United States District Court
Northern District of Texas
Fort Worth Division

United States of America v. [redacted]	[redacted]

Motion for Sentencing Variance

To the Hon. [redacted]

[redacted] files this motion for sentencing variance.

INTRODUCTION

This is a wretched case. It is *Saving Private Ryan* with an even worse ending.

This presents the Court with a very difficult question: how to punish admittedly serious conduct while recognizing that the applicable sentencing guidelines provision is seriously flawed and that the 3553(a) factors support a low sentence.

This motion will focus on these two things: why Sentencing Guidelines section 2K2.1 is seriously flawed and should be afforded no deference and why the 3553(a) factors support a low sentence. Ultimately, it will ask the Court to disregard the sentence suggested by the guidelines and impose a markedly lower sentence based on the current sentencing guidelines minus the unwarranted and in many cases unapplied enhancements.

SENTENCING GUIDELINES SECTION 2K2.1 IS FUNDAMENTALLY FLAWED AND DESERVES NO DEFERENCE

Sentencing Guideline sections 2K2.1 is fundamentally flawed. It has become progressively harsher without reason or justification. Only one revision to this section has included a legitimate rationale for the increase while the other increases have been supported only by broad, non-specific generalizations. One increase was even slipped in under the table without public comment. Because of this, this guideline deserves no deference from this Court.

The steady upward creep of 2K2.1

The subsections of 2K2.1 have steadily become more onerous over the years. Below the sentencing guidelines are calculated for Reynaldo [redacted] under the previous versions of the applicable sentencing guidelines. Each substantive revision of these guidelines provisions results in a higher sentence.

November 1, 1987

Base offense level	6
Number of firearms	+5

Altered or obliterated serial number	+1
Total	12

Here, it should be noted that prior to the 1991 consolidation of 2K2.1, 2K2.2, & 2K2.3 there was a great deal of interaction and shuffling between these three sections from year to year. The 1987 and 1989 calculations are based on the applicable guideline from 2K2, but they aren't the same. In 1987, the applicable section for Reynaldo Bazan was 2K2.1, but the calculation comes from 2K2.3 because 2K2.1 cross-references to it when its calculation is higher. Except for the quantity of weapons in this case, the 1987 calculation would have been only level 10.[1] In 1989, the applicable section was again 2K2.1 but cross-referenced to 2K2.2 after a reworking of 2K2.2 and 2K2.3. In 1989, the except for the quantity of weapons, the calculation would have been on level 8.[2]

[1] A base offense level of 9 plus 1 for the obliterated serial numbers.

[2] A base offense level of 6 plus 2 for the obliterated serial numbers.

November 1, 1989

Base offense level	6
Number of firearms	+6
Altered or obliterated serial number	+2
Total	14

In addition to changing some of the applicable base offense levels, this "amendment raises the enhancement for stolen weapons or obliterated serial numbers from 1 to 2 levels to better reflect the seriousness of this conduct. The numbers currently used in the table for the distribution of multiple weapons in §2K2.2 are amended to increase the offense level more rapidly for sale of multiple weapons."[3]

November 1, 1991

Base offense level	12
Number of firearms	+5

[3] Amendment 189. These amendments are contained in Appendix C to the guidelines and are available on the Sentencing Commission's website at http://www.ussc.gov/Guidelines/2010_guidelines/index.cfm

Altered or obliterated serial number	+2
Total	19

This change was accompanied the following statement in the amendment: "This amendment consolidates three firearms guidelines and revises the adjustments and offense levels to more adequately reflect the seriousness of such conduct, including enhancements for defendants previously convicted of felony crimes of violence or controlled substance offenses."[4]

November 1, 2001

This change raised the enhancements for the number of firearms involved in the offense. The range was greatly expanded. The top level increased from 50 or more to 200 or more while the maximum enhancement doubled to 10.[5]

[4] Amendment 374.

[5] This is actually the third version of this. The 1989 version cross-referenced to a table in 2K2.3. That table had a somewhat similar structure for the number of guns but lower enhancements. The version that this amendment changes had lower levels and lower enhancements than the first table in 2K2.3.

