

OLD AGE AS THE HIDDEN SENTENCING FACTOR

Adam M. Gershowitz

Imagine two doctors who illegally sold opioids in exchange for cash. Both doctors sold roughly the same quantity of pills, had no prior criminal convictions, and accordingly faced the same sentencing guidelines range. The major difference was that one doctor was in his sixties and considerably older than the other doctor. The Federal Sentencing Guidelines provide that judges should consider a defendant's age only in atypical cases. Yet, this Article demonstrates that older defendants received sentencing discounts far more often than younger defendants convicted of the same crime.

This Article gathers sentencing data for almost 130 doctors convicted in federal court of illegally selling opioids. These defendants all committed the same crime—drug dealing—and often sold similar quantities of drugs. Yet, the older defendants fared much better. When a guidelines sentence would have kept a defendant in prison past the age of sixty-five, judges sentenced below the guidelines in eighty-one percent of cases. By contrast, younger doctors received below-guideline sentences in only fifty-five percent of cases, which is consistent with sentencing data for all crimes. Older defendants not only received more frequent sentence reductions, but larger sentence reductions.

Most startling, this Article documents how some judges based their sentencing decisions not on the Federal Sentencing Guidelines, but instead, on the defendants' likely age of death. Judges appear to start with an age of release in mind—often in the defendant's mid-seventies—and work backward from there to compute the sentence. These judges seem focused on ensuring that older defendants will be released in time to live some of their remaining years outside of prison.

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Some of the most notorious villains of the opioid crisis were medical doctors who flooded the streets with dangerous pills. In many ways, drug-dealing doctors are similar to street dealers. They sold controlled substances for cash and they were prosecuted under the very same criminal statutes used to lock up dealers who peddle heroin in a back alley in the middle of the night. In another way though, drug-dealing doctors are quite different from their street counterparts. Doctors are older than the average criminal defendant—much older.¹ While the average federal defendant is about thirty-seven years old,² the typical doctors convicted of selling opioids were in their fifties or sixties. A sizeable number were in their seventies and eighties and one was even over ninety.

The Federal Sentencing Guidelines (“the Guidelines”) indicate that age should be taken into consideration in sentencing only when it is “present to an unusual degree” and not in the “typical case.”³ The stated policy of the Guidelines thus would seem to suggest that older doctors should not receive steep sentencing discounts just because they would be old at the end of their sentences.⁴

Despite the directive that age should play a role only in atypical cases, prosecutors have long speculated that older defendants—particularly older white-collar defendants—often receive major sentencing breaks.⁵ Judges, as the theory goes, simply do not want to impose what will amount to de facto life sentences on older defendants.⁶

The opioid crisis provides an opportunity to test whether defendants’ age—or, more accurately, their “age at release”—has an effect on sentence length. An example helps to frame the question: imagine a seventy-year-old doctor was convicted in federal court of selling oxycodone and faces a guidelines range of thirteen to fifteen years. Because there is no parole in the federal system, that doctor will likely die in

1. U.S. SENT’G COMM’N, OVERVIEW OF FEDERAL CRIMINAL CASES FISCAL YEAR 2016, at 6 (2017) [hereinafter U.S. SENT’G COMM’N, OVERVIEW].

2. *See id.* at 4 (“Of the 75,727 federal offenders sentenced in 2019, only 2,382 (or about 3%) were age 60 or above”); *see also* SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, tbl. 8, <https://www.uscourts.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Table08.pdf>.

3. U.S.S.G. § 5H1.1 (2005) (emphasis added).

4. *See id.*

5. *See* Jillian Hewitt, *Fifty Shades of Gray: Sentencing Trends in Major White-Collar Cases*, 125 YALE L.J. 1018, 1025 (2016), https://www.yalelawjournal.org/pdf/q.1018.Hewitt.1071_if28v6d7.pdf.

6. *See id.*

prison if the judge imposes a sentence within the guidelines range.⁷ By contrast, consider a forty-year-old doctor who engaged in the same misconduct and faces the same guidelines range. The younger doctor will likely have plenty of life left to live on the outside if he is sentenced within the thirteen-to-fifteen-year guidelines range. Will the judge impose roughly the same sentence on the seventy-year-old doctor as the forty-year-old doctor?

To date, there has been very little research on the impact of age on sentencing and the studies that have, have had conflicting results.⁸ This Article seeks to fill a gap in the literature by analyzing 129 doctors—some young, and many older—who were sentenced between 2015 and 2019 for illegally distributing opioids. By digging through court transcripts, sentencing memoranda, plea agreements, and other public filings, this Article pieces together the advisory guidelines ranges as well as the sentences that judges actually meted out.

While each case is obviously unique, the full data set of 129 doctors tells a dramatic story about how a defendant's likely "age at release" affects sentencing. To understand the story, the Article will break down the cases into two groups: (1) cases in which a sentence at the bottom of the guidelines range would have resulted in incarceration beyond the age of sixty-five ("older release defendants"), and (2) cases in which a bottom-end guidelines sentence would result in release before age sixty-five ("younger release defendants"). The results are startling.

7. See 18 U.S.C. § 3624(b) (2018).

8. Paul H. Robinson et. al., *Extralegal Punishment Factors: A Study of Forgiveness, Hardship, Good Deeds, Apology, Remorse, and Other Such Discretionary Factors in Assessing Criminal Punishment*, 65 VAND. L. REV. 737, 763–64 (2012) ("One study found that Pennsylvania judges were less likely to incarcerate older offenders and that older offenders received shorter sentences than their younger counterparts; however, the study offered little insight as to the causes of this discrepancy. Other studies have reached 'conflicting conclusions' about the impact of old age on punishment."); Dawn Miller, *Sentencing Elderly Criminal Offenders*, 7 NAT'L ACAD. ELDER LAW ATT'YS J. 221, 238 (2011) ("Some researchers have found that elderly offenders, if convicted, are more likely to be fined or otherwise receive lighter sentences, and many also receive leniency before or during the guilt-determination phase. Conversely, other researchers have found quite the opposite—that elderly offenders are sentenced more harshly than younger offenders and may even be more likely to be convicted.").

For older release defendants, judges sentenced below the guidelines in a shocking eighty-one percent of cases. This is far more than the overall rate of below guidelines sentences in the federal system, which tends to hover around fifty percent.⁹ By contrast, younger release defendants (doctors who would be released before age sixty-five) received sentences below the guidelines range in about fifty-five percent of cases. In other words, younger doctors tended to receive below guidelines sentences at about the same rate as other federal defendants, while older doctors received variances much more often.

The story is bigger than simply the existence of below guidelines sentences though. Older release defendants tended to get massive sentencing reductions. It is not unusual to see doctors who had run pill mills and engaged in appalling behavior receive sentences that were 60%, 70% or even 80% below the bottom of the guidelines range.¹⁰ By contrast, not only did fewer younger release defendants receive below guidelines sentences, but their sentencing reductions were typically much smaller.¹¹

The sentencing disparities between older release and younger release defendants were present even when they faced the identical guidelines ranges. For instance, older doctors facing a sentencing range of 108–135 months received shorter sentences than younger defendants facing the same guidelines range.

Perhaps most startling was that a sizeable number of judges seemed to have an idea about how long a defendant would likely live and then worked backwards from that age in computing their sentences. This Article documents that many defendants received sentences that would lead to release in their mid-seventies, even though their guideline ranges would have suggested much longer incarceration. Some judges candidly explained that they were trying to determine a sentence that would result in the defendants having some chance to live life outside of prison before their deaths.

9. See U.S. SENT'G COMM'N, 2019 ANNUAL REPORT, and SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 1, 84 tbl. 29, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/2019-Annual-Report-and-Sourcebook.pdf>.

10. See Adam M. Gershowitz, *Punishing Pill Mill Doctors: Inconsistent Sentences in the Opioid Epidemic*, 54 U.C. DAVIS L. REV. 1053 (2020) [hereinafter *Punishing Pill Mill Doctors*].

11. *Id.*

Part I of this Article begins with an overview of doctors' role in the opioid crisis. Part I will discuss the process for locating a large sample of federal cases involving drug-dealing doctors and how the sentencing guideline ranges were documented vis-à-vis the ultimate sentence and age of the defendants. Part II will summarize the ambiguous and stingy rules for considering age in federal sentencing. Part III moves beyond the policy statements in the Federal Sentencing Guidelines and describes what actually is happening. Part III offers a quantitative and qualitative analysis of the number, scope, and type of below guidelines sentences being afforded to white-collar medical doctors who illegally prescribed opioids. Finally, Part IV analyzes how some judges appear to be working backward in their sentencing calculations by starting with a release date in the offender's mid-seventies and then choosing a sentence that achieves that result, rather than first starting with the advisory guidelines range.

I. Identifying the Doctors Who Fueled the Opioid Crisis

A small group of doctors played a major role in the opioid crisis. This Article does not focus on the doctors who acted in good faith and were tricked into prescribing narcotics to drug-seeking patients.¹² While negligent prescribing also fueled the opioid crisis, those doctors were not engaged in criminal activity. Instead, this paper focuses on the doctors who intentionally sold drugs without a legitimate medical purpose.

A. Drug Dealers in White Coats

The most egregious opioid-peddling doctors engaged in appalling behavior that would make the most jaded observers blanche. Some doctors conspired to bring in fake patients—who were often homeless—so that co-conspirators could fill their prescriptions and sell the

12. See Kelly K. Dineen, *Definitions Matter: A Taxonomy of Inappropriate Prescribing to Shape Effective Opioid Policy and Reduce Patient Harm*, 67 UNIV. KAN. L. REV. 961, 993–94 (describing inadvertent overprescribing).

drugs on the street.¹³ Other doctors waited for patients to come to them and then charged up to \$300 in cash in exchange for a prescription.¹⁴ Still, other doctors ran what seemed like an assembly line by seeing upwards of one hundred patients a day and spent little-to-no time with any of them before issuing prescriptions for large and dangerous quantities of drugs.¹⁵

Some doctors were operating pill mills and wrote prescriptions for millions of pills in the span of a few years.¹⁶ Other doctors had legitimate medical practices but sold dangerous drugs on the side to earn extra cash or to feed their own addictions.¹⁷

Doctors, of course, have a license from the Drug Enforcement Agency (“DEA”) to prescribe controlled substances, but they are not permitted to do so without a legitimate medical purpose and outside the standard of practice.¹⁸ When doctors fail to conduct physical examinations or diagnostic tests and only meet with patients for long enough to sell them drugs, they have committed a crime in violation of federal and state drug laws.¹⁹

In some cases, criminal prosecutions were straightforward. When radiologists and pathologists—specialists who would almost never have a good reason to prescribe opioids²⁰—were caught it was difficult for them to argue that they prescribed opioids for a legitimate medical purpose.²¹ For other doctors—particularly those in the pain management field—prosecutors had a harder time demonstrating that the

13. See *Punishing Pill Mill Doctors*, *supra* note 10 (discussing the most egregious cases).

14. See *id.* at 1063.

15. See *id.* at 1056–57.

16. See *id.* at 1063–67.

17. See, e.g., Press Release, U.S. Dep’t of Just., Physician Practicing in Grass Valley and Yuba City Sentenced to Over 4 Years in Prison for Illegal Prescription Practice (Feb. 22, 2018), <https://www.justice.gov/usao-edca/pr/physician-practicing-grass-valley-and-yuba-city-sentenced-over-4-years-prison-illegal>.

18. See 21 C.F.R. § 1306.04(a) (2021) (explaining that “[a]n order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription . . .” and the person issuing it “shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.”).

19. See *id.*

20. See, e.g., Torsten Ove, *Ex-UPMC doctor gets prison for opioid diversion scheme*, PITTSBURGH POST-GAZETTE (May 10, 2019); Press Release, U.S. Dep’t of Just., Former Georgia medical examiner sentenced for opioid conspiracy (Aug. 30, 2018), <https://www.justice.gov/usao-ndga/pr/former-georgia-medical-examiner-sentenced-opioid-conspiracy>.

21. See *id.*

prescriptions were illegitimate.²² Most state prosecutors lacked the resources to conduct undercover sting operations or to hire expert physicians to review tens of thousands of pages of medical records to decipher that the listed diagnoses were a sham.²³ Accordingly, most cases involving drug-dealing doctors have been prosecuted by U.S. Attorney's offices with greater resources, rather than over-burdened state prosecutors.²⁴

As the opioid crisis became better known, federal prosecutors have increased the number of prosecutions against doctors.²⁵ Following convictions and sentences, the Department of Justice often issues press releases, and local media frequently write up news stories. As explained in the methodology section below, these public announcements were key in locating criminal prosecutions against white-collar drug dealers as well as to study how age affects sentencing.²⁶

B. Methodology for Finding and Studying the Significance of Age in Sentencing

To find the cases of doctors who illegally distributed opioids, this Article used news reports in the Westlaw and Lexis news databases and reviewed press releases that U.S. Attorney's offices sometimes issued following convictions and sentencing. In total, 169 doctors who were convicted of illegally prescribing or conspiring to prescribe opioids under the federal drug distribution statutes between 2015 and 2019 were located.²⁷

22. See Adam M. Gershowitz, *The Opioid Doctors: Is Losing Your License a Sufficient Penalty for Dealing Drugs?*, 72 HASTINGS L.J. 871, 912–16 (2021).

23. See *id.*

24. See *id.* at 914.

25. See Josh Bowers & Daniel Abrahamson, *Kicking the Habit: The Opioid Crisis, America's Addiction to Punitive Prohibition and the Promise of Free Heroin*, 80 OHIO ST. L.J. 787, 808–10 (2021) (describing federal efforts to cut opioid prescriptions through increased prosecutions).

26. See *id.*

27. See 21 U.S.C. § 841(b)(1)(A). I began by searching the Westlaw news database for: "doctor or dr. and opioid or oxy! or vicodin or hydrocodone or fentanyl and (sentence /30 month! Or year) & DA(aft 12-30-2014 & bef 01-01-2020)." With the help of research assistants, I then ran the same search in the Lexis database to search for additional documents. These searches returned more than 5,000 documents.

Finding the guidelines ranges for each convicted doctor was much more difficult. I began by reviewing the transcripts of sentencing hearings. Unfortunately, sentencing transcripts are sometimes unavailable because defendants often plead guilty, waive their appellate rights,²⁸ and therefore, do not spend the money to order a transcript of the sentencing proceeding. To fill this gap, I tried to piece together the guidelines ranges by consulting plea agreements and sentencing memoranda from the parties. These documents sometimes stated the advisory guidelines range as calculated by the probation office or as agreed to by the parties. Thereafter, I wrote to the prosecutors and defense attorneys to try to confirm that the court did in fact adopt these advisory guidelines ranges. In some cases, the lawyers replied, but in other cases, they did not. Because some of the data below are not drawn from an explicit statement of the court at sentencing, it is possible that the court rejected the advisory ranges specified by the local probation office or recalled by the attorneys.²⁹ There thus exists a small possibility of error in some of the data points below. Nevertheless, I am overall quite confident of the data set forth below.

While this Article sought to utilize as broad of a data set as possible, some cases necessarily had to be excluded. First and most obviously, were cases where no statement of the guidelines range could be located. Second, cases in which the parties entered a binding plea

During my review of these documents, I excluded doctors who were convicted solely of possessing drugs for personal use, as well as doctors who were convicted only of health care fraud, Medicaid fraud, or other related offenses. I focused instead on doctors who were convicted in federal court of illegally distributing drugs or conspiring to do so. Finally, I removed doctors who were convicted of drug distribution that resulted in the death of the victim because that offense carries a mandatory minimum sentence of twenty years that necessarily reduced the sentencing judge's sentencing discretion. This approach resulted in a sample of 169 cases. My sample is certainly under-inclusive because there were surely prosecutions that did not result in news reports or press releases.

28. Courts have long upheld appellate waivers in plea agreements. See Julian A. Cook, III, *Federal Guilty Pleas under Rule 11: The Unfulfilled Promise of the Post-Boykin Era*, 77 NOTRE DAME L. REV. 597, 629 (2002). Not surprisingly, defendants have an incentive to trade their appellate rights for sentencing concessions from prosecutors. See Nancy J. King & Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 DUKE L.J. 209, 232-36 (2005).

29. Although good numbers are hard to come by, it appears that judges frequently follow the pre-sentence report. See Michael D. Norman & Robert C. Wadman, *Probation Department Sentencing Recommendations in Two Utah Counties*, 64 FED. PROB. 47, 48 (2000) (finding that 89% of public defenders and 77% of prosecutors agreed that judges follow the sentencing recommendations in the pre-sentence report).

agreement were removed. In those cases, if a judge accepted the defendant's guilty plea the court was bound to sentence within the range agreed to by the parties. Thus, there was limited opportunity to assess whether the judge would factor age into the sentence.³⁰ Third, cases in which there was a mandatory minimum sentence were excluded because the judges had far less ability to factor age into sentencing.³¹ Finally, multiple cases in which the bottom of the guidelines range was zero months were removed because judges cannot sentence to any lower amount of jail time than zero months. These cases did not provide an opportunity to analyze whether age played a role in below guidelines sentences.³² In total, 129 cases in which doctors were convicted for drug dealing were not subject to mandatory minimum-

30. For instance, in the case of Dr. Margaret Temponeras the parties reached a binding plea deal in which the sentencing range would be between 36 and 84 months. See Transcript of Sentencing Proceedings at 5, *United States v. Temponeras*, No. 1-00065 (S.D. Ohio 2019). See also Email from Carl Lietz, Defense Attorney, to Karly Newcomb (Jan. 24, 2020) (noting that in the case of Dr. William Richardson the parties reached a binding plea deal of 48 to 60 months, and that such binding deals are "unusual"). Additionally, I excluded the case of Fred Gilliard because the prosecution and defense reached an agreement for a 54-month sentence in the middle of the sentencing hearing. The judge imposed that sentence. Although not a binding plea, because of the unusual circumstances that case has also been omitted. See Telephone Interview with Jim May, Assistant U.S. Att'y, District of S.C. (Oct. 22, 2019); John Monk, *Doctor gets prison for giving drugs to SC Irish Traveler, Pressuring Patients for Sex*, THE STATE (Jan. 30, 2019).

31. Pursuant to federal drug law, if a victim dies as a result of drugs sold by the defendant—whether it be street drugs or a prescription that comes in a bottle—they face a sentence of up to life, with a mandatory minimum sentence of 20 years. See 21 U.S.C. § 841(b)(1)(A). Even though the 20-year mandatory minimum drastically reduces the judge's sentencing discretion there are even examples of age playing a role in this category of cases as well. For example, Dr. Joel Smithers faced a mandatory minimum sentence of twenty years and a guidelines range of Life after being convicted of more than 800 counts of illegal distribution. The judge imposed a forty-year sentence on Dr. Smithers, rather than a guidelines sentence of Life. Because he was age 36 at sentencing, Dr. Smithers will have the realistic prospect of release prior to his death. See Adeel Hassan, *A Doctor Who Prescribed 500,000 Doses of Opioids Is Sent to Prison for 40 Years*, N.Y. TIMES (Oct. 2, 2019).

32. These cases included Drs. Stanley Heatwole, Gurcharan Singh Kanwal, Paul Bellofiore, and Horace Paul Guerra, IV. See United States Sentencing Memorandum at 3, *United States v. Heatwole*, No. 6-00021 (W.D. Va. 2016); E-mail from Suzanne Kerney-Quillen, Special Assistant U.S. Att'y, W.D. Va., to Adam Gershowitz (Oct. 24, 2019); Government's Memorandum in Aid of Sentencing at 1, 5, *United States v. Bellofiore*, Case 3-00187 (D. Conn. 2017); Government's Sentencing Memorandum at 1, 6, *United States v. Guerra*, Case 2-00197 (D. Nev. 2018).

sentence statutes and had a bottom-end guidelines sentence of at least six months.

After locating the cases, I then sought out the age of the doctors at sentencing. In most cases, their age was mentioned in the Department of Justice (“DOJ”) press release announcing the sentence. When it was missing from the DOJ press release (or when there was no such release), I consulted news reports and sentencing memoranda submitted by the parties. When absent from those sources, I consulted state medical board licensing databases. The ages I report are by year, not by the exact day and month of birth. They may therefore under-state the age of some of the doctors. For instance, if a defendant was sentenced a week before his sixtieth birthday, he would be counted as age 59.

With respect to sentence lengths, I made two assumptions for ease of exposition. First, I was unable to determine whether some of the defendants were incarcerated for any significant length of time prior to trial or pleading guilty. Thus, it is possible they would receive credit for time served that would ultimately lead to earlier release.³³ Second, this Article does not consider the availability of good time credit. The Sentencing Reform Act of 1984 abolished parole in the federal system, but it continued to allow inmates to accrue up to fifty-four days of credit for good behavior each year.³⁴ It is of course quite likely that older physicians without prior criminal records will behave well in prison and earn good time credit. Because that assumption is speculative and the exact amount of good time credit would be determined in the future and uncertain, however, this Article does not account for good time credit.

33. Finding data about pre-trial detention was not readily accessible. Moreover, I made the assumption that because it was almost never mentioned at sentencing hearings and in sentencing memoranda of the parties that pre-trial detention for white-collar physician defendants was relatively rare.

34. See 18 U.S.C. § 3624(b).

II. The Federal Sentencing Guidelines' Limited and Confusing Approach to Considering Age in Sentencing

For many years, the Federal Sentencing Guidelines provided that a defendant's age was "not ordinarily relevant" in determining whether to impose a sentence outside the guidelines range.³⁵ In 2010, the U.S. Sentencing Commission amended the guidelines to provide that age can be a relevant consideration when its effects are present to an unusual degree and distinguish the case from other cases.³⁶ The policy statement now provides as follows:

Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an *unusual degree* and distinguish the case from the *typical cases* covered by the guidelines. Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration. Physical condition, which may be related to age, is addressed at [section] 5H1.4.³⁷

The policy statement does not provide guidance on when age is present to an "unusual degree."³⁸ Nor is there a baseline for what is a "typical case."³⁹

To add another layer of complexity,⁴⁰ there is a separate guideline—section 5H1.4—that provides that "physical condition" can be a basis for a departure when, "individually or in combination with other offender characteristics, [it] is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines."⁴¹ The guidelines policy statement goes on to explain that "[a]n extraordinary physical impairment may be a reason to depart downward; *e.g.*, in the

35. See *United States v. Simmons*, 470 F.3d 1115, 1130 (5th Cir. 2006); Evan A. Jenness, *The 'Silver Tsunami' And Sentencing—Age and Health as Mitigating Factors*, CHAMPION (Sept.-Oct. 2013), at 30.

