure public safety; it will,
4 however, guarantee her continued abuse by men in prison. To ensure public safety, the Court should
5 assist Leniyah in escaping commercial sex exploitation. The jury found lesser fault with Leniyah, not
6 that she “callously” shot Mr. Walupupu out of spite or to get her money back. The jury found that she
7 was sincerely afraid of him, or at least provoked to such an extent by him that an ordinary person also
8 would shoot him out of fear, anger, or terror. The tragic reality is that Mr. Walupupu played a
9 significant role in creating the unsafe conditions that led to his death. The uncontroverted evidence in
10 this case showed that he repeatedly harassed, grouped, and sexually assaulted other sex workers
11 while drunk, and chose to fight with them over money. Any consideration of public safety concerns
12 must confront his role in this case. Once again, the government and probation officer fail utterly to
13 reckon with this inconvenient truth.

14 The defense vigorously disagrees with the government and probation officer that a lengthy
15 sentence is necessary to specific deterrence. First, Leniyah’s convictions from age 13 to 15 have little
16 bearing on this case or her future; the contention by the government and probation officer that a
17 homeless black child age 13 is “dangerous” because she has been forced out onto the street and must
18 shoplift to survive, is, it must be said, nothing short of *racist* and *ignorant*. Although the government
19 also seeks to argue that other incidents in which Leniyah had to defend herself are probative of her
20 dangerousness, predictably, the government’s view and understanding of those cases is entirely one-
21 sided—just as its views in this case continue to be. Again, neither the government nor the probation
22 officer appear to appreciate the jury’s central finding that Leniyah acted without malice. That finding
23 poses profound conceptual problems for any claim around the value of deterrence here.

24 Fundamentally, where the offense of conviction involves a mistake—a fear that was sincerely held
25 but unreasonable, or an overreaction to an unexpected provocation that would cause an ordinary
26 person to kill—deterrence makes no sense. This is not a financial crime that was coldly and rationally
27 committed by an accountant. Nor was it a racketeering offense that was advanced by a committed
28 member of a gang who must be persuaded not to continue in the enterprise. This was an unexpected

1 and unwanted threat from a drunk, screaming, transphobic, and violent older man fielded by a
 2 traumatized twenty-year-old with the executive functioning of a child. That is not a scenario where
 3 rational deterrence has any bearing.

4 To ensure public safety, the Court should take steps to abate the threat that sex trafficking and
 5 commercial sex exploitation poses to Leniyah just the same as Mr. Walupupu. Removing Leniyah
 6 from dangerous and chaotic conditions like those she experienced at her grandmother's house, her
 7 mother's residence, and in foster care programs, will ensure that she is not put in a position where she
 8 feels she needs to defend herself again. As set forth below, the solution is to surround and support
 9 Leniyah with services and a new environment that will ensure her safety.

10 *Third*, as to educational, vocational, medical, or other correctional treatment, a prison sentence
 11 should be out of the question. Under 18 U.S.C. § 3553(a), this Court must impose a sentence that is
 12 "sufficient, but not greater than necessary" to achieve the purposes of sentencing, considering among
 13 other things "the need for the sentence imposed ... to provide the defendant with needed ... medical
 14 care, or other correctional treatment in the most effective manner." That statutory duty is not
 15 academic. It requires a sentencing court to account for the *actual conditions* BOP imposes on a
 16 defendant. When the BOP cannot meet a defendant's medical needs, a shorter or non-custodial
 17 sentence is both appropriate and legally required.

18 Leniyah is a transgender woman whose medical records reflect a diagnosis of gender
 19 dysphoria—a serious, clinically recognized medical condition. For years, the BOP recognized gender
 20 dysphoria as warranting individualized treatment that could include hormone therapy, counseling,
 21 and gender-affirming surgery where medically indicated. That policy was grounded in constitutional
 22 precedent, including *Farmer v. Brennan*, 511 U.S. 825 (1994), which held that deliberate indifference
 23 to the medical needs and safety of inmates violates the Eighth Amendment.