Base offense level	12
Number of firearms	+8
Altered or obliterated serial number	+2
Total	22

This change was accompanied the following statement in the amendment:

> This amendment responds to a recommendation from the Bureau of Alcohol, Tobacco and Firearms (ATF) to increase the penalties in §2K2.1 (Unlawful Receipt, Possession or Transportation of Firearms or Ammunition) for offenses involving more than 100 firearms.
>
> The amendment modifies the firearms table at §2K2.1(b)(1), to provide enhancements in two-level increments. Prior to this amendment, the table provided enhancements in one level increments. This change has the effect of compressing the table by providing a wider range in each subdivision of the table for the number of firearms involved in the offense. Compressing the table in this manner diminishes some of the fact-finding required to determine how many firearms were involved in the offense and provides some increase in penalties. The amendment provides additional two-level increases for offenses that involve either 100-199 firearms, or 200 or more firearms. These increases are provided to ensure adequate and proportionate punishment in cases that involve large numbers of firearms.[6]

November 1, 2006

This change really leaves a mark. The altered or obliterated serial number enhancement increased by another two levels from +2 to +4. The trafficking enhancement of +4 was added. The definitional lan-

[6] Amendment 631.

guage in the commentary for the possession of a firearm in connection with another firearms trafficking offense from subsection 2K2.1(b)(6) was changed to allow application of this enhancement to any offense other than the charged offense.[7]

Base offense level	12
Number of firearms	+8
Altered or obliterated serial number	+4
Trafficking	+4
Possession in connection with another offense	+4
Total	32

This change was accompanied the following statement in the amendment:

> Second, the amendment provides a 4-level enhancement at §2K2.1(b)(5) if the defendant engaged in the trafficking of firearms. The definition of trafficking encompasses transporting, transferring, or otherwise disposing of two or more firearms, or receipt of two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual. The definition also requires that the defendant know or have reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual whose possession or receipt would be unlawful or who intended to use or dispose of the firearm unlawfully.

[7] Most recently, the enhancement did not apply if the other offense was a firearms or explosives offenses. Now, the enhancement applies to any other offense not the offense of conviction. *See United States v. Juarez*, 626 F.3d 246, 255 (5th Cir. 2010).

> Third, the amendment modifies §2K2.1(b)(4) to increase penalties for offenses involving altered or obliterated serial numbers. Prior to this amendment, §2K2.1(b)(4) provided a 2-level enhancement if the offense involved either a stolen firearm or a firearm with an altered or obliterated serial number. The amendment provides a 4-level enhancement for offenses involving altered or obliterated serial numbers. This increase reflects both the difficulty in tracing firearms with altered or obliterated serial numbers, and the increased market for these types of weapons.[8]

The 2006 change is the last change to this section and is the currently in effect version of this section.

The failings of each subsection

Three of the enhancements of 2K2.1 suffer serious problems. Each will be treated in turn.

The altered or obliterated serial number enhancement

This enhancement has slowly crept upward and become more onerous. It initially called for an additional level when the defendant "knew or had reason to believe the firearm was stolen or had an altered or obliterated serial number." In 1991, this enhancement was increased to two levels.[9] In 1993, the *mens rea* requirement for this en-

[8] Amendment 691.

[9] Amendment 374.

hancement was removed.[10] In 2006, this enhancement increased to four levels. The 2006 amendment was the first to specifically address the change made to this enhancement. The amendment's articulated reason for the increase: "This increase reflects both the difficulty in tracing firearms with altered or obliterated serial numbers, and the increased market for these types of weapons."[11] This rationale suffers from two terminal problems, which will be examined in turn.

First, there's no need for an increased enhancement here because there's no "increas[ing] market for these weapons." This part of the rationale for the increase was slipped in *sub rosa* by the Sentencing Commission without pubic comment or review much less justification. When the proposed amendments were published for comment, the rationale for this change was limited to "the difficulty in tracing firearms with altered or obliterated serial numbers."[12] The implemented amendment, however, had the additional reason, "the increased market for these types of weapons," which had never before been published for comment and had not been raised in the comments on the original

[10] Amendment 478.

[11] Amendment 691.

