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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, )

**REPLY TO GOVERNMENT'S  
13 RESPONSE TO MOTION FOR  
14 MODIFICATION OF SENTENCE**

v. )

15 **AMANDA PATRICIA BOSSINGHAM,** )

**(Hearing: July 25, 2008 at 11:00 a.m.)**

16 Defendant. )

(Before the Honorable Mary H. Murguia)

17 Defendant, Amanda Bossingham (now Amanda Bouzaglo), through undersigned  
18 counsel, respectfully replies to the Government's Response to the Motion to Extend Self-  
19 Surrender Date and Consider Reduction in Sentence. This Reply is supported by following  
20 Memorandum of Points and Authorities.

21 **RESPECTFULLY SUBMITTED** this 23rd day of July, 2008.

22 **KIMERER & DERRICK, P.C.**

23 /s/ Michael D. Kimerer

24 **MICHAEL D. KIMERER**

25 **AMY L. NGUYEN**

26 **Counsel for Defendant Bossingham**

**MEMORANDUM OF POINTS AND AUTHORITIES**

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**I. Motion to Extend Self-Surrender Date**

The Government does not oppose Ms. Bouzaglo’s Motion to Extend Self-Surrender Date, and the Court entered an Order on July 1, 2008, extending the self-surrender date to October 7, 2008. (Doc. 87). Consequently, there is no need to further address that portion of the Motion

**II. Motion for Modification of Sentence**

Although the Government does not challenge Ms. Bouzaglo’s contention that she is worthy of a reduction in her sentence, it nevertheless opposes any such reduction, seemingly on the basis that this Court lacks jurisdiction to do so. However, the Government is incorrect in its contention that no Federal statute or rule applies to this case that would allow a modification of Ms. Bouzaglo’s sentence. Indeed, undersigned counsel recently discovered an amendment to the Sentencing Guidelines which subsequently decreased Ms. Bouzaglo’s sentencing range, making her eligible for a reduction in sentence pursuant to 18 U.S.C. § 3582(c).

Title 18, section 3582(c)(2) of the United States Code states:

In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable police statements issued by the Sentencing Commission.

Thus, although district court’s generally may not alter a term of imprisonment once it has been imposed, § 3582(c) creates an exception to that rule. *See United States v. Hicks*, 472 F.3d 1167,

1 1169-70 (9th Cir. 2007). In *Hicks*, the Ninth Circuit further clarified that where a defendant's  
2 sentencing range has been lowered by the Sentencing Commission, the statute "allows the district  
3 court to re-calculate the defendant's sentencing range using the newly reduced Guideline, and then  
4 determine an appropriate sentence in accordance with the § 3553(a) factors." *Id.* at 1170. *Hicks*  
5 also held that where a modification of sentence is appropriate pursuant to § 3582(c), *United States v.*  
6 *Booker*, 543 U.S. 220, 245-46 (2005), applies to re-sentencing proceedings and the Sentencing  
7 Guidelines should be considered advisory. *Id.* at 1169-72.

9 In the instant case, the Sentencing Guidelines in effect as of November 1, 2000, were  
10 applied to determine Ms. Bouzaglo's sentencing range. (See Transcript of Sentencing, 6/15/04,  
11 Doc. 71, attached as Ex. A). Because she was sentenced on June 15, 2004, the Guidelines were  
12 still mandatory. The following offense level calculations were found by the Court:  
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14	Base Offense Level, § 2F1.1(a)	6
15	Loss between \$70,000 and \$120,000, § 2F1.1(b)(1)(H) <sup>1</sup>	+6
16	More than one victim, § 2F1.1(b)(2)	+2
17	Use of means of identification, § 2F1.1(b)(5)(C)	+2
18	Acceptance of Responsibility, § 3E1.1	-3
19		
20	<b>Total Offense Level</b>	<b>13</b>

21 (Id. at 36-39). With no criminal history, Ms. Bouzaglo's Criminal History Category was I,  
22 rendering a sentencing range in Zone D of 12-18 months imprisonment. The Court imposed a  
23 sentence at the low-end of the guideline range of 14 months imprisonment, followed by thirty-six  
24 (36) months supervised release. (Id. at 51).