36. See Jenness, *supra* note 35.

37. U.S. SENT'G COMM'N GUIDELINES MANUAL § 5H1.1 (emphasis added).

38. See *id.*

39. See generally *id.*

40. See Dawn Miller, *Sentencing Elderly Criminal Offenders*, 7 NAELA J. 221, 239 (2011) (describing the "confusion" and "widespread variation in interpretation" created by the provisions).

41. 18 U.S.C. § 5H1.4.

case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment."⁴² Of course, physical impairments, are strongly associated with advanced age.⁴³ Defendants in their sixties and seventies (and even middle-aged defendants in their forties and fifties) can suffer from an array of medical conditions that will be difficult to care for in prison (and may even be exacerbated by incarceration).⁴⁴

Judges do not appear to specifically invoke the age or physical condition guidelines with much frequency.⁴⁵ This may be because there is a second avenue for judges to take age into consideration: a variance under 18 U.S.C. § 3553.⁴⁶ After a judge has adopted a guidelines range, the defense attorney can request that the court vary below the guidelines range.⁴⁷ Under § 3553, the court is supposed to impose a sentence that is "sufficient, but not greater than necessary" to comply with the sentencing purposes set forth in the statute.⁴⁸ One of those sentencing purposes is "to protect the public from further crimes of the defendant."⁴⁹ Defense attorneys typically argue that older defendants are at a much lower risk of recidivism.⁵⁰ Indeed, the Sentencing Commission's own research indicates that while youthful offenders with a Category I criminal history category recidivate at a rate of nearly thirty percent older offenders only recidivate about six percent of the time.⁵¹

Prior to the decision in *U.S. v. Booker*, in which the Supreme Court held that the Federal Sentencing Guidelines were advisory, it was more

42. *Id.*

43. See Emily Widra, *Incarceration shortens life expectancy*, PRISON POL'Y INITIATIVE (June 26, 2017), <https://perma.cc/ZG6R-P4RH>.

44. See Ira P. Robbins, *George Bush's America Meets Dante's Inferno: The Americans with Disabilities Act in Prison*, 15 YALE L. & POL'Y REV. 49, 56 (1996); Widra, *supra* note 43 (noting that incarceration reduces life expectancy).

45. See Robinson et. al., *supra* note 8, at 764 "[T]he provision is rather rarely used.").

46. 18 U.S.C. § 3553(a).

47. *Id.*

48. 18 U.S.C. § 3533(a).

49. 18 U.S.C. § 3553(a)(2)(C).

50. See Troy K. Stabenow, *Sample Sentencing Memoranda for Downward Departure/Variance for an Elderly Defendant*, 5B WEST'S FED. FORMS, DIST. CTS. CRIM. § 91:49 (2021).

51. See *id.* (arguing that it is also possible to make retributive arguments against long sentences for elderly offenders); Grace McCarten, *Jailed While Frail: Examining Rationales for Incarcerating Aging and Infirm Criminals*, 27 ELDER L.J. 221, 244 (2019).

difficult for judges to sentence outside the guidelines range.⁵² In the post-*Booker* world, judges can more easily issue non-guidelines sentences, known as variances.⁵³ After calculating the correct guidelines range, a court considers it as a frame of reference.⁵⁴ It can then issue a sentence below (or occasionally above) the range as long as its reasons are consistent with the factors in section 3553(a).⁵⁵

In short, judges can either point to section 5H1.1 to consider age or they can focus their analysis under section 3553(a) in granting a non-guidelines variance. It appears that judges specifically invoke section 5H1.1 only rarely.⁵⁶ To the extent age comes into play, it is primarily through section 3553(a) analysis in issuing a non-guidelines variance.⁵⁷

III. Older Release Defendants Receive More Sentencing Breaks and Larger Sentencing Breaks

The Federal Sentencing Guidelines policy statement indicates that judges only should consider age in unusual circumstances and atypical cases.⁵⁸ But are judges giving a lot of weight to age anyway in making their sentencing decisions? The answer appears to be “yes.” This Part considers the cases of 129 doctors convicted of illegally distributing opioids. Of the 129 cases, eighty-four involve doctors who would have been incarcerated beyond the age of sixty-five if the court imposed a sentence at the bottom end of the guidelines. This Article will refer to these doctors as “older release defendants.” In the other forty-five cases, a sentence at the bottom end of the guidelines range would have resulted in defendants being released before age sixty-five. These cases involve what the Article will refer to as “younger release defendants.”

This Part reviews (A) the number of older and younger release defendants who received below guidelines sentences, (B) the scope of the sentencing reductions for older and younger release defendants,

52. See *United States v. Booker*, 543 U.S. 220 (2005); Paul J. Hofer, *Federal Sentencing After Booker*, 48 CRIME & JUST. 137, 140 (2019).

53. See *United States v. Mejia-Huerta*, 480 F.3d 713, 719 (5th Cir. 2007).

54. *Id.* at 721.

55. *Id.*

56. See Robinson et. al., *supra* note 8, at 764.

57. *Id.*

58. *Id.*

and (C) the differences in sentences for older and younger release defendants facing the identical guidelines ranges.

A. Below-Guidelines Sentences Are More Common When Age of Release Would Be Over Age Sixty-Five

Judges reduced sentences for older release defendants a lot more often than they reduce sentences for younger release defendants. Of the eighty-four older release defendants in this study—defendants who would be incarcerated beyond the age of sixty-five if they received a sentence at the bottom of the guidelines range—sixty-eight received a below guidelines sentence. This amounts to a staggering eighty-one percent of older release defendants being sentenced below the guidelines.⁵⁹ This rate is far higher than the rate for average federal criminal defendants.⁶⁰ Typically, federal defendants are sentenced below the guidelines range in about fifty percent of cases.⁶¹ Table 1 (below) documents the older release defendants sentenced for illegally distributing opioids and the huge number of below guidelines sentences.

59. See *infra* Table 1.

60. See *Federal Sentencing: The Basics*, U.S. SENT'G COMM'N (Nov. 2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/201811_fed-sentencing-basics.pdf.

61. See *U.S. Sentencing Commission, Sentence Imposed Relative to the Guidelines Range Over Time: Fiscal Years 2010-2019*, U.S. SENT'G COMM'N (2019), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Figure09.pdf> (reviewing the period from 2010 to 2019 and finding a low of 46% within guidelines sentences in 2014 and a high of 55% in 2010).

TABLE 1: OLDER RELEASE DEFENDANTS: CASES WHERE A BOTTOM-END GUIDELINES SENTENCE WOULD RESULT IN INCARCERATION BEYOND AGE 65

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom Guidelines Sentence	Judge's Actual Sentence	Age at Release	Sentence Within, Below, or Above the Guidelines
Abbey Akinwumi ⁶²	55	168-210 months	69	84 months	62	Below
Sardar Ashrafkhan ⁶³	59	600 months	109	276 months	82	Below
Nevorn Askari ⁶⁴	61	210-240 months	78.5	66 months	66.5	Below
Gavin Awerbuch ⁶⁵	59	70-87 months	65	32 months	62	Below
William Bacon ⁶⁶	83	240 months	103	72 months	89	Below

62. See Defendant's Sentencing Memorandum at 1, *United States v. Akinwumi*, No. 13-20392 (E.D. Mich. 2016); Press Release, U.S. Dep't of Just., Doctor Sentenced to 84 Months in Prison for Distributing Prescription Drugs (Mar. 1, 2016) <https://www.justice.gov/usao-edmi/pr/doctor-sentenced-84-months-prison-distributing-prescription-drugs>.

63. See Press Release, U.S. Dep't of Just., Former Doctor Sentenced to 23 Years in Prison for Distributing Prescription Drugs, Health Care Fraud, and Money Laundering (June 15, 2017), <https://www.justice.gov/usao-edmi/pr/former-doctor-sentenced-23-years-prison-distributing-prescription-drugs-health-care>; Sentencing Memorandum by the United States Regarding Sardar Ashrafkhan at 1, *United States v. Ashrafkhan*, No. 2-20551 (E.D. Mich. 2017); E-mail from Wayne Pratt, Assistant United States Attorney, Eastern District of Michigan, to Adam Gershowitz (Oct. 23, 2019) (on file with author).

64. See Press Release, U.S. Dep't of Just., Two Doctors and Clinic Owners Sentenced for Operating Pill Mills in Metro Atlanta (June 26, 2017), <https://www.justice.gov/usao-ndga/pr/two-doctors-and-clinic-owners-sentenced-operating-pill-mills-metro-atlanta>; Government's Motion for Downward Departure Based on Substantial Assistance at 2, *United States v. Askari*, No. 1-00276 (N.D. Ga. 2017) (The prosecution filed a 5K1.1 motion and recommended a 66-month sentence. The court followed that recommendation.).

65. See Transcript of Sentencing Hearing at 10, 12, 40, *United States v. Awerbuch*, No. 2-20636 (E.D. Mich. 2018); Steve Friess, *Doctor Tied to Insys Opioid Kickback Scheme Gets Prison Term*, REUTERS (Feb. 26, 2018), <https://www.reuters.com/article/us-insys-opioids/doctor-tied-to-insys-opioid-kickback-probe-gets-prison-term-idUSKCN1GA2WE>.

66. See Sentencing Transcript at 4, 18, 25, *United States v. Bacon*, No. 7-00002 (M.D. Ga. 2018); Press Release U.S. Dep't of Just., Sentences Handed Down for

Dwight L. Bailey ⁶⁷	66	151-188 months	79	151 months	79	Within
Alan Barnett ⁶⁸	69	10-16 months	70	Probation	69	Below
Rafael Beier ⁶⁹	63	188-235 months	79	192 months	79	Within
Noel Blackman ⁷⁰	69	57-71 months	74	50 months	73	Below
Joseph Burton ⁷¹	73	168-210 months	87	96 months	81	Below
Nicholas J. Capos, Jr. ⁷²	67	70-87 months	73	52 months	71	Below

Illegal Pill Mills Operating in Valdosta and Columbus (Dec. 7, 2018) [hereinafter Sentences Handed Down for Illegal Pill Mills], <https://www.justice.gov/usao-mdga/pr/sentences-handed-down-illegal-pill-mills-operating-valdosta-and-columbus>.

67. See E-mail from Randy Ramseyer, Assistant United States Attorney, Western District of Virginia, to Adam Gershowitz (Oct. 21, 2019) (on file with author); Press Release, U.S. Dep’t of Just., Lebanon Doctor Sentenced on Federal Drug Distribution Charges (Feb. 7, 2019), <https://www.justice.gov/usao-wdva/pr/lebanon-doctor-sentenced-federal-drug-distribution-charges>.

68. See Tentative Findings and Rulings Concerning the Applicable Advisory Guidelines Range at 1, 4, *United States v. Barnett*, No. 2-00153 (W.D. Pa. 2017); Position of the Government with Respect to Sentencing Factors at 1, *United States v. Barnett*, No. 2-00153 (W.D. Pa. 2016); Press Release, U.S. Dep’t of Just., Physician Sentenced for Illegally Distributing (Jan. 12, 2017), <https://www.justice.gov/usao-wdva/pr/physician-sentenced-illegally-distributing-oxycodone>.

69. See Sentencing Memorandum, Motion for Downward Departure, Request for Variance, and Reply to the Government’s Response to Defendant’s PSR Objections at 3, *United States v. Beier*, No. 2-00117 (D. Idaho 2017); Government’s Memorandum at 1, 3, *United States v. Beier*, No. 2-00117 (D. Idaho 2017); Sentencing Hearing Transcript at 25, 36, 49, *United States v. Beier*, No. 2-00117 (D. Idaho 2017); Press Release, U.S. Dep’t of Just., Doctor Sentenced to 16 Years for Distributing Drugs (Nov. 30, 2017), <https://www.justice.gov/usao-id/pr/doctor-sentenced-16-years-distributing-drugs>.

70. See Robert Kessler, *L.I. Pain Doctor Sentenced to 50 Months in Oxycodone Case*, NEWSDAY (May 13, 2017), <https://www.newsday.com/long-island/crime/li-pain-doctor-sentenced-to-50-months-in-oxycodone-case-1.13626691>.

71. See Transcript of Sentencing Proceedings at 159, 163–64, 170, *United States v. Burton*, No. 1-00369 (N.D. Ga. 2018); Press Release, U.S. Dep’t of Just., Former Georgia Medical Examiner Sentenced for Opioid Conspiracy (Aug. 30, 2018), <https://www.justice.gov/usao-ndga/pr/former-georgia-medical-examiner-sentenced-opioid-conspiracy>.

72. See Press Release, U.S. Dep’t of Just., Physician Practicing in Grass Valley and Yuba City Sentenced to Over 4 Years in Prison for Illegal Prescription Practice (Feb. 22, 2018), <https://www.justice.gov/usao-edca/pr/physician-practicing-grass-valley-and-yuba-city-sentenced-over-4-years-prison-illegal#>; Defendant’s Sentencing Memorandum and Objections to the PSR at 1–2, *United States v. Capos* No. 2-00020 (E.D. Cal. 2018); Plea Agreement at 6, *United States v. Capos*, No. 2-00020 (E.D. Cal. 2016).

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James Chaney ⁷³	52	Life	Life	180 months	67	Below
James Earl Chapman ⁷⁴	65	292-365 months (subject to 240 month statutory maximum)	85	120	75	Below
Michael Roger Chiarottino ⁷⁵	68	63-78 months	73	36 months	71	Below
John Couch ⁷⁶	54	360 months to Life	84	240 months	74	Below
Gazelle Craig ⁷⁷	42	860 months	114	420 months	77	Below
Fanny Dela Cruz ⁷⁸	73	168-186 months	87	96 months	81	Below

73. See Transcript of Sentencing Hearing Proceedings at 70, 87, *United States v. Chaney*, No. 6-0037 (2017); *United States v. Chaney*, No: 6:14-cr-0037 (Oct. 27, 2017); Press Release, U.S. Dep’t of Just., Hazard Physician and Wife Sentenced for Unlawful Distribution of Prescription Opioids and Health Care Fraud (Sept. 29, 2017), <https://www.justice.gov/usao-edky/pr/hazard-physician-and-wife-sentenced-unlawful-distribution-prescription-opioids-and>.

74. See Transcript of Sentencing Hearing at 6, 42, 52–54, 76, *United States v. Chapman*, No. 4-00022 (N.D. Ga. 2015).

75. See Press Release, U.S. Dep’t of Just., Marin Doctor Sentenced to Three Years in Prison for Prescribing Oxycodone Outside the Usual Course of Professional Practice and Without a Legitimate Medical Purpose (July 19, 2016), <https://www.justice.gov/usao-ndca/pr/marin-doctor-sentenced-three-years-prison-prescribing-oxycodone-outside-usual-course>; *United States’ Sentencing Memorandum* at 2, 4, *United States v. Chiarottino*, No. 14-00466 (N.D. Cal. 2016).

76. See Transcript of Sentencing of John Patrick Couch, M.D. at 44, 79, 80, 88, *United States v. Couch*, No. 1-00088 (S.D. Ala. 2017).

77. See Press Release, U.S. Dep’t of Just., Houston Physician and a Pain Management Clinic Owner Each Sentenced to 35 Years in Prison for Running Pill Mill That Provided Unlawful Prescriptions for Millions of Doses of Opioids and Other Controlled Substances (Sept. 20, 2018), <https://www.justice.gov/opa/pr/houston-physician-and-pain-management-clinic-owner-each-sentenced-35-years-prison-running>; *United States’ Memorandum in Aid of Sentencing and Response to Defendant’s Motion for Downward Variance* at 2, 6, *United States v. Craig*, No. 4-00419 (S.D. Tex. 2018).

78. See Government’s Sentencing Memorandum at 1, 3, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016); Judgment at 2, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016); Holly Fournier, *Livonia Doctor Gets 8 Years for Illegal Prescriptions*, DETROIT NEWS (Dec. 7, 2016), <https://www.detroitnews.com/story/news/local/wayne-county/2016/12/07/doctor-gets-8-years-illegal-prescriptions/95101888/>.

Michael Lee Cummings ⁷⁹	64	57-71 months	69	30 months	66.5	Below
Glenn Bryan Davis ⁸⁰	63	108-135 months	72	72 months	69	Below
Julio Gabriel Diaz ⁸¹	67	262-327 months	89	327 months	94	Within
Donovan Dave Dixon ⁸²	51	235-293 months	71	240 months	71	Within
Sundiata El-Amin ⁸³	69	188-235 months	85	151 months	82	Below
Richard Evans ⁸⁴	72	70-87 months	78	60 months	77	Below
Mitchel Fagin ⁸⁵	65	37-46 months	68	15 months	66	Below
Madhu Garg ⁸⁶	65	46-57 months	69	18 months	66.5	Below

79. See Government’s Sentencing Memorandum at 1, 10, *United States v. Cummings*, No.1-00011 (W.D. Ky. 2019); Press Release, U.S. Dep’t of Just., Clinton County Doctor Sentenced to 30 Months in Prison for Illegally Prescribing Opioids (July 29, 2019), <https://www.wbko.com/content/news/Clinton-County-doctor-sentenced-for-illegally-prescribing-opioids-513345511.html>.

80. See Press Release, U.S. Dep’t of Just., Pain Doctor Sentenced to Six Years in Prison for Overprescribing Controlled Substances (Feb. 23, 2016), <https://www.justice.gov/usao-wdpa/pr/pain-doctor-sentenced-6-years-prison-overprescribing-controlled-substances>; Rich Lord, *Ex-Doctor Going to Prison for Misprescribing Opioids*, PITTSBURGH POST-GAZETTE (Feb. 23, 2016), <https://www.post-gazette.com/local/region/2016/02/23/Johnstown-doctor-gets-prison-for-opioid-prescriptions/stories/201602230171>.

81. See Press Release, U.S. Dep’t of Just., Santa Barbara Doctor Sentenced to Over 27 Years in Federal Prison for Writing Huge Quantities of Dangerous Narcotic (Dec. 7, 2015), <https://www.dea.gov/press-releases/2015/12/07/santa-barbara-doctor-sentenced-over-27-years-federal-prison-prescribing>; Judgment and Probation/Commitment Order at 1, *United States v. Diaz*, No. 8-000011 (C.D. Cal. 2015).

82. See Judgment in a Criminal Case at 36, 42, 49, *United States v. Dixon*, No. 7:16-30 (E.D.N.C. 2018).

83. See Press Release, U.S. Dep’t of Just., Grant County Doctor Sentenced to 151 Months for Drug Trafficking (July 26, 2018), <https://www.justice.gov/usao-edky/pr/grant-county-doctor-sentenced-151-months-drug-trafficking#>; Government’s Sentencing Memorandum at 3, 4, *United States v. El-Amin*, No. 2-00057 (E.D. Ky. 2018); Sentencing Agreement at 1, *United States v. El-Amin*, No. 2-00057 (E.D. Ky. 2018).

84. See Transcript of Sentencing Hearing at 60–63, *United States v. Evans*, No. 4-00015 (S.D. Tex. 2017).

85. See Robert Kessler, *Dr. Mitchel Fagin Sentenced to 15 Months in Oxycodone Case*, NEWSDAY (Dec. 16, 2016), <https://www.newsday.com/long-island/crime/dr-mitchel-fagin-sentenced-to-15-months-in-oxycodone-case-1.12769382>; Defendant’s Sentencing Memorandum at 1, *United States v. Fagin*, No. 2-00255-JS (E.D.N.Y. 2016).

86. See Government’s Sentencing Position at 4, 14, *United States v. Garg*, No. 2-00007 (C.D. Cal. 2016); *Ex-Glendoria Doctor Sentenced to Prison for Selling Pain Pills to*

John M. Gayden ⁸⁷	64	235-293 months	84	235 months	84	Within
Jeanne E. Germeil ⁸⁸	55	262-327 months	77	210 months	72.5	Below
Alan Arnold Godofsky ⁸⁹	61	121-151 months	71	60 months	66	Below
Carlos Godoy ⁹⁰	80	70-87 months	86	12 months	81	Below
Jose Jorge Abbud Gordinho ⁹¹	67	46-57 months	71	96 months	75	Above
Timothy Gowder ⁹²	72	480 months	112	252 months	93	Below
Steven Hefter ⁹³	61	135-168 months	72	87 months	68	Below

Addicts in LA, PATCH (June 1, 2016), <https://patch.com/california/glendora/ex-glendora-doctor-sentenced-prison-selling-pain-pills-addicts-la>.

87. See Transcript of Sentencing at 16, 26, 76, *United States v. Gayden*, No. 6-00187 (M.D. Fla. 2018); Press Release, U.S. Dep’t of Just., Brevard County Doctor Sentenced to Over Nineteen Years for Illegally Distributing Oxycodone (Sept. 10, 2018), <https://www.justice.gov/usao-mdfl/pr/brevard-county-doctor-sentenced-over-nineteen-years-illegally-distributing-oxycodone>.

88. See Press Release, U.S. Dep’t of Just., South Florida Pain Management Doctor Sentenced to 17 ½ Years in Prison for Illegally Dispensing Opioid Drugs and Jumping Bond (Nov. 26, 2019), <https://www.dea.gov/press-releases/2019/11/26/south-florida-pain-management-doctor-sentenced-17-12-years-prison>; E-mail from Daniel Ecarius, Defense Attorney, to Karly Newcomb (Jan. 22, 2020).

89. See Transcript of Sentencing Hearing at 16, 30, 33, *United States v. Godofsky*, No. 5-00059 (E.D. Ky. 2018).

90. See Derick Hutchinson, *Farmington Doctor Sentenced for Illegal Distribution of Prescription Pills*, WDIV CLICKONDETROIT (Oct. 4, 2017), <https://www.clickondetroit.com/news/farmington-doctor-sentenced-for-illegal-distribution-of-prescription-pills>; Government’s Motion for Downward Departure at 3–4, *United States v. Godoy*, No. 2-20283 (E.D. Mich. 2017) (The prosecution filed a 5K1.1 motion and recommended a 49-month sentence. The court imposed a notably lower sentence.)

91. See Press Release, U.S. Dep’t of Just., Beckley Doctor Sentenced to Eight Years in Prison for Federal Drug Crime and Health Care Fraud (Apr. 27, 2016), <https://www.justice.gov/usao-sdww/pr/beckley-doctor-sentenced-eight-years-prison-federal-drug-crime-and-health-care-fraud>; Sentencing Memorandum of the United States at 1, *United States v. Gordinho*, No. 5-00007 (S.D. W. Va. 2016).

92. See E-mail from Gregory Rosenberg, Assistant United States Attorney, Eastern District of Kentucky, to Adam Gershowitz (Oct. 25, 2019) (on file with author); Press Release, U.S. Dep’t of Just., *Oak Ridge*, Tennessee Doctor and Boca Raton, Florida Clinic Owner Sentenced for Oxycodone Trafficking Conspiracy (Aug. 9, 2019) <https://www.justice.gov/usao-edky/pr/oak-ridge-tennessee-doctor-and-boca-raton-florida-pain-clinic-owner-sentenced-oxycodone>.

