

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

**PAULO JORGE DA COSTA
CASQUEIRO MURTA**

Criminal No. 4:17-CR-514-8

PAULO MURTA'S SENTENCING MEMORANDUM

/s/ Samy Khalil
Samy Khalil
Texas Bar No. 24038997
samy@klfirm.law

Joshua Lake
Texas Bar No. 24129249
joshua@klfirm.law

KHALIL & LAKE
4200 Montrose Blvd., Suite 440
Houston, Texas 77006
713.904.4477

Attorneys for Paulo Murta

Table of Contents

	<u>Page</u>
I. Introduction	3
II. Post- <i>Booker</i> Sentencing.....	4
III. Statutory Sentencing Factors.....	5
A. Non-Guidelines 3553(a) Factors.....	6
Factor 1: Nature and Circumstances of the Offense & History and Characteristics of Mr. Murta	6
Factor 2: Purposes of Punishment.....	13
Factor 3: The Kinds of Sentences Available.....	16
Factor 4: Avoiding Sentencing Disparities in Treatment of Similar Offenders ...	17
B. Guidelines Manual Factors	20
USSG § 3B1.2: Minor Role	21
USSG § 4C1.1: Zero-Point Offender	21
IV. Conclusion.....	21

I. Introduction

We believe that a time-served sentence is appropriate in this case. For the last three years, Mr. Murta has experienced a unique degree of suffering, far beyond what is typical for pretrial defendants. Since being extradited to this country in July 2021, he has not seen his children, his grandchildren, or his parents. Those three years of suffering have now been compounded. A few weeks ago, Mr. Murta's mother experienced a stroke that has left her hospitalized, unable to speak coherently, and facing a grim prognosis. Because of bond conditions imposed in this case, Mr. Murta has been unable to leave this country to be at his mother's bedside.

To explain: Mr. Murta is not from the United States. He and all his family are from Portugal. Before his extradition, Mr. Murta had rarely set foot in the United States,¹ but now, he has been confined to this country for nearly three years. Mr. Murta has not only been separated from his family, but he has also been unable to work — he has no work authorization in this country — which has devastated his financial condition. He has suffered enough.

This Court has sentenced 17 other defendants in related cases, and the parties agree that Mr. Murta's culpability is most like that of Defendant Morales, who received a “split sentence” of 6 months in prison and 6 months of home confinement. Mr. Murta has already

¹ The Superseding Indictment alleged only one brief trip to the United States as a primary basis for U.S. jurisdiction. *See United States v. Bleuler*, 60 F.4th 982, 994 (5th Cir. 2023) (FCPA charge “relies on a sole visit to Miami”). Other than that overnight trip in 2012, Mr. Murta has made only two other trips to this country, both for tourist visits with his family, unrelated to this case.

served more time than that — 9 months in custody and 4 months in home confinement — so a time-served sentence is appropriate here. That sentence would also permit Mr. Murta to return promptly to Portugal, where Portuguese prosecutors have requested his testimony regarding ongoing investigations and criminal proceedings — a Portuguese Criminal Tribunal in Lisbon recently summoned Mr. Murta to appear for proceedings on May 29, 2024. For all these reasons, the Court should impose a time-served sentence.

In this sentencing memorandum, we survey the sentencing factors this Court will consider under 18 U.S.C. § 3553(a) and the Sentencing Guidelines, beginning with the history and characteristics of Mr. Murta himself.

II. Post-*Booker* Sentencing

As the Court knows, in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court instructed sentencing courts to “tailor the sentence in light of [the] statutory concerns” found in 18 U.S.C. § 3553(a), *id.* at 245–46, and to “take account of the Guidelines together with other sentencing goals” identified by Congress. *Id.* at 259. Section 3553(a) provides that a court, after considering the statutory factors, should impose a sentence “sufficient, but not greater than necessary,” to accomplish the purposes of sentencing set out in section 3553(a)(2)(A)-(D).