[12] 71 Fed.Reg. 4782-01, 4789 (Jan. 27, 2006).

proposed amendment.[13] More importantly, the notion that this is an increasing problem is pure bunk. A brief glance at the application of this enhancement gives the lie to this very quickly. Following is a table of the percentage application of this enhancement to 2K2.1 offenses. It is drawn from the Sentencing Commission's annual data. 2002 is the first year this data is available:[14]

Year	%
2010	6.9
2009	6.8
2008	7.1
2007	10.7
2006	23.0
2005	20.6
2004	20.7
2003	21.5
2002	21.9

This looks suspiciously like the problem went into remission about the time the sentencing commission "recognized" it. The application of

[13] *Id.*; 71 Fed.Reg. 28,063-01, 28,071 (May 15, 2006).

[14] This table and the two following are based on data in the Sentencing Commission's Use of Guidelines and Specific Offense Characteristics for the applicable years. These reports are available at http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Guideline_Application_Frequencies/index.cfm

this enhancement dropped by two-thirds practically overnight—two years anyway, which is overnight in legal time. Or perhaps this marked reduction in application reflects the judiciary's collective wisdom that this has finally gotten over the top.

Second, the supposed problem of altered or obliterated serial numbers is grossly overwrought. Tracing firearms—even ones with serial numbers—has always suffered serious limitations. The presence or absence of a serial number has little to do with whether a firearm can be traced. Serial number data can only provide information through the first sale by a federally licensed firearms dealer (FFL). Even if the firearm is subsequently sold through a FFL, there's no readily available way to locate the transaction because it could have been sold by a dealer other than the original one some years and many miles removed from the initial selling dealer. Even if the gun is again sold by the original dealer, the dealer may or may not know that; the current record-keeping scheme wouldn't identify that. As ATF puts it: "A National Tracing Center trace usually ends after the first retail sale. Following the trail of the gun further often requires a substantial com-

mitment of investigative effort by the tracing law enforcement agency, a commitment that is often not feasible."[15]

More importantly, this is neither a recent nor serious problem. Obliterated serial numbers have been recovered and the crime prosecuted for some time. The earliest Fifth Circuit case regarding obliterated serial numbers counsel located with a 30-second Westlaw search was in 1993.[16] Had more than 30 seconds been expended on the effort, an earlier might have been located. Indeed, ATF has been recovering serial numbers successfully just as long.[17] Myriad techniques exist to recover serial numbers. They involve (singularly and in combination depending on the efficacy of the specific technique on a specific gun) polishing of the firearm, magnetization of the firearm, application of

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[15] Following the Gun: Enforcing Federal Laws Against Gun Traffickers 25 (ATF June 2000), available at http://www.endgunviolence.com/vertical/Sites/%7BAAEC109F-616F-49FC-8E4C-EDEA9EDD71E9%7D/uploads/%7B1EBD35CD-CF32-475A-AEB4-E6B83049F790%7D.PDF

[16] *United States v. Hooker*, 997 F.2d 67 (5th Cir. 1993).

[17] http://www.cagv.org/understanding_firearms.htm and Following the Gun: Enforcing Federal Laws Against Gun Traffickers 37 (ATF June 2000), available at http://www.endgunviolence.com/vertical/Sites/%7BAAEC109F-616F-49FC-8E4C-EDEA9EDD71E9%7D/uploads/%7B1EBD35CD-CF32-475A-AEB4-E6B83049F790%7D.PDF

etching chemicals to the firearm, enhancing the application of etching chemicals with electricity, and heating the firearm.[18]

In sum, this enhancement is bunk. Perhaps some enhancement is warranted since an obliterated serial number does require a modicum of effort by a crime lab to recover—and if it is, [redacted] submits that the original one level enhancement is appropriate. But the real tracing problem has nothing to do with the presence or absence of a serial number; rather, it flows from the shortcomings of the system's ability to trace transactions. Moreover, this is neither a new problem nor a difficult one. It has existed and been solved through myriad technical processes for 20 years. The rationale for the increase is wrong. Some of it wasn't even exposed to scrutiny before adoption. This Court should discount this enhancement.

