

they offer any justification for the maltreatment they caused the undocumented aliens in this case. Rather, they engage in a lengthy and wholly irrelevant discussion of the national debate surrounding immigration laws and policy in an effort to rationalize their conduct. Indeed, their memorandum describes a criminal scheme in which Jose Calhelha admits to hiring six illegal aliens, who he apparently treated very well and hired because he, like so many other American businesses, had difficulty hiring and maintaining individuals to work at his ten Dunkin' Donuts stores.

Thus, while detailing with painstaking care all of the favorable things that his friends and relatives have said about him in preparation for this sentencing, the Calhelhas demonstrate no regret for their actions. Rather they seek to blame their conduct on the complexity of immigration laws, advice from their immigration attorney and lack of skilled workers in the United States to work at Dunkin' Donuts stores. Their sentencing brief is filled with encomiums to themselves about their lifetime of good deeds and the fact they have always worked hard. Yet, the Calhelhas fail to utter a single word of sympathy for all of the people that they recruited who worked so hard for them, and the many other employees whose lives were directly, and in many cases negatively, impacted by the treatment that they received from the Calhelhas. Moreover, they seek to undermine the credibility of those witnesses who have had the courage to come forward. Finally, despite mounds of evidence to the contrary, they

continue to maintain that all of those who worked for them were treated very well.

The Calhelhas self-serving and self-laudatory memorandum is designed to convince the Court that they (not all of the undocumented aliens) are the real "victims" in this case. This case, however, is about an extensive criminal scheme involving the Calhelhas systematic violations of our immigration laws in a post-9/11 world and the very real exploitation of undocumented aliens.

Given the extensiveness of their criminal activity, the exploitation of the undocumented aliens, and their genuine lack of remorse, the Court should impose the term of incarceration that defendant Jose Calhelha has earned -- the top end of the Sentencing Guideline range. Moreover, Diane Calhelha has already been given a great deal of consideration by this Office. She was not only offered a misdemeanor but the Office has agreed to recommend a non-custodial sentence in exchange for her willingness to engage in community service. This was done in the hopes that given her age and work ethic that she would have learned from her mistakes and would seek to become a productive and law-abiding member of our community. Given her audacity at the change of plea to completely distance herself from the criminal conduct and her own continued lack of remorse, she is deserving of a significant amount of community service so that she can come to fully understand the gravity of her offenses.

Background of the Criminal Investigation

The criminal investigation in this case began after an interview aired on local television on or about May 2005 during which two undocumented aliens, whose faces were blurred to conceal their true identities, discussed the long-term abusive treatment that they were subjected to by the Calhelhas. Almost one year before the interview aired, Dunkin' Brands headquarters had received a tip from a woman employed at one of Mr. Calhelha's stores who stated that "two individuals were not receiving proper wages" and that Mr. Calhelha was "forcing the individuals to be 'indentured servants.'" See Ex. A¹ (draft investigative report). After conducting some initial interviews, Dunkin's corporate headquarters conducted a one-day raid and interviewed the employees on-site at Mr. Calhelha's stores. The Dunkin' Brands investigation revealed, inter alia, that: 1) many (if not most) of Mr. Calhelha's employees were illegal; 2) that Mr. Calhelha recruited six people from Portugal to work at his stores by promising them work visas, good hourly wages, time off, etc. but had "reneged on his promises"; 3) he had placed ads in Portuguese newspapers to recruit these employees; 4) he had some of the employees live at his house for a period of time and then later rented an apartment for them in his name; 5) he required employees to engage in other work such as landscaping after their

¹ Because many of the exhibits attached to this memorandum are from the Dunkin' Brands investigation which is subject to a protective order or law enforcement reports, the Government will request to file all of the exhibits manually and under seal.

