

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

v.

**JOSEPH MICHAEL LOPEZ,**

**Defendant.**

**Case No: 10-00320-15-CR-W-DGK**

**SENTENCING MEMORANDUM**

Defendant, Joseph Michael Lopez, respectfully submits the following sentencing memorandum and request for variance. This memorandum is filed to assist the Court in determining a fair and just sentence.

**I. Introduction**

On November 18, 2010, a two-count indictment was returned naming 19 defendants, including Mr. Lopez. The indictment charged the defendants with conspiracy to distribute illicit drugs and money laundering. On November 19, 2010, Mr. Lopez was arrested and later released on an unsecured bond. Mr. Lopez remained employed and successfully received drug treatment while on bond supervision. On October 17, 2012, Mr. Lopez pled guilty to the lesser included charge in count one of the indictment charging him with a violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 846, and count two, 18 U.S.C. §§1956(a)(1)(A)(i), (h).

On January 11, 2013, the preliminary presentence investigation report (PSR) was prepared. The PSR correctly calculated Mr. Lopez's total offense level at 23, placing him in a sentencing range of 46 to 57 months under the guidelines. *See* PSR, ¶ 45. Recognizing that Mr. Lopez had only one criminal history point, the PSR also correctly cited the applicability of United States Sentencing Guideline (U.S.S.G.) 5C.1.2 (Limitation on Applicability of Statutory

Minimum Sentences) in finding that “the guideline imprisonment range is 46 months to 57 months.” See PSR, ¶¶ 36, 45, 51, 73. The PSR, however, also stated that the statutory minimum is 60 months, making Mr. Lopez’s guideline range 60 months. See PSR, ¶ 73.

Mr. Lopez respectfully submits that he should be sentenced to no more than 30 months imprisonment. First, Mr. Lopez qualifies for the safety valve under 18 U.S.C. § 3553(f). The Court, therefore, should disregard the statutory minimum. Second, due to Mr. Lopez’s unique situation and personal characteristics, a variance from the guideline range is warranted.

## **II. Arguments and Authorities**

### **A. Pursuant to the safety valve provision under 18 U.S.C. § 3553(f), Mr. Lopez should be sentenced below the statutory minimum.**

Under 18 U.S.C. § 3553(f), “the court shall impose a sentence pursuant to [the] guidelines . . . without regard to any statutory minimum sentence” if the defendant meets certain criteria. The term “shall” means that the court must disregard the statutory minimum. Cf. *United States v. A.B.*, 529 F.3d 1275, 1284 (10<sup>th</sup> Cir. 2008) (“§3553(f) requires the district court to disregard the mandatory minimum sentence when certain conditions are met”); *United States v. Barrero* 425 F.3d 154, 158 (2<sup>nd</sup> Cir. 2005) (discussing *Booker* and explaining “Because 18 U.S.C. § 3553(f)(1) is constitutional, we may not ignore its dictates”). Cf. *United States v. Hendricks*, 171 F.3d 1184, 1186 (8<sup>th</sup> Cir. 1999) (“The application of the safety-valve provision is not discretionary once the court determines that the defendant meets the qualifications”); *United States v. Ortiz-Santiago*, 211 F.3d 146, 152 (1st Cir.2000) (“the safety valve—when it applies—is mandatory”). *United States v. Figueroa*, 199 F.3d 1281, 1282 (11th Cir.2000) (same).

The statutory criteria under 18 U.S.C. § 3553(f)(1)-(5) are: (1) the defendant does not have more than 1 criminal history point; (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do

so) in connection with the offense; (3) the offense did not result in death or serious bodily injury to any person; (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, and (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. *See* 18 U.S.C. § 3553(f).

Mr. Lopez satisfies the criteria outlined in 18 U.S.C. § 3553(f)(1)-(5). First, Mr. Lopez has no more than one criminal history point. *See* PSR, ¶ 51. Second, he did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon in connection with the offense. *See* generally, PSR, ¶¶ 38-42. Third, the offense committed by Mr. Lopez did not result in the death or serious bodily injury to any person. *See id.* Fourth, Mr. Lopez was not an organizer, leader, manager, or supervisor of others in the offense. *See* PSR, ¶ 39; U.S.S.G. § 3B1.1. Finally, Mr. Lopez truthfully provided the government all the information and evidence that he had concerning the offense that was part of the same course of conduct.<sup>1</sup> Specifically, on October 20, 2011, and a year later on October 23, 2012, Mr. Lopez met with the government and disclosed all the information he possessed concerning the offense and his involvement in the crime. Because Mr. Lopez satisfies the criteria under 18 U.S.C. § 3553(f)(1)-(5), the statutory minimum should be disregarded.