93. See Press Release, U.S. Dep’t of Just., Vestavia Hills Cardiologist Sentenced to 87 Months in Prison for Illegally Prescribing Opioids (May 7, 2019); E-mail from Mohammad Khatib, Assistant United States Attorney, to Adam Gershowitz (Oct. 17, 2019) (on file with author).

Steven Henson ⁹⁴	57	360 months to Life	87	Life	Life	Within
Steven Arthur Holper ⁹⁵	67	57-71 months	72	41 months	70	Below
Eric Jacobson ⁹⁶	54	135-168 months	65	96 months	62	Below
Pawankumar Jain ⁹⁷	66	135-168 months	77	108 months	75	Below
Edd Jones ⁹⁸	65	6-12 months	65.5	18 months	66.5	Above
Alex Kafi ⁹⁹	70	108-135 months	79	60 months	75	Below
Azad Khan ¹⁰⁰	64	41-51 months	67	24 months	66	Below

94. Transcript of Sentencing Proceedings at 11, 12, 41, *United States v. Henson*, No. 6-10018 (D. Kan. 2019); Press Release U.S. Dep’t of Just., *Wichita Doctor Sentenced to Life for Diverting Rx Drugs to the Streets* (Mar. 8, 2019), <https://www.justice.gov/usao-ks/pr/wichita-doctor-sentenced-life-diverting-rx-drugs-streets>.

95. See Ken Ritter, *Vegas Doctor Gets Federal Prison Time in Fentanyl Death Case*, ASSOC. PRESS (July 23, 2019), <https://apnews.com/article/77c64f194e294f488d414fa26bc89f79>; Government’s Amended Response to Defendant’s Sentencing Memorandum at 6, *United States v. Holper*, No. 2-00037 (D. Nev. 2019).

96. See Paige McAtee, *Former Great Neck Doctor Sentenced to Prison for Illegally Dealing Painkillers*, PATCH.COM (Mar. 15, 2016), <https://patch.com/new-york/great-neck/former-great-neck-doctor-sentenced-prison-illegally-dealing-painkillers>; Defendant’s Sentencing Memorandum at 2, *United States v. Jacobson*, No. 2-00432 (E.D.N.Y. 2016).

97. See Press Release, U.S. Dep’t of Just., *Former Dona Ana County Doctor Sentenced to 108 Months for Conviction of Unlawful Distribution of Prescription Painkillers and Health Care Fraud Charges* (May 9, 2019), <https://www.justice.gov/usao-nm/pr/former-dona-ana-county-doctor-sentenced-108-months-conviction-unlawful-distribution>; *United States’ Sentencing Memorandum* at 3–4, *United States v. Jain*, No. 2-012161 (D.N.M. 2019).

98. See Sentencing Hearing at 10, 14, 16, *United States v. Jones*, No. 1-00009, Vol. 3 (M.D. Ga. 2017); Latasha Ford, *Investigators Find Fitzgerald Doctor When Search Warrant Executed at Home*, TIFTON GAZETTE (Apr. 30, 2015), https://www.tiftongazette.com/news/investigators-find-fitzgerald-doctor-when-search-warrant-executed-at-home/article_11dbf246-ef86-11e4-ab89-4ff664318f73.html.

99. See Press Release U.S. Dep’t of Just., *Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids* (June 19, 2019) [hereinafter *Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids*], <https://www.justice.gov/opa/pr/michigan-doctor-sentenced-prison-his-role-scheme-unlawfully-distribute-opioids>; E-mail from Michael Rex, Defense Attorney, to Karly Newcomb (Feb. 3, 2020) (on file with author).

100. See Press Release, U.S. Dep’t of Just., *Doctor Sentenced to 24 Months in Prison for Selling Prescriptions of Suboxone and Klonopin* (Apr. 9, 2018) [hereinafter *E-mail from Robert Livermore*], <https://www.justice.gov/usao-edpa/pr/doctor-sentenced-24-months-prison-selling-prescriptions-suboxone-and-klonopin>; E-mail from Robert Livermore, Assistant United States Attorney, to Adam Gershowitz (Oct. 15, 2019) (on file with author).

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David Kirkwood ¹⁰¹	62	87-108 months	69	70 months	68	Below
Naeem Kohli ¹⁰²	61	121-151 months	71	24 months	63	Below
Michael Kostenko ¹⁰³	61	235-240 months	81	240 months	81	Within
George Kudmani ¹⁰⁴	71	292-365 months	95	48 months	75	Below
John Alan Littleford ¹⁰⁵	73	87-108 months	80	87 months	80	Within
Ernesto Lopez ¹⁰⁶	76	188-235 months	92	60 months	81	Below
Kevin Lowe ¹⁰⁷	55	240 months	75	144 months	67	Below

101. See Press Release, U.S. Dep’t of Just., Doctor Sentenced for Running Pill Mill (Aug. 29, 2018), <https://www.justice.gov/usao-sdoh/pr/doctor-sentenced-running-pill-mill>; United States’ Sentencing Memorandum at 8–9, United States v. Kirkwood, No. 3-00168 (S.D. Ohio 2018).

102. See Press Release, U.S. Dep’t of Just., Effingham Illinois Doctor Sentenced for Illegal Dispensation of Controlled Substances (Nov. 5, 2015), <https://www.justice.gov/usao-sdil/pr/effingham-illinois-doctor-sentenced-illegal-dispensation-controlled-substances>; Government’s Sentencing Memorandum at 4, 10, United States v. Kohli, No. 4-40038 (S.D. Ill. 2015).

103. See Sentencing Memorandum of the United States at 1, United States v. Kostenko, No. 5-00221 (S.D. W. Va. 2017); Press Release, U.S. Dep’t of Just., Beckley Area Physician Sentenced to 20 Years in Federal Prison for Oxycodone Crime (Aug. 23, 2017), <https://www.justice.gov/usao-sdww/pr/beckley-area-physician-sentenced-20-years-federal-prison-oxycodone-crime#>.

104. See Press Release, U.S. Dep’t of Just., Louisville Physician Sentenced to 48 Months in Prison for Unlawful Distribution of Controlled Substances and Health Care Fraud (June 5, 2017), <https://www.justice.gov/usao-wdky/pr/louisville-physician-sentenced-48-months-prison-unlawful-distribution-controlled>; United States’ Sentencing Memorandum at 33, United States v. Kudmani, No. 3-00173 (W.D. Ky. 2017).

105. See Press Release, U.S. Dep’t of Just., Parker Doctor Sentenced for Illegally Distributing Controlled Substances (Apr. 24, 2019), <https://www.justice.gov/usao-co/pr/parker-doctor-sentenced-illegally-distributing-controlled-substances>; E-mail from Peter McNeilly, Deputy Chief of Narcotics, United States Attorney’s Office for the District of Colorado, to Adam Gershowitz (Oct. 31, 2019) (on file with author).

106. See Press Release, U.S. Dep’t of Just., Doctor Who Operated Oxycodone and Fentanyl Diversion Scheme Sentenced to 5 Years in Prison (July 2, 2019), <https://www.justice.gov/usao-sdny/pr/doctor-who-operated-oxycodone-and-fentanyl-diversion-scheme-sentenced-5-years-prison>; The Government’s Sentencing Memorandum at 2, United States v. Lopez, No. 1-00006 (S.D.N.Y. 2019); Transcript of Sentencing Hearing at 8, United States v. Lopez, No. 1-00006 (S.D.N.Y. 2019).

107. See Press Release, U.S. Dep’t of Just., Doctor and Owner of Bronx Clinics Involved in Illegal Distribution of More than 5 Million Oxycodone Pills Is Sentenced to 12 Years in Prison (Jan. 11, 2016), <https://www.justice.gov/usao-sdny/pr/doctor-and-owner-bronx-clinics-involved-illegal-distribution-more-five-million>, at 15, 21.

Gracia Mayard ¹⁰⁸	63	60 months	68	54 months	67.5	Below
Donatus O. Mbanefo ¹⁰⁹	65	188-235 months	81	96 months	73	Below
Pravin V. Mehta ¹¹⁰	78	57-71 months	82	24 months	80	Below
Andres Mencia ¹¹¹	64	60-78 months	69	78 months	70.5	Within
Moshe Mirilashvili ¹¹²	68	292-365 months	92	160 months	81	Below
Nibedita Mohanty ¹¹³	56	108-135 months	65	48 months	60	Below
Rodney Moret ¹¹⁴	67	97-121 months	75	75 months	73	Below
Adelfo Pamatmat ¹¹⁵	72	292-360 months	96	228 months	91	Below

108. See Press Release, U.S. Dep’t of Just., Queens Doctor Sentenced to 54 Months’ Imprisonment for Conspiracy to Distribute Oxycodone (June 17, 2015), <https://www.justice.gov/usao-edny/pr/queens-doctor-sentenced-54-months-imprisonment-conspiracy-distribute-oxycodone>.

109. See Sentences Handed Down for Illegal Pill Mills, *supra* note 66; Sentencing Transcript at 25, 26, United States v. Mbanefo, No. 7-00002 (M.D. Ga. 2018).

110. See Phil Fairbanks, Pravin Mehta, “Dr. Feel Good” gets prison for dealing opiate pills, BUFFALO NEWS (Jan. 25, 2016); Government’s Response to Defendant’s Request for a Non-Guidelines Sentence at 2, United States v. Mehta, No. 1-00268 (W.D.N.Y. 2016).

111. See Paula McMahon, Popular Broward doctor’s ‘pill mill’ punishment is much less than feds sought, SUN SENTINEL (Sept. 7, 2018), <https://www.sun-sentinel.com/news/crime/fl-reg-doctor-andres-mencia-sentenced-20180906-story.html>.

112. See Press Release, U.S. Dep’t of Just., New York Doctor Sentenced to More Than 13 Years in Prison for Unlawfully Dispensing Nearly 1 Million Oxycodone Pills (Sept. 28, 2016), <https://www.justice.gov/usao-sdny/pr/new-york-doctor-sentenced-more-13-years-prison-unlawfully-dispensing-nearly-1-million>; Sentencing Memorandum of the United States at 11, United States v. Mirilashvili, No. 1-00810 (S.D.N.Y. 2016).

113. See Press Release, U.S. Dep’t of Just., Stafford Doctor Sentenced to 4 Years in Prison for Distribution of Oxycodone and Health Care Fraud (June 26, 2015), <https://www.justice.gov/usao-edva/pr/stafford-doctor-sentenced-four-years-prison-distribution-oxycodone-and-health-care>; Sentencing Position of the United States at 1, 2, United States v. Mohanty, No. 1-00256 (E.D. Va. 2015).

114. See Government’s Sentencing Memorandum at 4, United States v. Moret, No. 2-20723 (E.D. Mich. 2017) at 4; Press Release, U.S. Dep’t of Just., Former Doctor Sentenced to 75 Months in Prison for Illegally Prescribing Opiates and Committing Health Care Fraud (Feb. 6, 2018), <https://www.justice.gov/usao-edmi/pr/former-doctor-sentenced-75-months-prison-illegally-prescribing-opiates-and-committing>.

115. See Transcript of Sentencing Hearing, at 50, 55, 67, 73, United States v. Pamatmat, No. 2-20551 (E.D. Mich. 2017).

Keyhosrow Parsia ¹¹⁶	81	24-30 months	83	Probation	81	Below
Constantino Perales ¹¹⁷	67	151-188 months	80	144 months	79	Below
Bharat Patel ¹¹⁸	71	87-108 months	78	54 months	75.5	Below
Shriharsh Laxman Pole ¹¹⁹	65	87-108 months	72	87 months	72	Within
Roy Reynolds ¹²⁰	69	168-210 months	83	50 months	73	Below
Edward Ridgill ¹²¹	65	87-108 months	72	60 months	70	Below
Kenneth Rivera-Kolb ¹²²	66	37-46 months	69	30 months	68.5	Below

116. See Sam Newhouse, *Doc gets 4 Years for South Philly Pill Mill*, METRO (Feb. 28, 2018), <https://www.metro.us/news/local-news/philadelphia/doc-gets-4-years-south-philly-pill-mill>; E-mail from Robert Livermore, *supra* note 100.

117. See Transcript of Sentencing Proceedings at 15, 33, 48, *United States v. Perales*, No. 1-00888 (N.D. Ill. 2018); Press Release, U.S. Dep’t of Just., LaSalle County Physician Sentenced to 12 Years in Prison for Illegally Dispensing Prescription Opioids (Oct. 16, 2018), <https://www.justice.gov/usao-ndil/pr/lasalle-county-physician-sentenced-12-years-prison-illegally-dispensing-prescription>.

118. See Press Release, U.S. Dep’t of Just., Norwalk Doctor Sentenced to 54 Months in Prison for Drug Distribution and Health Care Fraud Offenses (Oct. 12, 2018), <https://www.justice.gov/usao-ct/pr/norwalk-doctor-sentenced-54-months-prison-drug-distribution-and-health-care-fraud>; Government’s Sentencing Memorandum at 12, 24, *United States v. Mansourov et al.*, No. 3-001640 (D. Conn. 2018).

119. See Press Release, U.S. Dep’t of Just., Former Doctor Sentenced to Prison for Illegal Sale of Opioid (Apr. 26, 2019), <https://www.justice.gov/usao-edva/pr/former-doctor-sentenced-prison-illegal-sale-opioids>; Position of the United States with Respect to Sentencing at 3, *United States v. Pole*, No. 1-00303 (E.D. Va. 2019).

120. See Press Release, U.S. Dep’t of Just., Physician Sentenced to Federal Prison for Drug Trafficking (Aug. 10, 2018), <https://www.justice.gov/usao-wdky/pr/physician-sentenced-federal-prison-drug-trafficking>; Government’s Sentencing Memorandum at 1, *United States v. Reynolds*, No. 1-00009 (W.D. Ky. 2018); Bill Estep, *Drug dealer with a medical license gets 50 months in prison*: LEXINGTON HERALD LEDGER (Aug. 11, 2018), <https://ci.uky.edu/kentuckyhealthnews/2018/08/13/drug-dealer-with-a-medical-license-gets-50-months-in-prison/>.

121. See Press Release, U.S. Dep’t of Just., Medical Doctor Who Illegally Wrote Prescriptions—including for Highly Addictive Opioids—Sentenced to Five Years in Prison (Apr. 23, 2018), <https://www.justice.gov/usao-cdca/pr/medical-doctor-who-illegally-wrote-prescriptions-including-highly-addictive-opioids>; Transcript of Sentencing, at 14, 35, 36, *United States v. Ridgill*, No. 2-00631 (C.D. Cal. 2018).

122. See Jane Musgrave, *Former Doctor Gets Prison Sentence for Illegally Prescribing Meds*, PALM BEACH POST (Mar. 15, 2019), <https://www.palmbeachpost.com/news/20190315/former-doctor-gets-prison-sentence-for-illegally-prescribing-meds>; Response in Opposition to Defendant’s Sentencing Memorandum and Defendant’s Request for Alternative Sentence Pursuant to 18 USC Section 3553(a), at 1, *United States v. Rivera-Kolb*, No. 9-80121 (S.D. Fla. 2019).

Romie Earl Roland ¹²³	57	235-293 months	77	130 months	68	Below
Jerrold Rosenberg ¹²⁴	63	70-87 months	69	51 months	67	Below
Anthony Rossi ¹²⁵	66	6-12 months	66.5	Probation	66	Below
Xiulu Ruan ¹²⁶	52	Life	Life	252 months	73	Below
Russell Sachs ¹²⁷	58	87-108 months	65	24 months	60	Below
Clarence Scranage ¹²⁸	62	360 months to Life	92	360 months	92	Within
Jerome Sherard ¹²⁹	60	210-262 months	77.5	60 months	65	Below

123. See Transcript of Sentencing Hearing, at 73, 96, 116, *United States v. Roland*, No. 1-00291 (N.D. Ga. 2017).

124. See Press Release, U.S. Dep’t of Just., Doctor Sentenced for Health Care Fraud, Accepting Kickbacks to Prescribe Highly Addictive Version of Fentanyl (Mar. 9, 2018), <https://www.justice.gov/usao-ri/pr/doctor-sentenced-healthcare-fraud-accepting-kickbacks-prescribe-highly-addictive-version>; Government’s Sentencing Memorandum, at 3, 11, *United States v. Rosenberg*, No. 1-00009 (D.R.I. 2018).

125. See Supplemental Tentative Findings and Rulings at 5, *United States v. Rossi*, No. 2-00177 (W.D. Pa. 2017); Position of the Government with Respect to Sentencing Factors at 1, *United States v. Rossi*, No. 2-00177 (W.D. Pa. 2016); T.L. Miller, *Hermitage Doc Gets Probation for Fraud, Opioid Sales*, THE HERALD (Jan. 7, 2017), https://www.sharonherald.com/news/local_news/hermitage-doc-gets-probation-for-fraud-opioid-sales/article_eb92fac8-269c-59d1-bafe-b9f08831e538.html#.

126. See Lawrence Specker, *Doctor Gets 21 Years in Mobile “Pill Mill” Case*, PRESS-REGISTER (May 28, 2017); Transcript of Sentencing of Xiulu Ruan, M.D. at 64–65, *United States v. Ruan*, No. 1-00088 (S.D. Ala. 2017).

127. See Larry Hannan, “Pill Mill” Physician Who Had 10 Patients Die of Overdoses and Had Sex With Others Is Sentenced to 2 Years, JACKSONVILLE.COM (Jan. 4, 2017, 6:00 PM), <https://www.jacksonville.com/news/2017-01-04/pill-mill-physician-who-had-10-patients-die-overdoses-and-had-sex-others-sentenced-2>; Press Release, U.S. Dep’t of Just., Clay County Doctor Indicted for Distributing Controlled Substances Resulting in the Death of a Patient (Mar. 13, 2015), <https://www.justice.gov/usao-mdfl/pr/clay-county-doctor-indicted-distributing-controlled-substances-resulting-death-patient>; United States’ Position Regarding Disputed Guideline Issues at 13, *United States v. Sachs*, No. 3-30-0030 (M.D. Fla. 2016); Defendant’s Sentencing Memorandum at 10, *United States v. Sachs*, No. 3-30-0030 (M.D. Fla. 2016) (noting Probation determined a base offense level of 29, which [although not stated in the brief] would amount to a range of 87 to 108 months pursuant to the 2016 Sentencing Table).

128. See Sentencing Position of the United States and Response to Defendant’s Objections to the Presentence Report at 1, 3, 4, *United States v. Scranage*, No. 3-00023 (E.D. Va. 2017); Press Release, U.S. Dep’t of Just., Doctor Sentenced to 30 Years for Oxycodone Distribution Conspiracy (Dec. 18, 2017), <https://www.justice.gov/usao-edva/pr/doctor-sentenced-30-years-oxycodone-distribution-conspiracy>.

129. See Sentencing Report, *United States v. Sherard*, No. 1-00104-004 (E.D. Tenn. 2015); United States’ Response to Defendant’s Request for a Downward Variance at 2, 20, *United States v. Sherard*, No. 1-00104-004 (E.D. Tenn. 2015).

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Derron McRae Simon ¹³⁰	45	235-293 months	65	180 months	60	Below
Christopher Stegawski ¹³¹	65	240 months	85	160 months	78	Below
Christopher Steward ¹³²	65	18-30 months	66.5	18 months	66.5	Within
Alan Summers ¹³³	79	57-71 months	84	48 months	83	Below
Andrew Sun ¹³⁴	79	63-78 months	84	63 months	84	Within
Rassan M. Tarabein ¹³⁵	58	135-168 months	69	60 months	63	Below

130. See Press Release, U.S. Dep’t of Just., Arlington Doctor Sentenced to 15 Years in Prison in Oxycodone Conspiracy (Mar. 6, 2015), <https://www.justice.gov/usao-edva/pr/press-release-6>; Transcript of Sentencing Hearing at 4, United States v. Simon, No. 1-00300 (E.D. Va. 2015); Government’s Position with Respect to Sentencing United States v. Simon at 1, No. 1-00300 (E.D. Va. 2015).

131. See Press Release, U.S. Dep’t of Just., Pill Mill Operators Sentenced (Nov. 24, 2015), <https://www.justice.gov/usao-sdoh/pr/pill-mill-operators-sentenced>; Defendant’s Sentencing Memorandum and Motion for Deviation from Guidelines at 5, United States v. Stegawski, No. 1-00054 (S.D. Ohio 2015).

132. See *Cave City dentist sentenced in federal court*, WBKO.COM (Mar. 20, 2017), <https://www.wbko.com/content/news/Cave-City-dentist-sentenced-in-federal-court-416645193.html>.

133. See Press Release, U.S. Dep’t of Just., Doctor Sentenced to 48 Months in Prison for Selling Prescriptions of Suboxone and Klonopin (Feb. 27, 2018), <https://www.justice.gov/usao-edpa/pr/doctor-sentenced-48-months-prison-selling-prescriptions-suboxone-and-klonopin>; Sentencing Memorandum on Behalf of Alan Summers at 2, United States v. Summers, No. 2-00201 (E.D. Pa. Feb. 23, 2018); E-mail from Robert Livermore, *supra* note 100.

134. See Press Release, U.S. Dep’t of Just., SoCal Doctor Who Distributed Addictive Painkiller Hydrocodone and Laundered More Than \$1 Million in Illegal Proceeds Sentenced to Over Five Years in Federal Prison (Jan. 5, 2015), <https://www.justice.gov/usao-cdca/pr/socal-doctor-who-distributed-addictive-painkiller-hydrocodone-and-laundered-more-1>; Transcript of Sentencing at 5, 6, 8, United States v. Sun, No. 2-00157 (C.D. Cal. Jan. 5, 2015).

135. See Press Release, U.S. Dep’t of Just., Former Pain Management Doctor Receives 5 Years in Health Care Fraud Case, Ordered to Pay More than 15 Million Dollars in Restitution (June 8, 2018), <https://www.justice.gov/usao-sdal/pr/former-pain-management-doctor-receives-5-years-health-care-fraud-case-ordered-pay-more>; United States’ Sentencing Memorandum at 1, 2, 4, United States v. Tarabein, No. 1-00090 (S.D. Ala. June 4, 2018).

