

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-80118

UNITED STATES OF AMERICA
Plaintiff

vs.

JORGE S. ALVAREZ
Defendant.

SENTENCING MEMORANDUM

Defendant Jorge S. Alvarez (hereafter “Alvarez”) is being sentenced upon his adjudication of guilty to Conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h).

The Court is aware of the broad ramifications of *United States v. Booker* for these proceedings. The sentencing guideline range is no longer binding on the Court, but is only one of five factors to be considered in determining the sentence. *Booker*, 125 S. Ct. at 764-65. The other four factors are (1) the nature and circumstances of the offense, and history and characteristics of the defendant; (2) the kinds of sentences available; (3) the need to avoid unwarranted sentencing disparity; and (4) the need to provide restitution. *Id.* 18 U.S.C. § 3553(a)(1), (a)(3), (a)(6)-(7). In considering the Section 3553(a) factors, the sentencing guidelines are to be given no more or less weight than any other factor. *See United States v. Jaber*, 362 F. Supp. 2d 365, 37076 (D. Mass 2005)(providing comprehensive analysis of why sentencing guidelines do not reflect statutory purposes of punishment; *United States v. Ranum*, 353 F. Supp. 2d 984, 987 (E.D. Wis. 2005).

Perhaps even more important, however, is that *Booker* establishes a new, independent limit on the sentence that may be imposed. The primary sentencing mandate of Section 3553(a)

states that courts must impose the minimally-sufficient sentence to achieve the statutory purposes of punishment- justice, deterrence, incapacitation, and rehabilitation. The court shall impose a sentence *sufficient, but not greater than necessary*, to comply with the purpose set forth in 18 U.S.C. § 3553 (a)(2).

The Court should consider a downward departure/variance pursuant to 18 U.S.C. § 3553 (a). The mandate of § 3553(a) is, of course, for the Court to "impose a sentence sufficient, but not greater than necessary, to comply" with the purpose of sentencing set forth in the second paragraph of the same statute.

In *Hunt*, the Eleventh Circuit rejected "any across the board prescription regarding the appropriate deference to give the guidelines." *Id.* at 1184. Rather, a "district court may determine, on a case by case basis, the weight to give the Guidelines, so long as that determination is made with reference to the remaining section 3553(a) factors that the court must also consider in calculation the defendants' sentence." *Id.* at 1185. Thus, as recognized by the Court in *United States v. Glover*, 431 F.3d 744, 752-753 (11th Cir. 2005), in some cases the Guidelines may have little persuasive force in light of some of the other § 3553(a) factors. The Eleventh Circuit's position is clear:

"The decisions of this Court principally distinguish between varying from an advisory Guideline range based on a case specific, individualized application of the 18 U.S.C. § 3553(a) factors and varying from an advisory Guideline range based on a categorical rejection of Congress's clearly expressed sentencing policy as embedded in the Guideline and in its statutes. The latter amounts to error, while the former falls within the scope of the district court's discretion intended by *Booker*."

United States v. Williams, 472 F.3d 835, 835-836 (11th Cir. 2006) (Black, J. concurring in the denial of rehearing en banc). *See also, United States v. Ennis*, 468 F.Supp. 2d 228, 235 (D. Mass 2006) ("treating offenders who are not equally culpable the same is a false equality, not at all

consistent with the admonition "to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.")

POST-BOOKER 3553(a) SENTENCING CONSIDERATIONS

Alvarez's Personal Characteristics

Alvarez is currently 51 years old. He was born and raised in Cuba. He was raised by his parents along with his siblings in a lower income household. Alvarez came from Cuba in 2002 at 32 years of age. When he arrived, he worked in whatever was available to obtain work as a baker. He then later obtained employment in construction and soon after opened his own trucking company named Saihdel Trucking. The company and Alvarez were going through difficult times and is what led Alvarez to become involved in the offense. Alvarez has always been gainfully employed and has no gaps in his employment. He currently provides for his wife and his minor son who depend on him for support. Attached as exhibits are letters from Alvarez's wife, cousin, and friend who corroborate the kind of person he is.

Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense

Although this is a serious offense and Alvarez should be punished for what he did, a guideline sentence does not necessarily equate to a sentence that adequately reflects Alvarez's personal characteristics. A guideline sentence in this case for Alvarez, when taking into account all other factors is excessively harsh for such a crime and an individual such as Alvarez. He understands and has admitted that his conduct is unacceptable and understands that he deserves to be punished. Although not an excuse for his actions, he was lured by the ability to be able to provide a better life for his family. Alvarez is very ashamed for what he has done and took steps to correct his mistakes. He made arrangements to pay back the PPP loan and made two payments toward the loan before his arrest and plans to continue to make payments. Alvarez has also tried

to break away with his criminal conduct by cooperating with the Government to the fullest extent possible within his abilities.

The Need to Avoid Unwarranted Sentence Disparity

Alvarez deserves to be punished for his actions but should be punished proportionately with his conduct considering the punishment received by other individuals in his same position.

To Afford Adequate Deterrence of Criminal Conduct

Alvarez should be sentenced to a sentence that sends a message to individuals who transgress society's laws, and demonstrates that this conduct will not be tolerated, while at the same time complying with the mandate that the sentence should be sufficient, but not greater than necessary to accomplish the objectives established by 18 U.S.C. § 3553.

To Protect the Public from Further Crimes of the Defendant

This is a significant factor in imposing sentence. Alvarez has never had contact with law enforcement before this case. Except for the conduct in this case, Alvarez has always been a hard-working law-abiding citizen. He has a supportive family, has learned from his mistakes, and is not likely to continue to commit crimes.

CONCLUSION

For all of the above reasons, this Court should impose upon Alvarez a sentence minimally sufficient to achieve the statutory purpose of punishment considering all the above-mentioned factors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 20, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all parties.

/s/Alfredo A. Izaguirre

Alfredo A. Izaguirre, Esq.