regular work and never paid them for the additional work; 6) that his other employees worked as much as 80 hours per week and he did not pay them overtime; 7) that he provided employees with false social security numbers that he purchased from an unknown source; 8) that employees came on tourist visas and were promised work visas which never materialized; 9) that employees were paid in paychecks made out to different names; and 10) that many other employees at the stores were from Mexico and Ecuador. See Ex. B. In fact, during the one-day raid, 74 employees were interviewed and, based on those interview, Dunkin Brands Corporation concluded: (a) 52 were undocumented employees believed to be working illegally; (b) the required I-9 forms were "incomplete, inaccurate and often falsified;" (c) Calhleha management was responsible for providing false identification documents; and (d) employees were paid in cash until they had fake identification documents and then were paid under the false names. See Ex. B. The interview reports had been subsequently typed into a report of interview. A sample of the typed interview reports is attached as Exhibit C.

In short, these interviews clearly show a pattern of hiring illegal aliens. After speaking with representatives of Dunkin' Brands, this Office was informed that the purpose of their raid was to determine the hiring practices at these stores. The questions by the interview teams did not ask about the general treatment they were subjected to. See Exhibit D (sample of the questionnaire used by Dunkin' Brands on the day of the raid).

Nevertheless, some of those interviewed did make reference to the treatment they received from Mr. Calhleha. By way of example, Noemi Beralta (see Bates Stamp number DB3794), who had been hired as a cashier, stated that Jose Calhleha had yelled at her and made reference to her illegal status. Moreover, she recalled an incident where a box had fallen off a shelf in the storage room onto her ankle. She was in pain. She stated that she was treated at Yale New Haven Hospital for her injuries and that she paid for her treatment. When a check arrived from the insurance company for her treatment bills, Jose Calhleha told her that it was his money. One year after the accident, with the assistance of another manager, Jose Calhleha paid her \$300.00 as compensation. See Exhibit C (interview of Noemi Beralta); see also Exhibit E (Report of Noemi Vintimilla a.k.a. Noemi Beralta).

After the raid, Dunkin Brands informed Jose Calhleha about their findings. Eventually Mr. Calhleha had little choice but to sell all ten of the Dunkin Donuts stores and he was required to pay a significant monetary fine to the Dunkin' corporation for his violations.

By the time that the interview had aired on local television (which is when the Government first learned of this activity), the stores had been sold or were in the final process of sale. Given that there was an extensive pattern and practice of utilizing fraudulent identification documents, it was very difficult to locate the witnesses in this case. Moreover, since the witnesses were mostly undocumented, they were witnesses who

understandably feared coming forward and providing information to the investigative agency, the United States Immigration and Customs Enforcement.

Legal Standard

The Supreme Court clarified the continuing role of the Sentencing Guidelines and the scope of the sentencing court's discretion in United States v. Booker, 543 U.S. 220 (2005). Booker makes clear that this Court must consider both the sentencing factors set forth in 18 U.S.C. Section 3553(a), and the Sentencing Guidelines in fashioning a reasonable sentence. Id. at 764. While the Sentencing Guidelines are no longer mandatory following Booker, they must still be considered in determining the appropriate sentence. The Second Circuit has recognized the continuing relevance of the Sentencing Guidelines following Booker in determining an appropriate sentence:

[I]t is important to bear in mind that Booker/Fanfan and section 3553(a) do more than render the Guidelines a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge. Thus, it would be a mistake to think that, after Booker/Fanfan, district judges may return to the sentencing regime that existed before 1987 and exercise unfettered discretion to select any sentence within the applicable statutory maximum and minimum. On the contrary, the Supreme Court expects sentencing judges faithfully to discharge their statutory obligation to "consider" the Guidelines and all of the other factors listed in section 3553(a). We have every confidence that the judges of this Circuit will do so, and that the resulting sentences will continue to substantially reduce unwarranted disparities while now achieving somewhat more individualized justice.

United States v. Crosby, 397 F.3d 103, 113-14 (2d Cir. 2005).

