



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HAYES AND OTHERS v. THE UNITED KINGDOM

*(Applications nos. 56532/22 and 2 others –
see appended list)*

JUDGMENT

Art 3 • No risk of a sentence of life imprisonment without parole which would be irreducible *de facto* and *de jure* in event of applicants' extradition to, and conviction in, the USA • Domestic courts' failure to engage in first stage of *Sanchez-Sanchez v. the United Kingdom* [GC] test • Government's failure to rebut the presumption, in event of applicants' conviction on one charge, that the mandatory life sentence would be imposed • Compassionate release review mechanism satisfied second stage of *Sanchez-Sanchez* test • Review mechanism allowed US authorities "to consider a prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances" • Imposition of a mandatory life sentence would not be grossly disproportionate in view of the gravity of the offences charged

Prepared by the Registry. Does not bind the Court.

STRASBOURG

1 July 2025

FINAL

01/10/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Hayes and Others v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Tim Eicke,

Jovan Ilievski,

Gediminas Sagatys,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the applications (nos. 56532/22, 56889/22 and 3739/23) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three American nationals, Ms Valerie Perfect Hayes (“the first applicant”), Mrs Jennifer Amnott (“the second applicant”) and Mr Gary Blake Reburn (“the third applicant”), on the various dates indicated in the appended table;

the decision to give notice to the United Kingdom Government (“the Government”) of the complaints concerning Article 3 of the Convention;

the decision to indicate interim measures to the respondent Government under Rule 39 of the Rules of Court and the fact that these interim measures have been complied with;

the parties’ observations;

Having deliberated in private on 10 June 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The issue in the present case is whether the extradition of the applicants to the United States of America (“US”) would violate Article 3 of the Convention because, if convicted of the charges against them, they would face, *inter alia*, a mandatory sentence of life imprisonment without the possibility of parole.

THE FACTS

2. The applicants, who were born in 1980, 1985 and 1963 respectively, are currently detained in prisons in Scotland. The first applicant was represented by Ms J. Berlow-Rahman of Berlow Rahman Hassan Ltd., a firm of solicitors and notaries based in Glasgow. The second applicant was represented by Mr E. Gosney of CSG Legal, a firm of solicitors based in

Edinburgh. The third applicant was represented by Ms R. Houston of Houston Law, a firm of solicitors based in Glasgow. All three applicants have been granted legal aid.

3. The Government were represented by their Agent, Mr T. Manley of the Foreign, Commonwealth and Development Office.

4. The facts of the case may be summarised as follows.

I. THE EXTRADITION REQUEST

5. The US Government requested the applicants' extradition from the United Kingdom by reference to mutual treaty obligations. The request was governed by the Extradition Act 2003 (see *Sanchez-Sanchez v. the United Kingdom* [GC], no. 22854/20, § 24, 3 November 2022).

6. On 21 February 2019 the Scottish Ministers certified that the request was valid and made in the approved way.

7. The request was made on the basis of warrants dated 16 January 2019 issued by the District Court for the Western District of Virginia. The warrants "libelled" [gave notice to the applicants of] the following offences: (1) conspiracy to commit kidnapping involving children; (2) conspiracy to kill witnesses with intent to prevent communication to a federal law enforcement officer; (3) kidnapping; (4)-(8) attempted kidnapping of a child (relating to five children); (9)-(12) attempted killing of witnesses (being the four parents of the five children) with intent to prevent communication to a federal law enforcement officer; and (21)-(24) brandishing a firearm during a crime of violence, "to wit" [that is to say], attempted killing of a witness.

8. Although the warrants originally "libelled" further counts ((13)-(20)), the US Department of Justice subsequently confirmed that if the applicants were to be extradited, it would not proceed on those counts.

9. On charge (2) the minimum sentence is life imprisonment. The minimum sentence on each of charges (1) and (4)-(8) is twenty years, and the maximum is life imprisonment. There is no minimum sentence on charges (3) and (9)-(12). Charge (3) has a maximum sentence of life imprisonment and charges (9)-(12) have a maximum sentence of thirty years imprisonment. Charges (21)-(24) carry a minimum sentence of seven years imprisonment and a maximum sentence of life imprisonment.

II. BACKGROUND TO THE REQUEST

10. The allegations against the applicants are as follows. The second applicant and her husband, Frank Amnott, met the first applicant in 2015. The Amnotts were desperate to start a family and the first applicant told them that she had three children who had been "captured" and were in the custody of two Mennonite families in West Virginia. She told the Amnotts that if they helped her to recover her children they could keep one of the Mennonite

families' two other children. The third applicant was the first applicant's boyfriend. Together the two couples formed a plan which involved carrying out surveillance on the houses of the two Mennonite families; obtaining firearms; achieving armed entry to the two houses; securing the five children; and murdering their four parents by shooting them in the head.

11. On 28 July 2018 the first and third applicants travelled with Frank Amnott from Maryland to Virginia, while the second applicant remained in Maryland. On 29 July 2018 the first applicant, the third applicant and Frank Amnott entered the home of the first Mennonite family while they were at church to familiarise themselves with the layout. They returned after dark, with the third applicant and Frank Amnott carrying firearms, and forced their way inside the house. The father was secured in the basement but the mother managed to escape and call the police. When the police arrived the father was bound in the basement and Frank Amnott was holding him at gunpoint. The first and third applicants managed to escape, and shortly thereafter fled to Scotland with the second applicant.

12. Frank Amnott has pleaded guilty to charge (2) (see paragraph 7 above). According to the most recent information provided to the Court, on 12 February 2024, he has not yet been sentenced.

III. LETTER FROM THE US DEPARTMENT OF JUSTICE DATED 26 OCTOBER 2020

13. According to this letter, for counts (1) through to (12) (see paragraph 7 above) the sentencing court will have discretion to run the sentences either concurrently or consecutively, whereas on counts (21)-(24) sentences must run consecutively. Thus, the US Department of Justice acknowledged that if the applicants were convicted of every single charge, the minimum possible sentence would be a sentence of life imprisonment plus twenty-eight years.

14. However, according to the US Department of Justice the applicants would have several opportunities to avoid a mandatory sentence of life imprisonment. First of all, they would have the opportunity to attack the charges and have some or all of them dismissed. They could also file motions to attack the evidence, the venue and the jurisdiction. Should their cases proceed to trial they could be acquitted on one or all of the charges.

15. Furthermore, the applicants could plead guilty in exchange for a favourable sentence. Such negotiations occurred in virtually every federal prosecution in the US. Moreover, sentencing judges would have broad discretion to determine the appropriate sentence after a fact-finding process in which the applicants would have an opportunity to offer evidence. The applicants would also have a statutory right to appeal any sentence imposed if it were substantively or procedurally unreasonable in the circumstances of the case. It would even be possible to challenge a mandatory sentence of life imprisonment by arguing that it was cruel and unusual under the

Eighth Amendment of the US Constitution (see *United States v. Slatten*, 865 F. 3d 767 (D.C. Cir. 2017)).

16. If the applicants were sentenced to life imprisonment, and any appeal and/or habeas review was unsuccessful, they would have the following opportunities to reduce their sentence, despite the fact that there was no traditional parole available in the federal system.

17. First of all, the Federal Rules of Criminal Procedure authorised judges, upon a request from the prosecutor, either to reduce a sentence at the moment of imposing it or to reduce a previously imposed sentence to reflect a convicted defendant's assistance post-sentencing.

18. Secondly, there was the possibility of "compassionate release" (see paragraphs 49-52 below). Under this program, the Director of the Federal Bureau of Prisons would consider factors described in Title 18 of the United States Code ("U.S.C."), Section 3553(a) (see paragraph 47 below; see also *Sanchez-Sanchez*, cited above, §§ 59-62). The First Step Act 2018 allowed for an appeal against the denial of an application for compassionate release by the Bureau of Prisons (for further information about the First Step Act, see *Sanchez-Sanchez*, cited above, § 60). According to the US Department of Justice, since the implementation of the First Step Act several US courts had ordered the release of prisoners after their requests for compassionate release were denied by the Bureau of Prisons. Furthermore, in the first six months after the First Step Act went into effect, the Bureau of Prisons had granted 150% more of the compassionate release applications filed by prisoners than it had done the previous year.

19. Thirdly, the applicants could seek executive clemency in the form of a commutation or reduction in sentence (see paragraph 48 below; see also *Sanchez-Sanchez*, cited above, § 58). Such a request could be filed at any time after they began to serve their sentence, as long as all appeal rights against conviction and sentence had been exhausted. If a request was denied, they could reapply one year from the date of the President's denial action. There was no limit on the number of times they could apply for commutation. In considering such requests, the Office of the Pardon Attorney would take into account a variety of factors, including expressions of remorse and acceptance of responsibility.

