

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 24-CR-14055-MOORE/ MCCABE**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**MICHAEL JOHN PELLICIONE,**

**Defendant.**

**RESPONSE TO DEFENDANT’S SENTENCING MEMORANDUM WITH  
INCORPORATED MOTION FOR A DOWNWARD DEPARTURE**

The United States of America, by and through the undersigned Assistant United States Attorney, hereby files its Response to Sentencing Memorandum with Incorporated Motion for a Downward Departure (DE 45).

The Defendant has requested a downward departure and/or downward variance from the advisory guidelines, seeking a non-prison sentence such as probation or home confinement. The United States objects to any such reduction, whether through a downward departure or downward variance. A sentence of 21 months, at the high end of the guideline range, is both sufficient and necessary to achieve the objectives of sentencing, including deterrence, public protection, rehabilitation, punishment, and the promotion of respect for the law, while also reflecting the seriousness of the offense.

Given the Defendant’s repeated disrespectful and disingenuous behavior during the ATF investigation and while on bond, a downward departure or variance would fail to serve the fundamental goals of sentencing. The Defendant’s actions, including his continued drug use and dishonesty, demonstrate a lack of remorse and a disregard for the law, indicating that a more lenient sentence would not effectively deter future criminal conduct or protect the public. Therefore, the

United States submits that a sentence at the high end of the guideline range is the appropriate and necessary sentence to ensure justice is served and to fulfill the objectives of sentencing.

### **RELEVANT BACKGROUND**

On October 31, 2024, a federal grand jury sitting in the Southern District of Florida returned an indictment charging the Defendant with five (5) counts of Failure of Firearms Dealer to Keep Proper Record of Sale, in violation of 18 U.S.C. §§ 922(b)(5) and 924(a)(1)(D) (DE 20).

On December 18, 2024, the Defendant pled guilty to Counts One through Five, failure of a firearms dealer to keep a proper record, in violation of 18 U.S.C. §§ 922(b)(5) and 924(a)(1)(D).

The Defendant was permitted to remain on bond and has been supervised by U.S. Probation Officer Christina Williams. On December 19, 2024, the Defendant submitted to a urine test at the U.S. Probation Office in Fort Pierce, Florida, in connection with his presentence investigation. The urine test was confirmed positive for marijuana. According to his presentence investigator, at the time of his presentence investigation interview, the Defendant claimed that he had not used marijuana since the 1960s. (DE 43: 4)

According to his presentence investigator, when confronted with the positive urine test, the Defendant initially told both the pretrial services officer and presentence investigation officer that he tested positive for marijuana because “his next-door neighbors were using marijuana while he was working in his garage, and he must have inhaled the smoke from the wind that was blowing in his direction.” According to his presentence investigator, a day later, the Defendant totally changed his story and told both officers that “he ate brownies at a friend’s house on Thanksgiving Day that contained marijuana for which he was unaware. He advised that he did not feel any effects after eating the brownies, so he did not realize that he used marijuana.” (DE 43:4)

On January 7, 2025, a Petition for Action on Conditions of Pretrial Release notifying the Court of the positive urine test on December 19, 2024, was filed, with the recommendation that the Defendant’s bond be modified to include the special condition that he submit to substance abuse testing and treatment at the discretion of Pretrial Services. On that same date, the Court concurred with the U.S. Probation Officer’s recommendation and his bond was modified accordingly.

The Presentence Investigation Report reflects a Base Level of 12, pursuant to § 2K2.1(a)(7), plus two levels for the Specific Offense Characteristics, due to the offense involving

six (6) firearms, pursuant to § 2K2.1(b)(1)(A). The Defendant's Total Offense Level is 14, and a Criminal History Category I, due to the Defendant having zero criminal history points. Since the defendant possessed, received, purchased, transported, transferred, sold, or otherwise disposed of a firearm or other dangerous weapon, he does not qualify for a reduction as a Zero-Point Offender, § 4C1.1(a)(7). (DE 43:10).

