

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 23-cr-00009-TPB

**UNITED STATES OF AMERICA**

**Plaintiff,**

**vs.**

**DENIS CASSEUS,**

**Defendant.**

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**DEFENDANT'S OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT**

Defendant, **DENIS CASSEUS**, by and through undersigned counsel, pursuant to Rule 32(f) of the Federal Rule of Criminal Procedure, and the Due Process Clause of the Fifth Amendment to the United States Constitution, respectfully files the Defendant's objections to the Pre-Sentence Investigation Report (PSR) and states:

1. Offense level calculation: The Defendant objects to not receiving a two-level downward adjustment for Zero-Point Offenders, pursuant to USSG §4C1.1. Different Courts have been granting Defendant's motion to apply the §4C1.1 in the following cases:

- *United States v. Christian Pena Encarnacion*, 22-CR-20422-DMM
- *United States v. Robles*, 22-CR-20494-RNS
- *United States v. Palomino*, 22-CR-20501-BB
- *USA v. del Pozo*, 22-CR-20429-RNS
- *USA v. Angel Alexis Garces*, 22-CR-20422-DMM
- *USA v. Crystal Estrada Marquez*, 22-CR-20595-DMM
- *USA v. Alejandro Catano Velasquez*, 22-CR-60207-AHS
- *United States v. Solchys Perez et al.* 22-CR-20534-DMM
- *USA v. Isaac McNeal*, 22-CR-20467-DPG
- *USA v. Da Costa* 22-CR-20534-DMM
- *USA v. Luckny Vincent*, 23-CR-80027-RLR
- *United States v. Carlos Sablón*, 22-CR-20341- JEM
- *USA v. Javier Ortiz*, 22-CR-10001-DPG

## 2. Paragraph 36

Defendant objects to the two-level upward adjustment pursuant to USSG §2B1.1(b)(12).

The offense did not involve conduct as described in 18 U.S.C. §1040, which provides as follows:

(a) Whoever, in a circumstance described in subsection (b) of this section, knowingly—

(1) falsifies, conceals, or covers up by any trick, scheme, or device any material fact; or

(2) makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or representation, in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191), or in connection with any procurement of property or services related to any emergency or major disaster declaration as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, shall be fined under this title, imprisoned not more than 30 years, or both.

(b) A circumstance described in this subsection is any instance where—

(1) the authorization, transportation, transmission, transfer, disbursement, or payment of the benefit is in or affects interstate or foreign commerce;

(2) the benefit is transported in the mail at any point in the authorization, transportation, transmission, transfer, disbursement, or payment of that benefit; or

(3) the benefit is a record, voucher, payment, money, or thing of value of the United States, or of any department or agency thereof.

(c) In this section, the term “benefit” means any record, voucher, payment, money or thing of value, good, service, right, or privilege provided by the United States, a State or local government, or other entity.

The offense in the present case does not involve conduct described above. The Robert T. Stafford Disaster Relief and Emergency Assistance Act was invoked for a health pandemic to address the size and scale of COVID-19’s impact on the United States. The Stafford Act provides federal funding to aid the response to the COVID-19 response. The Stafford Act Emergency Declaration for COVID-19 authorized public

assistance for various programs or benefits.

Various loans such as PPP and EIDL loans were authorized by the CARES Act. Loans provided to Mr. Casseus do not fall within the category of the public assistance under the Robert Stafford Disaster Relief and Emergency Assistance Act, nor are they benefits as defined in 18 USC §1040. Therefore, the objection should be sustained.

3. Paragraphs 46 and 75

If the Court sustains Defendant's objections, the total offense level should be 15, a criminal history category I, and a guideline imprisonment range of 18-24 months.

**CERTIFICATE OF SERVICE**

I HEREBY certify that on July 31, 2023, undersigned counsel electronically filed foregoing document with the Clerk of Courts using CM/ECF which will send notification of such filing to all counsel of record.

Respectfully submitted,  
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