Since *Booker*, the Supreme Court has decided several cases that clarify how federal sentencing should proceed. First, in *Rita v. United States*, 551 U.S. 338 (2007), the Court explained that the Guidelines have no presumption of correctness in the trial court (even if they do on appeal). *Id.* at 351; *see also Nelson v. United States*, 555 U.S. 350, 352 (2009) (“Our [post-*Booker*] cases do not allow a sentencing court to presume that a sentence

within the applicable Guidelines range is reasonable. ... The Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable.”) (emphasis in original).

In *Gall v. United States*, 552 U.S. 38 (2007), the Supreme Court made explicit the discretion that post-*Booker* sentencing courts enjoy. In particular, the Court rejected any rule “requir[ing] ‘extraordinary’ circumstances to justify a sentence outside the Guidelines range.” *Id.* at 47. In that case, the Court affirmed a sentence of probation despite a Guidelines range of 30 to 37 months and even though the *Guidelines Manual* prohibited “departures” based on the defendant’s history and personal characteristics. *Gall* illustrates that a court has broad discretion, after considering the 3553(a) factors, to impose a sentence outside of the Guidelines range (a “variance”), even if the case does not fall outside the so-called “heartland” of the Guidelines.

Because of *Booker* and its progeny, sentencing is no longer bound to the Guidelines (as was true when they were “mandatory”); the Guidelines are only one among many statutory considerations. The Guidelines range is merely a “starting point” for a sentencing court to consider, *Gall*, 552 U.S. at 49, but one that this Court, in its discretion, may choose to disregard based on a defendant’s history and characteristics and other statutory factors where appropriate.

III. Statutory Sentencing Factors

The Sentencing Reform Act of 1984 sets forth seven factors (and several sub-factors) for a court to consider in determining a sentence. The Guidelines themselves and any relevant policy statements are just two of the seven factors. *See* 18 U.S.C. § 3553(a)(4)

& (5). Section 3553(a) also lists five additional factors that this Court should assess independently rather than through the lens of the *Guidelines Manual*. We address these sentencing factors as they apply to Mr. Murta, and we explain why they support a time-served sentence.

A. Non-Guidelines 3553(a) Factors

Factor 1: Nature and Circumstances of the Offense & History and Characteristics of Mr. Murta

After *Booker*, there is “[n]o limitation ... on the information concerning the background, character, and conduct of [the defendant] which a court ... may receive and consider for the purposes of imposing an appropriate sentence.” 18 U.S.C. § 3661. “[I]n the federal judicial tradition ... the punishment should fit the offender and not merely the crime.” *Pepper v. United States*, 562 U.S. 476, 487–88 (2011) (cleaned up).

The Offense. Mr. Murta is pleading guilty to conspiracy; but for the better part of three years, he pleaded for a speedy trial and waited through multiple trial delays (none of which were requested by him), two dismissals with prejudice, and two appeals. After that long wait, he recently gave up fighting, having decided to plead guilty and bring this case to a close. At trial, the parties would have disagreed sharply about many facts and some of the Government’s broader theories. But Mr. Murta has decided not to fight any longer. He admits his guilt, and he acknowledges his wrongdoing. Here, he only provides context for his actions.

For many years, Mr. Murta worked for a Swiss wealth management company. *See* Information ¶ 8. The company’s owner, Michel Ostertag, assigned Mr. Murta a variety of

tasks, but one of the most important was to serve the largest bank in Mr. Murta's home country of Portugal. Banco Espirito Santo ("BES") was one of Portugal's most established institutions, with customers across the globe. As relevant to this case, Mr. Murta was charged with assisting BES customers and prospective customers who wanted to open accounts and protect their wealth.

To that end, Mr. Murta traveled often. He would meet with clients, learn about their needs, and offer solutions. Those clients wanted to protect their assets. Venezuelans were particularly interested in those services. BES had long-term relationships with many Venezuelans, including some who worked at PDVSA, and with PDVSA itself. Mr. Murta began working with those clients at the request of BES and his boss, knowing that these were long-time BES clients whose happiness was vitally important to the bank.