20. Finally, the letter addressed the question of gross disproportionality. It noted that killing a human to prevent their communication to law enforcement or their testimony at trial was the ultimate perversion of the course of justice, and the US Congress had decided that it should be met with the most severe punishment applicable, regardless of whether the scheme was successful. In this case, it was hard to imagine a more egregious set of facts. The applicants had sought to eliminate the parents of young children as witnesses so they could successfully escape with their children, all of whom were under eight years old and were too young to fight back. The plot was

interrupted while it was unfolding, with the father of the first family bound and held at gunpoint, ready to be executed.

IV. THE APPLICANTS' CHALLENGE TO THEIR EXTRADITION

21. The applicants sought to challenge their extradition. Although they invoked a number of different grounds, the only ones maintained before the Court are as follows: that their extradition would be incompatible with Article 3 of the Convention because a mandatory sentence of life imprisonment on charge (2) (see paragraph 7 above) would be grossly disproportionate for a crime less than murder, and that a sentence of life imprisonment without parole would be irreducible.

A. The decision of the Sheriff

22. The Sheriff of Lothian and Borders handed down its judgment on 30 July 2021. The Sheriff held that the threshold of “grossly disproportionate” was a particularly difficult hurdle for the applicants to surmount (see, for example, *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 and 4 others, §§ 237-238, 10 April 2012 and *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, § 133, 17 January 2012). In his view, on the facts of the case the evidence on excessiveness was fundamentally lacking in quality and quantity to show that the likely sentences, at least on count (2), would be grossly disproportionate.

23. In considering the current law on the reducibility of sentences, the Sheriff had regard to the recent case-law of the Court, together with the domestic authorities. He noted that in *Trabelsi v. Belgium* (no. 140/10, ECHR 2014 (extracts)) the Court had decided that the remedies available under the US federal law of compassionate release and executive clemency did not satisfy the requirements of Article 3 of the Convention. However, the domestic courts had declined to follow *Trabelsi* (for further information about the relevant domestic case-law, see *Sanchez-Sanchez*, cited above, §§ 19-23 and 26-56). The Sheriff considered the approach taken by the High Court of England and Wales in *Sanchez v. Government of the United States of America* ([2020] EWHC 508) (for details of that domestic decision, see *Sanchez-Sanchez*, cited above, §§ 19-23) and *Hafeez v United States* ([2020] 1 WLR) (for details of that domestic decision, see *Sanchez-Sanchez*, cited above, §§ 48-56; see also *Hafeez v. the United Kingdom* (dec.), no. 14198/20, §§ 18-30, 28 March 2023) to be persuasive, although not binding, when dealing with a United Kingdom wide statute.

24. In assessing reducibility, the Sheriff did not consider relevant the possibility of a reduction in sentence for assistance given, since the Article 3 argument focused on post-sentence reduction for rehabilitation.

25. However, the US Government had given assurances that compassionate release and executive clemency were features of the US legal system, were exercised in the regulated manner, and were overseen by the judiciary or executive office. The Sheriff accepted that those assurances sufficiently mitigated the relevant risks. Even if the assurances had not been available, he considered that he was bound to follow decisions of the Supreme Court and House of Lords – in this case, the judgment of the House of Lords in *R(Wellington) v. Secretary of State for the Home Department* ([2008] UKHL 72) (see *Sanchez-Sanchez*, cited above, §§ 26-34). Even if he was not bound to follow *R(Wellington)*, he would in any event have followed the reasoning of the High Court in *Sanchez*, and found that *Trabelsi* (cited above) was properly to be regarded as an exceptional case, and did not form part of a clear and constant jurisprudence on the central issue of whether the Court’s Article 3 case-law should apply equally to non-Convention States in extradition cases.

26. In relation to compassionate release, he found that the grounds for seeking such release were considerably constrained in legal terms. Nevertheless, they were available *de facto* and *de jure*, and the process was a judicial one. Furthermore, repeated applications were possible. He similarly accepted that executive clemency was a process that did not ostensibly involve any consideration of justification on penological grounds, that it had unspecified criteria for awards, that it involved no issue of reasons, that it did not inform a prisoner what he or she had to do to qualify for clemency and under what conditions, and had no procedural safeguards such as judicial review. It was, however, available, there was a structure for such applications, and repeated applications were possible. As such, any sentence of life imprisonment would not be irreducible. The Sheriff accepted that the applicants would face considerable difficulty in obtaining either remedy, but did not consider that fact to be relevant since their difficulty stemmed entirely from the nature of their alleged crimes. Quoting Lord Hoffman in *R(Wellington)*, he observed that the requirement that the sentence be reducible could not mean that there had to be a real prospect of release for the prisoner in question. If that were the case, the more heinous the crime the stronger the claim would be not to be extradited.

B. The appeal to the High Court of Justiciary

27. The applicants were granted permission to appeal and the High Court of Justiciary handed down its judgment on 28 January 2022.

28. The court noted at the outset that the Sheriff had erred in finding that he was bound by the judgment of the House of Lords in *R(Wellington)*, since the Scottish courts were generally not bound by judgments of the Supreme Court and House of Lords. The Scottish courts were, however, bound to “take into account” the judgments of this Court in a matter involving Convention

rights, and, in a matter which applied across the whole of the United Kingdom, the Scottish courts would regard decisions of the Court of Appeal and High Court in England and Wales as persuasive.

29. The court refused the applicants' appeal. In its view, it was not possible to conclude that a sentence of life imprisonment without parole would be "grossly disproportionate" for the purposes of Article 3 of the Convention, given the extreme gravity of the crimes charged. With regard to reducibility, the Court also agreed broadly with the reasoning of the High Court of England and Wales in the cases of *Hafeez* and *Sanchez* (see paragraph 23 above). In *Babar Ahmad* and *Harkins and Edwards* (both cited above) this Court had acknowledged that a distinction was to be made between extraditions and removals within Contracting States and those involving non-Contracting States. It would therefore require a high level of ill-treatment, including death or torture, to amount to a bar on extradition to States with a long history of respect for democracy, human rights and the rule of law. Although the judiciaries in Europe might not agree with all aspects of the US penal system, it was not for them to insist upon that system abiding strictly by the Convention standards before granting an order for extradition. The system of compassionate release and executive clemency in the US criminal justice system was sufficient to meet the requirements of Article 3 in the extradition context, even if it might not be likely that the applicants would be afforded either remedy over time.

30. In conclusion, the court noted that:

"It may be that in the upcoming case of *Sanchez-Sanchez* the Grand Chamber of the European Court will follow this new [*Trabelsi*] line rather than the approach in earlier cases. If it does so, and holds that any prospective ill-treatment, in a country which has a long history of respect for democracy, human rights and the rule of law, is sufficient to bar extradition, that could have a profound influence on the practical operation of extradition treaties with non-Contracting States. It has the potential to create safe havens for fugitives from justice, who are charged with very serious crimes, including, as here, those perpetrated in their states of origin. That is not an attractive prospect. Application of the mainstream European Court jurisprudence, as illustrated in *Kafkaris*, *Harkins and Edwards* and [*Babar*] *Ahmad*, may be thought preferable for those parts of the world governed by the rule of law. It attaches considerable importance to the sovereignty principle under which the Convention should not be used as a means of imposing the criminal justice values of contracting States on non-Convention countries. It should require some obvious and serious form of ill-treatment to bar the extradition to a country such as the United States for the crimes of conspiracy to murder parents and to steal their children."

31. On 3 March 2022 the court refused to grant the applicants permission to appeal to the Supreme Court.

C. The Supreme Court

32. The applicants subsequently applied to the Supreme Court for permission to appeal. On 16 November 2022 they made further submissions

in which they relied on the judgment of the Grand Chamber in *Sanchez-Sanchez* (cited above), which had been handed down on 3 November 2022. On 8 December 2022 the Supreme Court refused permission to appeal as the applications did not raise an arguable point of law. It noted that “the scheme for compassionate release, as described in the sheriff’s findings, complies with paragraph 96 of the judgment in *Sanchez v Sanchez* [*sic*].”

V. INTERIM MEASURES

33. The applicants asked the Court to grant interim measures under Rule 39 of the Rules of Court to prevent their extradition to the US pending the determination of their substantive applications. The Court granted their requests on 13 December 2022, in the cases of the first and second applicants, and on 20 January 2023, in the case of the third applicant.

VI. LETTER FROM THE US DEPARTMENT OF JUSTICE DATED 3 NOVEMBER 2023

34. In this letter the US Attorney for the Western District of Virginia indicated that the applicants would be offered a plea bargain to offences other than the one carrying a mandatory sentence of life imprisonment, thereby allowing them to avoid facing this mandatory sentence. Furthermore, they could seek to reduce their sentence by cooperating with law enforcement and providing assistance to ongoing investigative and procedural efforts.

