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UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA

United States of America,	)	
	)	CR 06-00422-001-TUC-FRZ
Plaintiff,	)	
	)	
vs.	)	<b>Government's Response to Defendant's</b>
	)	<b>Sentencing Memorandum</b>
ALFONSO RAMIREZ-GARCIA	)	
	)	
Defendant.	)	

NOW COMES the United States of America, by its attorneys, PAUL K. CHARLTON, United States Attorney for the District of Arizona and Shelley K.G. Clemens, Assistant United States Attorney, and hereby responds to Defendant's Sentencing Memorandum previously filed on July 28, 2006.

**Facts.**

On February 1, 2006, the defendant was encountered by United States Border Patrol Officers while walking in the desert near San Miguel, Arizona. The defendant was arrested and ordered detained after agents determined that he was a citizen of Mexico and illegally in this country. Agents also determined that the defendant had previously been deported on October 13, 2005, following his release from prison for the aggravated felony offenses of Burglary of a Residence and Forgery in the First Degree.

2 The defendant entered a plea of guilty to the original indictment charging Illegal  
3 Entry into the United States, 8 U.S.C. §1326(a), 8 U.S.C. §1326(b)(2). The presentence  
4 investigation report calculates the defendant’s offense level at 21 and his criminal history  
5 category at III, to which there are no objections by either party. Pursuant to the plea  
6 agreement, the applicable range of punishment is 33 to 41 months.

7 **Government’s Position:**

8 The government respectfully requests that this Court sentence the defendant pursuant  
9 to the recommendation of the Department of Probation. The recommended sentence of 37  
10 months takes into account the defendant’s criminal history, and the aggravating factors  
11 surrounding his prior convictions. In addition, a sentence higher than the minimum would  
12 reflect an additional aggravating factor that the defendant re-entered this country only four  
13 months after his prior removal.

14 **Analysis:**

15 **A Sentence Within the Guidelines Range is Appropriate and Reasonable**

16 The Sentencing Reform Act of 1984 created the United States Sentencing  
17 Commission as an independent agency of the judicial branch. The primary purpose of the  
18 United States Sentencing Commission was to “establish policies and practices for the federal  
19 criminal justice system that will assure the ends of justice by promulgating detailed  
20 guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.”  
21 *United States Sentencing Guidelines* Section 1A1.1 Commentary.

22 The United States Sentencing Commission established the guidelines to aid Courts  
23 in implementing the statutory factors listed in 18 U.S.C. 3553(a). Under Section 3553(a), the  
24 sentence imposed must reflect the seriousness of the offense, promote respect for the law,  
25 provide just punishment, afford adequate deterrence, and protect the public. In *United States*  
26 *v. Wilson*, 2005 WL 78552 (D.Utah Jan. 13, 2005), the Court held that because the

1 “Sentencing Commission has promulgated and honed the Guidelines to achieve the purposes  
2 of Section 3553(a), “considerable weight should be given to the Guidelines in determining  
3 what sentence to impose.” The sentencing court must also consider “the need to avoid  
4 unwarranted sentencing disparities among defendants with similar records who have been  
5 found guilty of similar conduct. 18 U.S.C. 3553(a)(6). A court that imposes a sentence  
6 outside the applicable advisory Guidelines range must state “with specificity” both at  
7 sentencing and in the written judgment and commitment order its reasons for doing so. 18  
8 U.S.C. 3553(c).

9       There have been many cases interpreting the propriety of using the federal Sentencing  
10 Guidelines as a starting point or a presumptive test to determine reasonableness. United  
11 States v. Diaz-Argueta, 447 F.3d 1167 (9<sup>th</sup> Cir.2006) ( “..the District Court started out  
12 properly by calculating on the record the applicable Guideline range.”) Those cases show  
13 the federal Sentencing Guidelines still play an important role in the District Court’s  
14 determination of what an appropriate sentencing range should be. United States v. Cantrell,  
15 433 F.3d 1269, 1280 (2006). See also, United States v. Menyweather, 431 f.3d 692, 696-97  
16 (2005).