Here is a brief timeline of the relationship between BES and Venezuelan individuals and entities, including PDVSA and its subsidiary Bariven.²

- October 17, 2008: Luis Carlos de Leon (a codefendant in this case) asked BES to open an account with him and Javier Alvarado (another codefendant) as signatories.
- January 26, 2009: PDVSA Director Eudomario Carruyo wrote to the Director General of BES, Joao Da Silva ("BES Banker 1" in the Information), to ask for assistance with the transfer of \$30,680,000 into a BES account in PDVSA's name.
- February 9, 2010: BES Director Paulo Nacif and BES Banker Joao Da Silva emailed Shiera, Shiera Associate 1, and others that they were "very confident that we are going to start a successful business relationship for both parties."

² These dates and details are all found in documents available to counsel. To promote expediency in this case, we have not submitted them as exhibits, but they will be provided if the Court has any questions.

- June 17, 2010: BES Banker Humberto Coelho paid for Nervis Villalobos (a codefendant in this case) to stay at the Jumeirah hotel in Dubai.
- January 10, 2011: BES Director Paulo Nacif asked other BES employees to “contact Abraham Shiera ... to facilitate the opening of his account.” Nacif said that Shiera was “a partner at ... a company that had ... 90% of sales to PDVSA.”
- February 2, 2012: PDVSA wrote to BES to “confirm that the next huge investments will be made.” The letter described upcoming investments totaling \$1.5 *billion* USD in Espirito Santo International funds.
- March 21, 2012: BES Director Paulo Nacif emailed that “BES is providing today a wire transfer ordered by PDVSA of the amount of USD 230,000,000.”
- May 27, 2012: BES Banker Humberto Coelho sent an internal email indicating that Eudomario Carruyo, “former CFO of PDVESA [sic] and advisor to the Minsiter [sic] of Finance of Venezuela” would be opening a BES account because of his “good relation [with] Mr. Joao [Da] Silva” (BES Banker 1), and his initial deposit would be “aprox EUR 6 million.”
- July 31, 2012: BES Banker Juliana Rocha emailed Abraham Shiera, “At the request of Humberto Coelho, I hereby send you the transfer coordinates in EUR and USD from the Safeleader Investments Ltd account” (“BES Account 10” in the Information).
- September 18, 2012: BES Banker Miguel Veiga França Figueira sent the BES Finance & Credit Committee a request to increase a Shiera company’s “daily limit for issuing purchase orders” to USD \$20,000,000.
 - In the request, he explained that Shiera’s company was “one of Bariven’s main companies (a company that is also our client).”
- February 13, 2014: BES President Ricardo Espirito Santo Salgado and ICG owner Michel Ostertag signed an agreement with Nervis Villalobos, confirming “agreements established between the Espirito Santo Group and Mr. Nervis Villalobos” regarding “investment made in the Espirito Santo Group.”
- March 19, 2014: BES and Bariven (guaranteed by PDVSA) signed an amended “\$17,100,000 Short Term Financing Agreement.”

- June 25, 2014: Abraham Shiera emailed Director General of BES Joao Da Silva (BES Banker 1), “These would be my companies for the second round,” forwarding an email regarding \$96,704,375.01 to be sent to three Shiera companies.

Within the context of that deep, long-term relationship between BES, PDVSA, Bariven, and various Venezuelan individuals, Mr. Murta agreed to assist BES’s Venezuelan clients. During a time of great unrest in Venezuela, he helped its citizens form corporate entities outside their country. He helped them form corporations and other entities in the names of third parties, which he knew would be used to open bank accounts for the ultimate benefit of others. He helped them secure their assets offshore.

Mr. Murta recognizes the wrongfulness of his actions, and he should have refused to participate in the criminal scheme concocted by the largest bank in Portugal, Venezuelan government officials, and American businessmen. He did not refuse, though, and he takes responsibility for his role in that scheme. That said, his small role involved no discretion and provided him with rewards that pale in comparison to the millions and billions at stake. His minor role in this offense weighs heavily in favor of a time-served sentence.

Personal Characteristics. The other statutory factor at play here — Mr. Murta’s history and characteristics — points in the same direction. This is a 59-year-old man who has led an upstanding life. He remains married, partnered with his wife in raising their children to adulthood, and excelled in his profession. Outside of these events, he has never run afoul of the law, and he never will again. As described below, Mr. Murta has patiently endured the last three years while this U.S. case has been pending, and there is no need to impose any additional punishment.