### **ARGUMENT**

Under 18 U.S.C. § 3553, the Court is required to consider a variety of factors when imposing a sentence, ensuring that the punishment is both just and appropriate for the offense committed. These factors include the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence to reflect the seriousness of the crime, and the need to promote respect for the law. The Court must also consider the need for the sentence to provide adequate deterrence, protect the public, and offer the defendant an opportunity for rehabilitation. In addition, the Court must avoid unwarranted disparities among defendants who have committed similar offenses. When determining the appropriate sentence, the Court is required to balance these considerations to achieve a fair and just outcome, while ensuring that the sentence reflects the gravity of the offense and serves the broader goals of sentencing.

#### **§3553(1) The nature and circumstances of the offense and the history and characteristics of the Defendant.**

“Off-the-books” firearm sales are a serious violation of federal firearm laws, not only undermining the licensing system but contributing to illegal firearm distribution. This crime involves a breach of trust, as the Defendant, as a licensed dealer, was entrusted with the responsibility to properly record and track firearm sales, a duty he blatantly disregarded. The Defendant, a rogue federally licensed firearms dealer (FFL), used his numerous law enforcement connections to operate with impunity, knowingly violating federal firearm laws. Flaunting these connections, he flew under the radar, making it more difficult for authorities to detect his illicit activities. Were it not for a firearm from his dealings turning up in criminal seizures in foreign country—namely Canada—he may have continued operating undisturbed, and undeterred. Certainly, one would expect any law enforcement officer to believe that the firearms, sold to the Defendant, would be handled properly, not sold “off-the-books.”

As noted in the various letters of support, many of the Defendant's customers were law enforcement officers, who engaged in transactions, buying, trading, and selling firearms through him. It appears, with at least one officer, these transactions were conducted “off-the-books,” circumventing proper documentation and background checks, **required to take place for each and every transaction**, under federal law. Authorities were able to identify six of transactions, due to the cooperation of this one officer, but the full extent of the Defendant’s illicit activity remains unclear. The true scale of his illegal dealings may never be fully known, nor will we ever know the full extent of the damage to be done.

The Defendant has prior knowledge of the law, being a federally licensed firearms dealer. This fact suggests that the Defendant’s actions **were repeated, deliberate and intentional**, rather than a lapse in judgment or misunderstanding of the law. Despite being in a position of trust, he used his law enforcement ties to evade scrutiny, suggesting a lack of respect for the law and a disregard for public safety.

The Defendant’s pattern of dishonesty—first lying to authorities and later admitting to those lies—further demonstrates a lack of accountability and a willingness to evade the truth.

The Defendant cites his medically infirm wife as a reason that he should not serve any time in jail. He also proffers community letters, including letters from law enforcement for his good character (DE 45-2, 46).

U.S. Sentencing Guidelines §§ 5H1.1 and 5H1.6 explicitly state that age and family responsibilities are generally not relevant when determining whether a sentence should fall outside the guideline range. While age may be considered in rare cases, such as when the offender is elderly and infirm, the Court may depart under §§ 5H1.1 and 5H1.4 only in **extraordinary circumstances**. In this case, the Defendant is 77 years old, but there is no indication that he suffers from poor physical health. He is not under a doctor’s care, is not taking medication, and is not infirm in any way (DE 43, ¶ 55-56). In fact, the Defendant is in good health and performs physical tasks for his neighbors, such as cutting grass and trimming bushes (DE 45:4, 45-2).

In the Eleventh Circuit, downward departures based on factors like family responsibilities, community ties, or personal characteristics are generally disfavored. In *United States v. Devegter*, 439 F.3d 1299 (11th Cir. 2006), the court vacated a downward departure based on family

circumstances, stating that "there is nothing inherently extraordinary about caring for a child or a sick parent." Similarly, in *United States v. Robinson*, 20 F.3d 1030 (11th Cir. 1994), the court vacated a downward departure based on community involvement and good character, reaffirming that such factors are generally not valid grounds for a sentencing reduction.