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28 <sup>1</sup> The Court rejected the loss amount recommended by the Presentence Report of \$144,333.19, which would have  
added 7 levels to the base offense level. (Ex. A at 18-19).

1           Effective November 1, 2001, the Sentencing Commission amended § 2F1.1, the guideline  
2 under which Ms. Bouzaglo was sentenced, which was referred to as the “Economic Crime  
3 Package” Amendment. (See U.S.S.G. Amendments to the Sentencing Guidelines, May 10, 2001,  
4 attached as Ex. B). Specifically, the amendment consolidated § 2B1.1 (theft), § 2B1.3 (property  
5 damage), and § 2F1.1 (fraud). The amendment also eliminated the two-level enhancement for  
6 offenses involving more than one victim, § 2F1.1(b)(2)(B), and replaced it with an enhancement  
7 for offenses involving a large number of victims, § 2B1.1(b)(2) (more than 10 victims). (Id. at  
8 19). According to the Sentencing Commission, this change addressed three concerns: 1) as a  
9 result of the consolidation, the more-than-one-victim enhancement would apply in cases that, prior  
10 to the amendment, were not subject to such an enhancement; 2) a two-level increase in every case  
11 involving more than once victim is arguably inconsistent with the approach in subsection (b)(2) of  
12 § 3A1.1 (hate crimes); and 3) in practice, the more than minimal planning enhancement was so  
13 closely lined with the more-than-one-victim enhancement that the decision to eliminate the former  
14 argues strongly for also eliminating the latter. (Id. at 19-20).  
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18           Applying the amendment to Ms. Bouzaglo’s case leaves no doubt that she was “sentenced  
19 to a term of imprisonment based on a sentencing range that has subsequently been lowered by the  
20 Sentencing Commission . . .” 18 U.S.C. § 3582(c)(2). Ms. Bouzaglo received a two-level  
21 increase in her offense level because her offense involved more than one victim, pursuant to §  
22 2F1.1(b)(2)(B), rendering a sentencing range of 12-18 months imprisonment. That sentencing  
23 range was subsequently lowered by the Sentencing Commission effective November 1, 2001, by  
24 completely eliminating the more-than-one-victim enhancement. (See Ex. B). Without that  
25 enhancement, Ms. Bouzaglo’s offense level is 11 rather than 13, placing her sentence in Zone C  
26 and rendering a guideline range of 8-14 months.  
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Given the foregoing analysis, a reduction of Ms. Bouzaglo’s sentence pursuant to 18 U.S.C. § 3582(c)(2) seems appropriate, and following the holding of *Hicks*, 472 F.3d at 1169-72, should be done in accordance with *Booker*. 543 U.S. 220, 125 S. Ct. 738. As this Court is aware, federal sentencing after *Booker* is governed by 18 U.S.C. § 3553(a), which states that the district courts “shall consider” the seven listed factors, only one of which is the sentencing range under the Advisory Sentencing Guidelines. *United States v. Menyweather*, 431 F.3d 692, 695-96 (9th 2005). Thus, now that the Guidelines are advisory rather than mandatory, district courts “should consult them for advice as to the appropriate sentence,” but a reasonable sentence can only be reached by taking into consideration all seven factors under § 3553(a). *Id.* (citing *United States v. Kimbrew*, 406 F.3d 1149, 1152 (9th 2005)).

Ms. Bouzaglo’s original Motion for Modification of Sentence identifies numerous factors that should be considered pursuant to 28 U.S.C. § 3553(a), and are incorporated herein by reference. Those factors, when considered with the reduced sentencing range of 8-14 months, warrant a reduction of her sentence and demonstrate that imposing any prison sentencing upon Ms. Bouzaglo will undoubtedly prove counterproductive and will undermine all of the progress she has made in her life over the last 8 years. Ms. Bouzaglo, therefore, respectfully requests this Court to reduce her sentence to 12 months home confinement.

RESPECTFULLY SUBMITTED this 23rd day of July, 2008.

Kimerer & Derrick, P.C.

By: /s/Michael D. Kimerer  
Michael D. Kimerer  
Amy L. Nguyen  
Counsel for Defendant Bossingham

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 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  
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By: /s/ Nancy M. Alexander