Mr. Murta spent nine months in pretrial custody, where he suffered due to inadequate health care that caused permanent degradation of his hearing and his general health. *See* Dkt. 213 at 1–3 (and attached exhibits); Dkt. 233 at 11–12 (and attached exhibits). Even after the Government changed course and agreed to bond,³ Mr. Murta spent four months subject to home confinement and location monitoring through an electronic ankle monitor. In short, he has effectively served 13 months already — which should be considered in determining an appropriate sentence.

After those 13 months, Mr. Murta has spent 2 more years confined to this country, which is not his home. Unlike most defendants, Mr. Murta is only in this country because of this case. As a result, he has been separated from his family, prohibited from earning a living, and prevented from accessing medical care in his home country where he has health insurance. He has also missed four of his children’s graduations.⁴ And last month, his mother suffered a stroke and received a very poor prognosis for the future — through it all, Mr. Murta has remained here, where he receives updates by phone and email, unable to be at his mother’s bedside.

³ “After Murta filed his motion to dismiss, based on violations of the STA [Speedy Trial Act], the government reversed its position on incarceration and agreed to a bond apparently determining that contrary to it earlier arguments, a Court could put in place a structure that would insure Murta’s appearances for trial. Murta’s unnecessary lengthy detention is a matter of consequence.” Order of Dismissal at 19, Dkt. 482 (June 6, 2023) (Hoyt, J.), *rev’d in part by United States v. Murta*, 2024 WL 64764 (5th Cir. Jan. 5, 2024) (unpublished).

⁴ Mr. Murta’s son Alfonso received a degree in management in June 2021, a master’s degree in management in May 2022, and a master’s degree in finance in October 2022. Mr. Murta’s daughter Diana received a degree in communication and marketing in September 2022.

Mr. Murta's time in this country has, in many ways, been harsher than for a typical U.S.-based defendant under house arrest.⁵ Normally, defendants are permitted to maintain employment on house arrest, but Mr. Murta cannot because the Government extradited him here without giving him legal status. As a consequence, he has no work authorization. Even if he did, he would be unable to establish himself here, given that all his contacts and his experience are in Europe. Mr. Murta's finances have been devastated by these last three years. He has been paying medical expenses without health insurance, legal fees, and regular living expenses, all without a job to offset those expenses.

Physical Health. For years, Mr. Murta has suffered from cholesteatomas in his ears. "A cholesteatoma is a skin cyst in the middle-ear." *Cholesteatoma*, Stanford Medicine.⁶

Cholesteatomas damage the eardrum, and ... [a]s they grow, they can damage the neighboring structures of the middle ear and even the inner ear and/or brain if left untreated. They can dramatically affect and damage hearing, cause dizziness, and injury to facial nerves. Cholesteatomas can also cause infections in the middle ear that, left untreated, sometimes spread to the brain.

⁵ As Judge Hoyt explained, "while in pretrial custody and while released on bond, Murta has been confined in a foreign country where he has no family, no connections to his community and no employment. There can be no doubt that the long delay in bringing his case to trial has 'seriously interfere[d] with the defendant's liberty' and 'disrupt[ed] his employment, drain[ed] his financial resources, curtail[ed] his associations, subject[ed] him to public obloquy, and create[d] anxiety in him, his family and his friends.' Such suffering by him has been experienced, in the Court's view, to a greater degree than most non-violent defendants, who are prosecuted in their home country." Order of Dismissal at 20, Dkt. 482 (June 6, 2023) (quoting *United States v. Taylor*, 487 U.S. 326, 340 (1988)), *rev'd in part by United States v. Murta*, 2024 WL 64764 (5th Cir. Jan. 5, 2024) (unpublished).

⁶ Available at <https://www.stanfordchildrens.org/en/service/ear-nose-throat/conditions/cholesteatoma> (last visited May 15, 2024).