In this case, there is nothing extraordinary about the Defendant's personal circumstances. His wife is not infirm or an invalid, she has neuropathy in her feet. Feasible alternatives do exist for caring for his wife, such as hiring help or temporarily placing her in an assisted living facility. The Defendant and his family have the financial means to provide the necessary assistance for his wife, rather than using the funds to "donate to charity" (DE 45:9). Therefore, a downward departure based on these factors is not warranted.

There are also aggravating factors to be considered which, when combined with the nature and circumstances of the offense, are not outweighed by the Defendant's personal circumstances or the helpful façade he puts up to neighbors and law enforcement. Here, the Defendant exploited his law enforcement connections, further exacerbating the severity of the offense. He sold firearms to individuals who, in turn, may have used them for illegal purposes, risking public safety and tarnishing the reputation of law enforcement officers, who may have dealt with him.

**§3553(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;**
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;**

The sentence imposed by this Court must reflect the gravity of the Defendant's actions. Neither probation nor home confinement would adequately address the severity of this offense. The Defendant operated his firearms business from his own home, and such leniency would only serve to preserve his current lifestyle rather than hold him accountable for his illegal conduct. This offense is not only serious in nature but has far-reaching international consequences. The Defendant's conduct demonstrates a flagrant disregard for the safety of citizens both in the United States and abroad. By facilitating the illegal distribution of firearms, he violated the trust, placed

in him as a licensed firearms dealer and endangered countless lives. His actions have had a devastating impact on public safety and the integrity of the legal system.

The Defendant's **total lack of respect for the law is evident**. Despite serving law enforcement officers as customers, he did not merely make a one-time lapse in judgment or a "clerical error"—he repeatedly chose to sell used firearms from a law enforcement officer off-the-books, each transaction compounding his disregard for federal regulations. Rather than learning from his mistakes, he exploited his position of trust to continue his unlawful behavior. His abuse of his law enforcement connections shows a deliberate misuse of power that only magnified the seriousness of his offenses. Not only did he attempt to bribe ATF agents during a visit to his home, but he also boasted about the law enforcement cards he had collected, further emphasizing his belief that his position allowed him to flout the law without consequence.

The Defendant's conduct has directly contributed to the illegal trafficking of firearms across international borders, further exacerbating the growing problem of gun violence. A significant number of firearms involved in crimes in Canada can be traced back to the United States.<sup>1</sup> Between 2018 and 2021, Florida ranked as the third leading source of crime guns in Ontario, a disturbing trend that underscores the Defendant's role in facilitating such illegal activity. In response, U.S. and Canadian authorities established a cross-border task force aimed at disrupting and dismantling the flow of firearms, ammunition, and explosives across the U.S.-Canada border.<sup>2</sup> However, the Defendant's actions reveal how easily firearms can bypass regulatory measures, contributing to this ongoing crisis.

The Caribbean region, particularly Jamaica, faces a similar issue. The illicit trafficking of firearms is a significant driver of violent crime, with the Government Accountability Office reporting that violent deaths in the Caribbean are nearly three times the global average. Many of these murders involve firearms traced back to the United States.<sup>3</sup> U.S. attorneys general have advocated for legislation to combat this problem, noting that at least 200 firearms are trafficked

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<sup>1</sup> <https://globalnews.ca/news/8845131/ontario-crime-guns-new-data-top-us-source-states/#:~:text=The%20firearms%20were%20traced%20to,129%20and%20Michigan%20with%2059>

<sup>2</sup> <https://www.ice.gov/news/releases/us-canada-establish-cross-border-task-force-disrupt-gun-smuggling-and-trafficking>

<sup>3</sup> <https://www.gao.gov/blog/high-murder-rates-caribbean-linked-guns-trafficked-united-states>

from the U.S. to Jamaica every month.<sup>4</sup> This illegal flow of guns fuels not only violent crime but also narcotics trafficking, further destabilizing the region.