Under the non-mandatory Guideline regime established by Booker and Crosby, the sentencing judge is empowered to make the factual findings necessary for determining what the recommended Guideline Sentence is in a particular case. Crosby, 397 F.3d at 113 (“the sentencing judge is entitled to find all the facts appropriate for determining either a Guidelines sentence or a non-Guidelines sentence”).

This memorandum contains two parts: Part 1 is a discussion of: (a) the Sentencing Guideline provisions that are applicable to both Jose and Diana Calhelha’s criminal conduct; and (b) the reasons why Jose Calhleha should be sentenced to the top of the Guideline range and why Diana Calhleha should be given at least 500 hours of community service as part of her sentence. Part 2 addresses the other sentencing factors contained in 18 U.S.C. § 3553.

Part 1

Guidelines Issues

Although no longer binding upon the Court, the United States Sentencing Guidelines represent the considered judgment of the United States Sentencing Commission, a body of experts, drawn from all areas of the legal profession. Drawing on previous sentences imposed in particular cases, the guidelines were specifically created to ensure that appropriate and consistent sentences were imposed in federal courts throughout the nation. Both the Booker and Crosby Courts stressed the continuing significance of the Guidelines under the new sentencing

framework. In this case, the sentence called for by the Sentencing Guidelines properly reflects the seriousness of the Calhleha crimes. Thus, the United States requests that the Court impose a sentence at the top of the range, rather than a sentence at the low end of the sentencing range as requested by Mr. Calhleha. Calhleha Mem. at ___.

Jose Calhleha

A. The Appropriate Offense Level is 12

The United States agrees with the Probation Office that the applicable sentencing Guideline range is offense level 12 with a Criminal History Category of I. This offense level calls for a Guideline imprisonment range of 10 to 16 months. Pre-Sentence Report ("PSR"), Par. 40. Using the 2004 Sentencing Guidelines Manual, Mr. Calhelha's offense level, as correctly calculated in the PSR, is as follows:

Base Offense Level (2L1.1(a)(2))		12
Offense was Other than for Profit	-	3
Smuggling more than 6 aliens	+	3
Organizer and Leader (3B1.1(c))	+	2
Acceptance of Responsibility (3E1.1)	-	2
		<hr/>
Offense Level Total		12

Guideline Range **10 to 16 Months**

1. Other than For Profit

The parties in this case have stipulated to the sentencing calculation and range set forth above. In the plea agreement, however, the Government reserved the right to argue that the Court impose a sentence at the top of the Guideline range because while the "other than for profit" offense level enhancement technically may apply, its application to this case produces an absurd result. The offense level departure does not take into consideration that the entire underlying criminal conduct in this case was motivated by Calhelha's greed and desire to profit. Even Jose Calhleha admits that his purpose in recruiting individuals from Portugal into the United States was because he was having difficulty finding "skilled workers." Moreover, the PSR properly acknowledges that U.S.S.G. §2L1.1(b)(2) provides for a offense reduction if the act of transporting or harboring was committed for other than for profit. The commentary further explains that this means that there was no expectation for payment to the defendant for the act of transporting or harboring into the United States. Here, to the contrary, in many instances the defendant paid the individuals he recruited to enter the United States. Several of the aliens have set forth in their interview reports that they were reimbursed for travel to the United States or told that they would be.

This sentencing departure clearly envisioned a circumstance where an alien pays a smuggler to enter the United States illegally as can be a very common occurrence at our south-west border. The illegal act of transporting usually ends with the

alien crossing the border. To the contrary, in this case, the acts of recruitment and transportation were the initial steps in an extensive scheme to hire undocumented aliens. But the clear purpose of this crime was for profit as the Calhelhas would not have to pay their alien workers prevailing wages and that they could more easily maintain control over their underpaid labor force. In this case, the Calhelhas motives are easy to discern. The Calhelhas wanted to ensure that they had an affordable and reliable workforce. In fact, they admit that they went to an immigration lawyer to complain about the lack of skilled workers in the U.S. Their motive was clearly financial. Therefore, while the strict letter of this departure may apply, the overall spirit of it does not warrant any break for Jose Calhleha. Given that the entire criminal scheme was financially motivated, the Government requests that the Court consider a sentence of 15-16 months of incarceration, the top end of the applicable range. Indeed if the downward offense level enhancement had not applied, Mr. Calhelha's sentencing range would have been 15 to 21 months of incarceration.² Accordingly, the Government submits that a sentence of 15 or 16 months, that would overlap both ranges, would be a fair and just sentence.