Id. Mr. Murta’s doctor in Portugal describes his ear as having “a large tympanic membrane perforation” and a cholesteatoma that must be surgically removed to avoid “risks of non-treatment including worsening hearing, facial nerve paralysis[,] and” meningitis. Dkt. 404 (Exhibit 1). An ENT physician at Houston Methodist confirms the same. Exhibit 1 (Sept. 21, 2022). He explains:

Mr. Paulo Murta has been under my care since March of 2022. ... I have strongly recommend[ed] surgical removal of the cholesteatoma with reconstructive surgery to repair the ear drum. If untreated, cholesteatoma will continue to cause a chronic infection with drainage, and will erode surrounding bony structures including the ossicles, the facial nerve canal, and the tegmen separating the ear from the brain.

Id.

At a follow-up appointment, the same doctor wrote that he observed recent bleeding in one ear, and he had a “frank discussion” with Mr. Murta, including making it “clear that he will require surgery to create a safe ear.” Dkt. 404 (Exhibit 3 at 5 (Mar. 15, 2023)). The doctor explained that the “risks of not having surgery include recurrent[] infection, bony erosion, facial paralysis, and meningitis.” *Id.* More recently, the doctor reiterated his “strong recommendation that [Mr. Murta] consider revision tympanomastoidectomy surgery” because of those same risks if he does not. Exhibit 2 (Apr. 22, 2024). He also noted that Mr. Murta’s “hearing has declined in both ears” since the last report. *Id.*

In Portugal, Mr. Murta’s doctor — with whom he has a long relationship, so the doctor is deeply familiar with his condition — has referred him to a specialist based on the complexity of his condition. Dkt. 404 (Exhibit 4). These past three years have damaged

Mr. Murta’s long-term health and hearing, and he is eager to return home to his own doctors.⁷

Factor 2: Purposes of Punishment

a. Seriousness of the Offense/Just Punishment/Respect for the Law

The Supreme Court has described these three related factors as “retribution.” *See Tapia v. United States*, 564 U.S. 319, 325 (2011). Retribution, however, is not an inexorable command for a heavy punishment. Rather, in our society retribution should be tempered with mercy, particularly when a defendant is a worthy candidate for redemption. *See Walker v. Martel*, 709 F.3d 925, 950–51 (9th Cir. 2013) (Gould, J., concurring in part & dissenting in part) (“Shakespeare told us that ‘[t]he quality of mercy is not strain’d;’ Milton instructed us to ‘temper so [j]ustice with mercy’ and advised that ‘[m]ercy [must] colleague with justice;’ and President Lincoln reminded us that ‘mercy bears richer fruits than strict justice.’”) (citations omitted).

In addition to all the suffering Mr. Murta has already endured — 9 months in custody, 4 months on home incarceration, 3 years of inability to work and separation from his family, and more — a felony conviction is itself substantial punishment. *See United States v. Brewer*, 978 F. Supp. 2d 710, 712 (W.D. Tex. 2013) (in varying down to probation

⁷ Again, as Judge Hoyt explained, “[i]t bears repeating that Murta’s incarceration from June 2, 2021, through March 10, 2022, has taken its toll on Murta and his family in multiple ways.... Murta ... suffers from a very serious health condition that has received inadequate medical treatment during his stay in the United States. Medical records reflect that if the condition goes untreated, it can result in a loss of hearing or even death. The severity of his condition is corroborated by multiple physicians from multiple countries, including reputable United States physicians. The government does not dispute these medical facts...” Order of Dismissal at 23, Dkt. 482 (June 6, 2023), *rev’d in part by United States v. Murta*, 2024 WL 64764 (5th Cir. Jan. 5, 2024) (unpublished).

where the Guidelines called for prison sentences from 108 to 135 months and 70 to 87 months, respectively, for husband and wife co-defendants, the court observed: “Non-monetary punishment includes being shamed in their lifelong hometown ... and being ostracized by their professional friends ... And for their crime, they will live out their lives as convicted federal felons.”). Like the Brewers, Mr. Murta will face shame and embarrassment for the rest of his life, not only among his professional colleagues overseas but also among his neighbors, friends, family, and members of his community. In this case, a time-served sentence promotes, rather than undermines, respect for the law.