A sentence within the guidelines is essential to acknowledge the gravity of these offenses and the harm that may be caused by the Defendant's actions. While the full extent of his trafficking activities remains unknown, we know that since his guilty plea, another firearm that he sold off the books—this time to J.F. and his female straw purchasers—was recovered in Jamaica, further highlighting the international reach of his crimes.

Given the nature of the Defendant's offenses, a sentence of probation would be a slap on the wrist for someone who used his privileged position as a firearms dealer and friend of numerous law enforcement officers to perpetuate widespread illegal activity. This sentence is necessary to serve as a deterrent, ensuring that both law enforcement officers and FFLs understand the consequences of such illegal conduct and to prevent others from following in the Defendant's footsteps. A lenient sentence, such as probation or home confinement, would not sufficiently deter future rogue FFLs or law enforcement officers from engaging in similar illegal activity.

While the Defendant correctly asserts that he finally admitted to the conduct underlying his offense, pled guilty as charged, and did so voluntarily (DE 41:1), his overly literal interpretation of the sentencing guidelines fails to account for the broader purpose of the law. While the Defendant ultimately pled guilty, his conduct after his plea reveals a lack of genuine remorse or acceptance of responsibility. He continues to minimize his behavior, to his wife, his friends and the Court.

While the Defendant cooperated with agents and provided some self-incriminating evidence (DE 41:2), his cooperation was **not entirely forthright**. When confronted by ATF and HSI agents during the investigation, he initially lied before eventually admitting his falsehood (DE 43: para. 16, 24). This gradual and incomplete admission fails to reflect true remorse or consistent acceptance of responsibility, as the law expects from a defendant. We may never know just how many former law enforcement officers' weapons he peddled to shady characters, off the books!

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<sup>4</sup> <https://www.theguardian.com/world/2024/oct/03/jamaica-gun-trafficking-us-attorneys-general>

The Defendant has not demonstrated true repentance. His decision to continue using marijuana and THC products while on bond, and continue to lie to authorities, directly undermines his claim of sincere regret for his actions.

Urine tests, conducted between December 19, 2024, and January 17, 2025, confirmed his repeated use of marijuana or THC products, **while on bond, and after his conditions were modified on January 9, 2025.** According to his US Probation Officer, the Defendant denied use when questioned about it. Thereafter, just like he did when confronted by ATF about his lies, the Defendant changed his story twice, offering inconsistent explanations. On January 2, 2025, the Defendant next blamed one of his neighbors for smoking marijuana near him. The next day, January 3, 2025, he blamed it on a friend who purportedly, secretly, gave him marijuana laced brownies at Thanksgiving, in November 2024. Yet, he continued to test positive for marijuana well into January 2025.

The US Probation Officer's Interpretation report from Alere "indicated that the Defendant reused marijuana between the dates of December 19, 2024 and January 10, 2025, and again between January 10, 2025 and January 17, 2025, only serve to further cast doubt on his professed acceptance of responsibility. This continued drug use demonstrates his lack of seriousness about the criminal conduct for which he was convicted. As the Eleventh Circuit has noted in **United States v. Laing**, 929 F.3d 1130 (11th Cir. 2019), continued drug use after conviction raises significant concerns about a defendant's remorse. Similarly, **United States v. Kelley**, 415 F.3d 1253 (11th Cir. 2005) supports the idea that drug use while awaiting sentencing signals a lack of genuine remorse. The Defendant's ongoing marijuana use, combined with his false explanations, casts serious doubt on the sincerity of his claimed acceptance of responsibility.