35. Moreover, under federal law, from the moment of sentencing there would be multiple review mechanisms in place allowing the US authorities to consider the applicants’ progress towards rehabilitation or any other ground for release based on their behaviour or other relevant personal circumstances. These review mechanisms would apply even if the applicants were convicted of the offence carrying a mandatory life sentence.

36. The principal mechanisms would be compassionate release and executive clemency.

37. According to the letter, the First Step Act, passed in 2018 (see paragraph 18 above), had effected a paradigm shift in how compassionate release functioned because it had empowered courts to grant compassionate release in response to a defendant’s request. US courts had ordered the release of thousands of defendants after their requests for compassionate release were denied or not addressed in a timely fashion by the Bureau of Prisons. In reviewing those petitions, courts had granted compassionate release based on a range of different circumstances, including health problems, family and childcare issues, or significant changes to preexisting sentencing paradigms. When evaluating these petitions, courts were obligated to consider not only the presence of extraordinary and compelling circumstances, but also the

factors set forth in Title 18, U.S.C., § 3553(a) (see paragraph 47 below; see also *Sanchez-Sanchez*, cited above, § 57), which included the nature of the crime, the defendant’s personal history (including his or her rehabilitative efforts), and the need to satisfy certain penological objectives, such as general and specific deterrence, just punishment, and protection of the community.

38. In 2023 the Sentencing Commission amended the existing federal sentencing guidelines, which provided guidance on when compassionate release was appropriate, and formally expanded the circumstances that might qualify as warranting a sentence reduction (see paragraph 51 below). To the extent that a defendant could show one of the circumstances described in the amended guidelines, and could also show that his or her continued or long-term incarceration did not serve the statutorily identified sentencing objectives (as set forth in Title, 18 U.S.C., § 3553(a) – see paragraph 47 below), that defendant would be eligible for a sentence reduction, and the court would be authorised to reduce that defendant’s sentence below any applicable statutorily required minimum.

39. In addition, the amendments to the federal sentencing guidelines provided that an “unusually long sentence” might constitute an extraordinary and compelling reason for relief where the defendant had served at least ten years of the sentence and there was a change in the law (other than to the sentencing guidelines) that created a “gross disparity” between the defendant’s sentence and the sentence that would be imposed under the changed law. Therefore, in the event there were post-hoc changes to the sentencing laws applicable to the applicants’ conduct, the applicants could petition, under the sentencing guidelines, for a sentence reduction on the basis of the changed law and, among other things, any evidence of rehabilitation.

40. Although rehabilitation alone was not a sufficient basis for relief, it routinely formed part of the court’s evaluation of the propriety of an early release in cases where defendants had otherwise shown extraordinary and compelling circumstances (see, for example, *Pepper v. United States*, 562 U.S. 476, 491 (2011) – quoted in paragraph 53 below). In 2022, district courts identified “rehabilitation” as a basis for granting a compassionate release petition in 9.1% of cases – a higher percentage than in 2020 and 2021 combined. The Fourth Circuit Court of Appeals, being the judicial appellate body that would possess the authority and jurisdiction to review the trial court rulings of the applicants’ compassionate-release petitions, had overturned denials of compassionate release petitions after concluding that the trial court’s review did not fully consider the extent or significance of a defendant’s rehabilitation (see, for example, *United States v. Gutierrez*, No. 21-7092, 2023 WL 245001, at *3-4 (4th Cir. Jan. 18, 2023) – quoted in paragraphs 57-58 below). Moreover, the district court for the Western District of Virginia, which was the judicial body that would consider any compassionate release petitions from the applicants post-conviction, along with federal courts in neighbouring districts, had routinely recognised

defendants’ rehabilitative efforts and relied on that evidence when granting a defendant an early release or sentence reduction, including in cases involving life sentences. The US Department of Justice referred to the following cases:

- *United States v. Hutson*, Case No. 1:10-CR-2, Dkt. No. 2021 (W.D.V.A. June 6, 2023) (reducing sentence from 300 months to 210 months because of post-hoc sentencing guidelines changes and the defendant’s rehabilitation);
- *United States v. Tyree*, Case No. 3:16-CR-22, Dkt. No. 343 (W.D.V.A. Feb. 11, 2022) (reducing defendants’ sentences from 225 months to 120 months and 360 months to 180 months because of post-hoc statutory changes to sentencing minimums as well as the defendants’ youth at the time of the offence, their minimal prior criminal history, and their rehabilitation while incarcerated);
- *United States v. Salam*, Case No. 7:12-CR-73, Dkt. No. 416 (W.D.V.A. Jan. 4, 2022) (reducing defendant’s sentence from 292 months to 235 months because of post-hoc sentencing guidelines changes and the defendant’s rehabilitative efforts while in prison);
- *United States v. Gibson*, 570 F. Supp. 3d 346, 356 (E.D. Va. 2021) (reducing defendant’s life sentence to 600 months in part because of his rehabilitation and community service efforts);
- *United States v. Johnson*, 2023 WL 5049267, at *4 (E.D. Va. Aug. 8, 2023) (reducing defendant’s two life sentences, plus 790 months, to 420 months after explaining that a ‘defendant’s “record of rehabilitation in the Bureau of Prisons ... is one factor that may weigh in favour of granting compassionate release” and recognizing the defendant’s “exceptional” efforts at rehabilitation – see paragraphs 59-61 below).

41. Notably, courts were authorised to reduce sentences notwithstanding any statutorily required mandatory-minimum sentences that might apply. Such sentence reductions had been affirmed by the Fourth Circuit Court of Appeals. For example, the court had affirmed the trial court’s decision to reduce a defendant’s mandatory minimum 35-year sentence to time served (approximately 17 years) after considering the defendant’s absence of prior criminal history, his significant rehabilitative efforts, and changes to the applicable statutory penalties (see *United States v. McCoy*, 981 F.3d 271, 277-78, 285-88 (4th Cir. 2020) – quoted in paragraphs 54-55 below).

42. Between October 2019 and October 2022, defendants throughout the US filed 27,789 compassionate release petitions; of those, 4,502 – or 16.2% – were granted. Within the Western District of Virginia, federal courts had adjudicated roughly 682 compassionate release petitions, and granted 81, meaning they had reduced defendants’ sentences in nearly 12% of filed cases.

43. If the district court denied the applicants’ motions for compassionate release, they could appeal to the US Court of Appeals for the Fourth Circuit. If the Fourth Circuit affirmed the district court’s denial of the application, they could petition the US Supreme Court to review their cases. The

applicants’ failure to obtain release on a motion for compassionate release would not prevent them from requesting release again, consistent with the procedures described above, particularly if there were changed circumstances.

44. The executive clemency process included an appraisal of several holistic factors bearing on the petitioner’s personal situation and characteristics (see paragraph 48 below). There were myriad examples of defendants having their sentences commuted. For example, on April 28, 2023, President Biden commuted the sentences of thirty-one defendants because they had “demonstrated a commitment to rehabilitation, including by securing employment and advancing their education.” Indeed, since taking office, President Biden had commuted the sentences of at least 106 defendants. Press releases from past administrations (both Democrats and Republicans) highlighting grants of clemency and commutation have similarly described defendants’ post-conviction acts of heroism, “successful rehabilitation,” acceptance of responsibility, work as a “model inmate,” completion of hundreds or thousands of hours of training and educational programming, and service in mentorship roles while incarcerated. If a defendant’s commutation application was denied by the President, the defendant could reapply for commutation one year from the date of the President’s denial action. There was no limit on the number of times an inmate could apply for commutation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

45. The relevant legal framework and practice in the United Kingdom is set out in *Sanchez-Sanchez* (cited above, §§ 24-56).

46. The relevant legal framework and practice in the US is as follows.

I. SENTENCING PRINCIPLES

47. The core sentencing principles under US law are found in Title 18, U.S.C., § 3553(a):

“(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
 - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.”

II. EXECUTIVE CLEMENCY

48. The basis for commutation of sentence pursuant to Executive Clemency is found in Article 2(II) of the US Constitution, which empowers the President to “grant reprieves and pardons for offences against the United States, except in cases of Impeachment”. Guidance published by the US Department of Justice reads as follows:

“Commutation of sentence is an extraordinary remedy. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age and meritorious service rendered to the Government by the petitioner e.g. cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors (such as demonstrated rehabilitation whilst in custody or exigent

circumstances unforeseen by the court at the time of sentencing) may also provide a basis for recommending commutation in the context of a particular case.”

