

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

|                                  |   |                                     |
|----------------------------------|---|-------------------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) |                                     |
|                                  | ) |                                     |
| <b>Plaintiff,</b>                | ) |                                     |
|                                  | ) |                                     |
| <b>v.</b>                        | ) | <b>Case No. 24-00029-11-CR-W-BP</b> |
|                                  | ) |                                     |
| <b>JORAN NICHOLS</b>             | ) |                                     |
|                                  | ) |                                     |
| <b>Defendant.</b>                | ) |                                     |

**DEFENDANT JORDAN NICHOL'S SENTENCING MEMORANDUM**

COMES NOW the defendant, Jordan Nichols, by and through the undersigned counsel, and hereby respectfully request this Honorable Court to impose a sentence of probation, which is sufficient but not greater than necessary to serve the objectives of sentencing, as reflected in 18 U.S.C. § 3553(a). In support of his motion for a downward variance the Defendant respectfully states as follows:

**PROCEDURAL BACKGROUND**

On October 29, 2024, Jordan Nichols, appeared before Chief U.S. District Beth Phillips and entered a plea of guilty, pursuant to a plea agreement, to Count 1 of the Indictment, which charged that, beginning no later than on or about February 2021 and continuing until at least July 2022, he conspired to commit wire fraud in violation of 18 U.S.C. § 1349.

In exchange for his plea of guilt, the Government agreed to dismiss Count 12 of the Indictment at sentencing, and not to seek an upward departure or a sentence outside of the guidelines range. Mr. Nichols is free to seek a downward departure or sentence outside of the guideline range. He must pay restitution in the amount of

\$20,832 and a \$100 special assessment prior to sentencing.

### **OFFENSE CONDUCT**

Mr. Nichols provided personal identification information to Daisha Sanders. Thereafter Daisha Sanders submitted an online application for a COVID-19 relief PPP loan for him. The loan application listed average monthly payroll of \$8,333 and a Schedule C which listed Gross receipts of \$144,080 and net income of \$99,982. Mr. Nichols did not have a business during that time with gross income and net income in those amounts. His loan application provided the following as the bank account associated with his business: Community America Credit Union (CACU). The bank account was a personal checking account held by him. As a result, his personal account at CACU received a wire deposit from Prestamos in the amount of \$20,832. He made a \$5145.30 Paypal transfer to Joel Wright, who transferred 5,000 to Daisha Sanders. Mr. Nichols spent the remaining loan proceeds on personal expenses, not associated with any business.<sup>1</sup>

### **TOTAL OFFENSE LEVEL**

There are no unresolved issues with regard to the PSR. Mr. Nichols Total Offense Level is 9 within Criminal History III with a resulting advisory guideline range of 8-14 months.<sup>2</sup>

### **STANDARDS FOR IMPOSING SENTENCE**

As the Supreme Court established in *United States v. Booker*, 543 U.S. 220 (2005), *Gall v. United States*, 552 U.S. 38 (2007), and *Kimbrough v. United States*,

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<sup>1</sup> Plea Agreement, ¶3, pg. 2.

552 U.S. 85 (2007), a sentencing court has broad discretion to consider nearly every aspect of a particular case (and a particular defendant) in fashioning an appropriate sentence. “It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall*, 552 U.S. at 52 (citing *Koon v. United States*, 518 U.S. 81, 113 (1996)). It is axiomatic that *Booker* rendered the sentencing guidelines advisory rather than mandatory. *Booker*, 543 U.S. at 264. The *Kimbrough* Court stressed that the sentencing judge is not bound by the Guidelines or Guidelines Policy Statements; rather, he may make his own policy judgments, even if those judgments are different than those provided for in the guidelines. *Kimbrough*, 552 U.S. at 101. *See also*, *Spears v. United States*, 555 U.S. 261, 264-265 (2009).

The primary federal statutes governing sentencing in the federal district courts are 18U.S.C. § 3553(a) and 18 U.S.C. § 3661. Section 3553(a) contains an introductory portion and seven subsections. The introductory portion directs the sentencing court, in determining a particular sentence, to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from future crimes of the defendant, and to provide the defendant with needed educational or vocational training,

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<sup>2</sup> PSIR ¶83, pg 20.

medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the guidelines; (5) guidelines policy statements; (6) the need to avoid unwarranted sentence disparities; and (7) the need to provide restitution. The introductory portion of § 3553(a) also directs the sentencing court to “impose a sentence sufficient but not greater than necessary” to comply with the purposes of subsection (2). Indeed, this is “the overarching goal in federal sentencing.” *Freeman v. United States*, 131 S.Ct. 2685, 2692 (2011).

Of crucial importance, 18 U.S.C. § 3661 makes it clear that “no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.” Put simply, in addition to the § 3553(a) sentencing factors, the court may receive and consider *any* information concerning the defendant’s background, character, and conduct in imposing a sentence. The Supreme Court highlighted the centrality of this concept: “In particular, we have emphasized that ‘[h]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.’ Permitting sentencing courts to consider the widest possible breadth of information about a defendant ‘ensures that the punishment will suit not merely the offense but the individual defendant.’” *Pepper v. United States*, 131 S. Ct. 1229, 1240 (2011) (citations omitted).

