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8 Attorneys for Defendant

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF ARIZONA**

11 **UNITED STATES OF AMERICA,**)

No. 02CR00477-001-PHX-MHM

12 Plaintiff,)

**MOTION TO EXTEND SELF-
SURRENDER DATE AND REQUEST
TO CONSIDER MODIFICATION OF
SENTENCE**

13 v.)

14 **AMANDA PATRICIA BOSSINGHAM,**)

(Expedited Ruling Requested)

15 Defendant.)

(Before the Honorable Mary H. Murguia)

16 Defendant, Amanda Bossingham (now Amanda Bouzaglo), through undersigned
17 counsel, respectfully requests this Court to extend her current self-surrender date of July 7,
18 2008, for approximately ninety (90) days. Additionally, Ms. Bouzaglo respectfully requests
19 this Court to consider modifying her sentence of fourteen months imprisonment. This Motion
20 is supported by following Memorandum of Points and Authorities.
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22 RESPECTFULLY SUBMITTED this 27th day of June, 2008.

23 KIMERER & DERRICK, P.C.

24 s/s Michael D. Kimerer

25 MICHAEL D. KIMERER

26 AMY L. NGUYEN

27 Counsel for Defendant Bossingham
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MEMORANDUM OF POINTS AND AUTHORITIES

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I. Factual Background

On November 6, 2003, Ms. Bouzaglo (formerly known and identified in this case as Ms. Bossingham), entered into a plea agreement with the Government in which she pled guilty to one count of Misuse of a Social Security Number, a class D felony offense. (Doc. 40). The criminal conduct occurred on August 16, 2001. Specifically, Ms. Bouzaglo pled guilty to submitting an application for a line of credit with M & I Bank using the social security number of another person. The Bank approved the line of credit in the amount of \$15,000.

On June 15, 2004, this Court sentenced Ms. Bouzaglo to fourteen months prison followed by thirty-six (36) months supervised release, and ordered her to pay \$36,294.95 in restitution. (Doc. 68). She filed a timely Notice of Appeal. (Doc. 70). On August 12, 2004, this Court granted Ms. Bouzaglo’s Motion for Release Pending Appeal and ordered that her self-surrender date be stayed until the appeal was concluded. (Doc. 79). Following an Order by Ninth Circuit Court of Appeals dismissing Ms. Bouzaglo’s appeal (doc. 83), this Court set a new self-surrender date of July 7, 2008. (Doc. 85).

II. Ms. Bouzaglo’s Conduct Since She Was Sentenced

It has now been almost seven years since Ms. Bouzaglo committed the offense, and four years since she was sentenced. She has been out of custody and monitored by Pretrial Services since the date of her arrest on October 11, 2002. Since she was sentenced by this Court approximately four years ago, Ms. Bouzaglo has drastically turned her life around. At the time of her offense, Ms. Bouzaglo’s mother had just passed away, her marriage had just failed, and her small business went under as a result of her divorce. However, during her criminal case and following her sentencing, she removed herself from the environment she was in when she

1 committed the offense and severed all ties with individuals that influenced her life and actions in a
2 negative way.

3 Toward the end of her criminal case, Ms. Bouzaglo met a man by the name of Salomon
4 Bouzaglo, who is now her husband of five years. With her husband's overwhelming support, Ms.
5 Bouzaglo made drastic changes in her life and formed new, positive relationships. The
6 Bouzaglo's opened a restaurant named Amy's Baking Company in Scottsdale, Arizona, which is
7 now very successful. (See Articles, attached as Ex. A). The Bouzaglo's spend most of their time
8 at the restaurant, as their presence is necessary for its continued operation. Ms. Bouzaglo is solely
9 responsible for creating the entire menu, cooking, baking, training their staff, ordering, managing
10 the catering business and completing daily operational duties necessary for the business. The
11 Bouzaglo's have hosted several charitable events at their restaurant and use it as a tool to help raise
12 money for non-profit organizations.

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15 Ms. Bouzaglo donates her time and money to various organizations, such as the St.
16 Nicholas Youth Organization and the Fraternal Order of Police. She is also very involved in the
17 Arizona Republican Party and volunteered numerous hours of her time during the 2006 elections.
18 (See Letter from Matt Salmon, attached as Ex. B). In 2005, she was 1 of 250 people appointed to
19 the Republican Presidential Task Force in Arizona. (See Commission of Accomplishment,
20 attached as Ex. C).

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22 Perhaps the best person to comment on Ms. Bouzaglo's conduct since her offense and
23 sentencing is her Pretrial Services Officer, Greg Ceylia, who has been monitoring her for more
24 than three years. According to Mr. Ceylia, Ms. Bouzaglo is in full compliance with all conditions
25 of pretrial release, including full-time employment, random urinalysis, regular reporting and house
26 visits. She also continues to make regular payment toward restitution. Mr. Ceylia stated that she
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1 is one of the strongest people on his current caseload and has no worries about her being involved
2 in criminal activity in the future. Mr. Ceylia further commented on the change he has observed in
3 Ms. Bouzaglo since her sentencing and believes that if anyone is deserving of a reduced sentence,
4 it is her.

