

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

CASE No. 1:21-CR-00421-JDB-1

JOHN MARON NASSIF

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REPLY TO GOVERNMENT'S RESPONSE OPPOSING NASSIF'S OPPOSED
MOTION TO EXTEND SURRENDER DATE

On June 6, 2023, the Government filed a response to Nassif's Opposed Motion to Extend Surrender Date. The Government has raised arguments as to why Nassif's Motion should not be granted. The undersigned hereby responds to those arguments.

1. The Government indicates that Nassif should have filed a motion for bond pending appeal sooner. As pointed out in Nassif's motion, the undersigned filed the notice of appeal four days after the judgment was filed in this case. The undersigned immediately ordered an expedited delivery of the transcript that same week. The transcript was delivered to the undersigned on May 26, 2023. On the next business day, May 30, 2023, the undersigned filed the motion to extend the time to self-surrender. The undersigned, and co-counsel, filled out their applications for admission to the D.C. Court of Appeals on May 16, 2023. Then, after getting the necessary

documentation to supplement the admission application, as well as getting a D.C. Court of Appeals bar member to sponsor both counsel and co-counsel, the application was filed on May 30, 2023. Both undersigned counsel and co-counsel were admitted to the D.C. Court of Appeals on May 31, 2023. The undersigned and co-counsel have moved with all deliberate speed to be appointed to the District of Columbia Court of Appeals and to pursue relief for Mr. Nassif in this Court and in the Court of Appeals.

2. On page of 2-3 of its response, the government indicates that the appellate issue of whether the D.C. Court of Appeals will hear the issue of whether the correct sentencing guideline for Count Two is USSG § 2B2.3 is “mere speculation.” The plain and simple truth is that the Court of Appeals will have to decide this issue. There have been two different interpretations of whether a violation of 18 USC § 1752(a)(2) should be properly scored according to USSG § 2B2.3 or USSG § 2A2.4. Judge Friedman, in *United States v. Brodnax*, clearly held that USSG § 2B2.3 was the correct guideline. The defense agrees that other judges, including this Court, have held that USSG § 2A2.4 is the correct guideline. Thus, there is a clear split in the decisions of the District of Columbia district judges on this important issue. Thus, it isn’t “mere speculation” to argue that the D.C. Court of Appeals must decide this issue one way or another. If the Court of Appeals rules in favor of Nassif, then he would be entitled to a re-sentencing based on the new guideline calculation.

In its response, the government fails to mention that although Judge Friedman ruled that USSG § 2B2.3 was the correct guideline, the government in that case did not file a notice of appeal on the issue and apparently has decided not to challenge Judge Friedman's ruling in the Court of Appeals. *See* Docket Sheet of *United States v. Brodnax*, Case No.: 1:21-cr-00350. Additionally, the government fails to mention that the same United States Attorney's Office agreed, in *United States v. Marquez*, Case No: 1:21-cr-136, in a plea agreement, that a violation of § 1752(a)(2) was properly scored under § 2B2.3. *See* Case No: 1:21-cr-136, plea agreement, Doc. 21, paragraph 4, page 2-3. In fact, in the Marquez case, the Government laid out the exact same scoring analysis, in the plea agreement, pursuant to USSG § 2B2.3, that the undersigned argued in the instant case. The Government later abandoned that position in future cases, but it was a guideline that the Government advocated in the plea agreement in the Marquez case. In the instant case, Nassif seeks additional time in which to self-surrender to the Bureau of Prisons. The time requested is necessary in order for the undersigned to file a motion for bond pending appeal in the district court. If said motion is denied, the undersigned would seek release from the Court of Appeals. Thus, the time requested is reasonable given the circumstances. As stated in Nassif's motion to extend his self-surrender date, if the Court of Appeals rules in favor of Nassif on the application of the § 2B2.3 guideline for the § 1752(a)(2) statute, he would be

entitled to a re-sentencing hearing and would have a new guideline range of 0 to 6 months, just as the government agreed to in the Marquez case.

3. The undersigned requests that this Court extend the time for self-surrender solely for the purpose of filing a motion for bond pending appeal in the above case. The undersigned submits that he, along with co-counsel, have diligently worked to obtain the necessary information to file such a motion and will be doing so in an expedited fashion.

Wherefore, for the reasons stated herein, Mr. Nassif respectfully requests that this Court grant an extension of his surrender date for a period of forty days, or until July 23, 2023.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Federal Defender, MDFL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June 2023, a true and correct copy of the foregoing was furnished by using the CM/ECF system to the Clerk of the Court, which will send notice of such filing to all counsel of record.

/s/ James T. Skuthan

James T. Skuthan, Esq.