2. Smuggling More than Six Aliens

² The base level offense would be 12. An additional 3 points for smuggling more than six aliens and an additional two for organizer and leader would have resulted in a total offense level of 17. A 3 point departure would have been applicable for acceptance of responsibility. Accordingly, the base level offense would be 14 with a corresponding Guideline range of 15 to 21 months of incarceration.

The stipulation of offense conducts stipulates to at least six aliens who were recruited from Portugal.

3. Organizer and Leader Enhancement

In determining whether Mr. Calhleha was an organizer or leader, the Guidelines direct that the sentencing court should consider the following factors: the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. U.S.S.G. § 3B1.1, App. Note 4; see United States v. Beaulieu, 959 F.2d 375, 379-80 (2d Cir. 1992). Thus, the "organizer or leader" enhancement is appropriate where the defendant "played a crucial role in the planning, coordination, and implementation of a criminal scheme." United States v. Paccione, 202 F.3d 622, 624 (2d Cir. 2000).

Under these standards, Jose Calhleha plainly qualifies as an organizer or leader. Jose Calhleha was directly involved in the recruiting, transporting, harboring, and hiring of undocumented aliens. He placed ads in Portugese newspapers seeking Portugese nationals to work at his various Dunkin Donuts stores in the United States knowing that these individuals had no authorization to work in the United States. (See Ex. A & J) He met with these individuals in Portugal. (See Ex. E. (Investigative Reports 2, 3, 4, 7, 19, 31)) He made fraudulent promises to these

individuals about their pay and their legal status in the United States. (See Ex. E (Investigative Reports of Interview 2, 3, 4, and 7)). Defendant Jose Calhleha attempts to blame his acts on the advice of immigration counsel is disingenuous, at best. By his own admission, his counsel notified him that under the visa waiver program, **visitors could not work in this country.** (See Ex. E (Investigative Report of Interview 9)). The law enforcement reports support that several aliens were instructed by Mr. Calhleha to conceal their intended purpose which was to work at Mr. Calhelha's stores. In short, Calhelha directed those aliens to lie to immigration and customs authorities. (See Ex. E. (Investigative Reports 25, 26)). Moreover, this conduct occurred over at least a two year period and after the first individuals came over, he was clearly aware that these individuals were illegally present and not permitted to work. The first individuals came into the United States in January 2003. The last individual came into this country in August 2004. The Calhelhas were clearly on notice in early 2003 as to the illegal conduct but nevertheless continued. Finally, the fact that management at the Calhelha stores, including Jose Calhelha, were actively engaged in selling documents to the undocumented aliens undermines any claim of ignorance.

After arriving into the United States, the aliens were then transported to Connecticut and some lived in the Calhelha's home. Attorneys for Jose and Diana Calhleha have made much of the fact that the Calhelhas residence was a very large, beautiful home.

For these individuals, however, their lives began by being required to work at 4:00 a.m., usually 12 hours each day, and they were also required to do additional work including, painting, landscaping, and snow removal. (See Ex. E. (Investigative Reports 7 and 23)). While at work, they were subject to verbally abusive treatment, were directed only to hire other undocumented aliens because Mr. Calhleha told them that Americans are lazy, and were sold fraudulent documents. All of Jose Calhelha's actions in this case created an environment enabling him to exercise enormous control over these individuals and to exploit their situation. Accordingly, the enhancement is appropriate.