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6 Additionally, shortly after she was sentenced in the instant case, Ms. Bouzaglo was placed
7 on four years probation by the Fourth Judicial District for Colorado Springs for the similar
8 offenses of Theft and Forgery. Significantly, the conduct underlying those offenses occurred just
9 two months before the instant offense, approximately seven years ago. Ms. Bouzaglo's probation
10 term was monitored by Pinal County here in Arizona on a courtesy basis until it was recently
11 successfully terminated on June 4, 2008. According to her probation officer, James Pfeifer, she
12 has been in "total compliance" with all of her probationary terms. (See Letter from James D.
13 Pfeifer, attached as Ex. D). It is Mr. Pfeifer's opinion that justice would be better served if Ms.
14 Bouzaglo is able to serve her sentence out of custody. (Id.).

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16 **III. Modification of Sentence**

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18 As stated by Mr. Ceylia, if there is anyone deserving of a reduction or modification of
19 sentence, it is Ms. Bouzaglo. (See also Letters of Support, attached as Ex. E). Her conduct since
20 her offense exemplifies the concepts of rehabilitation and reformity. She is a perfect example of
21 why prison is not appropriate in all cases, and why the Federal Sentencing Guidelines are now
22 advisory and sentencing judges have more discretion in imposing an appropriate sentence. *See*
23 *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005); *United States v. Menyweather*,
24 431 F.3d 692, 695-96 (9th 2005). In fact, because Ms. Bouzaglo was sentenced just seven
25 months before *Booker* came down and her case was still on direct review at that time, she
26 would normally be entitled to a new sentencing hearing or, at the very least, review of her
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1 sentence for reasonableness. *See United States v. Ameline (Ameline II)*, 409 F. 3d 1073 (9th
2 Cir. 2005) (*en banc*). Unfortunately, by entering into a plea agreement with the Government,
3 Ms. Bouzaglo waived her right to appeal, which has been held to be valid even in light of the
4 changes in sentencing law imposed by *Booker*. *See United States v. Cardenas*, 405 F.3d 1046,
5 1048 (9th Cir. 2005). Indeed, that is the very reason Ms. Bouzaglo's appeal was dismissed by
6 the Ninth Circuit. (See Doc. 83).
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8 Undersigned counsel readily acknowledges that without an Order from the Ninth
9 Circuit remanding the case for re-sentencing, it is very unlikely that this Court will be able to
10 modify her sentence. Similarly, undersigned counsel acknowledges that Rule 35, Fed. R. Crim.
11 P., does not apply to this case. However, the extraordinary circumstances surrounding Ms.
12 Bouzaglo's case is nevertheless being presented to this Court with the hope that there is some
13 way her sentence can be modified to allow her to serve some or all of her time out of custody.
14 Such a result would be consistent with the spirit of *Booker* as well as basic principles of equity
15 and fairness. It would also allow Ms. Bouzaglo to continue to make restitution payments on a
16 regular basis. At the very least, the information concerning her conduct since her sentencing in
17 2004 is presented to demonstrate to this Court and all parties involved that a criminal defendant
18 such as Ms. Bouzaglo can be rehabilitated without spending time in a Federal prison. In fact, in
19 this instance, serving time in a Federal prison will undoubtedly prove to be counterproductive
20 and will undermine all of the progress she has made in her life over the last 8 years.
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23 **IV. Extension of Self-Surrender Date**

24 As previously discussed, Ms. Bouzaglo currently owns a business with her husband for
25 which she is primarily responsible. She has been out of custody since her arrest on October 11,
26 2002, and only recently learned of the current self-surrender after this Court entered the Order on
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1 June 6, 2008. Consequently, Ms. Bouzaglo has not had enough time to make all the financial and
2 business arrangements necessary to ensure her restaurant will continue to operate in her absence.
3 Even then, its sustainability without her presence is questionable. She also needs to make
4 arrangement relating to her personal finances, such as bank accounts, loans, credit cards, etc.

5 Moreover, Ms. Bouzaglo has not yet been designated to a BOP facility, which would allow
6 her to self-surrender to the facility directly, rather than to the U.S. Marshall's Office. As this
7 Court is likely aware, surrendering to the U.S. Marshall's Office usually requires transportation to
8 CCA in Florence, Arizona, eventually followed by transportation to the designated facility.

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10 Lastly, undersigned counsel contacted the attorney for the Government, Mr. Daniel Drake,
11 who stated that he has no objection to a 90-day extension of the current self-surrender date.
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13 **V. Conclusion**

14 Given the foregoing extraordinary circumstances surrounding Ms. Bouzaglo's sentence
15 and conduct while on release, she respectfully requests this Court to modify her sentence to enable
16 to serve some or all of her 14-month prison sentence out of custody. If that is not possible, Ms.
17 Bouzaglo respectfully requests this Court to extend her current self-surrender date of July 7, 2008,
18 for approximately ninety (90) days.
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20 Ms. Bouzaglo further respectfully requests this Court to issue an expedited ruling in this
21 matter in light of the current self-surrender date of July 7, 2008.

22 RESPECTFULLY SUBMITTED this 27th day of June, 2008.

23
24 Kimerer & Derrick, P.C.

25
26 By: /s/Michael D. Kimerer
27 Michael D. Kimerer
28 Amy L. Nguyen
Counsel for Defendant Bossingham

CERTIFICATE OF SERVICE

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I hereby certify that on June 27, 2008, I electronically transmitted the attached motion to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

The Honorable Mary H. Murguia
United States District Judge
401 W. Washington
Phoenix, AZ 85003

Daniel Drake
Assistant United States Attorney
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004

By: s/s Nancy M. Alexander