The trafficking enhancement

The 2006 changes to 2K2.1 included the addition of a four-level enhancement for trafficking in firearms. This enhancement is problematic as well.

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[18] Virginia Department of Forensic Sciences Firearm/Toolmark Procedures Manual § 9.6, at 69, available at http://www.dfs.virginia.gov/manuals/firearms/procedures/240-D100%20FX-TM%20Procedures%20Manual.pdf.

The amendment enacting this new four-level enhancement offered no justification for its implementation. This is what one appellate judge has called criminalization on the cheap.[19]

Given the broad applicability of this enhancement both in terms of the number of offenses 2K2.1 includes and the typically larger number of guns in cases, this enhancement is nothing more than a wholesale shifting of the guidelines upward.

Indeed, this should be born out by the data. Section 2K2.1 encompasses principally offenses that are trafficking type offenses. This section includes 18 U.S.C. §§ 922(a)-(p), (r)-(w), (x)(1), 924(a), (b), (e)-(i), (k)-(o), 2332g; 26 U.S.C. § 5861(a)-(l). Virtually all of these offenses are

[19] *United States v. Grier*, 475 F.3d 556, 574 (3d Cir. 2006) (Rendell, J., concurring).

trafficking-type offenses.[20] And trafficking only requires more than one gun: "The definition of trafficking encompasses transporting, transferring, or otherwise disposing of two or more firearms, or receipt of two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual."[21] The typical case involves many more than that. A review of Fifth Circuit cases from 2010 reveals that cases of this sort involve many more than two guns: 103 guns;[22] five guns;[23] and, 25 guns.[24] And these cases aren't even the trafficking type offenses mentioned above that make up the bulk of the offenses

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[20] For example:

18 U.S.C. § 922(d): It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person …"
18 U.S.C. § 922(e): "It shall be unlawful for any person knowingly to deliver or cause to be delivered …"
18 U.S.C. § 922(i): " It shall be unlawful for any person to transport or ship …"
18 U.S.C. § 922(j): "It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose …"
18 U.S.C. § 922(k): " It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce …"
18 U.S.C. § 922(l): " it shall be unlawful for any person knowingly to import or bring into the United States …"
18 U.S.C. § 924(b): "Whoever … ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce …"
18 U.S.C. § 924(h): "Whoever knowingly transfers a firearm …"
26 U.S.C. § 5861(a): "to engage in business as a manufacturer …"
26 U.S.C. § 5861(e): "to transfer a firearm …"
26 U.S.C. § 5861(j): "to transport, deliver, or receive …"

[21] Amendment 691, Reason for Amendment, at 176, available at http://www.ussc.gov/Guidelines/2010_guidelines/Manual_PDF/Appendix_C_Supplement.pdf

[22] *United States v. Hernandez*, 633 F.3d 370, 372 (5th Cir. 2010).

[23] *United States v. Green*, 405 Fed. Appx. 860, 861 (5th Cir. 2010).

[24] *United States v. Juarez*, 626 F.3d 246, 249 (5th Cir. 2010).

included in 2K2.1 Rather, all three are making false statements to dealers cases.

But the data do not support the notion that this enhancement has shifted the guidelines upward. Rather, the trafficking enhancement of section 2K2.1 has been rarely used since its inception. Indeed, only about 4% of the cases sentenced under 2K2.1 include this trafficking enhancement:[25]

Year	%
2010	4.8
2009	4.4
2008	3.6
2007	3.1

As with the altered or obliterated serial number enhancement, does this really reflect the judiciary's collective wisdom that 2K2.1 has gone over the top? Unless ATF and others have suddenly started prosecuting almost exclusively one-gun, felon-in-possession cases no other conclusion is probable.

[25] *See* Note 14, *supra.*

Firearm in connection with another offense enhancement

This enhancement is nothing but criminalization on the cheap under the table. The amendment implementing offers no explanation of the reason for this change; rather, this change piggybacks along on the other changes made to this enhancement. The net effect is an extra four levels for 25% more defendants.