Tad W. Taylor ¹³⁶	64	240 months	84	240 months	84	Within
Deborah Gayle Thomas ¹³⁷	65	135-168 months	76	120 months	75	Below
Carlos Luis Venegas ¹³⁸	62	240 months	82	156 months	75	Below
Clarence Verdell ¹³⁹	68	41-51 months	71	Proba-tion	68	Below
Mackie James Walker Jr. ¹⁴⁰	65	210-240 months	82.5	188 months	81	Below
Frederick Weintraub ¹⁴¹	65	37-46 months	68	18 months	66.5	Below

136. See Transcript of Sentencing Hearing at 20, 43, 45, *United States v. Taylor*, No. 4-00009 (E.D. Tex. May 3, 2010); Press Release, U.S. Dep't of Just., Two North Texas Doctors, One Nurse Sentenced to Prison for Federal Drug Trafficking Violations (May 9, 2019), <https://www.justice.gov/usao-edtx/pr/two-north-texas-doctors-one-nurse-sentenced-prison-federal-drug-trafficking-violations>.

137. See Wes Wade, *Maryville pill mill doctor sentenced to 10 years in prison*, THE DAILY TIMES (Feb. 23, 2017), https://www.thedailytimes.com/news/maryville-pill-mill-doctor-sentenced-to-years-in-prison/article_e7f5783f-57cf-5d0f-9ba1-61343c8e158e.html.

138. See Press Release, U.S. Dep't of Just., Pill Mill Physician Sentenced to 13 Years for Conspiracy to Distribute Narcotics (May 13, 2019); Transcript of Sentencing Proceeding at 46-47, *United States v. Venegas*, No. 3-00479 (N.D. Tex. May 13, 2019) [hereinafter *Venegas Sentencing Proceeding*].

139. See E-mail from Robert Livermore, *supra* note 100; Press Release, U.S. Dep't of Just., Fourth Suboxone Doctor and Office Manager Indicted for Illegally Selling Prescriptions of Suboxone and Klonopin (Aug. 17, 2016), <https://www.justice.gov/usao-edpa/pr/fourth-suboxone-doctor-and-office-manager-indicted-illegally-selling-prescriptions>.

140. See Transcript of Sentencing Hearing at 4, 47, 57, *United States v. Walker*, No. 1-00001 (D.S.C. Apr. 30, 2018).

141. See Sentencing Submission by USA at 1, 2, *United States v. Weintraub*, No. 7-00533 (S.D.N.Y. Nov. 15, 2016); Press Release, U.S. Dep't of Just., Former Doctor Sentenced in White Plains Federal Court to 18 Months in Prison for Selling Oxycodone Prescriptions (Nov. 18, 2016), <https://www.justice.gov/usao-sdny/pr/former-doctor-sentenced-white-plains-federal-court-18-months-prison-selling-oxycodone>.

Henri Wetselaar ¹⁴²	93	360 months to Life	123	120 months	103	Below
Simmon Lee Wilcox ¹⁴³	60	188-235 months	75.5	100 months	68	Below
Richard Williams ¹⁴⁴	77	108-135 months	86	60 months	82	Below
Jerry Yee ¹⁴⁵	82	46-57 months	86	12 months & 1 day	83	Below

The younger release defendants did not fare nearly as well as the older release defendants. Table 2 (below) identifies forty-five doctors who were convicted for drug dealing, but would be released from prison before the age of sixty-five if the court imposed a sentence at the bottom end of the guidelines range.¹⁴⁶ Some of these doctors were in their fifties, but faced relatively short guidelines ranges. Other doctors faced longer ranges, but were much younger at the moment of sentencing.¹⁴⁷

Judges imposed below guidelines sentences in twenty-five of the forty-five cases involving younger release defendants. This amounts to

142. See Transcript of Sentencing and Disposition at 22, 35, 47, *United States v. Wetselaar*, No. 2-347 (D. Nev. Aug. 1, 2017); Press Release, U.S. Dep’t of Just., Physician Sentenced to 10 Years in Prison for Distribution of Oxycodone (Aug. 1, 2017), <https://www.justice.gov/usao-nv/pr/physician-sentenced-10-years-prison-distribution-oxycodone#>.

143. See Press Release, U.S. Dep’t of Just., Dr. Wilcox Sentenced to 100 Months in Federal Prison for Distribution of Oxycodone Convictions (May 10, 2016), <https://www.justice.gov/usao-ut/pr/dr-wilcox-sentenced-100-months-federal-prison-distribution-oxycodone-convictions#>; United States’ Sentencing Memorandum Regarding Simmon Lee Wilcox at 12, *United States v. Wilcox*, No. 2-00717 (D. Utah May 3, 2016).

144. See Press Release, U.S. Dep’t of Just., Doctor, Pharmacists, Recruiter Sentenced in Opioid Diversion Conspiracy (Apr. 3, 2017), <https://www.justice.gov/usao-sdtx/pr/doctor-pharmacist-and-recruiter-sentenced-opioid-diversion-conspiracy>; Government’s Consolidated Objections/Clarifications to the Various Presentence Investigation Reports at 3, *United States v. Le et al.*, No. 4-00125 (S.D. Tex. Feb. 27, 2017); E-mail from Brian Warren, former Defense Attorney, to Karly Newcomb (Jan. 30, 2020) (The government filed a 5K1.1 motion and requested a sentence of 87-108 months.).

145. See Press Release, U.S. Dep’t of Just., Brookfield Physician Sentenced to Prison for Illegally Distributing Prescription Narcotics (May 18, 2015), <https://www.justice.gov/usao-edwi/pr/brookfield-physician-sentenced-prison-distributing-prescription-narcotics>; Sentencing Minutes, *United States v. Yee*, No. 2-00192 (May 6, 2015).

146. See *infra* Table 2.

147. *Id.*

a below guidelines sentence in fifty-six percent of cases. Eighteen defendants (forty percent) received sentences within the guidelines range and two defendants (four percent) received above guidelines sentences. The younger release defendants, therefore, were treated very similar to the average federal defendant and far less favorably than the older release defendants.

TABLE 2: YOUNGER RELEASE DEFENDANTS CASES IN WHICH A SENTENCE AT THE BOTTOM END OF THE GUIDELINES RANGE WOULD RESULT IN RELEASE BEFORE AGE 65

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom Guidelines Sentence	Judge's Actual Sentence	Age at Release	Sentence Within, Below, or Above the Guidelines
Venkat Aachi ¹⁴⁸	52	30-37 months	54.5	24 months	54	Below
Arman Abovyan ¹⁴⁹	44	135-168 months	55	135 months	55	Within
Omar Almusa ¹⁵⁰	46	37-46 months	49	24 months	48	Below
Shelinder Aggarwal ¹⁵¹	48	188-235 months	64	180 months	63	Below

148. See Press Release, U.S. Dep't of Just., South Bay Doctor Sentenced to Two Years in Prison for Unlawfully Distributing Hydrocodone and Committing Health Care Fraud (Oct. 21, 2019), <https://www.justice.gov/usao-ndca/pr/south-bay-doctor-sentenced-two-years-prison-unlawfully-distributing-hydrocodone-and>; Government's Sentencing Memorandum at 2, United States v. Aachi, No. 18-00490 (N.D. Cal. 2019).

149. See Press Release, U.S. Dep't of Just., Seven More Defendants Sentenced for Participating in Schemes Related to Defrauding Health Care Benefit Programs, Unlawful Dispensing of Opioids, and Money Laundering (Feb. 13, 2019), <https://www.justice.gov/usao-sdfl/pr/seven-more-defendants-sentenced-participating-schemes-related-defrauding-health-care>; United States' Response to Defendant's Objections to the Presentence Investigation Report at 2, 17, United States v. Abovyan, No. 18-80122 (S.D. Fla. 2019).

150. See Transcript of Sentencing Proceedings at 23, United States v. Almusa, No. 18-00065 (W.D. Pa. 2019); Torsten Ove, *Ex-Doctor Gets Prison for Opioid Diversion Scheme*, PITTSBURGH POST-GAZETTE (May 10, 2019), <https://www.post-gazette.com/news/crime-courts/2019/05/09/omar-almusa-upmc-doctor-opioid-prescription-addiction-prison-sentence-pittsburgh-Marios-Papachristou/stories/201905090112>.

151. See Press Release, U.S. Dep't of Just., Huntsville Pill Mill Doctor Sentenced to 15 Years in Prison for Illegal Prescribing and Health Care Fraud (Feb. 7, 2017), <https://www.justice.gov/usao-ndal/pr/huntsville-pill-mill-doctor-sentenced-15-years-prison-illegal-prescribing-and-health>; Government's Sentencing Memorandum at 1, 8, United States v. Aggarwal, No. 16-00299 (N.D. Ala. 2017).

Hussein Awada ¹⁵²	46	135-168 months	57	84 months	53	Below
Sathish Narayanappa Babu ¹⁵³	48	46-57 months	52	18 months	49.5	Below
William Belfar ¹⁵⁴	55	30-37 months	57.5	Probation	55	Below
Matthew A. Bennett ¹⁵⁵	49	46-57 months	53	36 months	52	Below
Mark Buzzard ¹⁵⁶	51	87-108 months	58	72 months	57	Below
Wayne Celestine ¹⁵⁷	58	70-87 months	64	84 months	65	Within

152. See Sentencing Hearing Transcript at 17, *United States v. Awada*, No. 12-20595 (E.D. Mich. 2015); Mitch Hotts, *Pill Mill Doctor Sentenced to Seven Years in Prison*, OAKLAND PRESS (Nov. 17, 2015), https://www.macombdaily.com/news/pill-mill-doctor-sentenced-to-seven-years-in-prison/article_15e57f2a-31a8-57b7-80b9-a3f5b8f67a0f.html.

153. See Press Release, U.S. Dep’t of Just., *Suspended Physician Sentenced to 1 ½ Years for Illegally Dispensing Oxycodone and Falsely Billing Medicare in Undercover Probe* (Feb. 24, 2015), <https://www.justice.gov/usao-ndil/pr/suspended-physician-sentenced-1-years-illegally-dispensing-oxycodone-and-falsely>; Government’s Sentencing Memorandum at 12, 21, *United States v. Babu*, No. 14-00084 (N.D. Ill. 2015).

154. See Government’s Sentencing Letter at 2, *United States v. Belfar*, No. 13-807 (S.D.N.Y. 2018); Stephen Rex Brown, *Crooked shrink who criticized Lindsay Lohan’s doctor as an enabler is sentenced to 5 years probation for prescribing Oxycodone for cash*, N.Y. DAILY NEWS (June 3, 2019), <https://www.nydailynews.com/new-york/ny-oxycodone-shrink-sentenced-20190603-ekkvwuv3jrb3tblvuwxfknnjpq-story.html>.

155. See Government’s Response to Defendant’s Sentencing Memorandum, *United States v. Bennett*, No. 12-00279 (W.D.N.Y. 2015); Phil Fairbanks, *Former doctor gets 3 years in prison for giving out illegal painkillers*, THE BUFFALO NEWS (Nov. 2, 2015), https://buffalonews.com/news/local/crime-and-courts/former-doctor-gets-3-years-in-prison-for-giving-out-illegal-painkillers/article_55a704b1-2264-5ad6-88b7-14c768ac2f18.html.

156. Government’s Sentencing Memorandum at 12, 26, *United States v. Buzzard*, No. 5:15-20581 (E.D. Mich. 2018); Keith Martin, *West Bloomfield Doctor sentenced for opioid drug conspiracy* DRUG ENF’T AGENCY (July 26, 2018), <https://www.dea.gov/press-releases/2018/07/26/west-bloomfield-doctor-sentenced-opioid-drug-conspiracy>.

157. See Press Release, U.S. Dep’t of Just., *Local Medical Doctor Sentenced for Illegally Dispensing and Distributing Controlled Substances by Prescriptions and Money Laundering* (May 1, 2019), <https://www.justice.gov/usao-edla/pr/local-medical-doctor-sentenced-illegally-dispensing-and-distributing-controlled-0>; Letter to the Court from U.S. Attorney, *United States v. Celestine*, No. 18-00083 (E.D. La. 2019).

Daniel Cham ¹⁵⁸	49	168-210 months	63	160 months	62	Below
Zongli Chang ¹⁵⁹	53	108-135 months	62	135 months	64	Within
Luis Collazo ¹⁶⁰	55	24-40 months	57	Probation	55	Below
Steven Joseph Collins ¹⁶¹	52	108-135 months	61	120 months	62	Within
Albert R. Cowie ¹⁶²	38	24-30 months	40	24 months	40	Within
Johnny Di Blasi ¹⁶³	46	36-57 months	49	33 months	49	Below
Jeffrey Gundel ¹⁶⁴	51	108-135 months	60	78 months	57.5	Below

158. See Press Release, U.S. Dep’t of Just., Doctor Who Illegally Distributed Prescription Painkillers and Laundered Proceeds Sentenced to 160 Months in Federal Prison (Mar. 14, 2018), <https://www.justice.gov/usao-cdca/pr/doctor-who-illegally-distributed-prescription-painkillers-and-laundered-proceeds>; Transcript of Sentencing Proceedings at 6, *United States v. Cham*, No. 14-00591 (C.D. Cal. 2018).

159. See Press Release, U.S. Dep’t of Just., Livonia Doctor Sentenced to More than Twelve Years for Conspiring with Others to Illegally Distribute Prescription Drugs (Apr. 17, 2019), <https://www.justice.gov/usao-edmi/pr/livonia-doctor-sentenced-more-twelve-years-conspiring-others-illegally-distribute>; Government’s Sentencing Memorandum at 3–4, *United States v. Chang*, No. 2-200008 (E.D. Mich. 2019); Tresa Baldas, *Livonia Doctor Gets 12 Years in Prison for \$18 Million Opioid Scam*, DETROIT FREE PRESS (Apr. 18, 2019), <https://www.freep.com/story/news/local/michigan/oakland/2019/04/17/michigan-opioid-scam/3500769002/>.

160. See Government’s Sentencing Memorandum at 7, *United States v. Collazo*, No. 2-20595 (E.D. Mich. 2015); Khalil AlHajal, *Doctor Who Wrote Bad Prescriptions Sent to Prison*, FLINT J. (2015).

161. See Jeff Sturgeon, *Former Doctor from Roanoke Draws 10 Years for Child Porn, Drug Crimes*, THE ROANOKE TIMES (June 23, 2015), https://roanoke.com/news/crime/former-doctor-from-roanoke-draws-10-years-for-child-porn-drug-crimes/article_0cf7d5e1-9a2b-5505-9748-f35c8bb1619b.html; Government Sentencing Memorandum at 1–2, *United States v. Collins*, No. 7-00053 (E.D. Va. June 19, 2015) (Collins’ case is unusual in that he was also convicted of possessing child pornography.).

162. Transcript of Sentencing at 15–16, 22, *United States v. Cowie*, No. 1-00106 (W.D.N.Y. 2017); Phil Fairbanks, *Doctor—and recovering addict—gets jail time in fraud case*, BUFFALO NEWS (last updated Aug. 3, 2020), https://buffalonews.com/news/local/crime-and-courts/doctor-and-recovering-addict-gets-jail-time-in-fraud-case/article_600ba55c-5be7-574c-b175-a381b57cd2fa.html.

163. See E-mail from Matthew Josephson, Assistant U. S. Atty, S.D. of Ga., to Adam Gershowitz (Oct. 21, 2019) (on file with author); Press Release, U.S. Dep’t of Just., Doctor Sentenced to Prison for Prescribing Narcotics to Non-Patients (June 13, 2019), <https://www.justice.gov/usao-sdga/pr/doctor-sentenced-prison-prescribing-narcotics-non-patients>.

164. See Press Release, U.S. Dep’t of Just., Jan Surgeon Receives 78 Months in Prison for Distributing Oxycodone (Jan. 25, 2016), <https://www.justice.gov/usao-ndny/pr/surgeon-receives-78-months-prison-distributing-oxycodone>; Government’s Sentencing Memorandum at 2–3, *United States v. Gundel*, No. 1-00426 (N.D.N.Y. 2015).

Tod Hagins ¹⁶⁵	52	57-71 months	57	57 months	57	Within
Gary Hartman ¹⁶⁶	48	87-108 months	55	100 months	56	Within
Brian Heim ¹⁶⁷	56	57-71 months	61	63 months	61	Within
Francisco Huidor-Figueroa ¹⁶⁸	49	46-57 months	53	Probation	49	Below
Richard Johns ¹⁶⁹	51	108-135 months	60	108 months	60	Within
Jay K. Joshi ¹⁷⁰	34	18-24 months	35.5	15 months	35	Below
James Brian Joyner ¹⁷¹	47	70-87 months	53	70 months	53	Within

165. See Press Release, U.S. Dep’t of Just., Ohio Physician Sentenced to Nearly Five Years for Fraudulently Distributing Controlled Substances (Sept. 17, 2018), <https://www.justice.gov/usao-ndwv/pr/ohio-physician-sentenced-nearly-five-years-fraudulently-distributing-controlled>; E-mail from Sarah Wagner, Assistant U. S. Atty, N.D. of W. Va., to Adam Gershowitz (Oct. 29, 2019) (on file with author).

166. See Docket Entry for Sentencing, United States v. Hartman, No. 2-00048 (E.D. Va. 2019); Position of the U. S. With Respect to Sentencing and Motion to Grant Defendant Additional One-Level Decrease for Acceptance of Responsibility at 1, United States v. Hartman, No. 2-00048 (E.D. Va. 2019); Nick Boykin, *Virginia Beach dentist sentenced to over 8 years for opioid fraud scheme*, WTKR (Oct. 3, 2019), <https://www.wtkr.com/2019/10/03/virginia-beach-dentist-sentenced-to-over-8-years-for-opioid-fraud-scheme/>.

167. See Government’s Sentencing Memorandum at 2, United States v. Heim, No. 5:14-cr-00412-DAP (N.D. Ohio 2014); Press Release, U.S. Dep’t of Just., Akron Physician Sentenced to Five Years in Prison for Illegally Distributing Prescription Painkillers (Mar. 16, 2015), <https://www.justice.gov/usao-ndoh/pr/akron-physician-sentenced-five-years-prison-illegally-distributing-prescription>.

168. See Kelsey David, “Pill Mill” Doctor Sentenced to Probation, MONTGOMERY ADVISOR (Apr. 30, 2016), <https://www.montgomeryadvertiser.com/story/news/crime/2016/04/29/pill-mill-doctor-sentenced-probation/83700228/>; E-mail from Andrew Skier, defense attorney, to Karly Newcomb (Feb. 3, 2020) (on file with author).

169. Transcript of Sentencing Proceeding at 7, 15, 20, United States v. Johns, No. 4-00224 (2017); Linda Satter, *Former Little Rock Doctor sentenced to 9 years for writing fake prescriptions*, ARK. DEMOCRAT GAZETTE (Aug. 31, 2017), <https://www.arkansasonline.com/news/2017/aug/31/former-lr-doctor-sentenced-to-9-years-f/>.

170. See Transcript of Sentencing Hearing at 84, 96, 131, United States v. Joshi, No. 2-00011 (N.D. Ind. 2019); Becky Jacobs, *Munster doctor who improperly prescribed opioids gets 15 months*, CHI. TRIB. (Apr. 29, 2019), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-joshi-opioid-sentencing-st-0430-story.html>.

171. See Jamie Satterfield, *Judge hands Maryville pain clinic doctor 70-month sentence*, KNOX NEWS (Nov. 17, 2016), <https://www.knoxnews.com/story/news/crime/2016/11/17/judge-hands-maryville-pain-clinic-doctor-70-month-sentence/94042600/>; Sentencing Hearing Before Judge Pamela Reeves at 12, 15, 236, United States v. Joyner, No. 3-124-005 (E.D. Tenn. 2016).

Mahesh Kuthuru ¹⁷²	47	33-41 months	50	28 months	49	Below
Shouping Li ¹⁷³	57	37-46 months	60	12 months	58	Below
Oscar Linares ¹⁷⁴	59	51-71 months	63	57 months	64	Within
Avinoam Luzon ¹⁷⁵	33	168-210 months	47	110 months	42	Below
Joel Miller ¹⁷⁶	58	33-41 months	61	60 months	63	Above
Joel Adrian Milliner ¹⁷⁷	46	87-108 months	53	66 months	51.5	Below

172. See Press Release, U.S. Dep’t of Just., Nevada Pain Management Doctor Sentenced for Unlawful Distribution of Controlled Substances (Dec. 21, 2015), <https://www.justice.gov/usao-nv/pr/nevada-pain-management-doctor-sentenced-unlawful-distribution-controlled-substances>; Government’s Sentencing Memorandum at 1, 2, United States v. Kuthuru, No. 2-00338 (D. Nev. 2015).

173. See Press Release, U.S. Dep’t of Just., Northern Nevada Doctor Sentenced to Prison for Illegally Writing Opioid Prescriptions (Aug. 26, 2019), <https://www.justice.gov/usao-nv/pr/northern-nevada-doctor-sentenced-prison-illegally-writing-opioid-prescriptions>; Government’s Sentencing Memorandum at 3, 10, United States v. Li., No. 3-00009 (D. Nev. 2019).

174. See Government’s Sentencing Memorandum at 9, United States v. Linares, No. 2-20368 (E.D. Mich. 2016); Ray Kisonas, *Linares sentenced to 57 months in prison*, MONROE NEWS (July 12, 2016), <https://www.monroenews.com/news/20160712/linares-sentenced-to-57-months-in-prison>.

175. See Transcript of Sentencing at 41, 47, 48, United States v. Luzon, No. 1-00599 (S.D.N.Y. 2018); Press Release, U.S. Dep’t of Just., Doctor Sentenced to More than 9 Years in Prison for Selling Fentanyl That Resulted in Manhattan Man’s Overdose Death (Mar. 22, 2018), <https://www.justice.gov/usao-sdny/pr/doctor-sentenced-more-9-years-prison-selling-fentanyl-resulted-manhattan-man-s-overdose>.

176. See Transcript of Sentencing 60, 69, United States v. Miller, No. 1-00354 (D. Colo. 2016); Government’s Statement and Request for Sentence Consistent with 18 U.S.C. 3553 at 19, United States v. Miller, No. 1-00354 (D. Colo. 2015); Press Release, U.S. Dep’t of Just., Craig Doctor Arrested for Prescribing Drugs Resulting in Patient Deaths and Health Care Fraud Scheme (Aug. 26, 2013), <https://www.justice.gov/usao-co/pr/craig-doctor-arrested-prescribing-drugs-resulting-patient-deaths-and-health-care-fraud>.

177. See *Ferndale Physician Sentenced to Prison for Unlawfully Prescribing Pain Pills*, FBI (Jan. 22, 2015), <https://www.fbi.gov/contact-us/field-offices/detroit/news/press-releases/ferndale-physician-sentenced-to-prison-for-unlawfully-prescribing-pain-pills>; Transcript of Sentencing at 20, United States v. Milliner, No. 2-20112 (E.D. Mich. Jan. 22, 2016); Government’s Sentencing Memorandum at 1, United States v. Milliner, No. 2-20112 (E.D. Mich. 2016).