24 That framework has now been upended. In January 2025, the Trump Administration issued
 25 Executive Order No. 14168, entitled, "Defending Women from Gender Ideology Extremism and
 26 Restoring Biological Truth to the Federal Government," directing the BOP to restrict gender-
 27 affirming medical care and to house inmates based solely on their "biological sex at conception."
 28 Rizk Decl., Ex. AA. Implementation memoranda circulated within the BOP have sought to halt

1 transition-related care, reverse prior housing decisions, and discontinue gender-affirming
2 accommodations. These policy reversals are now the subject of ongoing litigation.

3 In *Kingdom, et al. v. Trump, et al.*, No. 1:25-cv-00412 (D.D.C. filed Mar. 5, 2025), transgender
4 inmates obtained a preliminary injunction prohibiting the BOP from terminating existing hormone
5 therapy or social accommodations while the case proceeds. (Preliminary Injunction Order, June 3,
6 2025, Lamberth, J.). But that relief is provisional, subject to appeal, and is being vigorously
7 challenged by the same U.S. Department of Justice that seeks a 156-month sentence in this case. The
8 injunction does not compel surgery or ensure continued treatment for new inmates.

9 Providing the government's intentions to punish transgender inmates disproportionately, in *Doe*
10 *et al. v. Bondi, et al.*, No. 25-5099 (D.C. Cir. Filed Apr. 2, 2025), the Department of Justice appealed
11 injunctions issued by multiple district courts prohibiting BOP from moving transgender female
12 inmates into male prisons. In fact, however, reports indicate that transgender women have already
13 been transferred to men's facilities notwithstanding the court's order.¹³ The Court should not proceed
14 to sentence Leniyah to BOP custody without further assurances from the government that she will not
15 be subject to these unlawful policies.

16 The uncertainty surrounding BOP compliance makes clear that Leniyah cannot depend on the
17 agency to provide her with consistent, medically necessary care during incarceration. Accordingly,
18 the Court should not impose a prison sentence.

19 The Ninth Circuit has been at the forefront of defining the constitutional floor for medical care
20 in custody—especially for transgender inmates. In *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir.
21 2019), the court affirmed an injunction requiring gender-affirming surgery for a transgender woman
22 in state custody, holding that denial of such treatment constituted deliberate indifference to serious
23 medical needs. *Edmo* emphasized that prison officials must provide medically necessary treatment for
24 gender dysphoria where a prisoner has shown that their gender dysphoria is sufficiently serious. *Id.*
25 at 785. The court further held that failure to do so exposed the claimant to “serious psychological
26

27
28 ¹³ Kaley Johnson and Sam Levin, *Trans women transferred to men's prisons despite rulings against Trump's order*, The Guardian (Mar. 7, 2025), https://www.theguardian.com/us-news/2025/mar/07/transgender-women-prison-trump?utm_source=chatgpt.com

1 distress and risk of self-harm.” *Id.* at 797.

2 Similarly, in *Rosati v. Igbino*, 791 F.3d 1037 (9th Cir. 2015), the court reinstated a
3 transgender inmate’s Eighth Amendment claim alleging denial of surgery, reiterating that gender-
4 affirming care is not elective but medically necessary. *See also Norsworthy v. Beard*, 87 F. Supp. 3d
5 1104 (N.D. Cal. 2015) (inmate stated Eighth Amendment deliberate indifference claim based on denial
6 of request for sex reassignment surgery). These precedents—within the Ninth Circuit—make clear
7 that the constitutional right to adequate medical treatment includes the right to gender-affirming care.
8 Despite this authority, the BOP has struggled to comply even with established standards of care.
9 Recent litigation and judicial findings confirm that transgender inmates continue to face systemic
10 delays, denial of treatment, and unsafe housing placements. *See Farmer*, 511 U.S. at 834-35 (prison
11 officials violate the Constitution when they disregard a substantial risk of serious harm). In light of
12 those realities, sentencing Leniyah to a lengthy term of imprisonment would almost certainly expose
13 her to constitutionally suspect conditions.