III. COMPASSIONATE RELEASE

49. Pursuant to Title 18, U.S.C., § 3582(c)(1)(A):

“The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”

50. Sentences imposed under section 3559(c) include mandatory life imprisonment.

51. The federal sentencing guidelines, which provided guidance on when compassionate release was appropriate, were amended by the Sentencing Commission in 2023 (see paragraph 38 above). The amended § 1B1.13, titled “Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A) (Policy Statement)”, now reads, insofar as relevant:

“(b) EXTRAORDINARY AND COMPELLING REASONS.—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) MEDICAL CIRCUMSTANCES OF THE DEFENDANT.—

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

(B) The defendant is—

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

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

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(iii) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

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

(D) The defendant presents the following circumstances—

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

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

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

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

(3) FAMILY CIRCUMSTANCES OF THE DEFENDANT.—

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

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

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

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

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

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

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

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

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

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

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

52. Pursuant to Title 28, U.S.C., § 994(t), rehabilitation of the defendant alone is not considered an extraordinary and compelling reason for the purposes of this policy statement.

IV. *PEPPER v. UNITED STATES*, 562 U.S. 476 (2011)

53. In this case the Supreme Court held that when a defendant's sentence had been set aside on appeal, a district court at resentencing could consider evidence of the defendant's post-sentencing rehabilitation and that such evidence could, in appropriate cases, support a downward variance from the now-advisory Federal Sentencing Guidelines range. Justice Sotomayor delivered the opinion of the court, which read, insofar as relevant, as follows:

“evidence of post-sentencing rehabilitation may be highly relevant to several of the § 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing. For example, evidence of post-sentencing rehabilitation may plainly be relevant to ‘the history and characteristics of the defendant.’ § 3553(a)(1). Such evidence may also be pertinent to ‘the need for the sentence imposed’ to serve the general purposes of sentencing set forth in § 3553(a)(2)—in particular, 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 ... or other correctional treatment in the most effective manner.’ §§ 3553(a)(2)(B)–(D); see *McMannus*, 496 F. 3d, at 853 (Melloy, J., concurring) (‘In assessing ... deterrence, protection of the public, and rehabilitation, 18 U. S. C. § 3553(a)(2)(B)(C) & (D), there would seem to be no better evidence than a defendant's post-incarceration conduct’). 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’ to comply with the sentencing purposes set forth in § 3553(a)(2).

As the original sentencing judge recognized, the extensive evidence of Pepper's rehabilitation since his initial sentencing is clearly relevant to the selection of an

appropriate sentence in this case. Most fundamentally, evidence of Pepper’s conduct since his release from custody in June 2005 provides the most up-to-date picture of Pepper’s ‘history and characteristics.’ § 3553(a)(1); see *United States v. Bryson*, 229 F.3d 425, 426 (CA2 2000) (‘[A] court’s duty is always to sentence the defendant as he stands before the court on the day of sentencing’). At the time of his initial sentencing in 2004, Pepper was a 25-year-old drug addict who was unemployed, estranged from his family, and had recently sold drugs as part of a methamphetamine conspiracy. By the time of his second resentencing in 2009, Pepper had been drug-free for nearly five years, had attended college and achieved high grades, was a top employee at his job slated for a promotion, had re-established a relationship with his father, and was married and supporting his wife’s daughter. There is no question that this evidence of Pepper’s conduct since his initial sentencing constitutes a critical part of the ‘history and characteristics’ of a defendant that Congress intended sentencing courts to consider. § 3553(a).

Pepper’s post-sentencing conduct also sheds light on the likelihood that he will engage in future criminal conduct, a central factor that district courts must assess when imposing sentence. See §§ 3553(a)(2)(B)–(C); *Gall*, 552 U. S., at 59 (‘Gall’s self-motivated rehabilitation ... lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts’ (citing §§ 3553(a)(2)(B)–(C))). As recognized by Pepper’s probation officer, Pepper’s steady employment, as well as his successful completion of a 500-hour drug treatment program and his drug-free condition, also suggest a diminished need for ‘educational or vocational training ... or other correctional treatment.’ § 3553(a)(2)(D). Finally, Pepper’s exemplary post-sentencing conduct may be taken as the most accurate indicator of ‘his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him.’ *Ashe*, 302 U. S., at 55. Accordingly, evidence of Pepper’s post-sentencing rehabilitation bears directly on the District Court’s overarching duty to ‘impose a sentence sufficient, but not greater than necessary’ to serve the purposes of sentencing. § 3553(a).”

V. *UNITED STATES v. MCCOY*, 981 F.3D 271 (4TH CIR. 2020)

54. The defendants in these consolidated appeals were convicted of robberies and accompanying firearms violations. Their sentences were “stacked”, exposing them to additional mandatory minimums and leading to sentences ranging from thirty-five to fifty-three years of imprisonment. After the defendants’ convictions became final, Congress passed the First Step Act (see paragraph 18 above) and ended sentence “stacking” in such cases. Following the adoption of the First Step Act the defendants’ sentences would have been dramatically shorter – in most cases, by thirty years – than the ones they received.

55. As the First Step Act also significantly expanded access to compassionate release and empowered courts to reduce sentences for “extraordinary and compelling reasons”, the defendants moved for reductions in their sentences under Title 18, U.S.C., § 3582(c)(1)(A) (see paragraph 49 above), relying primarily on the length of their sentences and the disparity between their sentences and those that Congress deemed appropriate in the First Step Act. After considering each defendant’s individual circumstances

– including their youth at the time of the offenses, their lack of significant prior criminal history, their exemplary behaviour and rehabilitation in prison, and their already-substantial years of incarceration – the district courts granted the defendants’ motions and reduced their sentences to time served.

56. The judgments of the district courts were subsequently affirmed by the Court of Appeals for the Fourth Circuit. It concluded:

“The district courts in these cases appropriately exercised the discretion conferred by Congress and cabined by the statutory requirements of § 3582(c)(1)(A). We see no error in their reliance on the length of the defendants’ sentences, and the dramatic degree to which they exceed what Congress now deems appropriate, in finding ‘extraordinary and compelling reasons’ for potential sentence reductions. The courts took seriously the requirement that they conduct individualized inquiries, basing relief not only on the First Step Act’s change to sentencing law under § 924(c) but also on such factors as the defendants’ relative youth at the time of their offenses, their post-sentencing conduct and rehabilitation, and the very substantial terms of imprisonment they already served. Those individualized determinations were neither inconsistent with any ‘applicable’ Sentencing Commission guidance nor tantamount to wholesale retroactive application of the First Step Act’s amendments to § 924(c). Accordingly, we affirm the judgments of the district courts.”

VI. *UNITED STATES v. GUTIERREZ*, NO. 21-7092 (4TH CIR. JAN. 18, 2023)

57. Jose Gutierrez was convicted of conspiring to import and distribute large quantities of cocaine and marijuana, and sentenced to a prison term of 40 years. In 2021, after serving 16 years of his term, Gutierrez filed an emergency motion for compassionate release under Title 18 U.S.C. § 3582(c)(1)(A) (see paragraph 49 above). For an “extraordinary and compelling” reason warranting release, Gutierrez relied primarily on his vulnerability to COVID-19. In arguing that the § 3553(a) sentencing factors (see paragraph 47 above) weighed in favour of relief, Gutierrez relied on extensive evidence of rehabilitation during the sixteen years he had spent in prison. The district court denied relief in a form order, with a brief explanation focused on the severity of Gutierrez’s original criminal behaviour.

58. On appeal, Gutierrez argued that the district court did not adequately explain its denial of his motion. The Court of Appeals for the Fourth Circuit agreed, finding that in the circumstances of the case, Gutierrez’s significant evidence of post-sentencing rehabilitation required a more robust and individualised explanation than that provided by the district court. Accordingly, it vacated the district court’s denial of compassionate release and remanded it for reconsideration and a fuller explanation.

“There is no ‘categorical explanation requirement’ mandating that a district court ‘address each of a defendant’s arguments’ when it rules on a compassionate-release motion. See *High*, 997 F.3d at 187 (internal quotation marks omitted). As noted above, a district court must consider the § 3553(a) sentencing factors in deciding whether to exercise its discretion to grant relief under § 3582(c)(1)(A)(i). See *id.* at 185–86. But

that does not mean, as this court has emphasized, that a district court must ‘provide an exhaustive explanation analyzing every § 3553(a) factor.’ *United States v. Jenkins*, 22 F.4th 162, 170 (4th Cir. 2021). Instead, the touchstone inquiry is ‘whether the district court set forth enough to satisfy our court that it has considered the parties’ arguments and has a reasoned basis for exercising its own legal decision making authority, so as to allow for meaningful appellate review.’ *High*, 997 F.3d at 190 (cleaned up). How much explanation is ‘enough’ depends on the complexity of a given case. See *Jenkins*, 22 F.4th at 170; *High*, 997 F.3d at 188–89. The Supreme Court made clear in *Chavez-Meza v. United States*, 138 S. Ct. 1959 (2018), that there is a category of ‘relatively simple’ cases in which a ‘minimal explanation’ will suffice. *High*, 997 F.3d at 188–89 (cleaned up) (quoting *Chavez-Meza*, 138 S. Ct. at 1967–68). In other cases, however, ‘a more complete explanation’ may be required. *Id.* at 188 (quoting *Chavez-Meza*, 138 S. Ct. at 1965); see *Martin*, 916 F.3d at 395–96 (discussing *Chavez-Meza*’s distinction between simple cases requiring little explanation and other cases in which ‘more explanation’ is necessary).