4. **Acceptance of Responsibility: (Subtract 2 levels)**.

Given Mr. Calhelha's plea in this case, the PSR recommends a reduction in his guideline offense level of two points. The defendant's sentencing memorandum, however, reflects no meaningful acceptance of responsibility. Rather, as the memorandum suggests his criminal conduct was because of his ignorance of the law. The only purpose for the memorandum's discussion of the debate surrounding immigration law is to distract the court and to attempt to rationalize Mr. Calhelha's abusive behavior. It is both futile and embarrassing for a man who engaged in such long-term criminal conduct, which required such extensive planning, and who was required to sell all ten of his stores because of his widespread immigration violations; who has paid a significant monetary penalty to the Dunkin'

corporation for his violations; who has paid restitution for back wages as determined by a state agency investigating him; who has settled a civil lawsuit against one of his former employees; and who has now pled guilty and paid a one million dollar forfeiture fine to the Government because of the evidence against him, to continue to proclaim such ignorance.

In fact, rather than accept responsibility, both defendants seek to undermine the credibility of the witnesses in this case. By way of example, they cite a letter from Serafim Faria. Mr. Faria who himself was recruited by Mr. Calhleha to come and work at his stores has written a letter in support.

Counsel provide a letter from Serafim Faria and ask that the court find the letter to be credible. The letter calls into questions consistent evidence from several other witnesses. Mr. Faria, however, has made contradictory statements to law enforcement and in fact has admitted to being untruthful to representative of Dunkin Brands Corporation during the course of their investigation. (See Ex. I. (Investigative Reports 3, 5, 11)) Serafim Faria has accepted a \$10,000.00 check in back wages. His statements regarding his payments are not consistent. By way of example, Mr. Faria states that he was initially paid in cash and that after that initial cash payment, he was paid with checks. In his letter to Your Honor, Mr. Faria states that following the initial cash payment of \$1,000.00, he was paid \$500.00 per week in cash and that a short while later he began receiving checks in a name other than his own.

Given Mr. Calhelha's continuing effort to blame everyone except himself for his criminal conduct and the fact that he continues to discredit the evidence against him, the Government reserves its right, to address acceptance issue, until after Mr. Calhleha allocutes at the sentencing. At that time, the Court will be better able to defend, as to whether it is appropriate to give Mr. Calhleha points for acceptance of responsibility.

Diana Calhleha

As set forth in the plea agreement, the Sentencing Guidelines do not apply to Ms. Calhelha's charge. In this case, the Government has given extraordinary consideration to Ms. Calhelha by offering a misdemeanor plea and also agreeing to recommend a non-custodial sentence. This decision was impacted by many factors in this case including the fact that given Ms. Calhelha's age and the influence of her father. It was the Government's intention to encourage a meaningful process of rehabilitation so that Ms. Calhelha would become a productive and law-abiding member of our community.

Nevertheless, her statements during her change of plea and in her memorandum have now made it clear that she too continues to be unwilling to show remorse for her actions and in fact has greatly limited her acknowledgment of the crimes that she engaged in. First, during her plea, she represented that while she was the general manager, one of her subordinates had hired two individuals who she knew to be illegal. She went on to minimize her responsibility by explaining that she did not

personally hire these individuals. It is rather transparent that she seeks to distance herself from any direct involvement in this crime.

In stark contrast, the defendants' memorandum paints a picture of a Diana Calhleha who was intimately familiar with all of the operations of the stores, who had basically grown-up at the Dunkin Donuts stores, and that she, like her father, worked very hard at these stores. Moreover, the interviews of the employees indicate that Diana Calhleha was involved in all of the day-to-day operations of the stores. Attached as Exhibit F, are sampling of the I-9 forms executed by Diana Calhleha that had been recovered by Dunkin Brands in the course of their investigation. Special Agent Brendan Lundt has verified that all of the alien numbers and/or social security numbers that appear on these forms are all false or fictitious.

