

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

United States of America

v.

Carlos Smith

No. 20 CR 922

Judge Manish S. Shah

**Reply in Support of Motion for Reduced Sentence under 18 U.S.C. § 3582(c)(2)
and United States Sentencing Guideline Amendment 821**

Defendant **Carlos Smith**, by the Federal Defender Program and its attorney, Erin K. DeGrand, submits the following reply to the Government's opposition of Mr. Smith's request for a sentencing reduction under 18 U.S.C. § 3582(c)(2) and Amendment 821. The government's response focuses on the details of Mr. Smith's offense that justified an above-guideline sentence at Mr. Smith's original sentencing, but it does not address the narrow request that Mr. Smith makes: that his original above-guideline sentence be anchored to the correct guideline range, which has been lowered by Amendment 821. The Court should grant Mr. Smith's motion to avoid unwarranted sentencing disparities with other individuals with similar backgrounds who have been convicted of similar offenses.

Mr. Smith does not challenge the Court's determination that an above-guideline sentence was appropriate in his case. However, the 3553(a) factors also require the Court to consider the need to avoid unwarranted sentencing disparities. The Supreme Court has made it clear that the U.S. Sentencing Guidelines should be the sentencing court's starting point and initial benchmark. *See Gall v. United States*, 552 U.S. 38, 49 (2007); *Peugh v. United States*, 569 U.S. 530, 541 (2013) (reminding that, post-*Booker*, in striving to achieve and maintain uniformity in sentencing, the correct guideline calculations "remain a meaningful benchmark through the process of appellate

review”). “The Guidelines are the framework for sentencing and anchor . . . the district court’s discretion” even if the district court varies from the guideline range. *Molina-Martinez v. United States*, 578 U.S. 189, 198–99 (2016) (internal quotation marks omitted). As such, courts “must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall*, 552 U.S. at 50, n.6.

At the time of Mr. Smith’s sentencing, this Court carefully considered the appropriate guideline range, the § 3553 factors, and the parties’ sentencing memorandums. After calculating a guideline range of 30-37 months, the Court sentenced Mr. Smith to 48 months in custody. Under the recent amendments, which lowered Mr. Smith’s guideline range to 27-33 months, Mr. Smith could have requested that the Court reduce his sentence to 27 months. He has not; Mr. Smith accepts the Court’s decision that the nature and circumstances of the offense, as well as his criminal history, merit an above-guideline sentence. The sentence he has requested still reflects roughly a 30 percent increase over the high end of his new guideline range. This is the guideline range that would be used for all similarly situated individuals to Mr. Smith moving forward, and those similarly situated to Mr. Smith who have already been sentenced also have the opportunity to update their sentences through a similar motion.

In considering an appropriate sentence for Mr. Smith when he was originally sentenced, the Court also considered the fact that Mr. Smith committed the offense at issue while on supervised release for another case, and that term of supervised release expired before Mr. Smith received separate punishment for the supervised release violation. The government argues that this is an additional reason to deny a sentence reduction, but this reason was already factored into the Court’s decision to issue an above-guideline sentence. To deny Mr. Smith’s narrow request would effectively make Mr. Smith’s original sentence harsher than it originally was; rather than

receiving a sentence about 30 percent above his guideline range, his sentence would be about 45 percent above his guideline range. Receiving an above-guideline sentence at all is relatively rare: sentencing data from 2022 demonstrates this, showing that only 2.9 percent of defendants nationally and 2.4 percent of defendants in this district received an above-guideline sentence that year.¹ Mr. Smith's proposed adjusted sentence of 43 months would still reflect the seriousness of his offense and the aggravating factors that led the Court to an above-guideline sentence, but it would also appropriately safeguard consistency in sentencing.

The government's response focuses entirely on Mr. Smith's offense conduct, but the guidelines make clear that the Court can also consider post-sentencing conduct in determining whether a reduction is warranted. *See* U.S.S.G. § 1B1.10 comment. n.1(B)(iii). Although Mr. Smith was sentenced relatively recently, he has been a model inmate during his 11 months in custody thus far. He has had no disciplinary issues, and he has participated in significant programming. *See* Dkt. 66 (Motion for Sentence Reduction) at Exs. A-D. He has maintained his close family relationships, which will help him reacclimate to life out of custody upon release. And his family needs him: most significantly, his elderly and ailing mother needs him to help care for her. Mr. Smith's post-sentencing conduct supports the modest reduction requested.

¹ *See Statistical Information Packet, Fiscal Year 2022, Northern District of Illinois*, United States Sentencing Commission, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2022/iln22.pdf> (last accessed June 12, 2024).

Wherefore, for the foregoing reasons, Carlos Smith respectfully requests this Court reduce his term of imprisonment from 48 months to 43 months.

Respectfully submitted,

Federal Defender Program
John F. Murphy,
Executive Director

By: s/ Erin K. DeGrand
Erin K. DeGrand
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned, Erin K. DeGrand, an attorney with the Federal Defender Program hereby certifies that in accordance with FED.R.CRIM. P. 49, FED. R. CIV. P5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document(s):

**REPLY IN SUPPORT OF MOTION FOR REDUCED SENTENCE UNDER 18 U.S.C.
§ 3582(C)(2) AND UNITED STATES SENTENCING GUIDELINE AMENDMENT 821**

was served pursuant to the district court's ECF system as to ECF filings, if any, and were sent by first-class mail/hand delivery on June 12, 2024 to counsel/parties that are non-ECF filers.

By: /s/ Erin K. DeGrand
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