14 The Court should also consider the heightened danger Leniyah faces as a transgender woman in
15 federal custody following the Administration’s recent decision to halt federal funding for the National
16 Prison Rape Elimination Act (“PREA”) Resource Center. PREA, 34 U.S.C. § 30301, *et seq.*,
17 establishes binding national standards intended to prevent sexual assault and harassment in
18 correctional institutions. The Resource Center has long served as the primary body responsible for
19 training, auditing, and enforcing compliance with those standards within the Bureau of Prisons.

20 In April 2025, the Department of Justice announced it would suspend funding for the PREA
21 Resource Center and related technical-assistance grants.¹⁴ This defunding effectively eliminates the
22 mechanism by which facilities were monitored for compliance and deprives prison administrators of
23 guidance on how to protect vulnerable populations—including transgender women—from sexual
24 assault. The PREA standards explicitly require that housing and placement decisions for transgender
25 inmates be made on a case-by-case basis, taking into account the inmate’s gender identity and
26

27
28 ¹⁴ *See Reade Levinson, U.S. Ends Funding for Federal Prison Rape-Prevention Office*, Reuters (Apr. 17, 2025), available at <https://www.reuters.com/world/us/us-ends-funding-prison-rape-prevention-office-2025-04-17/> (last accessed Oct. 25, 2025).

1 expressed safety concerns. See 28 C.F.R. § 115.42(c)-(e).

2 Without federal oversight or funding for compliance audits, those protections are now largely
3 aspirational. Transgender women in federal custody have already been transferred to men’s facilities
4 despite the substantial risk of sexual violence. These developments compound the existing
5 uncertainty surrounding gender-affirming care within the Bureau of Prisons and demonstrate that
6 Leniyah’s safety cannot be assured in a custodial environment. To put it bluntly, to sentence Leniyah
7 to a lengthy sentence at a federal men’s prison, as the government and probation officer recommend,
8 will virtually guarantee that she remains subject to severe physical, emotional, and sexual abuse for
9 the foreseeable future. The Court, in good conscience, should not do such a thing.

10 Taken together, the rollback of PREA oversight and the instability of BOP policy toward
11 transgender inmates present a substantial risk of physical and psychological harm. Under 18 U.S.C. §
12 3553(a)(2)(D), the Court must consider that risk in determining a sentence that provides Leniyah with
13 “needed ... medical care ... in the most effective manner.” A downward variance—or alternative
14 noncustodial disposition—is necessary to protect her from the foreseeable dangers of incarceration in
15 a system now stripped of its primary rape-prevention safeguards.

16 In sum, § 3553(a)(2)(D) obliges the Court to tailor Leniyah’s sentence in recognition of her
17 specific medical vulnerabilities. When the government cannot meet a defendant’s medical needs, the
18 humane and lawful remedy is to impose a reduced custodial term or a noncustodial sentence that
19 permits effective treatment.

20 In Leniyah’s case, the evidence demonstrates that the BOP’s current and prospective policies
21 create an unacceptably high likelihood of medical neglect, emotional trauma, and physical danger. A
22 substantial custodial term would thus fail to “provide the defendant with needed ... medical care ...
23 in the most effective manner,” § 3553(a)(2)(D), and would instead impose a punishment that exceeds
24 what is necessary to achieve deterrence, protection of the public, or rehabilitation. The Court should
25 therefore vary downward and impose the least restrictive sentence consistent with justice—one that
26 protects Leniyah’s safety, preserves her access to gender-affirming treatment, and honors Congress’s
27 directive that sentences not be greater than necessary.

28 The alternative to a prison sentence is a relatively short further sentence that Leniyah can serve

1 out at the San Francisco County Jail. To be sure, Leniyah is not completely safe at the local jail. She
2 has been assaulted, and taken advantage of by older male inmates, even as she struggles to find
3 herself and grow up while detained in custody. The realistic alternative to a lengthy period of
4 incarceration is a heavily structured release plan that is monitored by care providers trained to support
5 and rescue young people caught in sex trafficking, her therapist and doctor, a case manager, her
6 attorneys, and U.S. Probation. The defense commissioned Leniyah's social worker and therapist, Ms.
7 Trang Nguyen, who assigned to Leniyah while she was still in the juvenile system, to prepare a plan
8 for Leniyah's future. Rizk Decl. Ex. NN.