**B. Sentencing factors and request for sentence below the guideline range.**

Once a court disregards the statutory minimum under 18 U.S.C. § 3553(f), the court may vary downward on a defendant's sentence. *See, e.g., United States v. Garcia*, 2013 WL 1635514

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<sup>1</sup> Defense counsel contacted the government regarding this factor, and the government responded that for purposes of the safety valve, Mr. Lopez provided a truthful statement of his involvement to law enforcement.

(D. N.M. April 1, 2013) (“the Court concludes that, once it has reduced a sentence below a statutory minimum under 18 U.S.C. § 3553(f), it may also vary downward on a defendant’s sentence”). In *Booker*, the Supreme Court severed and excised the provisions of the Sentencing Reform Act that made the Sentencing Guidelines mandatory. See *United States v. Booker*, 543 U.S. 220, 244-45 (2005); *Gall v. United States*, 522 U.S. 38, 49 (2007). After *Booker*, the Guidelines are advisory in nature. See *id.* A sentencing court is still required to consider the applicable guideline range, but it is also permitted to tailor a reasonable sentence in light of the other statutory factors set out in 18 U.S.C. 3553(a). *Booker*, 543 U.S. at 245. A district court has flexibility to vary from that range “to individualize sentences where necessary,” and to tailor the sentence in light of statutory concerns other than the advisory guidelines. *United States v. Maloney*, 466 F.3d 663, 667 (8th Cir. 2006).

The primary directive in Section 3553(a) is for sentencing courts to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph 2.”

Section 3553(a)(2) states that such purposes are:

- (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;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Section 3553(a) further directs sentencing courts to consider the nature and circumstances of the offense and the history and characteristics of the defendant, among other factors.

This case presents an exceptional situation for the court to consider at sentencing. The purposes of sentencing as outlined in Section 3553(a) can effectively be met, and justice can be served, by a sentence not exceeding 30 months. Mr. Lopez’s personal history and characteristics are unique. First, Mr. Lopez has only one criminal history point. His contact with the criminal

justice system is minor and stems primarily from his addictions. Second, Mr. Lopez's work history is commendable, almost qualifying him as a master plumber. *See* PSR, ¶¶ 68-70. Indeed, his employer reported that Mr. Lopez "has shown productive work habits," and that he "shows the attitude of a life-long learner; conscious of his past errors, grateful for current opportunities and aware of paths for success and improvement." His employer further comments: "We have been pleased with him as an employee and intend to keep him with this small business as we grow. . . . Joseph has demonstrated great work ethics and we will be pleased for him to continue his employment." *See* Support Letters (provided separately to the court).

Third, Mr. Lopez plays an essential role in his family. He was the primary provider for his wife and two children. He also greatly assists his mother with medical issues. Letters provided to the court demonstrate the responsibility he embraced as a father and husband, and citizen. *See, e.g.,* Support Letters. Fourth, Mr. Lopez is in need of substance abuse treatment. When Mr. Lopez was as young as 7 years-old, he observed close family members abuse drugs and alcohol. *See, e.g.,* PSR, ¶ 57. Mr. Lopez then began consuming alcohol and using marijuana at age 13. His addictions ultimately led to his involvement in the instant offense. However, while on federal pretrial release, Mr. Lopez successfully attended weekly outpatient treatment programs. PSR, ¶ 65. He remained free from drug use from at least January 2011 through present. *See* PSR, ¶ 15. A sentence not exceeding 30 months will fulfill the purpose of the sentencing, reflect the seriousness of the defendant's offense, and provide him with the needed correctional treatment in the most effective manner.

### **III. Conclusion**

Because Mr. Lopez qualifies for the safety valve provision, the Court should disregard the statutory minimum. Due to his personal history and unique characteristics, the court should vary from the 46 to 57 guideline range, and enter a sentence not exceeding 30 months, which would fulfill the purpose of the sentencing, reflect the seriousness of the defendant's offense, serve as a deterrent to him and others, protect the public by providing the necessary supervision, and provide Mr. Lopez with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

This is to certify that on April 24, 2013 a true and accurate copy of the above and foregoing was e-filed with the Court using the CM/ECF system which sent notification to all parties entitled to service.

/s/ Dione C. Greene