## **APPLICATION OF 18 U.S.C. 3553(a) FACTORS**

### **18 USC 3553(a)(1):**

#### ***Nature and Circumstances of the Offense***

The Offense Conduct section of this memorandum has described Mr. Nichols illegal conduct. He has pled guilty and acknowledged his conduct and the damage it caused, which has resulted in restitution owed in the amount of \$20,832.

#### ***History and Characteristics of the Defendant***

Jordan Nichols is thirty-two (32) years old and father of five (5) young children under the age of twelve (12).<sup>3</sup> He has been consistently employed since working as a shipping leader for KC Sausage Company from 2012 – 2016 and as a landscaper from 2016-2022, prior to landing a job as a forklift operator in April of 2023. For the past year and a half, he has been employed at Pure Fishing Distribution Center in Kansas City, Missouri. His current wages are \$21.50 per hour.

Mr. Nichols received four criminal history points as follows: misdemeanor possession of marijuana (1) in 2014 at age 20, felony fleeing from law enforcement (1) in 2014 at age 21, and (2) misdemeanors driving under the influence convictions (1 point each) in 2021 at the age of 27.<sup>4</sup>

Mr. Nichols has successfully completed numerous court probations. He is

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<sup>3</sup> PSIR, ¶64, pg. 17.

<sup>4</sup> PSIR ¶ 40, 41, 44, 45, pgs. 11-13.

capable of conforming to any conditions set by the Court if it imposes a sentence of probation.

**18 USC ' 3553(a)(2): The Need for the Sentence Imposed –**

***(A) To Reflect the Seriousness of the Offense, to Promote Respect for the Law,  
and to Provide Just Punishment for the Offense***

***(B) To Afford Adequate Deterrence to Criminal Conduct***

Both of the concepts set out in (A) and (B) can be achieved without imposition of a custody sentence. A review of the criminological literature reveals that to the extent that criminal sanctions do have a general deterrent effect, the certainty (how certain an offender will be deterred) of punishment has a far greater deterrent effect than the severity of the sanction. *Any* sentence of incarceration, however short, has a significant deterrent effect upon a white-collar offender. Title 18 USC 3553(a)(2)(B)'s directive that the sentence imposed afford adequate deterrence to criminal conduct does not require a lengthy term of imprisonment. The fact that Mr. Nichols was investigated, prosecuted, and pled guilty for his actions should be sufficient to deter potential similarly situated white collar offenders.

**18 USC § 3553(a)(3): The Kinds of Sentences Available**

18 U.S.C. '3553(a)(3) requires the Court to consider "the kinds of sentences available" in a given case. Here, the Court has available to it a sentence of probation as a form of punishment other than imprisonment. Indeed, employing

a sentence of probation will allow the Court to both punish Mr. Nichols sufficiently while, at the same time, allowing him the opportunity to continue rebuilding his life and restoring trust of his family and friends.

**18 USC § 3553(4), (5): The Sentencing Guidelines Provisions**

This is a case which warrants a sentence of probation. Mr. Nichols' conviction alone serves as a general and specific deterrent. There is no credible evidence that he is a candidate for recidivism. While he does have numerous misdemeanor convictions, he has only one prior felony conviction and has never been convicted of a crime of violence. There are substantial reasons as to how a probationary sentence satisfies the concerns of 18 U.S.C. 3553 and the holding in *Booker*.

Mr. Nichols has pled guilty, accepted responsibility, cooperated, and avoided a trial. And, during the period of time Mr. Nichols has been released pending sentencing, he has complied with every directive of the Court and has conducted himself appropriately and responsibly. A sentence of probation consistent with the suggestions herein would serve all of the goals of punishment established by the Sentencing Reform Act.

**18 USC § 3553(7): The Need to Provide Restitution.**

The PSIR indicates restitution is owed and outstanding in the amount of

\$20,832.<sup>5</sup> A probationary sentence will permit Mr. Nichols to continue his full-time employment and make meaningful restitution payments.

### **CONCLUSION**

A probationary sentence would satisfy this sentencing mandate. It is the goal of sentencing to prevent unnecessary incarceration and to limit prison sentences to those individuals who pose the greatest risk to society. As renowned criminologist Norval Morris has consistently argued, and reflective of the recent Supreme Court decisions, when determining punishment, "the least restrictive (punitive) sentence necessary to achieve defined social purposes should be imposed."<sup>6</sup> A probationary sentence is consistent with *Galls* instruction that district courts should consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.<sup>7</sup> For the reasons set forth above, the defendant seeks a probationary sentence along with whatever special conditions of probation this Court deems necessary and appropriate under the facts and circumstances of this case.

Respectfully submitted,

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<sup>5</sup> PSIR ¶1, pg. 3.

<sup>6</sup> *In The Future of Imprisonment*, Norval Morris (1974, pg. 59).

<sup>7</sup> *Gall*, 128 S.Ct at 598.

**/s/ John Anthony Picerno**

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**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

In accordance with Rule 49(a), (b) and (d), fed. R. Crim. P., and Rule 5(b), Fed. R. Civ. P., it is hereby CERTIFIED that this Entry of Appearance was electronically filed on this 5<sup>th</sup> day of October 2025, and that a copy was sent to all concerned parties, through the Court's Electronic Case Filing System.

**/s/ John Anthony Picerno**

John Anthony Picerno