9 The plan includes a structured and disciplined housing plan with two programs that are
10 prepared to accept Leniyah. Cameo House is operated by the Superior Court and S.F. Sheriff's Office
11 for young women in San Francisco who are transitioning out of custody, and it is an available short-
12 term option of Leniyah in the event that long-term bedspace is not immediately available at one of the
13 programs that is dedicated to rescuing women out of commercial sex exploitation. The long-term plan
14 for Leniyah is to reside at Restorative Pathways. Restorative pathways is a non-profit that is focused
15 on removing young people from trafficking environments. Its residences' locations are confidential
16 and residents may not have cellular phones for their own protection. It is designed for people like
17 Leniyah: 18-24 year-olds who are survivors of trafficking and domestic violence, who need case
18 management, counseling, responsive mental health services, legal advocacy, housing assistance for
19 the long-term, education & career coaching, and transportation. They have already interviewed
20 Leniyah and found her suitable for the program. It provides up to two years of housing, followed by
21 assistance transitioning into permanent affordable housing.

22 The defense expects the government and probation officer to argue that a program will not
23 serve Leniyah because she ran away from foster care programs when she was 15 years old. That
24 position should be rejected given that it is insensitive to the realities of what it is like to be taken from
25 your family as a child and sent to a rough group home hundreds of miles away. Many children run
26 away from foster care programs for the same reasons Leniyah did. Obviously, Leniyah is also a very
27 different person now, seven years older, and having been detained in custody for nearly two years. As
28 Ms. Nguyen's time with Leniyah has been productive and reveals a young person who is committed

1 and eager to turn a page in her life, and escape the extremely dangerous and toxic environment that
 2 led to Mr. Walupupu screaming at her on Crissy Field. Leniyah has dreams for the future. She wants
 3 a career, a meaningful romantic relationship, time with her dog Serenity, and some peace and quiet
 4 (which she has not had in two years at the jail). She is ready to be a partner in her own rehabilitation.
 5 The Court should such seek assurances from Leniyah herself, and then implement the release plan.
 6 Obviously, the Court retains supervision over Leniyah. However, if the Court elects to give Leniyah a
 7 further custodial sentence, the Court will be limited in ordering a maximum of three years of
 8 supervised release. By contrast, were the Court to impose a term of probation it could do so for up to
 9 five years, and would retain the ability to resentence Leniyah on the conviction if she were to violate
 10 the terms of her probation.

11 *Fourth*, and finally, the Court is charged with honoring the “need to avoid unwarranted
 12 sentence disparities among defendants with similar records who have been found guilty of similar
 13 conduct.” 18 U.S.C. § 3553(a)(6). This is an unusual federal case and there are very few datapoints in
 14 this district or nationally to which to compare it.

15 There is, however, another manslaughter case from the Presidio from the very same year that
 16 was handled by the same prosecutor now before the Court. That is *United States v. Low*, discussed
 17 above. The government’s handling of that case reaffirms that the government’s prejudice is at the
 18 heart of its handling of this case. Mr. Low is a white, male eighty-two-year-old who appears to have
 19 led a particularly comfortable and privileged life, at least according to the sentencing memorandum
 20 he submitted to Judge Donato. His parents were professionals (dentists). *United States v. Low*, 3:23-
 21 CR-439 JD, Def’s Sent. Memo (ECF No. 32), at 5. He went to the most coveted public high school in
 22 San Francisco—Lowell—and then went to Dartmouth College. *Id.* He then had the privilege of
 23 attending business school and earned a certificate from Harvard Business School. *Id.* He worked in
 24 “data processing” for decades before retiring comfortably. *Id.*

25 On April 4, 2023, after attending a reception where he drank wine, Mr. Low got in his car in
 26 the Presidio and promptly ran over and killed Ethan Boyes, a national cycling champion. Unlike Mr.
 27 Walupupu, Mr. Boyes was not drunk. He was not committing a crime. He did not threaten Mr. Low
 28 with death, or put his hands on Mr. Low. He was just run over and killed while riding his bike.

