

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**ABEL NAZARIO-QUINONES,**

Defendant.

**CRIMINAL CASE NO: 18-574 (JL)**

**SENTENCING MEMORANDUM**

**INTRODUCTION**

Defendant Abel Nazario-Quiñones hereby files this Sentencing Memorandum in support of his request for the Court to exercise its sentencing discretion and impose a sentence sufficient, but not greater than necessary, to achieve the purposes of 18 U.S.C. § 3553(a). Mr. Nazario-Quiñones respectfully suggests that a sentence of probation is appropriate under the facts and circumstances of this case, and his otherwise unblemished life.

On February 1, 2019 Mr. Nazario-Quiñones was charged in a 37 count Superseding Indictment. Counts 1 to 30 charged the defendant with making false statements to the United States Department of Labor (“DOL”), in violation of 18 U.S.C. § 1001(a)(3), and Counts 31 to 37 charged the defendant with wire fraud, in violation of 18 U.S.C. § 1343. Mr. Nazario-Quiñones pled not guilty to all charges and exercised his constitutional right to a trial by jury. On March 21, 2020, a jury rendered its verdict, finding Mr. Nazario-Quiñones guilty as to counts 1 to 4, 6, 8 to 10, 12 to 17, 19, 20, 22, 24 to 27, 29 to 31, 33 to 35 and 37, and not guilty as to counts 7, 11, 21, 23, 28, and 36. Counts 5, 18 and 32 were dismissed during trial. On September 2, 2020, the Court entered a judgment of acquittal on counts 31, 33 to 35 and 37 pursuant to Fed. R. Crim. P. 29.

**A SENTENCE THAT IS JUST AND “SUFFICIENT BUT NOT GREATER  
THAN NECESSARY”**

18 U.S.C. § 3553(a) requires the Court to impose a sentence that is “sufficient, but not greater than necessary, to comply with the purposes set forth in [§ 3553(a)(2)].” This so-called “parsimony provision” is not merely one of many factors to weigh at sentencing but places a cap above which the Court is *prohibited* from sentencing—even when a greater sentence is recommended by the sentencing guidelines. *See United States v. Denardi*, 892 F.2d 269, 276-77 (3d Cir. 1989) (Becker, J., concurring in part, dissenting in part). In turn, § 3553(a)(2) provides that a sentence should be sufficient but not greater than necessary to:

- (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;

Put simply, when imposing a sentence, the courts are to ultimately consider the totality of the circumstances. *See United States v. Arroyo-Maldonado*, 791 F.3d 193, 198-200 (1st Cir. 2015) (stating that the district court exercises broad discretion in weighing the different sentencing factors during sentencing, to which the court of appeals remains deferential, as long as the sentence is substantively reasonable in light of the totality of the circumstances).

18 U.S.C. § 3553(a) also directs the Court to consider: the nature and circumstances of the offense and the history and characteristics of the defendant; the kinds of sentences available; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the

offense. 18 U.S.C. § 3661 provides that “[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”

#### **A. The History and Characteristics of Abel Nazario-Quiñones**

##### **Education and Work History**

Mr. Nazario-Quiñones attended school at the Santiago Negroni and Elvira Vicente middle schools and at the Luis Muñoz Marín high school, all located in the Susua Alto Ward in Yauco, Puerto Rico. He was a good and well-behaved student. Following his high school graduation, Mr. Nazario enrolled at the Interamerican University in San Juan, Puerto Rico, where he obtained a Bachelor of Arts degree, majoring in history and political science. Mr. Nazario-Quiñones graduated with honors on June 3, 1990. On June 2, 1992, Mr. Nazario completed a Master of Arts degree from the Interamerican University in San Juan, Puerto Rico with a major in Public Administration and Criminal Justice. Never relinquishing his thirst for self-improvement, Mr. Nazario-Quiñones is currently enrolled in the master’s degree program in International Relations and Diplomacy at the Centro de Estudios Avanzados de Puerto Rico y del Caribe, in San Juan, Puerto Rico, and in the Doctoral program in Communications, majoring in political communication, at the Universidad Americana de Europa (UNADE). Mr. Nazario-Quiñones also has a Certificate in International Penal Law from Universidad de Granada, in Spain.