Michael Minas ¹⁷⁸	50	151-188 months	63	96 months	58	Below
Sukhwinder Multani ¹⁷⁹	43	24-30 months	45	14 months	44	Below
Christopher Owens ¹⁸⁰	50	37-46 months	53	41 months	53	Within
Marios Papachristou ¹⁸¹	44	37-46 months	47	24 months	46	Below
Devendra I. Patel ¹⁸²	60	30-37 months	62.5	37 months	63	Within
Robert Tinoco Perez ¹⁸³	57	57-71 months	62	57 months	62	Within

178. See Transcript of Sentencing Hearing at 4, 18, 49, *United States v. Minas*, No. 1-00109 (D. Idaho 2016); Press Release, U.S. Dep’t of Just., Boise Doctor Convicted of Controlled Substances Delivery (Sept. 8, 2016), <https://www.justice.gov/usao-id/pr/boise-doctor-convicted-controlled-substance-delivery>.

179. See Press Release, U.S. Dep’t of Just., Decatur Doctor Sentenced for Illegal Distribution of Hydrocodone (Dec. 12, 2017), <https://www.justice.gov/usao-cdil/pr/decatur-doctor-sentenced-illegal-distribution-hydrocodone>; *United States’ Response to Defendant’s Objection and Sentencing Commentary at 4–5*, *United States v. Multani*, No. 2-20050 (C.D. Ill. 2017).

180. See Press Release, U.S. Dep’t of Just., Former Medical Doctor Sentenced to Over Three Years in Prison for Unlawfully Prescribing Oxycodone (Sept. 18, 2018), <https://www.justice.gov/usao-ndca/pr/former-medical-doctor-sentenced-over-three-years-prison-unlawfully-prescribing>; Government’s Sentencing Memorandum at 3, 9, *United States v. Owens*, No. 3-00370 (N.D. Cal. 2018).

181. See Torsten Ove, *Former UPMC Radiologist Headed to Federal Prison for Illegal Prescriptions*, PITTSBURGH POST-GAZETTE (Dec. 13, 2018), <https://www.post-gazette.com/news/crime-courts/2018/12/13/UPMC-Pittsburgh-radiologist-Marios-Papachristou-Omar-Almusa-federal-prison-sentence-illegal-prescriptions/stories/201812130136>; Defendant’s Sentencing Memorandum at 14, *United States v. Papachristou*, No. 2-000084 (W.D. Pa. 2018); Position of the Government with Respect to Sentencing Factors at 1, *United States v. Papachristou*, No. 2-000084 (W.D. Pa. 2018).

182. See Press Release, U.S. Dep’t of Just., Nevada Cardiologist Sentenced to 3 Years in Prison for Unlawful Distribution of Opioids (May 8, 2019), <https://www.justice.gov/usao-nv/pr/nevada-cardiologist-sentenced-three-years-prison-unlawful-distribution-opioids>; Government’s Sentencing Memorandum at 4, 11, *United States v. Patel*, No. 3-00114 (2019).

183. See Press Release, U.S. Dep’t of Just., Orange County Psychiatrist Sentenced to More than Four Years in Federal Prison for Writing Illegal Opioid Prescriptions to Drug Dealer (June 18, 2019), <https://www.justice.gov/usao-cdca/pr/orange-county-psychiatrist-sentenced-more-four-years-federal-prison-writing-illegal>; Government’s Sentencing Position for Defendant Robert Perez at 2, 4, *United States v. Perez*, No. 8-00123 (C.D. Cal. 2019).

Robert Rand ¹⁸⁴	54	78-97 months	60.5	120 months	64	Above
Michael Randall ¹⁸⁵	48	57-71 months	53	32 months	51	Below
Robert Ritchea ¹⁸⁶	54	108-135 months	63	120 months	64	Within
Anil Sahijwani ¹⁸⁷	43	87-108 months	50	45 months	47	Below
James Stein-Sheridan Shelby ¹⁸⁸	50	63-78 months	55	15 months home confinement	50	Below
Felix Shepard, Jr. ¹⁸⁹	57	46 months	61	6 months	57.5	Below

184. Transcript of Sentencing at 6, 183, 229, United States v. Rand, No. 3-00029 (D. Nev. 2017); Press Release, U.S. Dep’t of Just., Reno Doctor Sentenced to 10 Years in Prison for Involuntary Manslaughter of Patient and Unlawful Distribution of Large Quantities of Prescription Drugs (Nov. 20, 2017), <https://www.justice.gov/usao-nv/pr/reno-doctor-sentenced-10-years-prison-involuntary-manslaughter-patient-and-unlawful>.

185. See Letter from AUSA Charles Rose at 6, United States v. Randall, No. 2 - 00122 (E.D.N.Y. June 14, 2016); Transcript of Criminal Cause for Pleading at 5, United States v. Randall, No. 2-00122 (E.D.N.Y. 2015); Robert Kessler, Pain Pill Doctor Michael Randall Sentenced to 32 Months *NEWSDAY* (June 16, 2016), <https://www.newsday.com/long-island/crime/pain-pill-doctor-richard-randall-sentenced-to-32-months-1.11919801>.

186. See Press Release, U.S. Dep’t of Just., Phenix City “Pill Mill” Doctor Receives a Ten-Year Sentence for Participating in a Drug Distribution Conspiracy (May 10, 2017), <https://www.justice.gov/usao-mdal/pr/phenix-city-pill-mill-doctor-receives-ten-year-sentence-participating-drug-distribution>; Plea Agreement at 2–3, United States v. Ritchea, No. 3-00136 (M.D. Ala. 2017); E-mail from Robert Keith, Defense Att’y, to Karly Newcomb (Jan. 24, 2020).

187. See Criminal Minutes at 3, United States v. Sahijwani, No. 8-00463 (M.D. Fla. Aug. 29, 2017); Press Release, U.S. Dep’t of Just., Pill Mill Doctor Sentenced to Nearly Four Years for Role in Opioid Distribution Conspiracy (Dec. 12, 2017), <https://www.justice.gov/usao-mdfl/pr/pill-mill-doctor-sentenced-nearly-four-years-role-opioid-distribution-conspiracy>.

188. See Press Release, U.S. Dep’t of Just., Two Spokane Men Sentenced for Their Roles in Unlawfully Distributing Opioids (July 23, 2019), <https://www.justice.gov/usao-edwa/pr/two-spokane-men-sentenced-their-roles-unlawfully-distributing-opioids>; United States Sentencing Memorandum at 1, 7, United States v. Shelby, No. 2-00102 (E.D. Wash. 2019).

189. See E-mail from Randy Ramseyer, Assistant U.S. Att’y, W.D. Va., to Adam Gershowitz (Oct. 21, 2019); Press Release, U.S. Dep’t of Just., *Norton Doctor Sentenced on Federal Drug Charges* (Dec. 15, 2017), <https://www.justice.gov/usao-wdva/pr/norton-doctor-sentenced-federal-drug-charge>.

Sanjay Sinah ¹⁹⁰	51	60 months (pursuant to statutory max)	57	60 months	57	Within
John Van Wu ¹⁹¹	50	46-57 months	54	51 months	54	Within
Donald Willems ¹⁹²	41	108-135 months	50	120 months	51	Within

The key finding from Tables 1 and 2 is that older release defendants—those who would be incarcerated beyond the age of sixty-five if they received a sentence at the bottom end of the guidelines range—were much more likely to receive a below guidelines sentence. Eighty-one percent of the older release defendants received a below guidelines sentence, compared to fifty-six percent of the younger release defendants. Put differently, younger release defendants were treated very similarly to the average federal defendant.¹⁹³ Older release defendants were sentenced more favorably.

B. Older Release Defendants Were More Likely to Receive Large Sentencing Reductions

The fact that older release defendants very commonly receive below-guideline sentences, however, is only part of the story. After all, if older release defendants were only receiving sentences slightly below the guidelines range, the mere existence of the sentencing reduction would not be that important. A key question therefore is: “How far

190. See Transcript of Sentencing Hearing at 202, 335, 340, 358, 362, United States v. Sinha, No. 1-00009 (S.D. Miss. 2015).

191. See Press Release, U.S. Dep’t of Just., *Colorado Doctor Sentenced to Federal Prison for Illegally Distributing Oxycodone, Defrauding Employee Benefit Plans, and Falsifying Patient Files* (Oct. 15, 2019), <https://www.justice.gov/usao-co/pr/colorado-doctor-sentenced-federal-prison-illegally-distributing-oxycodone-defrauding>; Email from Bryan Fields, Assistant U.S. Att’y, D. Colo., to Adam Gershowitz (Oct. 31, 2019).

192. See Transcript of Sentencing Hearing at 2, 3, 6, 9, United States v. Willems, No. 17-80013 (S.D. Fla. 2017); Tonya Alanez, *Weston Doctor Gets Federal Prison Sentence in Sober Homes Fraud*, SUN SENTINEL (June 13, 2017), <https://www.sun-sentinel.com/local/broward/weston/fl-reg-sober-homes-doctor-sentenced-20170613-story.html>.

193. See U.S. SENT’G COMM’N, OVERVIEW, *supra* note 1 (noting that, on average, federal judges sentence below the guidelines range in roughly fifty percent of cases).

below the guidelines range are judges sentencing the older release defendants?" The answer is *far below* the guidelines.

Of the sixty-eight older release doctors in Table 1 who received below guidelines sentences, many of them received dramatic reductions. Twenty-nine of the sixty-eight doctors received a sentence that was fifty percent or more below the bottom of the guidelines range. Another thirteen doctors received a sentence that was between forty percent and forty-nine percent below the bottom of the guidelines range. Combined this means that forty-two of the sixty-eight doctors (sixty-two percent) sentenced below the guidelines received a discount of forty percent or more. Table 3 below identifies the doctors who received sentencing discounts that were at least forty percent below the bottom of the guidelines range.

TABLE 3: OLDER RELEASE DEFENDANTS WHO RECEIVED SENTENCING DISCOUNTS OF FORTY PERCENT OR MORE

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom End Guidelines Sentence	Judge's Actual Sentence	Percent Reduction
Abbey Akinwumi ¹⁹⁴	55	168-210 months	69	84 months	-50%
Sardar Ashrafkhan ¹⁹⁵	59	600 months	109	276 months	-54%
Nevorn Askari ¹⁹⁶	61	210-240 months	78.5	66 months	-79%

194. See Defendant's Sentencing Memorandum at 1, *United States v. Akinwumi*, No. 2:13-cr-20392 (E.D. Mich. Feb. 19, 2016); Press Release, U.S. Dep't of Just., Doctor Sentenced to 84 Months in Prison for Distributing Prescription Drugs (Mar. 1, 2016), <https://www.justice.gov/usao-edmi/pr/doctor-sentenced-84-months-prison-distributing-prescription-drugs>.

195. See Press Release, U.S. Dep't of Just., Former Doctor Sentenced to 23 Years in Prison for Distributing Prescription Drugs, Health Care Fraud, and Money Laundering (June 15, 2017), <https://www.justice.gov/usao-edmi/pr/former-doctor-sentenced-23-years-prison-distributing-prescription-drugs-health-care>; Sentencing Memorandum for the United States at 1, *United States v. Ashrafkhan*, No. 2-20551 (E.D. Mich. May 30, 2017); E-mail from Wayne Pratt, Assistant U.S. Atty, E.D. of Mich., to Adam Gershowitz (Oct. 23, 2019) (on file with author).

196. See Press Release, U.S. Dep't of Just., Two Doctors and Clinic Owners Sentenced for Operating Pill Mills in Metro Atlanta (June 26, 2017), <https://www.justice.gov/usao-ndga/pr/two-doctors-and-clinic-owners-sentenced-operating-pill-mills-metro-atlanta>; Motion for Downward Departure Based on Substantial Assistance by the Government at 2, *United States v. Askari*, No. 12-00276 (N.D. Ga. June 7, 2017).

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Gavin Awerbuch ¹⁹⁷	59	70-87 months	65	32 months	-54%
William Bacon ¹⁹⁸	83	240 months	103	72 months	-70%
Alan Barnett ¹⁹⁹	69	10-16 months	70	Probation	-100%
Joseph Burton ²⁰⁰	73	168-210 months	87	96 months	-43%
James Chaney ²⁰¹	52	Life	Life	180 months	-70% ²⁰²
James Earl Chapman ²⁰³	65	292-365 months (subject to 240-month statutory maximum)	85	120	-50%
Michael Roger Chiarottino ²⁰⁴	68	63-78 months	73	36 months	-43%

197. See Transcript of Sentencing Hearing at 10, 12, 40, *United States v. Awerbuch*, No. 2-20636 (E.D. Mich. 2018); Steve Fries, *Doctor tied to Insys opioid kickback probe gets prison term*, REUTERS (Feb. 26, 2018, 4:50 PM), <https://www.reuters.com/article/us-insys-opioids/doctor-tied-to-insys-opioid-kickback-probe-gets-prison-term-idUSKCN1GA2WE>.

198. Sentencing Transcript at 4, 18, 25, *United States v. Bacon*, No. 7-00002 (M.D. Ga. 2018); Sentences Handed Down for Illegal Pill Mills, *supra* note 66.

199. See Tentative Findings and Rulings Concerning the Applicable Advisory Guidelines Range at 1, 4, *United States v. Barnett*, No. 2-00153 (W.D. Pa. 2017); Position of the Government with Respect to Sentencing Factors at 1, *United States v. Barnett*, No. 2-00153 (W.D. Pa. 2016); Press Release, U.S. Dep’t of Just., Physician Sentenced for Illegally Distributing Oxycodone (Jan. 12, 2017), <https://www.justice.gov/usao-wdpa/pr/physician-sentenced-illegally-distributing-oxycodone>.

200. Transcript of Sentencing Proceedings at 159, 163–64, 170, *United States v. Burton*, No. 1-00369 (N.D. Ga. 2018); Press Release, U.S. Dep’t of Just., Former Georgia Medical Examiner Sentenced for Opioid Conspiracy (Aug. 30, 2018), <https://www.justice.gov/usao-ndga/pr/former-georgia-medical-examiner-sentenced-opioid-conspiracy>.

201. Transcript of Sentencing Hearing Proceedings at 70, 87, *United States v. Chaney*, No. 6-0037 (2017); Press Release, U.S. Dep’t of Just., Hazard Physician and Wife Sentenced for Unlawful Distribution of Prescription Opioids and Health Care Fraud (Sept. 29, 2017), <https://www.justice.gov/usao-edky/pr/hazard-physician-and-wife-sentenced-unlawful-distribution-prescription-opioids-and>.

202. For purposes of this Table’s computation, I converted life sentences to 50 years or 600 months.

203. See Transcript of Sentencing Hearing at 6, 42, 52–54, 76, *United States v. Chapman*, No. 4-00022 (N.D. Ga. 2015).

204. See Press Release, U.S. Dep’t of Just., Marin Doctor Sentenced to Three Years in Prison for Prescribing Oxycodone Outside the Usual Course of Professional

Gazelle Craig ²⁰⁵	42	860 months	114	420 months	-51%
Fanny Dela Cruz ²⁰⁶	73	168-186 months	87	96 months	-43%
Michael Lee Cummings ²⁰⁷	64	57-71 months	69	30 months	-47%
Mitchel Fagin ²⁰⁸	65	37-46 months	68	15 months	-59%
Madhu Garg ²⁰⁹	65	46-57 months	69	18 months	-61%
Alan Arnold Godofsky ²¹⁰	61	121-151 months	71	60 months	-50%
Carlos Godoy ²¹¹	80	70-87 months	86	12 months	-83%

Practice and Without a Legitimate Medical Purpose (July 19, 2016), <https://www.justice.gov/usao-ndca/pr/marin-doctor-sentenced-three-years-prison-prescribing-oxycodone-outside-usual-course>; Sentencing Memorandum for the United States at 2, 4, *United States v. Chiarottino*, No. 4-00466 (N.D. Cal.2016).

205. See Press Release, U.S. Dep't of Just., Houston Physician and a Pain Management Clinic Owner Each Sentenced to 35 Years in Prison for Running Pill Mill That Provided Unlawful Prescriptions for Millions of Doses of Opioids and Other Controlled Substances (Sept. 20, 2018), <https://www.justice.gov/opa/pr/houston-physician-and-pain-management-clinic-owner-each-sentenced-35-years-prison-running>; Memorandum in Aid of Sentencing and Response to Defendant's Motion for Downward Variance at 2, 6, *United States v. Craig*, No. 4-00419 (S.D. Tex. 2018).

206. Sentencing Memorandum for the Government at 1, 3, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016); Judgment at 2, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016); Holly Fournier, *Doctor gets 8 years for illegal prescriptions*, DETROIT NEWS (Dec. 7, 2016, 3:29 PM), <https://www.detroitnews.com/story/news/local/wayne-county/2016/12/07/doctor-gets-8-years-illegal-prescriptions/95101888/>.

207. Memorandum for Sentencing at 1, 10, *United States v. Cummings*, No. 1-00011 (W.D. Ky. 2019); Defendant's Sentencing Memorandum at 10, *United States v. Cummings*, Case 1-00011 (W.D. Ky. July 17, 2019); Press Release, U.S. Dep't of Just., Clinton County Doctor Sentenced to 30 Months in Prison for Illegally Prescribing Opioids (July 29, 2019), <https://www.justice.gov/usao-wdky/pr/clinton-county-doctor-sentenced-30-months-prison-illegally-prescribing-opioids>.

208. See Robert Kessler, *Dr. Mitchel Fagin Sentenced to 15 Months in Oxycodone Case*, NEWSDAY (Dec. 16, 2016, 10:20 PM), <https://www.newsday.com/long-island/crime/dr-mitchel-fagin-sentenced-to-15-months-in-oxycodone-case-1.12769382>; Defendant's Sentencing Memorandum at 1, *United States v. Fagin*, No. 2-00255 (E.D.N.Y. 2016).

209. See Government's Sentencing Position at 4, 14, *United States v. Garg*, No. 2-00007 (C.D. Cal. 2016); *Ex-Glendora Doctor Sentenced to Prison for Selling Pain Pills to Addicts in LA*, PATCH (June 1, 2016, 6:44 PM), <https://patch.com/california/glendora/ex-glendora-doctor-sentenced-prison-selling-pain-pills-addicts-la>.

210. See Transcript of Sentencing Hearing Proceedings at 16, 30, 33, *United States v. Godofsky*, No. 5-00059 (E.D. Ky. 2018).

211. See Derick Hutchinson, *Farmington Doctor Sentenced for Illegal Distribution of Prescription Pills*, WDIV CLICKONDETROIT (Oct. 4, 2017, 4:30 PM), <https://www.wdiv.com/story/news/local/2017/10/04/farmington-doctor-sentenced-illegal-distribution-prescription-pills/444444444>.

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Timothy Gowder ²¹²	72	480 months	112	252 months	-47%
Alex Kafi ²¹³	70	108-135 months	79	60 months	-44%
Azad Khan ²¹⁴	64	41-51 months	67	24 months	-41%
Naeem Kohli ²¹⁵	61	121-151 months	71	24 months	-80%
George Kudmani ²¹⁶	71	292-365 months	95	48 months	-84%
Ernesto Lopez ²¹⁷	76	188-235 months	92	60 months	-68%

clickondetroit.com/news/farmington-doctor-sentenced-for-illegal-distribution-of-prescription-pills; Government’s Motion for Downward Departure at 3–4, *United States v. Godoy*, No. 2:15-cr-20283 (E.D. Mich. 2017).

212. See E-mail from Gregory Rosenberg, Assistant U.S. Atty, E.D. of Ky., to Adam Gershowitz (Oct. 25, 2019) (on file with author); Press Release, U.S. Dep’t of Just., Tennessee Doctor and Boca Raton, Florida Clinic Owner Sentenced for Oxycodone Trafficking Conspiracy (Aug. 9, 2019), <https://www.justice.gov/usao-edky/pr/oak-ridge-tennes-doctor-and-boca-raton-florida-pain-clinic-owner-sentenced-oxycodone>.

213. See Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids, *supra* note 99; E-mail from Michael Rex, defense attorney, to Karly Newcomb (Feb. 3, 2020) (on file with author).

214. See Press Release, U.S. Dep’t of Just., E.D. Pa., Doctor Sentenced to 24 Months in Prison for Selling Prescriptions of Suboxone and Klonopin (Apr. 9, 2018), <https://www.justice.gov/usao-edpa/pr/doctor-sentenced-24-months-prison-selling-prescriptions-suboxone-and-klonopin>; E-mail from Robert Livermore, *supra* note 100.

215. See Press Release, U.S. Dep’t of Just., U.S. Atty’s Office, S.D. Ill., Effingham Illinois Doctor Sentenced for Illegal Dispensation of Controlled Substances (Nov. 5, 2015), <https://www.justice.gov/usao-sdil/pr/effingham-illinois-doctor-sentenced-illegal-dispensation-controlled-substances>; Government’s Sentencing Memorandum at 4, 10, *United States v. Kohli*, No. 4-40038 (S.D. Ill. 2015).

216. See Press Release, U.S. Dep’t of Justice, U.S. Atty’s Office, W.D. Ky., Louisville Physician Sentenced to 48 Months in Prison for Unlawful Distribution of Controlled Substances and Health Care Fraud (June 5, 2017), <https://www.justice.gov/usao-wdky/pr/louisville-physician-sentenced-48-months-prison-unlawful-distribution-controlled>; Sentencing Memorandum for the United States at 33, *United States v. Kudmani*, No. 3-00173 (W.D. Ky. 2017).

217. See Press Release, U.S. Dep’t of Just., Doctor Who Operated Oxycodone and Fentanyl Diversion Scheme Sentenced to 5 Years in Prison (July 2, 2019), <https://www.justice.gov/usao-sdny/pr/doctor-who-operated-oxycodone-and-fentanyl-diversion-scheme-sentenced-5-years-prison>; Sentencing Memorandum for the Government at 2, *United States v. Lopez*, No. 1-00006 (S.D.N.Y. 2019); Transcript of Sentencing Hearing at 8, *United States v. Lopez*, No. 1-00006 (S.D.N.Y. July 2, 2019).