Moreover, witnesses have stated that not only was there a pattern and practice of hiring undocumented aliens but that the Calhelhas would provide a recruiting fee to anyone who referred an undocumented alien to work at the store. (See Ex. E. (Investigative Report 27)) Finally, it is noteworthy that employees have observed that she was following in her father's footsteps with respect to the abusive treatment towards the employees.

Given the extraordinary consideration that she has already received and her lack of any meaningful responsibility for her actions, the Government submits that a lengthy period of

community service should be imposed. Such a sentence would provide the opportunity to recognize the severity of her criminal conduct as well have as give her a real understanding of the negative effect this criminal scheme has had on those who are particularly vulnerable in our society.

Part 2

Section 3553 Factors

Title 18, United States Code, Section 3553(a) provides, in pertinent part, that:

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims

of the offense.

For the reasons discussed above, Jose Calhelha's conduct, weighed in view of the factors set forth in Section 3553(a), call for a sentence of imprisonment consistent with the terms recommended by application of the Sentencing Guidelines. See 18 U.S.C. § 3553(a)(4) (Court shall consider the sentence applicable under the Guidelines).

A. The Nature and Circumstances of the Offense.

Jose Calhelha's criminal conduct of engaging in a long-term scheme to defraud aliens, bring them to the United States under false promises and then maintain control over them because of their status is a very serious crime.

In addition to the long term and systematic violations of our immigration laws, the impact on some of these aliens was devastating. The letters from those most directly effected set forth all of the negative effects. Moreover, Diana Calhleha started to become involved in all aspects of the underlying criminal conduct. (See Ex. E. (Investigative Report 19)).

By any measure - the seriousness and pervasiveness of the illegal conduct, the impact on our society and on these victims is significant and cannot be reduced to simply the hiring of six aliens. Regardless of an individual's views on immigration, this type of systematic violation of our immigration laws cannot be encouraged and must be punished.

Not only is this conduct criminal but it can be devastating to the undocumented aliens involved. Unfortunately, this case is

all too common of what can occur when individuals and corporations engage in this type of conduct. Even for those well-intentioned, hiring undocumented aliens places aliens in a status that makes them particularly vulnerable to exploitation. Because of their illegal status, undocumented aliens can easily be cheated out of their promised wages, they will live where they are told, they will work the hours that they are told, they are far less likely to complain about their treatment because they have little freedom to challenge their employer, they lack freedom to be able to simply change jobs and they cannot afford to draw attention to themselves by seeking any recourse for mistreatment because they fear of deportation.

As has been illustrated here, this type of conduct also supports an industry for the manufacture and sale of fraudulent documents and begins to impact many of our other systems, including our banking systems, the Social Security Administration and the Internal Revenue Service.

Business savvy individuals, like the Calhelhas, understand the enormous control they can exercise over undocumented aliens. Therefore in industries where maintaining a long-term labor force may be difficult, these practices can flourish. Ultimately, the Calhelhas engaged in this behavior so that they could exercise "control" over their workers. Jose Calhleha was no longer working the hours that he talks about at length in his memorandum. He had already become financially successful and was no longer very involved in the day to day operations of these

businesses. He was also clearly in the process of turning over the "management" of the stores to his daughter. In order to continue to financially thrive without working in the manner that he once had, the business model that he utilized, to ensure a sustained and cheap labor force, was to hire undocumented aliens. In this case, there appeared to be no regard for the human cost.³

B. History and Characteristics of the Defendants.

The Government does not contest that Mr. Calhleha has worked very hard to achieve his success. Nor does the Government contest that he had been given the opportunity to live-out the American dream. This case, however, is about the many, many individuals that he had working for him during the most recent years that he owned his Dunkin' Donuts stores. Jose Calhleha seeks to rationalize all of his criminal conduct by claiming that his actions were the result of the fact that immigration laws are difficult to understand. His actions in this case demonstrate a longstanding pattern of contempt for the law.