Mr. Nazario-Quiñones became the mayor of the Municipality of Yauco on January 2, 2001 and served in that capacity until December 31, 2016. During his term as mayor the defendant helped an immense number of constituents. He worked arduously from early in the morning to

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late into the evening, while making a modest salary of \$1,500 a month. In 2016 Mr. Nazario- Quiñones prevailed in the Senatorial elections and left Yauco to assume his new office. He served as Senator from January 2, 2017 until March 24, 2020. Beginning in January 2017 Mr. Nazario- Quiñones was also one of the sub-secretaries of the New Progressive Party.

Since May 2020 Mr. Nazario- Quiñones has been working as a waiter at El Alcatraz Beach Bar & Restaurant in Mayaguez. Though he is not paid a salary, he receives tips from patrons. This restaurant was owned by Mr. Franklin Rosado who had been a friend and supporter of the defendant. Tragically, Mr. Rosado recently died in a motorcycle accident. His untimely death caused great suffering to Mr. Nazario- Quiñones. During and after his trial, Mr. Nazario- Quiñones also earned money selling protective face masks to combat the COVID-19 pandemic.

Data provided in the Sentencing Commission’s own publications reflect that “education levels are also associated with different rates of recidivism,” and “[c]ollege graduates had the lowest [recidivism] rates” at 19.1 percent. *See Recidivism Among Federal Offenders: A Comprehensive Overview* (March 2016)<sup>1</sup> at page 24. In sum, these studies reflect that the higher the level education of an offender, the lower is the recidivism rate. Compared to other defendants, Mr. Nazario- Quiñones, who has received a master’s degree, and is in the process of obtaining a second Master’s Degree, as well as completing a Doctoral program, poses a low risk of recidivism. Coupled with his strong family ties and his otherwise unblemished public service record, Mr. Nazario- Quiñones’ characteristics make him deserving of a sentence of probation in this case.

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<sup>1</sup> Available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf).

**Strong Family Ties**

The Pre-Sentence Investigation Report (“PSR”) accurately reports that Mr. Nazario- Quiñones was born on June 24, 1970, in Springfield, Massachusetts. His biological parents lived in the mainland United States and, although relationship with his biological parents was distant, he was fortunately adopted by his paternal grandparents, Mr. Hermenegildo Nazario, a sugar cane worker, and Ms. Victoria Case, a seamstress, who lived in the Susua Alta Ward in Yauco. and raised Mr. Nazario- Quiñones Mr. Nazario- Quiñones, who was born with a hemangioma on his upper lip,<sup>2</sup> was brought to Puerto Rico by his grandmother to visit a specialist, and later remained on the island. The family was of limited means and struggled financially, but Mr. Nazario and Ms. Casas raised Mr. Nazario- Quiñones in a warm and caring home. Throughout his life, Mr. Nazario- Quiñones remained very close with his adoptive parents and was significantly involved in their care when they reached old age. Sadly, his adoptive mother passed away on October 14, 2020, an event that strongly affected Mr. Nazario- Quiñones, as he was her primary caretaker and provider of her needs. His father is now 96 years old and, unfortunately, struggles with Alzheimer’s Disease. Mr. Nazario- Quiñones is his primary caretaker and financial support.

Mr. Nazario- Quiñones’ strong family ties, and his commitment to gainful employment make him less prone to recidivism. He is anxious to find productive ways to assist his community in Yauco, which loves and supports him. A prison sentence would undoubtedly affect his ability to do so. A sentence of probation is sufficient to comply with the purposes of federal sentencing, while at the same time allowing the defendant to continue serving his community.

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<sup>2</sup> A hemangioma is a bright red birthmark that shows up at birth or in the first or second week of life.