b. General Deterrence

General deterrence aims to deter others from crime. See Richard Frase, *Punishment Purposes*, 58 STANFORD L. REV. 67, 80 (2005); D. Weisburd & E. Waring, WHITE COLLAR CRIME AND CRIMINAL CAREERS 151 (2001). Respected scholars and judges have both concluded that increasing severity of punishment does not increasingly deter crime. See, e.g., Daniel S. Nagin, *Deterrence in the Twenty-First Century: A Review of the Evidence*, in Vol. 42, No. 1, CRIME AND JUSTICE IN AMERICA (Aug. 2013), at 199–263 (“The evidence in support of the deterrent effect of the *certainty* of punishment is far more consistent than that for the *severity* of punishment.”) (emphasis added); *Brewer*, 978 F. Supp. 2d at 715 (“While the Court recognizes the importance of deterrence, it is also realistic about its limits, especially in the realm of white collar crime, where the powers of greed and ambition are often stronger than any deterrent effect.”).

c. Specific Deterrence/Incapacitation/Protecting the Public

When appropriate, specific deterrence can be the most powerful reason for incarceration: it is sometimes necessary to imprison people to prevent them from committing future crimes. Here, however, Mr. Murta poses no threat — in particular, he poses no future threat to the American public because he agrees to immediately fly home to Portugal and never return to this country.

The best indicator of future behavior is perhaps past conduct. And for nearly three years, Mr. Murta has proven himself trustworthy. For example, since his release on bond in March 2022 in a foreign country, Mr. Murta has followed every bond condition and never attempted to flee. Even when this case has been dismissed — twice with prejudice — Mr. Murta has remained steadfastly present and compliant with the Court’s orders (even though, arguably, he was under no legal obligation to remain here while his case was dismissed). His goal has always been to resolve this case in a prompt fashion, and he has endeavored to prove, in both word and deed, that he is a law-abiding, trustworthy man who poses no threat to the community. There is nothing to deter. This factor weighs heavily in favor of a time-served sentence.

d. Need to Provide Treatment in the “Most Effective Manner”

As we have said, Mr. Murta has no health insurance in this country, and he suffered serious damage to his health in pretrial incarceration. But in Portugal, he will have access to health insurance and his doctors who have treated these conditions for years. A prison sentence will not only impose an unnecessary cost on U.S. taxpayers, but it will also prolong Mr. Murta’s time receiving inadequate health care. A time-served sentence would

provide him with medical treatment in the “most effective manner.” § 3553(a)(2)(D) (sentence should provide defendant with “needed ... medical care ... in the most effective manner”).⁸

Factor 3: The Kinds of Sentences Available

The Court may consider a wide range of authorized sentences and prison alternatives, but for the last three years, Mr. Murta has, in effect, been subject to many of those restraints. *See* 18 U.S.C. §§ 3581 (imprisonment); 3561 (probation), 3563(b)(19) (home detention); 3563(b)(13) (reside in a specified place); 3563(b)(14) (remain within the court’s jurisdiction); 3563(b)(5) (refrain from working). There is no need to put Mr. Murta back in jail.

In response to concerns about over-incarceration, Congress established the Colson Task Force to examine challenges in the federal correctional system and develop practical, science-based, and data-driven solutions. The Task Force published a report in 2016 entitled *Transforming Prisons, Restoring Lives*.⁹ The first recommendation was to reserve prison space only “for those convicted of the most serious federal crimes.” *Id.* at xi, 20.

⁸ *See* Erica Zunkel, *18 U.S.C. § 3553(a)’s Undervalued Sentencing Command: Providing a Federal Criminal Defendant with Rehabilitation, Training, and Treatment in “the Most Effective Manner,”* 9 NOTRE DAME J. OF INT’L L. 49, 64 (2019) (“Federal courts approach § 3553(a)(2)(D)’s mandate inconsistently and often fail to recognize the BOP’s limitations on providing ‘the most effective’ rehabilitation and treatment.”) (capitalization formatting modified), available at <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1094&context=ndjicl>.

⁹ Available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/transforming-prisons-restoring-lives-final-recommendations-charles> (last viewed May 2, 2024).