In this case, Gutierrez came forward with the kind of significant and extensive evidence of post-sentencing rehabilitation that takes a case out of the ‘simple’ category and necessitates a ‘more robust’ and ‘individualized’ explanation. See *Martin*, 916 F.3d at 396; *United States v. McDonald*, 986 F.3d 402, 412 (4th Cir. 2021). We explained this principle in our *Martin* and *McDonald* cases, in which the defendants, over the course of long prison terms, ‘utilized the resources and programming they could access in prison to work toward rehabilitation’, see *McDonald*, 986 F.3d at 412, earning GEDs, working with and mentoring other inmates, and compiling exemplary disciplinary records, see *id.* at 411; *Martin*, 916 F.3d at 396 (describing successful completion of GED, tutoring of other inmates, and exemplary behavior while incarcerated as a ‘mountain of new mitigating evidence’). Given that ‘significant amount’ of post-sentencing mitigation evidence, we concluded, these were cases of ‘the more complex type contemplated in *Chavez-Meza*’ and thus necessitated a ‘more robust and detailed explanation.’ *High*, 997 F.3d at 190 (internal quotation marks omitted).

At oral argument, the government argued against application of *Martin* and *McDonald*, pointing instead to *High*, in which we found no need for a more detailed explanation where a defendant, over a roughly 18-month period, had taken drug education classes and avoided disciplinary infractions. See *High*, 997 F.3d at 190. We think that comparison badly understates the weight of Gutierrez’s evidence. Gutierrez’s unblemished disciplinary record extends for close to 17 years – just like the defendants in *Martin* and *McDonald*. See *McDonald*, 986 F.3d at 412 (noting that defendants in both cases showed evidence spanning ‘nearly two decades in prison’). And if anything, Gutierrez has presented more than the ‘mountain of new mitigating evidence’ we relied on in *Martin*, 916 F.3d at 396, and *McDonald*: like the defendants in those cases, Gutierrez has earned a GED, but he also has taken college classes that will lead to an associate degree; he has received vocational training certificates in carpentry and welding; he has become a welding teacher; and he has mentored other inmates and served as a recreation aide. All of this is attested to in the documentary evidence submitted with his motion, along with a Bureau of Prisons assessment that puts him at low risk of recidivism. This is a far cry from the taking of ‘various educational courses’ that we considered in *High*. *High*, 997 F.3d at 190.”

VII. *UNITED STATES v. JOHNSON*, 1:97-CR-314-AJT (E.D. VA. AUG. 8, 2023)

59. In 1998 the defendant was convicted of twelve offences linked to his engagement in large-scale illegal drug distribution in four states and the District of Columbia. In total, he was sentenced to two life terms plus 790 months imprisonment consecutive to his life sentences. In February 2021 the defendant requested compassionate release from the warden at FCI Hazelton. The following month he filed a Motion for Compassionate Release, largely based on his stacked sentences, his age at the time of the offence, and the risk factors associated with COVID-19. In May 2021, Johnson filed another compassionate release request with the warden, also detailing his personal background, good behaviour in prison, sentencing under a since-changed statute, familial support, remorse, and pledge to not reoffend. The United States District Court, in the Eastern District of Virginia, Alexandria Division, said the following:

“Johnson points centrally to his rehabilitation as an extraordinary and compelling reason for relief. While rehabilitation alone may not constitute the extraordinary and compelling reason for relief, 28 U.S.C. § 994(t), it may be considered among other factors. *McCoy*, 981 F.3d at 286 n.8 (‘there is no indication that successful rehabilitation efforts may not be considered *as one among other factors* under § 3582(c)(1)(A)(i)’ (emphasis added)). Consequently, a strong record of rehabilitation in the Bureau of Prisons (“BOP”) is one factor that may weigh in favor of granting compassionate release. *Id.* at 286 (affirming district courts’ grants of compassionate release and noting defendants ‘had established excellent institutional records and taken substantial steps toward rehabilitation’).

There is no doubt that in the more than quarter-century that Johnson has spent in the BOP for his offenses, he has engaged in activities that reflect an extraordinary commitment to rehabilitation. He has been a model inmate for over a decade, a fact that the Government does not appear to dispute. He has received dozens of certificates, completed nearly 1,000 hours of education classes, and served as an instructor in the Bounce Back Transition Unit Program. [Doc. No. 699] at 12-13. He has taken a variety of career-related classes, including passing the West Virginia electrician license exam and graduating with high marks from a paralegal program. *Id.* at 13. He has also attended victim impact, violence prevention, and critical thinking classes and taught and mentored others in both formal and informal roles. *Id.* In particular, Johnson has participated in the Inside-Out Prison Exchange Program and has worked with college students, as both an inmate-student and facilitator, to study social justice issues and ways to reduce recidivism. *Id.* at 14. He is also involved in a think tank program that aims to reduce recidivism and assist with re-entry. *Id.* At 14-15. He has also participated in other programs, and the record contains numerous letters from other inmates about his mentorship, continued relationship with his family, and reduction in his BOP risk assessment. *Id.* at 16-18. BOP staff have even recognized Johnson as ‘instrumental to aiding other inmates in the Transition Unit in pursuit of their release and re-entry goals’ and that he ‘can be counted on to lead his peers by example.’ [Doc. No. 699-3] at 4.

In summary, Johnson’s efforts at rehabilitation have been exceptional, particularly given so much of his rehabilitative activities occurred before passage of the First Step Act when there were no significant prospects for release and it appeared that he would

serve his life sentences without reduction, reflecting that his motivations for rehabilitation are by all indications sincere. Notwithstanding the extremely serious conduct that gave rise to Johnson’s incarceration, and that rehabilitation alone cannot be grounds for relief, Johnson’s rehabilitation weighs heavily in his favor. See *United States v. Gray*, No. CCB-95-364, 2021 WL 1856649, at *6 (D. Md. May 10, 2021) (granting compassionate release and noting ‘other federal district courts have reduced once-mandatory life sentences of defendants who, like [the defendant], were convicted of murder under 18 U.S.C. 1959(a)(1) when they were very young and, with no possibility of release, afterwards committed their lives to their rehabilitation and to mentoring others’) (citations omitted).”

60. The court went on to consider other factors, including the defendant’s age at the time of his offences, the horrific childhood he endured, sentencing disparities between his sentences and those of his co-accused, the consequences of sentence stacking, and changes in sentencing policy. It concluded that extraordinary and compelling reasons existed to justify a sentence reduction.

61. It then proceeded to the § 3553(a) analysis (see paragraph 47 above) and found that, on balance, these factors counselled in favour of a substantial sentence of years less than life in prison. Accordingly, it reduced the defendant’s sentence to a total period of incarceration of 420 months, or 35 years, with credit for time served and before application of any good time or other credits.

THE LAW

I. JOINDER OF THE APPLICATIONS

62. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicants complained that their extradition to the US would violate their rights under Article 3 of the Convention because there is a real risk that if convicted they would receive a sentence of life imprisonment without parole, which would be irreducible *de facto* and *de jure*, and because a mandatory life sentence on count (2) (see paragraph 7 above) would be grossly disproportionate.

Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

64. The Government argued that the applicants' complaints were inadmissible as manifestly ill-founded. However, the Court is of the opinion that the complaints raise sufficiently complex issues of fact and law, so that they cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is further satisfied that they are not inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicants

65. The applicants argued that their extradition would be incompatible with Article 3 of the Convention on two grounds: a sentence on count (2) (see paragraph 7 above) of mandatory life imprisonment would be grossly disproportionate, and the sentences faced by the applicants of mandatory life imprisonment and a fixed term of imprisonment exceeding their natural lives would be irreducible.

66. With regard to the first ground, the applicants argued that a mandatory sentence of life imprisonment would be grossly disproportionate for a crime that did not involve homicide or even attempted homicide. There was an important distinction between crimes of homicide which had been completed or reached the stage of attempt, and those – like the case in hand – that had not.

67. With regard to the second ground, the applicants argued that they passed the first stage of the test in *Sanchez-Sanchez v. the United Kingdom* ([GC], no. 22854/20, §§ 95-97 and 100, 3 November 2022), namely that, in the event of their conviction, there would exist a real risk that a sentence of life imprisonment without parole would be imposed without due consideration of all the relevant mitigating and aggravating factors. Although the US Department of Justice contends in its letter of 3 November 2023 that they will be offered a plea bargain (see paragraph 34 above), no such offer was made during the original extradition proceedings or during the appeal process, and no formal intimation of the detail of any such plea bargain had been received by the applicants' representatives. If the US Government had been minded to remove the risk of a mandatory life sentence, the appropriate course would have been to accede to the motion to discharge the applicants from the request for extradition in relation to count (2) on the indictment. No such assurance had been proffered.