Moreover, his continuing efforts to rationalize his conduct by claiming that he was not really aware of the process of obtaining visas for workers, that the policymakers in this country send mixed messages about hiring illegal workers, that the laws are confusing, and that American businesses cannot survive without hiring an illegal workforce reflects a profound

³ The Dunkin Brands report as well as some of the interviews discuss the type of abusive verbal language used. Clearly this language showed contempt for undocumented aliens.

unwillingness to acknowledge his criminal conduct and any true responsibility for the crimes he orchestrated and refused to stop, as he could have.

When it came time to receive the economic benefits of engaging in this work, Mr. Calhleha was happy to continue to make money without any regard for our immigration laws and for the impact his actions were having on his workers. Mr. Calhleha had already achieved a great deal of financial success by the time he engaged in the criminal scheme and therefore the crimes were not born out of any economic necessity. Throughout the period of the conspiracy Mr. Calhleha also had the loving support of his wife and family. He could have put an end to the fraud at any time without becoming destitute or causing his family to suffer. Yet, he chose to continue and taught his daughter the illegal methods.

His daughter, however, is also not blameless. She is of an age where she should have understood that laws were being broken and that individuals were mistreated. She, however, continued to utilize her father's methods. She was involved in all of the day-to-day operations of running the stores. She drove the aliens to work, drove them home, told them when and where they would be working, she gave them their pay-checks with the false names on them knowing that they were false names, she was engaged in hiring and firing managers and hiring and firing individuals. (See Ex. E. (Investigative Reports 4, 7, 19, 22, 23, 27, 28))

Mr. Calhleha has submitted many letters in support of the claim that he has engaged in a life of good deeds. Individuals,

like Mr. Calhleha who are individuals with sufficient stature, ability and opportunity to commit financial crimes are commonly involved in community service and charitable endeavors. Such activities do not remove the defendant from those similar wealthy defendants charged with economic crimes.

Mr. Calhelha's submission demonstrates, at most, that Calhleha is considered by some to be a good parent, boss, friend, and neighbor. Most of the good works cited by Calhleha -- showing kindness and compassion for friends, family, and colleagues going through difficult times, and acting as a role model for others -- are what would be expected from anyone who claims to care about others, and particularly from those with Mr. Calhelha's substantial means. That many of Mr. Calhelha's friends and relatives think highly of him as a person and as a professional does not distinguish him from most other white-collar criminals. See United States v. McClatchey, 316 F.3d 1122, 1135 (10th Cir. 2003) ("excellent character references are not out of the ordinary for an executive who commits white-collar crime; one would be surprised to see a person rise to an elevated position in business if people did not think highly of him or her").

C. The Sentence Must Promote Respect for the Law

The sentence in this case must reflect the seriousness of the offense committed by Mr. Calhleha, and provide a message of deterrence to all others who engage in this type of activity. As discussed at length above, it is very important that the

Calhelhas understand that they must respect the law. Given the complete disregard and contempt for the law, the punishment imposed in this case should promote respect for our laws - whether or not one agrees with them.

D. The Court Should Consider General Deterrence

One of the factors the Court must consider in imposing sentence is the need for the sentence to "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). A substantial prison sentence for such conduct can serve as a powerful deterrent against the commission of these crimes by persons who, like Mr. Calhleha, seek to avoid responsibilities.

The Government submits that the record documentation supports that hundreds of individuals were hired and there has been an established pattern and practice of maltreatment towards his undocumented employees. (See Ex. E. (Investigative Report 2, 4, 7, 27, 28)). Unless individuals and corporations understand that there are serious and certain consequences for their actions, the temptation to continue to engage in widespread violations of our immigration laws and to continue to prey on those who can become among the most vulnerable in our society can not be tempered, let alone, eliminated. It is only when these individuals and corporations see other similarly situated go to jail for a lengthy term of imprisonment, that these individuals and corporations will think twice before deciding to engage in such conduct. General deterrence serves an important function and works, perhaps even more effectively than in the context of

other types of criminal conduct, to prevent financially motivated crimes of the sort committed by Mr. Calhleha.

