

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 22-CR-80118

UNITED STATES OF AMERICA,

Plaintiff,

v.

YANDRE GARCIA HERNANDEZ

Defendant.

_____ /

SENTENCING MEMORANDUM

The defense respectfully submits this document and accompanying exhibits to aid the Court's determination of an appropriate sentence for Mr. Yandre Garcia Hernandez. Below are factors delineated in 18 U.S.C. § 3553(a), which allow the Court additional basis to sentence Mr. Hernandez below the bottom of his guidelines range. This memorandum is a request for a variance below the bottom of the U.S.S.G. United States v. Booker, 553 U.S. 220 (2005).

The yardstick is now a sentence “sufficient but not greater than necessary” to accomplish the stated goals of sentencing [in §3553(a)(2)]. There is “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” [§3553(a)(6)], and the need “to promote respect for the law, and to provide just punishment for the offense” [§3553(a)(2)(A)].” United States v. Ranum, 353 F. Supp.2d at 987 (E.D. Wisc. 2005). Reasonableness is the overarching factor to determine a sentence and the guidelines are only one element of determining what is reasonable. Kimbrough v. U.S., 552 U.S. 85, 90 (2007). The standards governing departures do not bind a district court when employing

its discretion with respect to variances. United States v. Chase, 560 F.3d 828 (8th Cir. 2009).

Courts have reduced sentences by up to a third and this has been found reasonable. United States v. Jenkins, 537 F.3d 1(1st Cir 2008). Up to an eight level departure downward from the guidelines has been deemed reasonable. United States, v. Menyweather, 431 F.3d 692 (9th Cir. 2005).

NATURE AND CIRCUMSTANCES OF THE OFFENSE

Mr. Garcia Hernandez allowed Mr. Barrera Almaguer to use his bank account to funnel a large sum of funds from false PPP loans. Mr. Almaguer did this by using the existing construction company Garcia & Sons Remodeling Service Corp's Bank of America account. Mr. Garcia Hernandez signed documents and checks as instructed. He benefited in the amount of approximately \$40,000.

CHARACTERISTICS OF THE DEFENDANT

Mr. Garcia Hernandez was born in 1987 in Cuba and arrived in the United States in 2015. He has a ninth-grade education and worked as a chef in Cuba. Since arriving in the United States he has worked in construction. He is married and has three children, ages 5, 3, and 1 years old with his wife. He as a fourth child from a prior marriage who resides in Cuba. He moved from Miami to Tampa in 2018.

Mr. Garcia Hernandez had been working at lawfully providing for his family since arriving in the United States. Like many, he struggled financially since his arrival and found lawful work in construction, something he had little experience at in Cuba. Regardless, he worked with others such as his father and learned the trade of construction well enough to start his own business with his father, Garcia & Sons.

KINDS OF SENTENCES AVAILABLE AND RESTITUTION

Mr. Garcia Hernandez, if able to continue to work instead of an extensive period of incarceration, would be able to put a portion of his earnings toward restitution. Punishment, future deterrence, the opportunity for redemption and restitution are all valid goals of sentencing. The Court may fashion a sentence in this case that achieves the myriad of objectives a sentence is designed to achieve by reducing the incarceration period and extending the probation period to the maximum of five year.

CONCLUSION

When looking at all the sentencing factors pursuant to 18 USC 3553, a downward departure and a sentencing variance is warranted in Yandre Garcia Hernandez's case. He has led a positive life, is raising children and tried to stay employed to serve his family. Mr. Garcia Hernandez made bad decisions that lead to this moment and fully acknowledged those mistakes. He should pay for those mistakes, but a sentence must be no more than necessary to effect justice.

Respectfully submitted,

_____/S/_____
Khurrum B. Wahid
Counsel for Yandre Garcia Hernandez
Wahid Vizcaino
2103 Coral Way, Suite 401,
Miami, FL 33145
(305)444-4303
(305)444-4302 Fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either by electronic transmission generated by CM/ECF, or in some other manner for those counsel or parties who are not able to receive electronic filings.

Respectfully submitted,

Wahid Vizcaino, LLP

2103 Coral Way, Suite 401
Miami, FL 33145

Phone: (305) 444-4303
Fax: (305) 444-4302
khurrun@wvglegal.com

_____/s/_____
Khurrun B. Wahid
FL Bar No. 178764