Kevin Lowe ²¹⁸	55	240 months	75	144 months	-40%
Donatus O. Mbanefo ²¹⁹	65	188-235 months	81	96 months	-49%
Pravin V. Mehta ²²⁰	78	57-71 months	82	24 months	-58%
Moshe Mirilashvili ²²¹	68	292-365 months	92	160 months	-45%
Nibedita Mohanty ²²²	56	108-135 months	65	48 months	-56%
Keyhosrow Parsia ²²³	81	24-30 months	83	Probation	-100%
Roy Reynolds ²²⁴	69	168-210 months	83	50 months	-70%
Romie Earl Roland ²²⁵	57	235-293 months	77	130 months	-45%

218. See Press Release, U.S. Dep’t of Just., Doctor and Owner of Bronx Clinics Involved in Illegal Distribution of More than 5 Million Oxycodone Pills Is Sentenced to 12 Years in Prison (Jan. 11, 2016), <https://www.justice.gov/usao-sdny/pr/doctor-and-owner-bronx-clinics-involved-illegal-distribution-more-five-million>; Indictment, at 15, 21, United States v. Lowe, No. 1-00055 (S.D.N.Y. Jan. 30, 2014).

219. Sentences Handed Down for Illegal Pill Mills, *supra* note 66; Sentencing Transcript at 2-26, United States v. Mbanefo, No. 7 -00002 (M.D. Ga. 2018).

220. See Phil Fairbanks, Pravin Mehta, “Dr. Feel Good” gets prison for dealing opiate pills, BUFFALO NEWS (Jan. 25, 2016), https://buffalonews.com/news/local/pravin-mehta-dr-feel-good-gets-prison-for-dealing-opiate-pills/article_d2a8824d-1fce-53fc-b3-93-718aee962a2b.html; Government’s Response to Defendant’s Request for a Non-Guidelines Sentence at 2, United States v. Mehta, No. 1-00268 (W.D.N.Y. Jan. 22, 2016).

221. See Press Release, U.S. Dep’t of Just., New York Doctor Sentenced to More Than 13 Years in Prison for Unlawfully Dispensing Nearly 1 Million Oxycodone Pills (Sept. 28, 2016), <https://www.justice.gov/usao-sdny/pr/doctor-sentenced-more-15-years-prison-conspiring-distribute-thousands-oxycodone-pills>; Sentencing Memorandum of the United States at 11, United States v. Mirilashvili, No. 1-00810 (S.D.N.Y. 2016).

222. See Press Release, U.S. Dep’t of Just., Stafford Doctor Sentenced to 4 Years in Prison for Distribution of Oxycodone and Health Care Fraud (June 26, 2015), <https://www.justice.gov/usao-edva/pr/stafford-doctor-sentenced-four-years-prison-distribution-oxycodone-and-health-care>; Sentencing Position of the United States at 1-2, United States v. Mohanty, No. 1-00256 (E.D. Va. 2015).

223. See Sam Newhouse, Doc gets 4 years for South Philly pill mill, PHILLY METRO (Feb. 28, 2018), <https://www.metro.us/news/local-news/philadelphia/doc-gets-4-years-south-philly-pill-mill>; E-mail from Robert Livermore, *supra* note 100.

224. See Press Release, U.S. Dep’t of Just., Physician Sentenced to Federal Prison for Drug Trafficking (Aug. 10, 2018), <https://www.justice.gov/usao-wdky/pr/physician-sentenced-federal-prison-drug-trafficking>; Sentencing Memorandum for the Government at 1, United States v. Reynolds, No. 1-00009 (W.D. Ky. 2018); Bill Estep, *Drug Dealer with Medical License: Kentucky Physician Sentenced to Prison*, LEXINGTON HERALD LEDGER (Aug. 11, 2018).

225. See Transcript of Sentencing Hearing, at 73, 96, 116, United States v. Roland, No. 1-00291 (N.D. Ga. 2017).

Anthony Rossi ²²⁶	66	6-12 months	66.5	Probation	-100%
Xiulu Ruan ²²⁷	52	Life	Life	252 months	-58%
Russell Sachs ²²⁸	58	87-108 months	65	24 months	-82%
Jerome Sherard ²²⁹	60	210-262 months	77.5	60 months	-71%
Rassan M. Tarabein ²³⁰	58	135-168 months	69	60 months	-56%
Carlos Luis Venegas ²³¹	62	240 months	82	156 months	-35%
Clarence Verdell ²³²	68	41-51 months	71	Probation	-100%

226. See Supplemental Tentative Findings and Rulings at 5, *United States v. Rossi*, No. 2-00177 (W.D. Pa. 2017); Position of the Government with Respect to Sentencing Factors at 1, *United States v. Rossi*, No. 2-00177 (W.D. Pa. 2016); T.L. Miller, *Hermitage doc gets probation for fraud, opioid sales*, THE HERALD (Jan. 7, 2017), https://www.sharonherald.com/news/local_news/hermitage-doc-gets-probation-for-fraud-opioid-sales/article_eb92fac8-269c-59d1-bafe-b9f08831e538.html#.

227. See Lawrence Specker, *Doctor Gets 21 Years in Mobile “Pill Mill” Case*, PRESS-REGISTER (May 28, 2017); See Transcript of Sentencing of Xiulu Ruan, M.D. at 64–65, *United States v. Ruan*, No. 1-00088 (S.D. Ala. 2017).

228. See Larry Hannan, *“Pill Mill” Physician Who Had 10 Patients Die of Overdoses and Had Sex with Others Is Sentenced to 2 Years*, JACKSONVILLE.COM (Jan. 4, 2017), available at <https://www.jacksonville.com/news/2017-01-04/pill-mill-physician-who-had-10-patients-die-overdoses-and-had-sex-others-sentenced-2>; Press Release, U.S. Dep’t of Just., Clay County Doctor Indicted for Distributing Controlled Substances Resulting in the Death of a Patient (Mar. 13, 2015).

229. See Plea Agreement, *United States v. Sherard*, 1-00104-004 (E.D. Tenn. Apr. 30, 2015), <https://www.justice.gov/usao-mdfl/pr/clay-county-doctor-indicted-distributing-controlled-substances-resulting-death-patient>; United States’ Response to Defendant’s Request for a Downward Variance at 2, 20, *United States v. Sherard*, 1-00104-004 (E.D. Tenn. Apr. 23, 2015).

230. See Press Release, U.S. Dep’t of Just., Former Pain Management Doctor Receives 5 Years in Health Care Fraud Case, Ordered to Pay More than 15 Million Dollars in Restitution (June 8, 2018), <https://www.justice.gov/usao-sdal/pr/former-pain-management-doctor-receives-5-years-health-care-fraud-case-ordered-pay-more>; United States’ Sentencing Memorandum at 4, *United States v. Tarabein*, No. 1-00090 (S.D. Ala. 2018).

231. See Press Release, U.S. Dep’t of Just., Pill Mill Physician Sentenced to 13 Years for Conspiracy to Distribute Narcotics (May 13, 2019), <https://www.justice.gov/usao-ndtx/pr/pill-mill-physician-sentenced-13-years-conspiracy-distribute-narcotics>; Transcript of Sentencing Proceeding at 46–47, *United States v. Venegas*, No. 3:16-cr-00479 (N.D. Tex. 2019).

232. See E-mail from Robert Livermore, *supra* note 100; Press Release, U.S. Dep’t of Just., Fourth Suboxone Doctor and Office Manager Indicted for Illegally Selling Prescriptions of Suboxone and Klonopin (Aug. 17, 2016), <https://www.justice>.

Frederick Weintraub ²³³	65	37-46 months	68	18 months	-51%
Henri Wetselaar ²³⁴	93	360 months to Life	123	120 months	-66%
Simmon Lee Wilcox ²³⁵	60	188-235 months	75.5	100 months	-47%
Richard Williams ²³⁶	77	108-135 months	86	60 months	-44%
Jerry Yee ²³⁷	82	46-57 months	86	12 months & 1 day	-74%

The degree of the sentencing discount for some older release defendants is startling. For instance, in Houston, Dr. Gazelle Craig sold patients hydrocodone and a muscle relaxant—known as the “Las Vegas cocktail”²³⁸—in exchange for \$300.²³⁹ Over just two-and-a-half years, Dr.

gov/usao-edpa/pr/fourth-suboxone-doctor-and-office-manager-indicted-illegally-selling-prescriptions.

233. See Sentencing Submission by U.S. at 1–2, *United States v. Weintraub*, No. 7-00533 (S.D.N.Y. 2016); Press Release, U.S. Dep’t of Just., Former Doctor Sentenced in White Plains Federal Court to 18 Months in Prison for Selling Oxycodone Prescriptions (Nov. 18, 2016), <https://www.justice.gov/usao-sdny/pr/former-doctor-sentenced-white-plains-federal-court-18-months-prison-selling-oxycodone>.

234. See Transcript of Sentencing and Disposition at 22, 25, *United States v. Wetselaar*, No. 2–347 (D. Nev. 2017); Press Release, U.S. Dep’t of Just., Physician Sentenced to 10 Years in Prison for Distribution of Oxycodone (Aug. 1, 2017), <https://www.justice.gov/usao-nv/pr/physician-sentenced-10-years-prison-distribution-oxycodone#>.

235. See Press Release, U.S. Dep’t of Just., Dr. Wilcox Sentenced to 100 Months in Federal Prison for Distribution of Oxycodone Convictions (May 10, 2016), <https://www.justice.gov/usao-ut/pr/dr-wilcox-sentenced-100-months-federal-prison-distribution-oxycodone-convictions#>; United States’ Sentencing Memorandum Regarding Simmon Lee Wilcox at 12, *United States v. Wilcox*, No. 2-00717 (D. Utah May 3, 2016).

236. See Press Release, U.S. Dep’t of Just., Doctor, Pharmacists, Recruiter Sentenced in Opioid Diversion Conspiracy (Apr. 3, 2017), <https://www.justice.gov/usao-sdtx/pr/doctor-pharmacist-and-recruiter-sentenced-opioid-diversion-conspiracy>; Government’s Consolidated Objections/Clarifications to the Various Presentence Investigation Reports at 3, *United States v. Le et. al.*, No. 4-00125 (S.D. Tex. 2017); E-mail from Brian Warren, defense attorney, to Karly Newcomb (Jan. 30, 2020) (on file with author).

237. See Press Release, U.S. Dep’t of Just., Brookfield Physician Sentenced to Prison for Illegally Distributing Prescription Narcotics (May 18, 2015), <https://www.justice.gov/usao-edwi/pr/brookfield-physician-sentenced-prison-distributing-prescription-narcotics>; Sentencing Minutes, *United States v. Yee*, No. 2-00192 (E.D. Wis. 2015).

238. See *Soma Fast Facts*, NAT’L DRUG INTEL. CTR. (Jan. 1, 2006), <https://www.justice.gov/archive/ndic/pubs10/10913/index.htm>.

239. See United States’ Memorandum in Aid of Sentencing and Response to Defendant’s Motion for Downward Variance at 1, 2, *United States v. Craig*, Case 4-00419 (S.D. Tex. 2018).

Craig wrote prescriptions for more than 2.1 million hydrocodone pills and almost 1.4 million muscle relaxant prescriptions.²⁴⁰ On some days, Dr. Craig's pill mill operation would bring in more than \$20,000 in cash.²⁴¹ To maintain this massive operation, Dr. Craig used "facilitators" who recruited homeless people to pose as patients.²⁴² The facilitators paid for the sham doctor visits, filled the prescriptions, and then, sold the pills on the street.²⁴³ Dr. Craig faced a huge guidelines range of 860 months—over seventy years—and the Government advocated for that sentence in light of her egregious behavior.²⁴⁴ Although the court imposed a stiff sentence of 420 months, the reduction from the guidelines was extremely large and provided the option for Dr. Craig (who was only forty-two at sentencing) to be released from prison during her natural lifetime.²⁴⁵

In New York, Dr. Ernesto Lopez, aged seventy-six, wrote prescriptions for fentanyl patches as well as more than 1 million oxycodone pills, which carried a street value of over \$20 million.²⁴⁶ Dr. Lopez typically charged patients \$200 to \$300 in cash for each visit, even though almost eighty percent of his patients had health insurance and thus likely should not have been paying in cash.²⁴⁷ When DEA agents arrested him, they recovered hundreds of fentanyl patches in his home and more than \$700,000 in cash stuffed in boxes.²⁴⁸ Dr. Lopez's guidelines range was 360 months to life, but the judge imposed a sentence of only five years in prison.²⁴⁹

Dr. John Couch and Dr. Xiulu Ruan, aged 54 and 52 respectively, operated a pain clinic in Alabama and together they wrote almost 67,000 prescriptions for painkillers in just one year—an average of one

240. *See id.* at 3.

241. *See id.*

242. *See id.*

243. *See id.*

244. *See id.* at 2.

245. *See* Transcript of Sentencing Hearing at 34, *United States v. Craig*, No. 4:17-cr-00419 (S.D. Tex. 2018) [hereinafter *Craig Sentencing*].

246. Raymond P. Donovan, *Doctor convicted on nine counts in connection with oxycodone and fentanyl diversion scheme*, DRUG ENFORCEMENT AGENCY (Feb. 22, 2019), <https://www.dea.gov/press-releases/2019/02/22/doctor-convicted-nine-counts-connection-oxycodone-and-fentanyl-diversion>.

247. *See id.*

248. *See id.*

249. *See id.*

prescription every four minutes.²⁵⁰ The doctors prescribed a plethora of drugs including morphine, oxycodone, methadone, hydromorphone, oxymorphone, and fentanyl.²⁵¹ But most alarming was their prescription of the powerful opioid sprays Subsys and Abstral, which were approved only for cancer patients suffering extreme pain.²⁵² Both doctors allegedly received kickbacks from the manufacturer of Subsys in exchange for prescribing the drug.²⁵³ Drs. Couch and Ruan also bought \$1.6 million in stock from the company that made Abstral and attempted to manipulate the stock price by writing more prescriptions.²⁵⁴ Drs. Couch and Ruan were the number one and two prescribers of Abstral in the entire country, writing one-third of the nation's prescriptions for that drug.²⁵⁵

To maximize their profits, Drs. Couch and Ruan went further than other pill mill doctors by opening their own pharmacy (C&R Pharmacy), which enabled them to bill insurance companies even more.²⁵⁶ Drs. Couch and Ruan made a fortune from prescribing opioids.²⁵⁷ The government seized two Ferraris, two Lamborghinis, and nine other exotic cars.²⁵⁸

Unsurprisingly, both doctors faced huge sentences. Dr. Couch's guidelines range was 360 months to life.²⁵⁹ Dr. Ruan's guidelines range

250. 2 *Alabama doctors convicted in pill mill case*, ASSOCIATED PRESS (Feb. 24, 2017), <https://apnews.com/article/e3fc0328ee8e4431805a4895f56ea7d7>.

251. See United States' Response to Defendants' Sentencing Memorandums and Positions Regarding Sentencing Factors at 8, *United States v. Couch*, No. 1-00088 (S.D. Ala. 2017) [hereinafter U.S. Response to Sentencing].

252. See Nate Raymond, *Alabama 'pill mill' doctor tied to Insys gets 21 years in prison*, REUTERS (May 26, 2017), <https://www.reuters.com/article/us-alabama-drugs/alabama-pill-mill-doctor-tied-to-insys-gets-21-years-in-prison-idUSKBN18M2GK>.

253. *Id.*

254. *Id.*

255. Press Release, U.S. Dep't of Just., *Dr. Couch and Dr. Ruan Sentenced to 240 and 252 Months in Federal Prison For Running Massive Pill Mill* (May 27, 2017) [hereinafter *Dr. Couch and Dr. Ruan*], <https://www.justice.gov/usao-sdal/pr/dr-couch-and-dr-ruan-sentenced-240-and-252-months-federal-prison-running-massive-pill>.

256. *Id.*

257. *Id.*

258. See *Case Study: Drs. John P. Couch and Xiulu Ruan*, CUMBERLAND TIMES NEWS (Feb. 27, 2018), https://www.times-news.com/news/case-study-drs-john-p-couch-and-xiulu-ruan/article_62ecec6a-c058-5361-af2f-cf5d65f9671b.html.

259. See U.S. Response to Sentencing, *supra* note 251, at 9.

was life in prison.²⁶⁰ The judge gave both doctors substantial discounts, however, imposing 240 months for Dr. Couch and 252 months for Dr. Ruan.²⁶¹

Drs. Craig, Lopez, Couch, and Ruan were not the only doctors to receive sentences dramatically below the guidelines range. In total, thirteen of the sixty-eight older release defendants received sentences that were ten years or more below the bottom of the guidelines range.²⁶²

Younger release defendants did not fare nearly as well. Recall from Table 2 that only fifty-six percent of younger release defendants—a total of twenty-five doctors—received sentences below the guidelines range. Most of those sentences were not nearly as far below the guidelines as the sentences for older release defendants. Of the twenty-five younger release defendants who received below guidelines sentences, only six were more than fifty percent below the bottom of the guidelines. Another four of the younger release doctors were sentenced to between forty percent and forty-nine percent below the bottom of the guidelines. Combined, this means that ten of the twenty-five (forty percent) younger release defendants who received below guidelines sentences received a large reduction. Table 4 (below) lists the younger release defendants who received sentences that were at least forty percent below the bottom of the guidelines.

260. *See id.*

261. *Dr. Couch and Dr. Ruan, supra* note 255.

262. *See* Tables 1, 2 (The doctors who received sentences that were at least a decade below the bottom of their guidelines range were Drs. Ashrafkhan, Askari, Bacon, Chaney, Chapman, Couch, Craig, Gowder, Kudmani, Lopez, Mirilashvili, Ruan, and Westelaar).

TABLE 4: FEWER YOUNGER RELEASE DEFENDANTS RECEIVED BIG REDUCTIONS

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom Guidelines Sentence	Judge's Actual Sentence	Age at Release	Percent Reduction
Sathish Narayana Babu ²⁶³	48	46-57 months	52	18 months	49.5	-41%
William Belfar ²⁶⁴	55	30-37 months	57.5	Probation	55	-100%
Luis Collazo ²⁶⁵	55	24-40 months	57	Probation	55	-100%
Francisco Huidor-Figueroa ²⁶⁶	49	46-57 months	53	Probation	49	-100%
Shouping Li ²⁶⁷	57	37-46 months	60	12 months	58	-68%
Sukhwinder Multani ²⁶⁸	43	24-30 months	45	14 months	44	-42%

263. See Press Release, U.S. Dep't of Just., Suspended Physician Sentenced to 1 ½ Years for Illegally Dispensing Oxycodone and Falsely Billing Medicare in Undercover Probe (Feb. 24, 2015), <https://www.justice.gov/usao-ndil/pr/suspended-physician-sentenced-1-years-illegally-dispensing-oxycodone-and-falsely>; Government's Sentencing Memorandum at 12, 21, United States v. Babu, No. 1-00084 (N.D. Ill. Feb. 17, 2015).

264. See Government's Sentencing Letter at 2, United States v. Belfar, No. 13-807 (S.D.N.Y. Dec. 6, 2018); Stephen Rex Brown, *Crooked Shrink Who Criticized Lindsay Lohan's Doctor as an Enabler Is Sentenced to 5-Years Probation for Prescribing Oxycodone for Cash*, N.Y. DAILY NEWS (June 3, 2019), <https://www.nydailynews.com/new-york/ny-oxycodone-shrink-sentenced-20190603-ekkvwuv3jrb3tblvuwxfkmmjppq-story.html>.

265. See Government's Sentencing Memorandum at 7, United States v. Collazo, No. 2-20595 (E.D. Mich. May 29, 2015); Khalil AlHajal, *Doctor Who Wrote Bad Prescriptions Sent to Prison*, FLINT J. (2015).

266. See Kelsey David, "Pill mill" doctor sentenced to probation, MONTGOMERY ADVISOR (Apr. 30, 2016, 12:45 AM), <https://www.montgomeryadvertiser.com/story/news/crime/2016/04/29/pill-mill-doctor-sentenced-probation/83700228/>; E-mail from Andrew Skier, defense attorney, to Karly Newcomb (Feb. 3, 2020).

267. See Press Release, U.S. Dep't of Just., Northern Nevada Doctor Sentenced to Prison for Illegally Writing Opioid Prescriptions (Aug. 26, 2019), <https://www.justice.gov/usao-nv/pr/northern-nevada-doctor-sentenced-prison-illegally-writing-opioid-prescriptions>; Government's Sentencing Memorandum, at 3, 10, United States v. Li, No. 3:19-cr-00009-MMD-CBC (D. Nev. Aug. 19, 2019).

268. See Press Release, U.S. Dep't of Just., Decatur Doctor Sentenced for Illegal Distribution of Hydrocodone (Dec. 12, 2017), <https://www.justice.gov/usao-cdil/pr/decatur-doctor-sentenced-illegal-distribution-hydrocodone#>; United States'

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Michael Randall ²⁶⁹	48	57-71 months	53	32 months	51	-44%
Anil Sahijwani ²⁷⁰	43	87-108 months	50	45 months	47	-48%
James Stein-Sheridan Shelby ²⁷¹	50	63-78 months	55	15 months home confinement	50	-100%
Felix Shepard, Jr. ²⁷²	57	46 months	61	6 months	57.5	-87%

There are two big-picture points to take away from the data above: (1) older release defendants were much more likely to receive below guidelines sentences than younger release defendants; and (2) older release defendants were much more likely to receive big sentencing reductions than younger release defendants. Table 5 (below) illustrates these points in numerical form.

Response to Defendant’s Objection and Sentencing Commentary at 4–5, *United States v. Multani*, No. 2-20050 (C.D. Ill. Oct. 10, 2017).

269. See Letter from AUSA Charles Rose at 6, *United States v. Randall*, No. 2-00122 (E.D.N.Y. June 14, 2016); Transcript of Criminal Cause for Pleading at 5, *United States v. Randall*, No. 2-00122 (E.D.N.Y. Nov. 5, 2015); Robert Kessler, *Pain pill doctor Michael Randall sentenced to 32 months*, NEWSDAY (June 16, 2016), <https://www.newsday.com/long-island/crime/pain-pill-doctor-richard-randall-sentenced-to-32-months-1.11919801>.

270. See *United States v. Sahijwani*, No. 8-00463 at 3 (M.D. Fla. Aug. 29, 2017); Press Release, U.S. Dep’t of Just., Pill Mill Doctor Sentenced to Nearly Four Years for Role in Opioid Distribution Conspiracy (Aug. 30, 2017), <https://www.justice.gov/usao-mdfl/pr/pill-mill-doctor-sentenced-nearly-four-years-role-opioid-distribution-conspiracy>.

271. See Press Release, U.S. Dep’t of Just., Two Spokane Men Sentenced for Their Roles in Unlawfully Distributing Opioids (July 23, 2019), <https://www.justice.gov/usao-edwa/pr/two-spokane-men-sentenced-their-roles-unlawfully-distributing-opioids>; *United States Sentencing Memorandum*, at 1, 7, *United States v. Shelby*, No. 2-00102 (E.D. Wa. June 14, 2019).