1 Although the government and defense counsel tried to make much of Mr. Low “accepting
2 responsibility” at the scene, the reality is that he had no other option. He was caught red handed in the
3 middle of the afternoon (4:55 p.m.) by horrified bystanders who pulled him out of the car and tried to
4 save Mr. Boyes. He was breathalyzed immediately.

5 Normally, when a drunk motorist runs over an innocent bicyclist in California, the motorist is
6 charged with a felony violation of California Penal Code § 191.5(a) for gross vehicular manslaughter
7 while being intoxicated. The penalties are four, six, or 10 years in prison. Here, inexplicably, the
8 same prosecutor before the Court in this case resolved a DUI vehicular manslaughter for a white,
9 male 82-year old for a misdemeanor conviction. Mr. Low was charged with involuntary manslaughter
10 (18 U.S.C. § 1112), but the government dismissed that count at Mr. Low’s request and instead
11 permitted him to plead to assimilated California Penal Code § 192(c)(2), a *misdemeanor*, at his
12 defense attorney’s suggestion. Not surprisingly, Judge Donato was aghast—and angry. Members of
13 the public wrote to the Court to complain that a drunk driver should not be given a misdemeanor for
14 killing an innocent cyclist. *See* ECF Nos. 14-17.

15 Remarkably, the same prosecutor in this case who could not admit that Mr. Walupupu was
16 drunk, argued like a defense attorney to Judge Donato that the evidence was equivocal as to Mr.
17 Low’s BAC—and allowed Mr. Low to admit in his plea agreement to the misdemeanor that his BAC
18 was somewhere between 0.04 and 0.09, i.e., somewhere between “impaired” and “legally
19 intoxicated.” *Id.*, Gov’t Sent. Memo (ECF No. 33) at 4. The same prosecutor then went on to argue
20 for a non-custodial sentence for this privileged, white, elderly drunk driver:

21 No sentence can bring Ethan back. His death was avoidable and Low is responsible. He will
22 have to live with that knowledge for the rest of his life. But that anguish pales in comparison to
23 that which is felt by Ethan’s mother, father, brothers, partner, friends, and fellow cyclists, for
24 they will have to live the rest of their lives without Ethan. The question, then, is not how to
25 make the world whole. We cannot. The question, instead, is what sentence achieves the goals
26 set forth in 18 U.S.C. § 3553(a). Based on the nature and circumstances of the offense, the
27 history and characteristics of the defendant, and the need to protect the public from further
28 crimes of the defendant, the government submits that 24 months’ probation is sufficient—but
not greater than necessary—to achieve the goals set forth in 18 U.S.C. § 3553(a).

Id. at 9-10.

The prejudice and hypocrisy of this U.S. Attorney’s Office is nothing short of breathtaking. As

the defense team argued to the jury, these prosecutors and FBI agents never believed Leniyah's story. They blamed her and they disbelieved her because of who she is. Thankfully, however, the jury believed Leniyah, even if the government now refuses to believe the jury's verdict. As government counsel has pointed out, no sentence can revive Mr. Walupupu. If probation is sufficient for a privileged, white male who drunkenly killed an innocent cyclist, then 24 months is surely sufficient for a young, impaired, Black transgender victim of trafficking who shot an older, drunk, ill, and violent "trick" who attacked her out of fear for her life.

In order to do justice and avoid unwarranted disparities pursuant to 18 U.S.C. § 3553(a)(6), the defense urges the Court to grant a 24-month sentence to Leniyah.

V. CONCLUSION

For all the reasons set forth above, Leniyah respectfully asks the Court to sentence her to a custodial sentence of 24 months, followed by three years of supervised release.

Dated: October 25, 2025

Respectfully submitted,



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