Mr. Calhleha argues that deterrence is not necessary because wealthy felons, like himself, have a low risk of recidivism. This argument should be rejected. At its core, this argument relies on premises inimical to basic principles of equal application of the laws. Mr. Calhleha essentially contends that he should receive the most minimal sentence because he will not commit any other crimes. This argument turns on its head the notion that from those who have the greatest advantages in life, the most is properly expected.

To the extent that Mr. Calhleha asserts that criminal sanctions have little deterrent effect on criminal behavior because there is a low risk of recidivism, that argument fails to take into account the extraordinary effect of deterrence. Not surprisingly, the commentators do not unanimously or even overwhelmingly support this view. For instance, the author of a survey of academic research regarding the efficacy of criminal sanctions for white collar crimes had this to say:

White-collar crime is believed to be particularly amenable to deterrence due to its rational and profit-oriented motivation. In a conceptual analysis of the topic, Braithwaite and Geis observed that white-collar offenders are not committed to a lifestyle of illegality, are risk averse, and have more to lose as a result of a criminal conviction than street offenders. Elsewhere Geis noted that "[j]ail terms have a self-evident deterrent impact upon corporate officials, who belong to a social group that is exquisitely sensitive to status

deprivation and censure." It is generally perceived that executives exhibit distress at the thought of being sentenced to incarceration: "It results in hypertension, it causes heart attacks, it is very serious."

Most judges and prosecutors view general deterrence as the one of the goals, if not the major purpose, in sentencing white-collar offenders. Punishment should serve to discourage others from committing similar offenses and jail or prison sentences, judges and scholars alike tend to believe, are particularly effective as a general deterrent.

Elizabeth Szockyj, "Imprisoning White-Collar Criminals?", from "Symposium: A Fork in the Road Build More Prisons or Develop New Strategies to Deal with Offenders," 23 S.Ill.U.L.J. 485, 492 (1999) (footnotes omitted).

E. Mr. Calhleha Has Earned A Sentence Comparable to Those Imposed on Similarly Situated Offenders.

The Sentencing Guidelines were promulgated, in part, to minimize disparities in federal sentences. Although those Guidelines are no longer mandatory, the importance of eliminating sentencing disparities remains an important factor which the Court must separately consider pursuant to 18 U.S.C. § 3553(a)(7).

Similarly, a sentence within the applicable Guideline range is necessary to demonstrate that the Court recognizes that he is not the victim in this case. The Government has already set-forth why the application of the "other than for profit" reduction is absurd in this case. Whether or not the Calhelhas will ever completely recognize all of the consequences of their criminal conduct is not clear but any sentence less than the

appropriate Guideline sentence will only reinforce the misguided notion that individuals like the Calhelhas are above the law.

F. Forfeiture and Restitution

The Government recognizes that Mr. Calhleha has paid the restitution to the employees identified in the plea agreement and has also paid a One Million Dollar restitution. The Government will provide the Court on the date of the sentencing with the exact amounts of restitution paid to each individual. The Government respectfully requests that the Court's judgment reflect the restitution payments and the one-million dollar forfeiture payment to ICE. Moreover, as is required by the case law, that the Government respectfully requests that the Court announce the forfeiture payments.

Conclusion

For the reasons set forth above, the Government respectfully requests that the Court sentence defendant Jose Calhleha to a term of imprisonment at the top of the applicable Guideline range, 15-16 months, and that Diana Calhleha receive at least 500 hours of community service.

Respectfully submitted,

KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

KRISHNA R. PATEL
Assistant United States Attorney
915 Lafayette Boulevard
Bridgeport, Connecticut 06604
Federal Bar No.: ct24433
Telephone: (203) 696-3000