272. See E-mail from Randy Ramseyer, Assistant United States Attorney, W. D. Va., to Adam Gershowitz (Oct. 21, 2019) (on file with author); Press Release, U.S. Dep’t of Just., Norton Doctor Sentenced on Federal Drug Charges (Dec. 15, 2017), <https://www.justice.gov/usao-wdva/pr/norton-doctor-sentenced-federal-drug-charge>.

TABLE 5: OLDER RELEASE DEFENDANTS WERE SENTENCED BELOW THE GUIDELINES MORE OFTEN AND THEY WERE MORE LIKELY TO RECEIVE BIGGER REDUCTIONS

Type of Defendant	Percentage of Cases Below Guidelines	Percentage of Below Guidelines Cases Where Judges Sentenced 40+% Below the Bottom of the Guidelines Range
Older Release Defendants	81% (68/84)	62% (42/68)
Young Release Defendants	56% (25/45)	40% (10/25)

C. Defendants in the Same Guidelines Range Were Often Treated Differently

To drill down further, let us compare the sentences of older release defendants and younger release defendants who faced the identical guidelines range. A few anecdotal examples illustrate how younger release defendants seem to receive far tougher sentences for the same conduct compared to older release defendants.

Consider two doctors—Alex Kafi and Richard Johns—both of whom faced the same guidelines range of 108–135 months.²⁷³ Both doctors pled guilty to a single charge of conspiracy and neither had prior criminal convictions. Both distributed large quantities of drugs.²⁷⁴

Dr. Johns admitted to distributing at least 39,000 oxycodone pills with a street value of one million dollars.²⁷⁵ He forfeited \$190,000.²⁷⁶ Dr. Johns received a sentence of 108 months—a guidelines sentence, albeit at the bottom of the range.²⁷⁷

Dr. Kafi’s conduct appeared to be as bad or worse. He exchanged prescriptions for cash

273. See generally Press Release, U.S. Dep’t of Just., Physician Admits to Illegally Distributing 39,000 Pills, Pleads Guilty to Federal Conspiracy (March 2, 2017) [hereinafter *Physician Admits to Illegally Distributing 39,000 Pills, Pleads Guilty to Federal Conspiracy*], <https://www.justice.gov/usao-edar/pr/physician-admits-illegally-distributing-39000-pills-pleads-guilty-federal-conspiracy>.

274. See generally *id.*

275. *Id.*

276. Transcript of Sentencing Proceeding at 23, *United States v. Johns*, Case No. 4-00224 (E.D. Ark. 2017).

277. *Id.* at 7, 15, 20.

often without ever meeting or communicating with the patient. . . . [He] conspired with patient marketers, who provided lists of patients . . . along with \$300 per prescription of Oxycodone. Kafi admitted the scheme involved approximately 693,000 mg of Oxycodone and he agreed to forfeit \$617,208.00, which were proceeds of his criminal activity.²⁷⁸

Unlike Dr. Johns (who received a within guidelines sentence), Dr. Kafi received a sentence of 60 months—well below the 108–135-month guidelines range.²⁷⁹

Because each case is unique and both doctors were sentenced in different federal districts it is impossible to say for certain why Dr. Johns received a within guidelines sentence of 108 months, while Dr. Kafi received a below guidelines sentence that was about half as long.²⁸⁰ Age is a possible explanation. At sentencing, Dr. Johns was fifty-one years old, while Dr. Kafi was seventy years old. A bottom end guidelines sentence of 108 months for Dr. Johns would ensure his release around age sixty, with a good chance that he would have plenty of life left to lead outside of prison. By contrast, Dr. Kafi would have been incarcerated until almost age seventy-nine, which is near the life expectancy for the average man.²⁸¹ A within guidelines sentence likely would have carried a significant risk that Dr. Kafi would die in prison. This reality was not lost on Dr. Kafi's defense attorney who explained after the sentencing that the judge "varied to 60 months in large part because of his age and mental health issues."²⁸²

Age also can help to explain other cases in the 108–135-month guidelines range in which defendants received below guidelines

278. Press Release, U.S. Dep't of Just., Michigan Physician Pleads Guilty to Conspiracy to Distribute Controlled Substances (Mar. 14, 2019) [hereinafter Michigan Physician Pleads Guilty to Conspiracy to Distribute Controlled Substances], <https://www.justice.gov/opa/pr/michigan-physician-pleads-guilty-conspiracy-distribute-controlled-substances>.

279. See Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids, *supra* note 99; see generally U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. A, sentencing table (U.S. SENT'G COMM'N 2018).

280. See Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids, *supra* note 99.

281. See Table 4: Life Expectancy at Birth, at Age 65, and at Age 75, by Sex, Race, and Hispanic Origin: United States Selected Years 1900-2017, CDC, available at <https://www.cdc.gov/nchs/data/hus/2018/004.pdf> (last visited Nov. 28, 2021) (indicating that a white male who had reached the age of 65 in 2017 had an average remaining life expectancy of 18 years).

282. See E-mail from Michael Rex to Karly Newcomb (Feb. 3, 2020).

sentencing. Table 6 below identifies ten cases in which doctors faced a guidelines range of 108–135 months: four older release defendants and six younger release defendants. Of the four older release defendants who would have been incarcerated past age sixty-five if they received a sentence at the bottom end of the guidelines all of them received sentences below the guidelines. Moreover, the reductions were considerable, ranging from thirty-three percent to fifty-six percent below the bottom of the guidelines range.²⁸³

By contrast, only one of the six younger release defendants received a sentence below the guidelines. And the one younger release doctor who received a below guidelines sentence received a twenty-eight percent reduction, which was less of a reduction than all the older release doctors. Additionally, of the five younger release doctors who were sentenced within the guidelines range, three received a sentence in the middle of the range and one received a sentence at the top of the range.²⁸⁴

283. See *infra* Table 6; see generally U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. A, sentencing table (U.S. SENT'G COMM'N 2018).

284. See *infra* Table 6; see generally U.S. SENT'G GUIDELINES MANUAL ch. 5, pt. A, sentencing table (U.S. SENT'G COMM'N 2018).

TABLE 6: COMPARISON OF OLDER AND YOUNGER RELEASE DEFENDANTS FACING THE 108-135 MONTH GUIDELINES RANGE

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom Guidelines Sentence	Older or Younger Release Defendant	Judge's Actual Sentence	Within Guidelines, Or Percent Below the Bottom of the Range
Glenn Bryan Davis ²⁸⁵	63	108-135 months	72	Older Release	72 months	-33%
Alex Kafi ²⁸⁶	70	108-135 months	79	Older Release	60 months	-44%
Nibedita Mohanty ²⁸⁷	56	108-135 months	65	Older Release	48 months	-56%
Richard Williams ²⁸⁸	77	108-135 months	86	Older Release	60 months	-44%
Zongli Chang ²⁸⁹	53	108-135 months	62	Younger Release	135 months	Within (top) guidelines

285. See Press Release, U.S. Dep't of Just., Pain Doctor Sentenced to 6 Years in Prison for Overprescribing Controlled Substances (Feb. 24, 2016), <https://www.justice.gov/usao-wdpa/pr/pain-doctor-sentenced-6-years-prison-overprescribing-controlled-substances>; Rich Lord, *Ex-Doctor Going to Prison for Misprescribing Opioids*, PITTSBURGH POST-GAZETTE (Feb. 23, 2016), <https://www.post-gazette.com/local/region/2016/02/23/Johnstown-doctor-gets-prison-for-opioid-prescriptions/stories/201602230171>.

286. See Michigan Doctor Sentenced to Prison for His Role in Scheme to Unlawfully Distribute Opioids, *supra* note 99; E-mail from Michael Rex, Defense Att'y, to Karly Newcomb (Feb. 3, 2020).

287. See Press Release, U.S. Dep't of Just., Stafford Doctor Sentenced to Four Years in Prison for Distribution of Oxycodone and Health Care Fraud (June 26, 2015), <https://www.justice.gov/usao-edva/pr/stafford-doctor-sentenced-four-years-prison-distribution-oxycodone-and-health-care>; Sentencing Position of the United States at 1, 2, United States v. Mohanty, No. 1-00256 (E.D. Va. 2015).

288. See Press Release, U.S. Dep't of Just., Doctor, Pharmacist and Recruiter Sentenced in Opioid Diversion Conspiracy (Apr. 4, 2017), <https://www.justice.gov/usao-sdtx/pr/doctor-pharmacist-and-recruiter-sentenced-opioid-diversion-conspiracy>; Government's Consolidated Objections/Clarifications to the Various Presentence Investigation Reports at 3, United States v. Le et. al., No. 4-00125 (S.D. Tex. 2017); E-mail from Brian Warren, Former Defense Att'y, to Karly Newcomb (Jan. 30, 2020).

289. See Press Release, U.S. Dep't of Just., Livonia Doctor Sentenced to More Than Twelve Years for Conspiring with Others to Illegally Distribute Prescription Drugs (Apr. 17, 2019), <https://www.justice.gov/usao-edmi/pr/livonia-doctor-sentenced-more-twelve-years-conspiring-others-illegally-distribute>; Government's Sentencing Memorandum at 3-4, United States v. Chang, No. 2-200008 (E.D. Mich. 2019); Tresa Baldas, *Livonia Doctor Gets 12 Years in Prison for \$18Million Opioid Scam*, DETROIT FREE PRESS (Apr. 18, 2019), <https://www.freep.com/story/news/local/michigan/oakland/2019/04/17/michigan-opioid-scam/3500769002/>.

Steven Joseph Collins ²⁹⁰	52	108-135 months	61	Younger Release	120 months	Within (middle) guidelines
Jeffrey Gundel ²⁹¹	51	108-135 months	60	Younger Release	78 months	-28%
Richard Johns ²⁹²	51	108-135 months	60	Younger Release	108 months	Within (bottom) guidelines
Robert Ritchea ²⁹³	54	108-135 months	63	Younger Release	120 months	Within (middle) guidelines
Donald Willems ²⁹⁴	41	108-135 months	50	Younger Release	120 months	Within (middle) guidelines

In short, as Table 6 demonstrates, the younger release doctors sentenced in the 108–135-month guidelines range fared far worse than the older release doctors in that range. A similar phenomenon played out in the 70–87-month guidelines range as well.

Consider the cases of Drs. James Bryan Joyner (age 47) and Richard Evans (age 72), both of whom faced guidelines ranges of 70–87 months. Dr. Joyner—the far younger defendant—received a much

290. See Jeff Sturgeon, *Former Doctor from Roanoke Draws 10 Years for Child Porn, Drug Crimes*, THE ROANOKE TIMES (June 23, 2015), https://roanoke.com/news/crime/former-doctor-from-roanoke-draws-10-years-for-child-porn-drug-crimes/article_0cf7d5e1-9a2b-5505-9748-f35c8bb1619b.html; United States’ Memorandum in Support of Sentencing at 1–2, United States v. Collins, No. 7-00053 (E.D. Va. 2015) (Collins’s case is unusual in that he was also convicted of possessing child pornography.).

291. See Press Release, U.S. Dep’t of Just., Surgeon Receives 78 Months in Prison for Distributing Oxycodone (Jan. 25, 2016), <https://www.justice.gov/usao-ndny/pr/surgeon-receives-78-months-prison-distributing-oxycodone>; Government’s Sentencing Memorandum at 2–3, United States v. Gundel, No. 1-00426 (N.D.N.Y. 2015).

292. See Transcript of Sentencing Proceeding at 7, 15, 20, United States v. Johns, No. 4-00224 (2017); Linda Satter, *Former Little Rock Doctor Sentenced to 9 Years for Writing Fake Prescriptions*, ARK. DEMOCRAT GAZETTE (Aug. 31, 2017, 4:30 AM), <https://www.arkansasonline.com/news/2017/aug/31/former-lr-doctor-sentenced-to-9-years-f/>.

293. See Press Release, U.S. Dep’t of Just., Phenix City “Pill Mill” Doctor Receives a Ten-Year Sentence for Participating in a Drug Distribution Conspiracy (May 10, 2017), <https://www.justice.gov/usao-mdal/pr/phenix-city-pill-mill-doctor-receives-ten-year-sentence-participating-drug-distribution>; Plea Agreement at 2–3, United States v. Ritchea, No. 3-00136 (M.D. Ala. 2017); E-mail from Robert Keith, Defense Att’y, to Karly Newcomb (Jan. 24, 2020).

294. See Transcript of Sentencing Hearing at 2, 3, 6, 9, United States v. Willems, No. 17-CR-80013 (S.D. Fla. 2017); Tonya Alanez, *Weston Doctor Gets Federal Prison Sentence in Sober Homes Fraud*, SUNSENTINEL (June 13, 2017, 7:30 PM), <https://www.sun-sentinel.com/local/broward/weston/fl-reg-sober-homes-doctor-sentenced-2017-0613-story.html>.

longer sentence even though it appears he engaged in less egregious misconduct.

Dr. Joyner, who was a former emergency room (“ER”) doctor, was employed at a pain clinic for a few months.²⁹⁵ His behavior was certainly not admirable, but it was not as egregious as many pill mill doctors. During the thirty-four days he worked at the clinic he personally saw over 500 patients, all of whom were prescribed narcotics.²⁹⁶ He also acted as a supervising physician overseeing the charts of another 1,700 patients.²⁹⁷ Dr. Joyner pled guilty to conspiring to distribute numerous drugs, including oxycodone, morphine, oxymorphone, and alprazolam.²⁹⁸

Dr. Evans appeared to have engaged in even more outrageous conduct. Dr. Evans had his staff pre-sign prescriptions before he had examined the patients.²⁹⁹ Some patients were instructed to mail in \$240 money orders in exchange for prescription refills.³⁰⁰ The evidence at Dr. Evans’ trial indicated that he wrote 11,000 prescriptions for oxycodone—over 1.6 million pills—which brought in over \$2.4 million in cash, money orders, and checks.³⁰¹ In a sure sign that Dr. Evans was operating a pill mill, witnesses testified to seeing out-of-state vehicles in Dr. Evans’ clinic parking lot, with each car having up to six occupants.³⁰² Vehicles with out-of-state license plates outnumbered vehicles with in-state plates.³⁰³ Patients were waiting outside the office before it opened and some patients loitered around the building for the rest of the day.³⁰⁴ Prosecutors calculated a guidelines range of 324–405 months, but the judge engaged in questionable calculations to reduce the range

295. Sentencing Hearing Before Judge Pamela Reeves at 232–34, *United States v. Joyner*, No. 3-124-005 (E.D. Tenn. 2016) [hereinafter *Joyner Sentencing Hearing*].

296. *See id.* at 234.

297. *See id.*

298. *See id.* at 233.

299. *United States v. Evans*, 892 F.3d 692, 698 (5th Cir. 2018).

300. *See id.* at 697.

301. *Id.* at 699.

302. *Id.* at 696.

303. *Id.*

304. *Id.*

to 70–87 months.³⁰⁵ The judge then departed below the guidelines to impose a sentence of sixty months.³⁰⁶

Although it is impossible to say for certain, it appears that the significant age difference between the doctors explains their sentencing disparities. At forty-seven, Dr. Joyner was squarely middle-age, while Dr. Evans was a quarter of a century older and toward the end of his life. Indeed, the judge who sentenced Dr. Evans explicitly stated that age played a role in giving him a below guidelines sentence.³⁰⁷ At the sentencing hearing, the judge explained that it “is not of the opinion that a sentence that would place a seventy-two-year-old man in prison for life essentially would be an appropriate sentence.”³⁰⁸ As such, the court issued a sentence below the guidelines—sixty months—that would result in Dr. Evans being released by age seventy-seven.³⁰⁹ Dr. Evans would likely have the chance to live some of his remaining years outside of prison.

By contrast, at age forty-seven and facing a sentence of six-to-seven years, Dr. Joyner was unlikely to die in prison. In arguing for a tough sentence, the prosecutor even focused on Dr. Joyner’s life after prison, noting that “already [Dr. Joyner] can look forward to a time after he comes out of prison even with a guidelines sentence.”³¹⁰ The court seemingly agreed, rejecting an argument that Dr. Joyner should receive a below guidelines sentence³¹¹ based on his years of prior excellent work as an ER doctor.³¹² The court imposed a within guidelines sentence of seventy months that would likely result in Dr. Joyner being released around the age of fifty-three.³¹³

The cases of Drs. Evans and Joyner were not unique. Indeed, other older release doctors in the 70–87-month guideline range received even bigger sentencing reductions than Dr. Evans. As Table 7 demonstrates below, the five older release doctors in the 70–87-month range all

305. *See, e.g.*, Transcript of Sentencing Hearing at 42, 57–60, *United States v. Evans*, No. 4-00015 (S.D. Tex. 2017).

306. *United States v. Evans*, 892 F.3d 692, 698 (5th Cir. 2018).

307. Transcript of Sentencing Hearing at 61, *United States v. Evans*, No. 4-00015 (S.D. Tex. 2017).

308. *See id.*

309. Press Release, U.S. Dep’t of Just., Houston Doctor Sentenced to Prison for Distributing Prescription Narcotics (Feb. 14, 2017), <https://www.justice.gov/usao-sdtx/pr/houston-doctor-sentenced-prison-distributing-prescription-narcotics>.

310. *See Joyner Sentencing Hearing*, *supra* note 295, at 222.

311. *See id.* at 236.

312. *See id.* at 213–15, 221.

313. *See id.* at 237.

received a below guidelines sentence. By contrast, Dr. Joyner and the other younger release doctor in the 70–87-month range received sentences within the guidelines.

TABLE 7: COMPARISON OF OLDER AND YOUNGER RELEASE DEFENDANTS FACING THE 70-87 MONTH GUIDELINES RANGE

Doctor	Age at Sentencing	Guidelines Range	Age at Release if Bottom Guidelines Sentence	Older or Younger Release Defendant	Judge’s Actual Sentence	Within Guidelines, Or Percent Below the Bottom of the Range
Gavin Awerbuch ³¹⁴	59	70-87 months	65	Older Release	32 months	-54%
Nicholas J. Capos, Jr. ³¹⁵	67	70-87 months	73	Older Release	52 months	-26%
Richard Evans ³¹⁶	72	70-87 months	78	Older Release	60 months	-17%
Carlos Godoy ³¹⁷	80	70-87 months	86	Older Release	12 months	-83%

314. See Transcript of Sentencing Hearing at 10, 12, 40, *United States v. Awerbuch*, No. 2-20636 (E.D. Mich. 2018); Steve Friess, *Doctor tied to Insys opioid kickback scheme gets prison term*, REUTERS (Feb. 26, 2018, 4:50 PM), <https://www.reuters.com/article/us-insys-opioids/doctor-tied-to-insys-opioid-kickback-probe-gets-prison-term-idUSKCN1GA2WE>.

315. See Press Release, U.S. Dep’t of Just., *Physician Practicing in Grass Valley and Yuba City Sentenced to Over 4 Years in Prison for Illegal Prescription Practice* (Feb. 22, 2018), <https://www.justice.gov/usao-edca/pr/physician-practicing-grass-valley-and-yuba-city-sentenced-over-4-years-prison-illegal>; Defendant’s Sentencing Memorandum and Objections to the PSR at 1–2, *United States v. Capos*, No. 2-00020 (E.D. Cal. 2018); Plea Agreement at 6, *United States v. Capos*, No. 2-00020 (E.D. Cal. 2016).

316. See Press Release, U.S. Dep’t of Just., *Houston Doctor Sentenced to Prison for Distributing Prescription Narcotics* (Feb. 14, 2017), <https://www.justice.gov/usao-sdtx/pr/houston-doctor-sentenced-prison-distributing-prescription-narcotics>; Transcript of Sentencing Hearing at 60–63, *United States v. Evans*, No. 4-00015 (S.D. Tex. 2017).

317. See Derick Hutchinson, *Farmington Doctor Sentenced for Illegal Distribution of Prescription Pills*, WDIV CLICKONDETROIT (Oct. 4, 2017, 4:30 PM), <https://www.clickondetroit.com/news/2017/10/04/farmington-doctor-sentenced-for-illegal-distribution-of-prescription-pills/>; Government’s Motion for Downward Departure at 3–4, *United States v. Godoy*, No. 2-20283 (E.D. Mich. 2017) (The prosecution filed a 5K1.1 motion and recommended a 49-month sentence. The court imposed a notably lower sentence.).

Jerrold Rosenberg ³¹⁸	63	70-87 months	69	Older Release	51 months	-27%
Wayne Celestine ³¹⁹	58	70-87 months	64	Younger Release	84 months	Within (top) guidelines
James Brian Joyner ³²⁰	47	70-87 months	53	Younger Release	70 months	Within (bottom) guidelines

Of course, the pattern is not so stark in all guidelines brackets. There are cases in which older release defendants did not receive a sentencing discount, while younger-release defendants in the same guideline category did get a sentencing break. For instance, both Dr. Michael Minas (age fifty) and Dr. Dwight Bailey (age sixty-six) faced a guidelines range of 151–188 months. Even though Dr. Minas was younger, he received a below guidelines sentence of ninety-six months, resulting in likely release at age fifty-eight. By contrast, Dr. Bailey received a within guidelines sentence of 151 months, leading to incarceration until about age seventy-nine. These cases, and others, clearly demonstrate that age is not always a significant sentencing factor. Rather, it is more accurate to say that age at release frequently appears to be an important sentencing factor.

318. See Press Release, U.S. Dep’t of Just. Doctor Sentenced for Healthcare Fraud, Accepting Kickbacks to Prescribe Highly Addictive Version of Fentanyl (Mar. 9, 2018), <https://www.justice.gov/usao-ri/pr/doctor-sentenced-healthcare-fraud-accepting-kickbacks-prescribe-highly-addictive-version>; Government’s Sentencing Memorandum at 3, 11, United States v. Rosenberg, No. 1-00009 (D. R.I. 2018).

319. See Press Release, U.S. Dep’t of Just., Local Medical Doctor Sentenced for Illegally Dispensing and Distributing Controlled Substances by Prescriptions and Money Laundering (May 1, 2019), <https://www.justice.gov/usao-edla/pr/local-medical-doctor-sentenced-illegally-dispensing-and-distributing-controlled-0>; Letter to the Court from United States Attorney, United States v. Celestine, No. 2000083 (E.D. La. 2019).

320. See Jamie Satterfield, Judge Hands Maryville Pain Clinic Doctor 70-Month Sentence, KNOX NEWS (Nov. 17, 2016, 6:09 PM), <https://www.knoxnews.com/story/news/crime/2016/11/17/judge-hands-maryville-pain-clinic-doctor-70-month-sentence/94042600/>; Sentencing Hearing Before Judge Pamela Reeves at 12, 15, 236, United States v. Joyner, No. 3-124-005 (E.D. Tenn. 2016).