This enhancement applies when "the defendant used or possessed any firearm or ammunition in connection with another felony offense[] or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense[.]"[26] Originally, "[a]nother felony offense" "refered to offenses other than explosives or firearms possession or trafficking offenses."[27] This broadly written exclusionary language limited the application of this enhancement to offenses outside this genre. But the 2006 change radically expanded its application. Now, the another felony offense "means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction

[26] USSG § 2K2.1(b)(6). Note that this enhancement had previously been for many years (b)(5). Other changes to this section renumbered it (b)(6).

[27] Amendment 691.

obtained."[28] Instead of enhancing a sentence for the defendant's intent to commit an offense outside this genre, this section enhances a defendant's sentence when the defendant is convicted of only one of the myriad offense that he could have been charged with. This is problematic for many reasons.

First, as noted above, the amendment offers no explanation for this change. Without a rationale for the increase, it is simply what one appellate judge has called criminalization on the cheap.[29] Perhaps there's a logical rationale for this change, but without one, this is simply an increase for the sake of an increase. Clearly, it's had this impact. Since this change, 2K2.1(b)(6) has applied to about 25% more cases than before. Below is the Sentencing Commission's data on the percentage application of this enhancement to 2K2.1 cases: [30]

Year	%
2010	24.1
2009	24.5
2008	22.8
2007	19.9
2006	20.4

[28] USSG § 2K2.1 Appl. Note 14(C).

[29] *United States v. Grier*, 475 F.3d 556, 574 (3d Cir. 2006) (Rendell, J., concurring).

[30] *See* Note 14, *supra.*

Year	%
2005	18.6
2004	20.3
2003	20.1
2002	20.1

Moreover, this is a stiff increase to be levied without rationale.

This is a 39% increase to the guidelines range. This is especially troubling given what might be done to avoid its application.

Second, the structure of this enhancement invites a defendant's seeking a more severe charge. In this case, these defendants could have easily been charged with half-a-dozen different offenses carrying punishment maximums from five to 20 years.[31] The PSR addendum notes that the other felony offense for purposes of this enhancement is the exportation of the firearms. That's also the last event in the conduct and actions of these defendants in this case. But it carries a 20 year maximum sentence. Yet had the defendants pleaded to an exportation offense, then there would have been no other felony offense, and this enhancement could not have been applied. Even though that

[31] This is more fully discussed in [redacted]'s motion for continuance of the trial.

would give a defendant greater exposure on the top end, it's a positive expected value bet. That 71.3% of the sentences in the Fifth Circuit in Fiscal Year 2010 were within the guidelines range while only 2.2% were above[32] almost certainly puts the defendant money ahead in such a situation.

Imagine:

Davis: *Hello*

[redacted]: *Leigh, it's Mike.*

Davis: *Hi, how are you.*

[redacted]: *Good, thank you. I'm calling on* [redacted]*. I can't offer him a ten-year-cap because he had a management role, and I think the guidelines will be over ten years. But we can structure a fifteen year cap with one substantive count and the conspiracy count.*

Davis: *Well, that's great, I really appreciate that, but can you give me a superseding information to aiding and abetting exportation?*

[redacted]: *That's a 20 year cap*?

Davis: *Yeah, but I'm betting on the come with the guidelines here.*

[redacted]: *What?*

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[32] U. S. Sentencing Commission's 2010 Sourcebook of Federal Sentencing Statistics Table N-5, *available at* http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2010/TableN-5.pdf

Davis: I'm gaming the guidelines. If I plead him to exportation, then that precludes the 4-levels from (b)(6) because it's the last act in the chain of events. Under the guidelines, he's gonna be 40% better. So, yeah, the cap is higher, but 71.3% of the time in this circuit the defendant gets a guidelines sentence and only 2.2% of the time one above the guidelines, the rest are below guidelines, so odds are we're years ahead on the deal.

Almost certainly the government wouldn't have done that. And that precludes vacating the plea on ineffective assistance grounds. But it's a conversation counsel now wishes he'd had and certainly will have next time around on one of these cases. Were such a thing to be done, it would redefine charge-bargaining in ways previously unimagined. And that's a little scary. When a defense lawyer can legitimately say that his client would be better off pleading to a greater cap due to guidelines issues, something has gone seriously awry with the guidelines.