17       The Ninth Circuit held in United States v. Cantrell 433 F.3d 1269 (2006), that  
18 “District Courts still must consult the Sentencing Guidelines and take them into account  
19 when sentencing, even though they have the discretion to impose non-Guidelines sentences.”  
20 Thus, generally, the District Court must first take the sentencing guidelines into account and  
21 calculate the correct Guidelines range. Cantrell at 1279.

22       The sentencing guidelines remain a factor for the court to take into consideration in  
23 determining the appropriate sentence. However, once the Court determines the correct  
24 guideline range, it must then consider the sentencing factors set forth in 18 U.S.C. §3553.  
25 The statutorily enumerated factors in 18 United States Code Section 3553, in pertinent part,  
26 are listed below.

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A. **The nature and circumstances of the offense and the history and characteristics of the defendant**

In the case at bar, the defendant entered a plea of guilty illegally re-entering the United States following deportation, which is enhanced by his previous conviction for an aggravated felony. The evidence shows that the defendant was only absent from this country for four months before he violated the laws of this country by attempting to sneak back in.

The defendant concurs that the guidelines as calculated are correct, however, feels that he should be sentenced to the lower end of the sentencing guidelines.

The defendant's aggravated felony convictions were for Burglary of a Residence and Forgery in the First Degree. The defendant committed these offenses while he had pending charges for Statutory Rape and Incest in the Superior Court of Hall County, Georgia. The charge of incest was dismissed once the defendant entered a plea of guilty to the Statutory Rape Charge (misdemeanor) on June 10, 2003.

The personal history and characteristics of the defendant are already taken into account in the guideline calculations. First, the defendant has some criminal history and therefore, he falls into third criminal history range for this offense level under the guideline range. A sentence of 37 months, the middle of the guideline range, recognizes both the serious nature of the offense and the social history and background of the defendant.

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B. **The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant and to provide the defendant with needed educational or vocational training, medical care, or other corrective treatment in the most effective manner:**

The crime of re-entry into the United States after deportation is indeed a serious offense against the United States of America. That Congress intended it to be treated as a serious offense, is exemplified by its classification as a felony, and a range of punishment that includes up to twenty (20) years and a fine of \$250,000.00. The only way to deter this

1 type of conduct is through an appropriate prison sentence that will deter the defendant and  
2 other individuals from engaging in this type of conduct.

3 The defendant argues that there are certain mitigating factors that this court should  
4 take into account when determining this defendant's sentence. First, the defendant claims  
5 that the Court should consider that the defendant only re-entered this country because he had  
6 lived here all of his life. However, when looking at the defendant's criminal history and the  
7 events that led to his deportation, this factor is hardly mitigating.

8 **C. The Kinds of Sentences Available:**

9 An offense level of 21 is a Zone C sentence, and thus the only sentence that is  
10 available is an sentence of incarceration.

11 **D. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with**  
12 **Similar Records who have been Found Guilty of Similar Conduct**

13 The crime of Illegal Reentry into the United States after Deportation, enhanced by a  
14 prior aggravated conviction, is a crime of nationwide significance. One of the main  
15 purposes of the federal sentencing guidelines was to ensure that federal defendants convicted  
16 of the same crime with similar backgrounds were treated similarly in New York City and in  
17 Iowa. One of the safest ways to ensure that this statutory element is consistently applied for  
18 this crime across the nation is to impose a sentence within the applicable guidelines range.

19 **CONCLUSION**

20 The defendant cites to a number of factors as to why the court should sentence the  
21 defendant to the low end of the applicable guideline range. However, none of these factors  
22 are truly mitigating. A sentence in the middle of the guideline range (37 months) under these  
23 circumstances, would be reasonable, and would accurately serve the purposes of sentencing.

24 Respectfully submitted this <sup>31st</sup> day of July, 2006.

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26 PAUL K. CHARLTON  
United States Attorney  
District of Arizona

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*S/ Shelley K.G. Clemens*

SHELLEY K.G. CLEMENS  
Assistant U.S. Attorney

Copy of the foregoing served electronically  
or by other means this 31<sup>st</sup> day of  
July, 2006 to:

Roger Sigal, Esq.  
Attorney for the defendant.