IV. Sentences That Appear Tied to Release Before Death in Prison

As we saw in Part III, judges imposed below guideline sentences much more often for older release defendants. And the size of the sentencing discounts for older release defendants were typically greater than what younger release defendants received. But to what end? In other words, are judges trying to achieve a particular goal by offering older release defendants more below guidelines sentences and reductions of greater size? It is impossible to know for certain, but this section explores the possibility that judges are seeking to ensure that older release defendants will be released by a particular age to prevent them from dying in prison. In short, there is evidence that judges have an age of death in mind and that they are working backwards to impose a sentence that will result in release before that date.

Let us begin with a case in which the district judge explicitly acknowledged designing a sentence to avoid the defendant dying in prison. In the 2019 sentencing of Dr. Carlos Venegas, the federal judge remarked twice, “I think I should give the Doctor some hope of being free on the outside at the conclusion of the sentence.”³²¹ Dr. Venegas was sixty-two years old and facing a sentence of up to twenty years, which likely would have resulted in him dying in prison. Instead of imposing the 240-month sentence, the judge sentenced him to 156 months so that he would be “74-ish” when he gets out.³²²

Dr. Venegas had been the supervising physician for multiple sham medical clinics that illegally distributed hydrocodone and alprazolam.³²³ He conspired with facilitators to pay homeless and poor individuals to pose as patients.³²⁴ Runners coached the “patients” to make up certain symptoms, then drove them to the clinics, and paid for their appointments.³²⁵ Dr. Venegas and his staff conducted virtually no

321. Venegas Sentencing Proceeding, *supra* note 138; *see also id.* at 48 (“I think the Doctor deserves to have at least some realistic chance of serving his sentence and having a life on the outside.”).

322. *Id.* at 47–48.

323. *See* Press Release, U.S. Dep’t of Just., Pill Mill Physician Sentenced to 13 Years for Conspiracy to Distribute Narcotics (May 13, 2019), <https://www.justice.gov/usao-ndtx/pr/pill-mill-physician-sentenced-13-years-conspiracy-distribute-narcotics>.

324. *See id.*

325. *See id.*

examinations or diagnostic testing.³²⁶ Dr. Venegas and those he supervised issued prescriptions for over two million opioid pills.³²⁷ He faced a maximum sentence of twenty years³²⁸ and the prosecution forcefully argued for that maximum given the sheer quantity of drugs he distributed.³²⁹

The judge was clearly influenced by the seriousness of the offense. But the court also focused heavily on Dr. Venegas's age of release and whether he would still be alive at that end of a long sentence.³³⁰ Put simply, the judge seemed to reach the sentence by working backwards to impose the stiffest possible sentence that would still allow for Dr. Venegas to be released before death.

Similarly, in the case of Dr. Richard Evans, the trial judge explicitly tried to predict how long the defendant would live when imposing his sentence.³³¹ As explained above, Dr. Evans sold over 1.6 million pills in exchange for cash.³³² He accepted payments of \$240 by mailed money orders in exchange for prescriptions.³³³ His clinic was such a well-known pill mill that "patients" drove in from out-of-state and lined up at the door before it even opened in the morning.³³⁴ After rejecting the advisory guidelines range of 324–405 months and calculating a far lower 70–87-month range, the judge was unwilling to sentence even in that range.³³⁵ The judge stated, "[I am] not of the opinion that a sentence that would place a seventy-two-year-old man in prison for life essentially would be an appropriate sentence."³³⁶ The court thus imposed a below guidelines sentence of five years in the hopes that Dr. Evans would be released before his death.³³⁷

The judges in the Venegas and Evans cases were extremely blunt about factoring age of release into their sentencing decisions. Other judges seemed to have considered age, but without saying it aloud. For

326. *See id.*

327. *See Venegas Sentencing Proceeding, supra* note 138, at 44.

328. *See id.* at 47.

329. *See id.* at 44–47.

330. *See Venegas Sentencing Proceeding, supra* note 138.

331. *See Transcript of Sentencing Hearing, United States v. Evans, 892 F.3d 692 (5th Cir. 2018) [hereinafter Evans Sentencing]; see also United States v. Evans, 892 F.3d 692, 698 (5th Cir. 2018).*

332. *Evans, 892 F.3d* at 699.

333. *Id.* at 697–98.

334. *Id.* at 696.

335. *See Evans Sentencing, supra* note 331.

336. *Id.* at 61.

337. *Id.*

instance, consider the case of Dr. Alan Godofsky, who was sixty-one years old at sentencing and facing a guidelines range of 121–151 months.³³⁸ The judge remarked, “whatever sentence the Court imposes will probably take the best of the rest of this defendant’s life from him, given his age.”³³⁹ Just seconds later, the court imposed a sentence of sixty months, which was less than half of the bottom of the guidelines range.³⁴⁰

Other judges never mentioned age during the sentencing hearing, but they nevertheless appeared to be designing their sentences to ensure that the defendants would be released in their seventies or very early eighties to ensure they could live life outside after their prison terms.³⁴¹ Drs. Couch and Ruan—who operated an Alabama pain clinic together—are prime examples of judges seeming to consider age of release. Drs. Couch and Ruan wrote a combined 67,000 painkiller prescriptions in a single year—an average of one prescription every four minutes.³⁴² The doctors wrote prescriptions to ordinary patients for extremely powerful drugs that had been approved only for cancer pain.³⁴³ They also accepted kickbacks from the manufacturers and took the extremely rare step of opening their own pharmacy to rake in even more money.³⁴⁴ The doctors allowed unlicensed employees to write prescriptions for them and the evidence indicated that Dr. Couch wrote 5,000 prescriptions when he was out of state or even out of the country.³⁴⁵ The scope of their misconduct was breathtaking and they faced enormous advisory guidelines ranges. The bottom of Dr. Couch’s guidelines range would have kept him in prison until age eighty-four, while Dr.

338. See Transcript of Sentencing Hearing Proceedings at 30, *United States v. Godofsky*, No. 5-00059 (E.D. Ky. 2018) [hereinafter *Godofsky Sentencing*].

339. *Id.* at 33.

340. See *id.* at 16.

341. See generally *Dr. Couch and Dr. Ruan*, *supra* note 255.

342. *Id.*

343. See *Nate Raymond*, *supra* note 252.

344. See *Dr. Couch and Dr. Ruan* *supra* note 255.

345. See *United States’ Response to Defendants’ Sentencing Memorandums and Positions Regarding Sentencing Factors* at 8, *United States v. Couch*, No. 1-00088 (S.D. Ala. 2017).

Ruan's guidelines range was life.³⁴⁶ Yet, both doctors received sentences that ensured they would be released in their early seventies.³⁴⁷

Age at release also appeared to play a major factor for another notorious pill mill doctor. Dr. Gazelle Craig faced an astronomical guideline sentence of 860 years based on distributing millions of opioids and muscle relaxers.³⁴⁸ Using facilitators to recruit homeless people to pose as patients, Dr. Craig's clinic took in \$20,000 in cash some days.³⁴⁹ The judge imposed an extremely lengthy sentence of 420 months.³⁵⁰ The full story is not the long sentence, but rather, that the sentence appeared calculated to ensure that Dr. Craig could be released before the end of her life. Dr. Craig was forty-two years old at sentencing. The 420-month sentence—35 years—would result in release at age seventy-seven (assuming no good time credit). Not surprisingly, this is close to the average life expectancy for women born at the same time as Dr. Craig.³⁵¹

The cases of Drs. Couch, Craig, and Ruan are not unique. Repeatedly, judges who sentenced doctors for illegal opioid distribution appear to have calculated sentences so that the doctors would have a good chance at release before dying in prison. Table 8 identifies cases in which judges imposed large sentencing reductions that appeared designed to leave open a realistic possibility that the defendant would be released before his death in prison. Table 8 includes cases in which (1) the bottom end of the guidelines range would have resulted in incarceration beyond age eighty; (2) the sentence is at least five years below the bottom end of the guidelines range; and (3) the ultimate sentence will result in the defendants' release in their seventies or earlier.

346. See *infra* Table 8. As in other cases, the age of release does not factor in the possibility of good-time credit.

347. See *Dr. Couch and Dr. Ruan, supra* note 255, at 3.

348. See United States' Memorandum in Aid of Sentencing and Response to Defendant's Motion for Downward Variance at 1–2, *United States v. Craig*, Case 4-00419 (S.D. Tex. 2018).

349. See *id.*

350. See Transcript of Sentencing Hearing at 34, *United States v. Craig*, No. 4:17-cr-00419 (S.D. Tex. 2018).

351. See CDC, HEALTH UNITED STATES, 2017, Table 15, available at <https://www.cdc.gov/nchs/data/hus/2017/015.pdf> (noting life expectancy of 76.6 for women born in 1975).

TABLE 8: MAJOR SENTENCING REDUCTIONS ENSURING RELEASE IN THE DEFENDANTS’ 70s

Defendant	Age at Sentencing	Guidelines Range	Age at Release If Sentenced at the Bottom of the Guidelines Range	Judge’s Actual Sentence	Age at Release Under Actual Sentence
James Chaney ³⁵²	52	Life	No Release	180 months	67
James Earl Chapman ³⁵³	65	292-365 months (subject to 240-month statutory maximum)	85	120 months	75
John Couch ³⁵⁴	54	360 months-Life	84	240 months	74
Gazelle Craig ³⁵⁵	42	860 months	113	420 months	77
George Kudmani ³⁵⁶	71	292-365 months	95	48 months	75
Donatus O. Mbanefo ³⁵⁷	65	188-235 months	81	96 months	73

352. See Transcript of Sentencing Hearing Proceedings at 70, 87, United States v. Chaney, No. 6-0037 (2017); Press Release, U.S. Dep’t of Just., Hazard Physician and Wife Sentenced for Unlawful Distribution of Prescription Opioids and Health Care Fraud (Sept. 29, 2017).

353. See Transcript of Sentencing Hearing at 6, 42, 52–54, 76, United States v. Chapman, Case 4-00022 (N.D. Ga. 2015).

354. See Transcript of Sentencing of John Patrick Couch, M.D. at 44, 79, 80, 88, United States v. Couch, No. 1-00088 (S.D. Ala. 2017).

355. See Press Release, U.S. Dep’t of Just., Houston Physician and a Pain Management Clinic Owner Each Sentenced to 35 Years in Prison for Running Pill Mill That Provided Unlawful Prescriptions for Millions of Doses of Opioids and Other Controlled Substances (Sept. 20, 2018), <https://www.justice.gov/opa/pr/houston-physician-and-pain-management-clinic-owner-each-sentenced-35-years-prison-running>; United States’ Memorandum in Aid of Sentencing and Response to Defendant’s Motion for Downward Variance at 2, 6, United States v. Craig, Case 4-00419 (S.D. Tex. 2018).

356. See U.S. Dep’t of Just., Louisville Physician Sentenced to 48 Months in Prison for Unlawful Distribution of Controlled Substances and Health Care Fraud (June 5, 2017), <https://www.justice.gov/usao-wdky/pr/louisville-physician-sentenced-48-months-prison-unlawful-distribution-controlled>; United States’ Sentencing Memorandum at 33, United States v. Kudmani, No. 3-00173 (W.D. Ky. 2017).

357. Sentences Handed Down for Illegal Pill Mills, *supra* note 66; Sentencing Transcript at 25–26, United States v. Mbanefo, Case 7-00002 (M.D. Ga. 2018).

Roy Reynolds ³⁵⁸	69	168-210 months	83	50 months	73
Xiulu Ruan ³⁵⁹	54	Life	No Release	252 months	75
Christopher Stegawski ³⁶⁰	65	240 months	85	160 months	79
Carlos Venegas ³⁶¹	62	240 months	82	156 months	75

The doctors in Table 8 who received large sentencing breaks and will be released in their seventies are the best examples of judges seemingly using age of release as a major sentencing factor. Additional (albeit somewhat less persuasive) evidence can be found in cases where defendants received below guidelines sentences ensuring they will be released in their early eighties rather than late-eighties, nineties, hundreds, or serving life terms. Table 9 below identifies six doctors who received large sentencing discounts that would result in release by ages eighty, eighty-one, or eighty-two. Notably, three of these doctors were in their seventies and faced lengthy guidelines ranges.³⁶² Thus, it would have been impossible for judges to impose a significant sentence and ensure their release in their seventies. The judges seemingly split the difference by imposing a sentence that ran into the defendants' early eighties (rather than their late eighties as the guidelines suggested).

358. See U.S. Dep't of Just., Physician Sentenced to Federal Prison for Drug Trafficking (Aug. 10, 2018); Government's Sentencing Memorandum at 1, *United States v. Reynolds*, Case 1-00009 (W.D. Ky. Aug. 7, 2018); Bill Estep, *Drug Dealer With Medical License: Kentucky Physician Sentenced to Prison*, LEXINGTON HERALD LEDGER (Aug. 11, 2018).

359. See Lawrence Specker, *Doctor Gets 21 Years in Mobile "Pill Mill" Case*, PRESS-REGISTER (May 28, 2017); See Transcript of Sentencing of Xiulu Ruan, M.D. at 64–65, *United States v. Ruan*, Case 1-00088 (S.D. Ala. 2017).

360. See U.S. Dep't of Just., Pill Mill Operators Sentenced (Nov. 24, 2015), <https://www.justice.gov/usao-sdoh/pr/pill-mill-operators-sentenced#>; Defendant's Sentencing Memorandum and Motion for Deviation from Guidelines at 5, *United States v. Stegawski*, Case 1-00054 (S.D. Ohio 2015).

361. See U.S. Dep't of Just., Pill Mill Physician Sentenced to 13 Years for Conspiracy to Distribute Narcotics (May 13, 2019), <https://www.justice.gov/usao-ndtx/pr/pill-mill-physician-sentenced-13-years-conspiracy-distribute-narcotics>; Venegas Sentencing Proceeding, *supra* note 138, at 46–47.

362. See Transcript of Sentencing Proceedings at 159, 163, 164, 170, *United States v. Burton*, No. 1-00369 (N.D. Ga. 2018); Government's Sentencing Memorandum at 1, 3, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016); The Government's Sentencing Memorandum at 2, *United States v. Lopez*, No. 1-00006 (S.D.N.Y. 2019).

TABLE 9: MAJOR SENTENCING REDUCTIONS ENSURING RELEASE IN THEIR EARLY 80S

Doctor	Age at Sentencing	Guidelines Range	Age at Release If Sentenced at the Bottom of the Guidelines Range	Sentence	Age at Release Under Actual Sentence
Sardar Ashrafkhan ³⁶³	59	Life	No Release	276 months	82
Joseph Burton ³⁶⁴	73	168-210 months	87	96 months	81
Fanny Dela Cruz ³⁶⁵	73	168-186 months	87	96 months	81
Carlos Godoy ³⁶⁶	80	70-87 months	86	12 months	81
Ernesto Lopez ³⁶⁷	75	360 months to Life	105	60 months	80
Moshe Mirilashvili ³⁶⁸	68	292-365 months	92	160 months	81

Additionally, there are multiple cases where defendants would have been incarcerated into their eighties but received modest sentencing reductions of less than five years.³⁶⁹ Of course, it is possible that judges would have granted the same sentencing reductions to younger defendants.³⁷⁰ Nevertheless the repeated pattern of cases suggests that the defendant’s advanced age played some role—whether consciously or subconsciously—in the judge’s decision to sentence below the

363. See Sentencing Memorandum by the United States at 1, *United States v. Ashrafkhan*, No. 2-20551 (E.D. Mich. 2017).

364. See Transcript of Sentencing Proceedings at 159, 163–64, 170, *United States v. Burton*, No. 1-00369 (N.D. Ga. 2018).

365. See Government’s Sentencing Memorandum at 1, 3, *United States v. Dela Cruz*, No. 2-20328 (E.D. Mich. 2016).

366. See Government’s Motion for Downward Departure at 3–4, *United States v. Godoy*, No. 2-20283 (E.D. Mich. 2017).

367. See The Government’s Sentencing Memorandum at 2, *United States v. Lopez*, No. 1-00006 (S.D.N.Y. 2019).

368. See Sentencing Memorandum of the United States at 11, *United States v. Mirilashvili*, No. 1-00810 (S.D.N.Y. 2016).

369. See *infra* Table 10.

370. See Sentencing Minutes at 4, *United States v. Yee*, No. 2-00192 (E.D. Wis. 2015) (Indeed, in one case the judge wrote in the sentencing minutes that age played no role in sentencing the 82-year-old defendants to one year in prison rather than a sentence in the 46-57-month guidelines range).

guidelines. Table 10 identifies the cases in which age may have played a role in older defendants receiving modest sentencing discounts ensuring their release in their early eighties rather than their late eighties.

TABLE 10: MINOR SENTENCING REDUCTIONS ENSURING RELEASE BEFORE MID 80S

Doctor	Age at Sentencing	Guidelines Range	Age at Release If Sentenced at the Bottom of the Guidelines Range	Sentence	Age at Release Under Actual Sentence
Sundiata El-Amin	69	188-235 months	85	151 months	82
Pravin V. Mehta	78	57-71 months	82	24 months	80
Keyhosrow Parsia	81	24-30 months	83	Probation	81
Constantino Perales	67	151-188 months	80	144 months	79
Alan Summers	79	57-71 months	84	48 months	83
Mackie James Walker, Jr	65	210-240 months	82.5	188 months	81
Richard Williams	77	108-135 months	86	60 months	82
Jerry Yee	82	46-57 months	86	12 months & 1 day	83

Finally, it is important to acknowledge that not all cases fit the theory that judges design sentences to ensure that defendants have time to live some of their remaining life on the outside. In a few cases, judges imposed sentences that resulted in incarceration into the defendants' nineties.³⁷¹ In another case, a defendant who was already ninety-three years old at sentencing received a ten-year sentence that would result in his incarceration beyond age 100 and almost certainly ensure his

371. This includes the following defendants and their likely age of release (assuming no good time credit): Julio Gabriel Diaz (94); Timothy Gowder (93); Adelfo Pamatmat (91); and Clarence Scranage (92). For ease of exposition, I also include here William Bacon, whose sentence runs until age 89. *See United States v. Diaz*, No. 8-000011 (C.D. Cal. 2015), at 10, 16; Press Release, U.S. Dep't of Just., Tennessee Doctor and Boca Raton, Florida Clinic Owner Sentenced for Oxycodone Trafficking Conspiracy (Aug. 9, 2019); Transcript of Sentencing Hearing at 50, 55, 67, 73, *United States v. Pamatmat*, No. 2-20551 (E.D. Mich. 2017); Sentencing Position of the United States and Response to Defendant's Objections to the Presentence Report at 1, 3, 4, *United States v. Scranage*, No. 3-00023 (E.D. Va. 2017), Sentencing Transcript at 4, 18, 25, *United States v. Bacon*, No. 7-00002 (M.D. Ga. 2018).

death in prison.³⁷² In another case, a judge actually imposed a life sentence.³⁷³ Finally, in a few cases, judges declined to sentence below the guidelines range and imposed incarceration into the defendants' early to mid-eighties.³⁷⁴

These cases demonstrate that not all judges are swayed by the prospect of defendants dying of old age while serving their prison sentences. The key point, however, is not that all judges are influenced by old age when sentencing, but rather, that the phenomenon articulated over the course of this Article appears to be quite common. Indeed, the seventeen cases in Tables 8 and 9 in which age appeared to play a role in large sentencing discounts outnumber the twelve³⁷⁵ cases of older-release defendants in which age clearly played no role.

V. Conclusion

The Federal Sentencing Guidelines provide that judges should consider a defendant's age only in atypical cases. The cases of doctors convicted of illegally distributing opioids tells a very different story, however. Judges regularly appear to consider defendants' age when making sentencing decisions. Older release defendants—those who would be incarcerated beyond the age of sixty-five if they received a sentence at the bottom end of the guidelines range—received below guidelines sentences in a staggering eighty-one percent of cases. This is

372. See Transcript of Sentencing and Disposition at 22, 35, 47, *United States v. Wetselaar*, No. 2-347 (D. Nev. 2017); Press Release, U.S. Dep't of Just., Physician Sentenced to 10 Years in Prison for Distribution of Oxycodone (Aug. 1, 2017), <https://www.justice.gov/usao-sdny/pr/doctor-sentenced-10-years-prison-conspiring-distribute-millions-oxycodone-pills>.

373. See Transcript of Sentencing Proceedings at 11, 12, 41, *United States v. Henson*, No. 6-10018 (D. Kan. 2019); Press Release, U.S. Dep't of Just., Wichita Doctor Sentenced to Life for Diverting Rx Drugs to the Streets (Mar. 8, 2019), <https://www.justice.gov/usao-ks/pr/wichita-doctor-sentenced-life-diverting-rx-drugs-streets>.

374. See Transcript of Sentencing at 16, 26, 76, *United States v. Gayden*, No. 6-00187 (M.D. Fla. 2018); Sentencing Memorandum of the United States at 1, *United States v. Kostenko*, No. 5-00221 (S.D. W. Va. 2017); Press Release, U.S. Dep't of Just., Parker Doctor Sentenced for Illegally Distributing Controlled Substances (Apr. 24, 2019), <https://www.justice.gov/usao-co/pr/parker-doctor-sentenced-illegally-distributing-controlled-substances>; Transcript of Sentencing at 5, 6, 8, *United States v. Sun*, No. 2-00157 (C.D. Cal. 2015); Transcript of Sentencing Hearing at 20, 43, 45, *United States v. Taylor*, No. 4-00009 (E.D. Tex. 2010).

375. See *supra* Tables 8 and 9.

far higher than younger doctors convicted of the same crime as well as the average federal defendant across all offenses. Even when younger doctors were sentenced below the guidelines, the size of their sentencing reductions was far less than that afforded to older defendants.

Perhaps most interesting were the older doctors who committed egregious conduct such as selling millions of pills or working with conspirators to recruit homeless individuals to pose as patients. These doctors—who reaped millions of dollars in profits—faced huge guidelines ranges and would ordinarily have received long sentences had they been younger at the time of their crimes. Yet, they received large sentencing discounts. Judges did not want these older defendants to die in prison. The judges appeared to decide on an age of release—often in the doctors’ mid-seventies—and to then work backward from there to generate a sentence that would get to that release date.

Computing a sentence to ensure a defendant will not die in prison is surely compassionate, and it is also financially sound given that older inmates are very expensive to incarcerate. Working backward from an age when an old defendant should be released from prison, however, is not remotely consistent with the elaborate rules set forth in the Federal Sentencing Guidelines. The result is vast sentencing inconsistency between older doctors who illegally peddled opioids and their younger colleagues who sold the very same drugs.