68. In any event, even if the risk arising in relation to count (2) were removed, there remained substantial grounds for believing that the applicants were at real risk of a life sentence (or its equivalent) without parole, as

counts (1), (4) and (8) on the indictment (see paragraph 7 above) carried a minimum sentence of twenty years imprisonment and a maximum sentence of life imprisonment; count (3) carried a maximum sentence of life imprisonment; and counts (9)-(13) carried maximum sentences of thirty years. These sentences could be ordered to run consecutively.

69. Insofar as the Government sought to argue that the applicants' sentence could be reduced in the event of their providing "substantial assistance" to the US authorities (see paragraph 80 below), they submitted that no indication had ever been given as to the assistance the US authorities considered that they could provide. Frank Amnott, the husband of the second applicant and the fourth member of the conspiracy the applicants were alleged to have been part of, had been arrested at the scene of the crime and pled guilty (see paragraphs 10-12 above). It was understood that he had offered substantial assistance to the authorities and it was anticipated that he would give incriminating evidence against the applicants at trial. In those circumstances, there was no obvious scope for any of the applicants to provide substantial assistance, even if they were minded to do so (which they were not).

70. In respect of the second stage of the *Sanchez-Sanchez* test, the applicants contended that under the US federal system there did not exist a mechanism for review of the sentence which would allow the authorities to consider their progress towards rehabilitation or any other ground for release based on their behaviour or other relevant personal circumstances. While paragraphs 96 and 97 of *Sanchez-Sanchez* stated the second limb of the test slightly differently (the former required the review mechanism to consider progress towards rehabilitation, while the latter required it to consider progress towards rehabilitation "or other relevant personal circumstances"), in the applicants' view the "or" could not imply alternatives. Consequently, a system which expressly prohibited an application for compassionate release being made or granted on grounds of rehabilitation alone failed to meet this stage of the test. To decide otherwise would be for the Court to say that there could never come a point where a prisoner's rehabilitation was so complete as to outweigh other penological grounds (of punishment, public protection and deterrence).

71. In the US federal system there were two mechanisms for review of a life sentence: executive clemency and compassionate release. The Sheriff had concluded that the system of executive clemency did not ostensibly involve any consideration of the justification of continued detention on legitimate penological grounds (see paragraph 26 above). While the Government suggested that it was enough for the President to be able to consider legitimate penological grounds (see paragraph 79 below), the applicants argued that in order to satisfy the second stage of the test in *Sanchez-Sanchez*, the President would have to be *required* to assess whether continued detention was justified on legitimate penological grounds. Absent such a requirement, executive

clemency was the modern day equivalent of the Royal prerogative of mercy from which it derived. Furthermore, there were no published criteria for making an application, and no published criteria for granting one – press releases therefore had to be relied on as reasons for clemency decisions. Consequently, the applicants argued that the US system of executive clemency was arbitrary and lacked any transparency as to what the considerations truly were.

72. Compassionate release, on the other hand, required “extraordinary and compelling reasons” (see paragraph 51 above). The law expressly excluded release on grounds of rehabilitation alone, and no example had been given at any stage of the proceedings where any federal court had granted an application in respect of a mandatory life sentence.

(b) The Government

73. The Government did not accept that the first stage of the *Sanchez-Sanchez* test (see *Sanchez-Sanchez*, cited above, §§ 96-97 and 100) had been met. Although one of the offences of which the applicants stood accused in the US was an offence which attracted a mandatory sentence of life imprisonment, there were nevertheless mechanisms by which the applicants could avoid such a sentence. In particular, the US prosecutor had confirmed that he would offer the applicants a plea bargain which would enable them to plead guilty to offences which did not carry a mandatory life sentence, thereby allowing them to avoid such a sentence being imposed on them (see paragraph 34 above). It followed that there would be no real risk that they would receive a mandatory life sentence if they pleaded guilty. If they did not plead guilty, the question of sentence would only arise if they were convicted by a jury.

74. Even if a sentence of life imprisonment was imposed, there were at least two mechanisms, namely executive clemency and compassionate release, which could be used to assess changes in the life prisoner and progress towards rehabilitation and which would provide the prospect of release in appropriate cases. The Government submitted that either mechanism would satisfy the second stage of the *Sanchez-Sanchez* test (see *Sanchez-Sanchez*, cited above, §§ 96-97 and 100).

75. According to the Government, the purpose of the system of compassionate release appeared to correspond exactly to the purpose of the review mechanism required by the Court. That purpose was to reflect the fact that there could develop situations in which the full rigour of a whole life sentence, although appropriate at the time when it was imposed, should be mitigated. Those situations were likely by their nature to be unusual, but the system of compassionate release prevented the law from operating inflexibly. In addition, the purposes of sentencing in US federal law (U.S.C. §3553(a) – see paragraph 47 above), which the court was required to consider when adjudicating upon any petition for compassionate release, corresponded

directly to the penological purposes of sentencing identified by the Court: namely, punishment, deterrence, public protection and rehabilitation.

76. Moreover, the process of considering compassionate release involved the assessment of changes in the prisoner, progress towards rehabilitation, and the prisoner's behaviour. The court was specifically obliged to consider matters which included the prisoner's rehabilitation efforts. In this regard, the letter from the US Department of Justice had referenced *Pepper v. United States* (562 U.S. 476, 491 (2011)), in which it was held that "evidence of post-sentencing rehabilitation may be highly relevant to several of the §3553(a) factors that Congress has expressly instructed district courts to consider at sentencing" (see paragraphs 40 and 53 above). The US Department of Justice had also identified many specific examples of the court before which the applicants would be tried and/or sentenced, and neighbouring courts, granting early release or sentence reduction having recognised a prisoner's rehabilitative efforts (see paragraph 42 above).

77. Therefore, while rehabilitation was not by itself a ground for release, the compassionate release mechanism allowed the domestic authorities to consider progress towards rehabilitation or any other ground for release based on the convict's behaviour or other relevant personal circumstances. While procedural safeguards were not relevant in the extradition context, it was nevertheless noteworthy that applications for compassionate release were heard by an independent court, before which the prisoner had a right to representation and any decision was subject to the possibility of appeal, including ultimately to the Supreme Court; and that applications could be made and renewed throughout a prisoner's sentence.

78. Executive clemency was also a review mechanism capable of satisfying the second stage of the *Sanchez-Sanchez* test (see *Sanchez-Sanchez*, cited above, §§ 96-97 and 100). Applications for executive clemency were processed by the Office of the Pardon Attorney, which carried out an appraisal of several holistic factors bearing on the petitioner's personal situation and characteristics. In particular, the Justice Manual referred to "meritorious service rendered to the Government by the petitioner" and "demonstrated rehabilitation" (see paragraph 48 above).

79. The evidence indicated that rehabilitation was not only a theoretical basis on which Presidents could commute sentences but a basis on which they actually did commute sentences (see paragraph 44 above). While a decision not to commute a sentence was not subject to judicial review, the Court had repeatedly held that it was not for it to prescribe whether the mechanism for sentence review should be executive or judicial, and executive clemency had been found to be an acceptable review mechanism even in the domestic context. Moreover, the purpose of the system of executive clemency, like that of compassionate release, corresponded exactly to the purpose of the review mechanism required by the Court, as it ensured the existence of a mechanism by which sentences which were merited when they were imposed could be

looked at again to reflect changes in the prisoner and his or her surrounding circumstances, and to ensure that the law did not operate inflexibly or deprive prisoners of all hope of rehabilitation or release.

80. While it did not involve a holistic assessment of rehabilitation, the Government pointed out that the applicants could also seek a sentence reduction based on the provision of “substantial assistance” to the prosecuting authorities. This could result in a reduction of sentence irrespective of any mandatory minimum.

81. Finally, the Government argued that on the facts of the case a mandatory sentence of life imprisonment would not be grossly disproportionate. The Convention did not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder, and it was hard to imagine a more egregious set of facts than the present. According to the allegations against the applicants, their plan had involved obtaining firearms, achieving armed entry to two private homes, kidnapping five children (all of whom were under the age of eight) and murdering their four parents with a view to eliminating them as witnesses to the kidnaps. The plan had proceeded to the extent of one of the parents being bound to a chair in the basement of his home and held at gunpoint ready to be executed when law enforcement intervened. Although the victims did not die, the fact that the applicants were in the course of carrying out the agreed plan when the police arrived meant that although the full intended harm was prevented, the level of culpability involved in the alleged offending was not greatly reduced.

2. *The Court’s assessment*

(a) **General principles**

82. An overview of the general principles to be applied in cases concerning sentences of life imprisonment without parole in the domestic and extradition contexts can be found in *Sanchez-Sanchez* (cited above, §§ 78-99).