Conclusion

This guidelines section suffers from serious deficiencies. It has been steadily revised upward, but these revisions have been done without legitimate justification. Only one of the amendments is accompanied by a legitimate explanation for the increase. The 2001 increase to enhancements for number of guns is based on a specific recommendation from ATF. All the others, where there is an explanation, are nothing but general platitudes. This "amendment raises the enhancement … to better reflect the seriousness of this conduct."[33] "This amendment … revises the adjustments and offense levels to more adequately reflect the seriousness of such conduct[34] Profound, informative stuff to be sure.

Further, the logic of some is sadly lacking. The altered or obliterated serial number enhancement has gone from +1 to +2 to +2 with no *mens rea* requirement to +4 with no *mens rea* requirement. The last bump in 2006 "reflects both the difficulty in tracing firearms with altered or obliterated serial numbers, and the increased market for these types of weapons."[35] That explanation is facially pleasing but logically

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[33] Amendment 189.

[34] Amendment 374.

[35] Amendment 691.

unsatisfying. There's nothing new about obliterated serial numbers. ATF and other forensic labs have been raising them for 20 years. They aren't the problem in tracing guns; a lack of available, searchable records is. Perhaps most troubling is the closing of the barn door behind the horse.

The same can be said of the trafficking enhancement and the expansion of the firearm in connection with another offense enhancement. The former was implemented without justification; the other was expanded without justification. Both are just a shifting of the guidelines upward.

But there's sunshine behind these clouds. The data suggest that at least the first two of these enhancements are being disregarded by the courts. The application of the obliterated serial number enhancement has dropped two-thirds since its latest expansion. The trafficking enhancement is being applied to only about 4% of cases. And given the lack of justification or support for the ever increasing upward march of 2K2.1, this Court should join the legion others that have apparently disregarded these enhancements.

[36] PSR ¶ 98.

[37] *Id.*

[38] PSR ¶ 96.

[39] Exhibit 4, Instant Offense Characteristics for Offenders, by Criminal History Category and Criminal History Points With Details for Zero Point Offender Categories, Recidivism and the First Time Offender, *available at* http://www.ussc.gov/Research/Research_Publications/Recidivism/200405_Recidivism_First_Offender.pdf.

[40] PSR ¶ 110.

[41] PSR ¶ 89,

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CONCLUSION AND SUGGESTED SENTENCE

The applicable sentencing guidelines have steadily increased since their inception. Oftentimes, no justification was provided. For other of the changes, the justification

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[42] PSR ¶ 39.

[43] PSR ¶ 92.

[44] PSR ¶¶ 108, 110.

was flat wrong. The significant changes are nothing but wholesale increases to the resulting guidelines ranges without legitimate justification—criminalization on the cheap. Thankfully, the data suggests that courts are not adhering slavishly to these increases but are seeing them for what they are.

the Court impose a sentence based on the current 2K2.1 calculated minus the offending provisions—namely the extra three levels for obliterated serial numbers, the trafficking enhancement, and the firearm in connection with another felony offense enhancement. Such a calculation including an upward adjustment for role in the offense and a downward adjustment for acceptance of responsibility, looks like this:

Base offense level	12
Number of guns	+8
Obliterated serial numbers	+1
Role in the offense	+3
Acceptance of responsibility	-3
Total:	**21**

At criminal history category I, this is a range of 37–46 months.

This is a large—no, massive—reduction from the range calculated in the PSR, which is 121 to 151 months. But it is also one that is

wholly supported and justified. It can be justified on the basis that the current 2K2.1 is fundamentally flawed. And it can be justified under a consideration of the 3553(a) factors in this case. Therefore, Reynaldo [redacted] asks this Court to vary from the sentencing guidelines and impose such a sentence.

Respectfully submitted,

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Certificate of Service

On September 28, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

s/ Leigh W. Davis_____
(Mr.) Leigh W. Davis

Certificate of Conference

I certify that I discussed this motion with AUSA [redacted]. Mr. [redacted] indicated that the government opposed the relief requested by this motion.

s/ Leigh W. Davis_____
(Mr.) Leigh W. Davis