Incarceration, a “highly punitive, costly, and potentially harmful intervention,” should be used “sparingly and judiciously.” *Id.* at 20.

The Sentencing Commission has similarly expressed interest in alternatives to incarceration: “Increasingly, criminal justice professionals have argued that dwindling prison space should be reserved for the most serious and dangerous offenders, necessitating a reconsideration of alternative sanctions for first-time and nonviolent offenders.” U.S. Sentencing Commission, *Alternative Sentencing in the Federal Criminal Justice System* at 1 (Jan. 2009).

There is no need to impose additional imprisonment here.

**Factor 4: Avoiding Sentencing Disparities in Treatment of
 Similar Offenders**

So far, at least 17 defendants have been sentenced in this district for charges arising out of the same investigation into bribery of Venezuelan officials. A survey of those cases reveals that *all* of those defendants received sentences below the Guideline range, and *all* received less time than the Government had requested.¹⁰

¹⁰ The data in this chart was compiled from a review of the sentencing transcripts of each defendant.

	Low End of the Guideline Range (in months)	Government Request (in months)	Sentence Imposed (in months)
Maldonado	12	7	0
Pena	37	22	0
Millan	60	36	0
Castillo	Unknown to Mr. Murta	Unknown to Mr. Murta	5
Morales	60	45	6
Shiera	120	54	12
Beech	57	45	12
Camacho	57	34	12
Ramos	87	52	18
Rincon	156	70	18 ¹¹
Padron	60	40	18
Muller	70	56	20
Pinto	70	56	24
Guedez	46	30	28
Nunez	57	46	36
Hernandez	120	120	48
Gravina	70	87	70

As shown, the average defendant in these cases has received a prison sentence of around 12 months. Mr. Murta is less culpable than most of those defendants, yet he has

¹¹ Rincon's sentence was further reduced to time served, even though he never entered BOP custody. See Amended Judgment at 2 (Mar. 26, 2024), Dkt. 370, *United States v. Rincon-Fernandez*, No. 4:15-CR-654-01 (S.D. Tex.). He was a central leader of this conspiracy, yet he has not spent even a day in prison.

Even before Rincon received that further reduction, Judge Hoyt aptly noted that “[i]t is ironic that Murta has spent more than nine months in pretrial incarceration here in the United States, about one-half the sentence that two of the government’s star witnesses, Rincon and Shiera, received.” Order of Dismissal at 19, Dkt. 482 (June 6, 2023), *rev’d in part by United States v. Murta*, 2024 WL 64764 (5th Cir. Jan. 5, 2024) (unpublished).

already spent roughly as long in custody as they did.¹² He also spent more than four months subject to house arrest after being released from pretrial detention.

Moreover, many culpable individuals will never be brought to justice, at least in the United States. The Government has chosen not to charge many of the conspirators, including “Shiera Associate 1,”¹³ “BES Banker 1,”¹⁴ “BES Banker 2,”¹⁵ and “the lawyer.”¹⁶ Many others appear to be beyond the Government’s reach even though they were indicted in this case: Nervis Villalobos-Cardenas, Alejandro Isturiz-Chiesa, Rafael Reiter-Munoz, Javier Alvarado-Ochoa, and Daisy Rafoi-Bleuler (a “partner” of Swiss Company A, Information ¶ 15, as compared to Mr. Murta, who was only an “employee” of Swiss Company B, *Id.* ¶ 8).

Finally, because Mr. Murta is a foreign national, he would be subject to harsher conditions of confinement than an otherwise identically situated defendant who is a U.S.

¹² As the Court knows, with a prison sentence of 12 months and 1 day, defendants are eligible for up to 54 days of credit for good behavior. 18 U.S.C. § 3624(b)(1). Most will therefore serve about 10 months in prison. Beyond that, many will be eligible for early release to home confinement or a residential reentry center. § 3624(g). And, under the First Step Act of 2018, most are *also* eligible to earn “10 days of time credits for every 30 days of successful participation in [certain] evidence-based” programs or activities, further shortening their stay in prison. 18 U.S.C. § 3632(d)(4)(a)(i). In short, nearly half of the defendants in this case were incarcerated for less time than Mr. Murta has already spent in pretrial detention.