83. The relevant principles to be applied in the domestic context are set out in more detail in *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, §§ 104-122, ECHR 2013 (extracts)).

84. The approach to be taken in the extradition context can be found in *Sanchez-Sanchez* (cited above, §§ 90-99).

85. The Court’s approach to “grossly disproportionate” sentences can be found in *Babar Ahmad and Others v. the United Kingdom* (nos. 24027/07 and 4 others, §§ 237-239 and 242, 10 April 2012).

(b) **Application of those principles to the facts of the case at hand**

86. The Court will first consider whether there are substantial grounds for believing that, in the event of their conviction of the offences on the indictment, there is a real risk that the applicants would be sentenced to life

imprisonment without parole (the first stage of the *Sanchez-Sanchez* test). If that question is answered in the affirmative, it will then consider whether, from the moment of sentencing, there would be in place a review mechanism satisfying the second stage of the *Sanchez-Sanchez* test, before considering whether, on the facts of the case, a mandatory sentence of life imprisonment on count (2) would be “grossly disproportionate”.

- (i) *Is there a real risk that a sentence of life imprisonment without parole would be imposed on the applicants?*

87. In answering this question the Court should normally take as its starting point the assessment of the national courts, which had the opportunity to conduct a detailed assessment of the evidence in proceedings to which the US was a party (see *Sanchez-Sanchez*, cited above, § 101). However, in the present case the national courts focused on the question of reducibility, in other words the second stage of the *Sanchez-Sanchez* test, having apparently assumed that the first stage was satisfied (see paragraph 32 above). It therefore falls to the Court to examine the evidence submitted on the risk of imposition of a sentence of life imprisonment without parole.

88. While it is in principle for the applicants to demonstrate that a whole life sentence would be imposed (see *Sanchez-Sanchez*, cited above, 95), in the present case they appear to rely solely on the fact that – unlike the applicants in *Sanchez-Sanchez* (cited above), *Hafeez v. the United Kingdom* ((dec.), no. 14198/20, 28 March 2023), *Lang v. Ukraine* (no. 49134/20, 9 November 2023), *Horne v. the United Kingdom* ((dec.), no. 34392/21, 13 February 2024), *Lazăr v. Romania* (no. 20183/21, 9 April 2024), and *Matthews and Johnson v. Romania* (nos. 19124/21 and 20085/21, 9 April 2024), who faced discretionary life sentences in the event of conviction, and the applicant in *Bijan Balahan v. Sweden* (no. 9839/22, 29 June 2023), who faced, at most, the prospect of life imprisonment with eligibility for parole – they face, in respect of count (2) (see paragraph 7 above), a mandatory sentence of life without parole.

89. In *Sanchez-Sanchez* (cited above, § 95) the Court held that a real risk of a sentence of life imprisonment without parole would “more readily be established” where an applicant faced a mandatory sentence of life imprisonment. It did not suggest that such a risk would be established automatically. However, in view of the restrictions on judicial discretion in such cases, it is not entirely clear what further evidence an applicant could be expected to adduce in order to demonstrate the existence of a real risk that a sentence of life imprisonment without parole would be imposed. Evidence of the kind considered by the Court in *Sanchez-Sanchez* (which included sentencing practice and the treatment of co-conspirators or other defendants with similar records to the applicant – see *Sanchez-Sanchez*, cited above, §§ 104-108) is of considerably greater significance where a criminal charge carries a discretionary, as opposed to a mandatory, life sentence. Therefore,

in cases such as the present, in which the applicants face a mandatory sentence of life imprisonment in the event of their conviction on count (2), there will exist a rebuttable presumption that the first stage of the *Sanchez-Sanchez* test has been met. Accordingly, it is for the Government to demonstrate that on the facts of the case the mandatory minimum sentence would not be imposed.

90. In this regard, the Government relied on two arguments. First of all, they contended that in view of the US prosecutor's assurance that the applicants will be offered a plea bargain (see paragraph 34 above), if they pleaded guilty they could avoid the imposition of a mandatory sentence of life imprisonment (see paragraph 73 above). Secondly, they submitted that the sentencing judge would have discretion to reduce even a mandatory life sentence were the applicants to provide "substantial assistance" to the prosecuting authorities (see paragraphs 34 and 80 above).

91. In respect of the first argument, the Court has made it clear that it cannot base its assessment of risk on the likely sentence an applicant would receive if he or she were to plead guilty (see *Sanchez-Sanchez*, cited above, § 108). Consequently, the availability of a plea bargain in the event of a guilty plea cannot be a relevant consideration in its assessment of risk.

92. With regard to the second argument, the Court has recognised that many factors contribute to the imposition of a sentence, and that the length of a prison sentence might be affected by pre-trial factors, such as the defendant agreeing to cooperate with the US Government (see *Sanchez-Sanchez*, cited above, § 108, with references therein). In the present case, however, the applicants submitted that no indication had ever been given as to the assistance the US authorities considered that they could provide; and that in any event there was no obvious scope for them to provide assistance since Frank Amnott, the husband of the second applicant and the fourth member of the conspiracy the applicants were alleged to have been part of, had been arrested at the scene of the crime and pled guilty (see paragraphs 11 and 12 above). It was understood that he had offered substantial assistance to the authorities and it was anticipated that he would give incriminating evidence against the applicants at trial (see paragraph 69 above). The Government have not sought to challenge either submission and have not, therefore, rebutted the presumption that in the event of the applicants' conviction on the second charge, the mandatory minimum sentence of life imprisonment would be imposed.

93. Accordingly, on the facts of the case, and in view of the domestic courts' decision not to engage with the first stage of the *Sanchez-Sanchez* test, the Court would accept that the applicants' extradition to the US would expose them to a real risk of being sentenced to life imprisonment without parole. That being so, it is necessary for the Court to proceed to the second stage of the analysis.

(ii) *Do the review mechanisms in the US satisfy the second stage of the Sanchez-Sanchez test?*

94. It follows from the judgment of the Grand Chamber in *Sanchez-Sanchez* (cited above, §§ 97 and 100) that in the extradition context there must be, at the moment of sentencing, the “possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner” (see *Vinter and Others*, cited above, § 109) founded either on “the prisoner’s progress towards rehabilitation or any other ground ... based on his or her behaviour or other relevant personal circumstances”. While a prospect of release based on the prisoner’s “other relevant personal circumstances” is potentially quite broad, it is clear from the Court’s case-law that it must entail more than compassionate release for the terminally ill or the physically incapacitated, since this could not really be considered release at all, if all it meant was that a prisoner died at home or in a hospice rather than behind prison walls (see *Vinter and Others*, cited above, § 127; see also *Murray v. the Netherlands* [GC], no. 10511/10, § 100, 26 April 2016, together with *Öcalan v. Turkey* (no. 2), nos. 24069/03 and 3 others, § 203, 18 March 2014; *Matiošaitis and Others v. Lithuania*, nos. 22662/13 and 7 others, § 162, 23 May 2017; *Boltan v. Turkey*, no. 33056/16, § 41, 12 February 2019; and *Petukhov v. Ukraine* (no. 2), no. 41216/13, § 170, 12 March 2019).

95. In the present case the parties agreed that in the US there would be two review mechanisms available to the applicants if they were to be convicted and sentenced to life imprisonment without parole: compassionate release and executive clemency.

96. The First Step Act appears to have effected a paradigm shift in how compassionate release functions, significantly expanding access and empowering courts to reduce sentences where the relevant criteria are satisfied (see paragraphs 37, 55 and 59 above).

97. With regard to the relevant criteria, pursuant to Title 18, U.S.C., §3582(c)(1)(A), compassionate release may be granted either where the prisoner is at least 70 years of age, has served at least 30 years in prison, and is not a danger to the safety of any other person or the community; or where extraordinary and compelling reasons warrant a reduction of his or her sentence (see paragraph 49 above).

98. Eligibility for compassionate release under both heads will be considered by reference to the factors set out in § 3553(a) of the U.S.C. (see paragraph 47 above). These include: the nature and circumstances of the offence and the history and characteristics of the prisoner; the need for the sentence imposed to reflect the seriousness of the offence, to promote respect for the law, and to provide just punishment for the offence; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the prisoner; to provide the prisoner with needed educational or vocational training, medical care, or other correctional treatment in the most effective

manner; the kinds of sentences available; the kinds of sentence and the sentencing range established for the applicable category of offence; any pertinent policy statement; the need to avoid unwarranted sentence disparities among prisoners with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offence. According to the US Supreme Court, evidence of post-sentencing rehabilitation may be “highly relevant” to several of the § 3553(a) factors (see paragraph 53 above).