His persistent drug use, along with his repeated dishonesty and lack of remorse, highlights the concern that the Defendant is unlikely to be deterred from future misconduct. The evidence suggests that he has not taken this offense seriously and is not genuinely committed to reform. This lack of genuine repentance is a critical factor in determining an appropriate sentence under 18 U.S.C. § 3553, as it calls into question his future compliance with the law and his capacity to be deterred by punishment.



**§3553(3) The kinds of sentences available-**

The only kind of sentence appropriate for this offense is incarceration. The Defendant's actions have reached Canada and Jamaica thus far, and a non-custodial sentence such as probation or home confinement would fail to reflect the seriousness of the offense. Such a sentence would not serve as an adequate deterrent, nor would it promote respect for the law. Given the Defendant's blatant disregard for federal firearms laws and his continued misconduct after his conviction, while on bond purportedly taking care of his wife and the neighbors, incarceration is necessary to ensure accountability and protect public safety.

**§3553(4) The kinds of sentence and the sentencing range established in the Guidelines-**

The advisory guidelines call for a sentence within the range of 15 to 21 months, with a recommendation to impose a sentence at the **high end of this range, 21 months**. This is necessary to reflect the severity of the Defendant's illegal activities, particularly the resulting international trafficking of firearms, and the potential harm caused to public safety. A sentence at the high end of the guidelines would serve as an effective deterrent and send a clear message to others who may consider exploiting their positions of trust and ignoring the law in similar ways.

**§3553(5) Any pertinent policy statement by the Sentencing Commission-**

The Sentencing Commission's policy statements emphasize the need for sentences that reflect the seriousness of the offense, promote respect for the law, and protect the public. U.S. Sentencing Guidelines § 3B1.3 even provides for an enhancement when the defendant abuses a position of trust or public service. Here, the Defendant is a federally licensed firearms dealer abused the trust placed in them by law enforcement and regulatory authorities, reinforcing the notion that a sentence should be imposed that is sufficient to deter the Defendant and others from engaging in similar illegal conduct. As noted previously, the Commission's guidelines also reflect the need to avoid leniency for defendants who show a lack of remorse or disregard for the law, as seen in the Defendant's post-plea conduct, including his continued drug use and dishonesty.

**§3553(6) The need to avoid unwarranted disparities among defendants with similar records who have been found guilty of similar conduct-**

A sentence at the high end of the guidelines is necessary to avoid unwarranted disparities among defendants with similar records who have committed similar offenses. The Defendant's conduct is serious and involves significant international implications, and as such, his sentence should reflect that level of severity. Sentencing him to a non-prison sentence would create a disparity with other defendants who have been sentenced appropriately for similar conduct, including the illegal trafficking of firearms and abuse of a position of trust. To ensure fairness and consistency in sentencing, the Defendant should receive a sentence that is commensurate with the seriousness of his crimes and the harm caused.

**CONCLUSION**

In conclusion, the Defendant's continued drug use, repeated dishonesty, and blatant disregard for the law demonstrate that he has not accepted full responsibility for his actions or shown genuine remorse. His conduct not only undermines his claim of repentance but also highlights the need for a sentence that serves as a meaningful deterrent to both him and others who might consider exploiting their position as a federally licensed firearms dealer, who has law enforcement as customers. The seriousness of his offense, compounded by the international consequences of his illegal actions, demands a sentence that reflects the gravity of the crime and the Defendant's failure to take responsibility. Given the Defendant's lack of remorse and the potential harm caused by his unlawful conduct, a sentence at the **high end of the sentencing guidelines** is necessary to ensure justice is served, to deter future violations, and to protect the safety and integrity of our communities.

The United States respectfully requests that this Honorable Court deny the Defendant's objection and request for downward departure/variance, and sentence him at the high end of the guideline range to 21 months, followed by a term of supervised release of three years, a \$50,000 fine, as calculated in paragraphs 75, 78, and 82 of the Presentence Investigation Report, and the

forfeiture of the 8 firearms listed in the indictment and plea agreement.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 11, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Carmen M. Lineberger  
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