¹³ Information ¶¶ 19, 58, 70–72.

¹⁴ *Id.* ¶¶ 23, 47.

¹⁵ *Id.* ¶¶ 24, 47.

¹⁶ *Id.* ¶ 65.

citizen because as a non-citizen: (1) he is ineligible for “minimum” security status,¹⁷ which would otherwise qualify him for placement in a federal prison camp as a first-time, non-violent offender, (2) he would likely be ineligible to serve any amount of time in a federal community corrections center or halfway house,¹⁸ and (3) upon completion of a federal term of imprisonment, he would risk extended immigration detention in connection with removal proceedings.

B. Guidelines Manual Factors

Before *Booker*, the Guidelines were the most significant factor in federal sentencing. But *Booker* breathed life into the other section 3553(a) factors and relegated the Guidelines to just two of the seven factors the Court must consider before imposing sentence.¹⁹ Nonetheless, two Guideline provisions counsel in favor of a downward departure or variance here, even if they do not technically change the final Guideline range of 60 months.

¹⁷ BOP policy requires that non-citizens “be housed in *at least* a Low security level institution.” U.S. Department of Justice, Federal Bureau of Prisons, *Program Statement: No. P5100.08, Inmate Security Designation and Custody Classification*, Chapter 5 at 9 (2006) (emphasis added), https://www.bop.gov/policy/progstat/5100_008.pdf.

¹⁸ See U.S. Department of Justice Federal Bureau of Prisons, *Change Notice to Program Statement 7310.04*, at 10 (1998), <https://www.prisonerresource.com/wp-content/uploads/2020/03/Community-Corrections-CenterCCC-Utilization-Transfer-Procedures-7310.04.pdf> (excluding inmates who qualify as “Deportable Alien[s]” from halfway houses).

¹⁹ See *United States v. Reinhart*, 442 F.3d 857, 864 (5th Cir. 2006) (recognizing the Supreme Court’s direction that “the guidelines are merely one sentencing factor among many, and the calculated guideline range must be considered in conjunction with the other § 3553(a) factors”).

USSG § 3B1.2: Minor Role

Mr. Murta played a minor role in this scheme, and he lacked knowledge of — much less control over — most of its aspects. That qualifies Mr. Murta for a downward adjustment under USSG § 3B1.2, and it supports our request for a time-served sentence.

USSG § 4C1.1: Zero-Point Offender

Mr. Murta also qualifies for the zero-point offender adjustment under USSG § 4C1.1. The Sentencing Commission promulgated that Guideline in November 2023 because of statistical data showing “that offenders with zero criminal history points have considerably lower recidivism rates than other offenders, including offenders with one criminal history point.” Adopted Amendments at 52 (eff. Nov. 1, 2023) (citing U.S. Sent’g Comm’n, *Recidivism of Federal Offenders Released in 2010* (2021)).²⁰ That data and this new Guideline further support a time-served sentence in this case.

IV. Conclusion

Under the unique circumstances of this case, a time-served sentence is the just result. There is no need for additional punishment. Mr. Murta is prepared to return to Portugal.

²⁰ Available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf (last visited May 15, 2024).

Respectfully submitted,

/s/ Sammy Khalil
Samy Khalil
Texas Bar No. 24038997
samy@klfirm.law

Joshua Lake
Texas Bar No. 24129249
joshua@klfirm.law

KHALIL & LAKE
4200 Montrose Blvd., Suite 440
Houston, Texas 77006
713.904.4477

Attorneys for Paulo Murta

CERTIFICATE OF SERVICE

On May 19, 2024, I filed the foregoing pleading with the Clerk of Court using the CM/ECF system. Because we are filing this motion under seal, we will email copies to the Court's case manager Glenda Hassan, DOJ Assistant Chief Sonali Patel, DOJ Trial Attorney Michael DiLorenzo, AUSA Robert Johnson, Senior U.S. Probation Officer Chris Hopkins, U.S. Probation Officer Zhanelle Spikes.

/s/ Sammy Khalil
Samy Khalil