99. The first head (the prisoner is at least 70 years of age, has served at least 30 years in prison, and is not a danger to the safety of any other person or the community) is clearly linked to the age of the prisoner but does not, on the face of it, require that the prisoner be experiencing any deterioration in physical or mental health because of the aging process (compare the guidance in respect of “extraordinary and compelling reasons” linked to the age of the prisoner – see paragraph 51 above and paragraph 101 below). In the present case it is noteworthy that each of the applicants, if convicted and sentenced to life imprisonment, would, after thirty years, be at least seventy years old and therefore potentially eligible to apply for compassionate release under this head.

100. According to the federal sentencing guidelines (see paragraph 51 above), “extraordinary and compelling reasons” will exist under any of the following circumstances or a combination thereof: medical circumstances; the age of the prisoner; the family circumstances of the prisoner; the prisoner was the victim of abuse by or at the direction of a person who had custody of him; the prisoner had received an unusually long sentence; or “other reasons” of similar gravity.

101. According to the guidelines, in order to be eligible to apply for compassionate release based on medical circumstances, the prisoner would have to be suffering from a terminal illness, a serious condition or impairment from which he was not expected to recover that diminished his ability to provide self-care in the prison environment, a condition that required specialised medical care and without which he would be at risk of serious deterioration in health or death, or the prisoner would have to be at increased risk of suffering severe medical complications or death as a result of an outbreak of infectious disease or public health emergency (see paragraph 51 above). While a prisoner could rely on his age upon attaining the not especially advanced age of 65, in order for this to constitute “extraordinary and compelling reasons” he would also have to be experiencing a serious deterioration in physical or mental health because of the aging process (see paragraph 51 above). Consequently, “extraordinary and compelling reasons” based on medical circumstances or the age of the prisoner could not really be considered release at all (see *Vinter and Others*, cited above, § 127).

102. Similarly, the Court would not consider compassionate release following physical or sexual abuse by, for example, a correctional officer (see

paragraph 51 above) to be relevant to the exercise at hand. If there was a real risk that an applicant would be the victim of such abuse, Article 3 would preclude his extradition regardless of the possible length of his sentence.

103. However, “extraordinary and compelling reasons” are not limited to these three categories. While the definition of “family circumstances” is quite restrictive, as the prisoner must find himself the sole available caregiver of a minor or incapacitated spouse or other family member, compassionate release may also be available if a prisoner received an unusually long sentence and had served at least ten years of the term of imprisonment. In determining whether the length of the sentence constituted an extraordinary and compelling reason, a change in the law may be considered, if such a change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed. Full consideration would have to be given to the prisoner’s individualised circumstances, and it is clear from the case-law – including that from the fourth circuit – that evidence of post-sentencing rehabilitation will be relevant to this assessment (see paragraphs 53-61 above).

104. In addition, “other reasons” encompasses any other reasons of similar gravity to those expressly mentioned in the guidelines.

105. While rehabilitation alone is not considered an extraordinary and compelling reason (see paragraph 52 above), the courts appear to – and appear to be required to – give due consideration to a prisoner’s progress towards rehabilitation in deciding whether or not to grant a motion for compassionate release. Indeed, there is clear evidence of sentences (including life sentences) being reduced by the US courts with progress towards rehabilitation weighing heavily in their reasoning (see paragraphs 53, 56 and 59-61 above). Moreover, if a prisoner can produce “significant and extensive evidence of post-sentencing rehabilitation”, the district court will have to provide a “more robust” and “individualized” explanation when it rules on a compassionate release motion (see paragraphs 57-58 above). If the district court denies a motion for compassionate release, the prisoner can appeal to the US Court of Appeals (see paragraph 43 above). Again, there is evidence of such appeals being successful (see paragraphs 56 and 58 above). If the Court of Appeals affirms the district court’s denial of the application, the prisoner can petition the US Supreme Court to review the case (see paragraph 43 above). A failure to obtain release on a motion for compassionate release does not prevent a prisoner from requesting release again (see paragraph 43 above).

106. Therefore, notwithstanding the fact that a motion could not be granted on the basis of rehabilitation alone, compassionate release undoubtedly constitutes a review mechanism that allows the domestic authorities “to consider a prisoner’s progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances”. As such, it satisfies the second stage of the *Sanchez-Sanchez* test.

107. In light of this conclusion, it is not necessary for the Court to consider whether executive clemency would also satisfy the second stage of the test.

(iii) *Would a mandatory sentence of life imprisonment on count (2) be grossly disproportionate?*

108. “Gross disproportionality” is a strict test that will only be met on “rare and unique occasions” (see *Babar Ahmad and Others*, cited above, § 237; *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, § 133, 17 January 2012 and *Aswat v. the United Kingdom*, no. 17299/12, § 58, 16 April 2013). Since the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States, in the extradition context due regard must be had to the fact that sentencing practices vary greatly between States and there will often be legitimate and reasonable differences between States as to the length of sentences which are imposed, even for similar offences. Therefore, it will only be in very exceptional cases that an applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate and thus contrary to Article 3 (see *Babar Ahmad and Others*, cited above, § 238 and *Harkins and Edwards*, cited above, § 134).

109. The Court has held that a mandatory sentence of life imprisonment without the possibility of parole is not *per se* incompatible with the Convention. At the same time, greater scrutiny will be required, and such a sentence will be much more likely to be grossly disproportionate than any of the other types of life sentence, especially if it required the sentencing court to disregard mitigating factors which are generally understood as indicating a significantly lower level of culpability on the part of the defendant (see *Babar Ahmad and Others*, cited above, § 242 and *Harkins and Edwards*, cited above, § 138).

110. In *Harkins and Edwards* the Court held that a mandatory life sentence for murder during an attempted armed robbery would not be grossly disproportionate because, *inter alia*, the first applicant in that case was over eighteen when the offence was committed and although he had provided a psychiatrist’s report showing him to be suffering from mental health problems, the report stopped short of diagnosing him with a psychiatric disorder. Therefore, the Court was not persuaded that the applicant possessed mitigating factors which would indicate a significantly lower level of culpability on his part (see *Harkins and Edwards*, cited above, § 139).

111. The applicants in the present case are charged under count (2) with conspiracy to kill witnesses with intent to prevent communication to a federal law enforcement officer, an offence carrying a mandatory sentence of life imprisonment (see paragraphs 7 and 9 above). They argued that there was an important distinction between crimes of homicide which had been completed or reached the stage of attempt, and those that had not (see paragraph 66 above). Both the Sheriff and the High Court of Justiciary considered whether

a mandatory life sentence would be grossly disproportionate in their cases but in view of the gravity of the offences charged both courts answered this question in the negative (see paragraphs 22 and 29 above). The Court cannot but agree with this conclusion. While the applicants might not be charged with homicide, this fact alone cannot render their cases sufficiently “rare and unique” as to meet the high threshold of exceptionality required to establish gross disproportionality. As the Government point out (see paragraph 81 above), according to the allegations against the applicants, their plan had involved obtaining firearms, achieving armed entry to two private homes, kidnapping five children (all of whom were under the age of eight) and murdering their four parents with a view to eliminating them as witnesses to the kidnaps. The plan had proceeded to the extent of one of the parents being bound to a chair in the basement of his home and held at gunpoint ready to be executed when law enforcement intervened. Although the victims did not die, the fact that the applicants were in the course of carrying out the agreed plan when the police arrived meant that although the full intended harm was prevented, the level of culpability involved in the alleged offending was not greatly reduced. The decision of the US Congress to punish such acts with the most severe punishment available – being a mandatory sentence of life imprisonment – therefore falls well within the boundaries of “legitimate and reasonable differences between States”.

(iv) *Conclusion*

112. The foregoing considerations are sufficient to enable the Court to conclude that the applicants’ extradition to the US would not be in breach of Article 3 of the Convention on account either of the risk that if convicted they would receive a sentence of life imprisonment without parole, which would be irreducible *de facto* and *de jure*; or because a mandatory life sentence on count (2) would be grossly disproportionate.

III. RULE 39 OF THE RULES OF COURT

113. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

114. It considers that the indications made to the Government under Rule 39 of the Rules of Court (see paragraph 33 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see point 4 of the operative part).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that the applicants' extradition to the US would not violate Article 3 of the Convention; and
4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicants until such time as the present judgment becomes final or until further notice.

Done in English, and notified in writing on 1 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	56532/22	Hayes v. the United Kingdom	09/12/2022	Valerie Perfect HAYES 1980 Edinburgh American	Jelina BERLOW-RAHMAN (Berlow Rahman Hassan Ltd.)
2.	56889/22	Amnott v. the United Kingdom	13/12/2022	Jennifer AMNOTT 1985 Polmont American	Euan GOSNEY (CSG - Conroy Storrie Gosney)
3.	3739/23	Reburn v. the United Kingdom	19/01/2023	Gary REBURN 1963 Edinburgh American	Rebecca HOUSTON (Houston Law, Clyde Offices)