### **Mr. Nazario-Quiñones' Extraordinary Devotion to Others**

Mr. Nazario-Quiñones is a voracious reader and an early riser, usually beginning his day at 4:00 a.m. With his boundless energy he has always been committed to self-improvement and has used his skills to help others who are less fortunate. Throughout his professional life, Mr. Nazario-Quiñones never hesitated to lend a helping hand to those in need. Indeed, throughout trial in this case, witness after witness detailed how Mr. Nazario-Quiñones, by no means a wealthy man, would give his last dollar to someone who he felt needed it more than him. It is this type of dedication to others and to the improvement of his community that undoubtedly makes Mr. Nazario-Quiñones a sterling candidate for a sentence of probation, as his selfless qualities must be given an opportunity to thrive outside the walls of a correctional facility. As a further testament to the defendant's self-less nature and commitment to service we have attached to this Sentencing Memorandum over 100 character letters submitted in support of Mr. Nazario-Quiñones. Exhibit A contains the batch of character letters submitted in English; Exhibit B contains the batch of character letters submitted in Spanish; and Exhibit C contains the translation to those letters, in the same order for Court's ease of reference.<sup>3</sup> To find otherwise would be a disservice to those who could make use of Mr. Nazario-Quiñones' assistance and support.

#### **B. The Need to Avoid Sentencing Disparities**

This case is singular in the history of public corruption indictments in the District of Puerto Rico. Our collective recollection cannot identify a single case in this district where a public official has been charged for making a false statement to a federal agency under circumstances which did

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<sup>3/</sup> The government was provided copies of the letters written in Spanish and the proposed English translations, and graciously represented that they had no objection to the accuracy of the accuracy of the English translations.

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not implicate a bribe or gratuity, or some personal gain or profit to the defendant. The anomaly of this case cries out for a sentence that is crafted based on the conduct of the defendant, which does not replicate other cases couched as “public corruption” by the government. This case does not fairly belong in a register of other public corruption indictments brought in the District of Puerto Rico, where local politicians have been charged for engaging in egregious conduct which largely involved *quid pro quos* inuring for the benefit of the public official.<sup>4</sup>

Discussing the importance of avoiding sentencing disparities, the U.S. Sentencing Commission has stated that: “Similar treatment for similar offenders is the hallmark of fair sentencing.”<sup>5</sup> Here, a sentence of probation will not create any local or national sentencing disparities, especially considering the offense conduct with which Mr. Nazario-Quiñones was charged with. For the reasons stated herein, a sentence of probation is sufficient, but not greater than necessary to comply with the underlying purpose of federal sentencing in this case.

**C. Reflecting the Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment, Deterring Criminal Conduct, Protecting the Public, and Providing Vocational Training**

18 U.S.C. §3553(a) also requires the Court to impose a sentence that “reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, affords adequate deterrence to criminal conduct, protects the public from further crimes of the

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<sup>4</sup> For example, in August 2020, the USAO brought a 13-Count Indictment against a member of the Puerto Rico House of Representatives and other family members. The indictment alleged a scheme to defraud the Commonwealth of Puerto Rico by engaging in a theft, bribery, and kickback scheme. In early 2017, Charbonier allegedly inflated her assistant Acevedo’s salary from \$800 on a bi-weekly, after-tax, basis to \$2,100; this amount increased to nearly \$2,900 by September 2019. Out of every inflated paycheck, it was agreed that Acevedo would keep a portion, and kick back between \$1,000 and \$1,500 to Charbonier, Montes, and Montes-Charbonier.

<sup>5</sup> Available at: <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/chap3.pdf>.

defendant, and provides the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”

Mr. Nazario-Quiñones is an extraordinary man with a generous spirit and a kind heart. His gratitude for life has been undiminished by his unfortunate conviction in this case. He is not an angry or bitter man. He is the consummate career public servant. During his many years in public service he has worked tirelessly to improve the life of his constituents, and he served the people of Yauco with love and devotion. Yauco is a poor working-class town. Mr. Nazario-Quiñones labored tirelessly to improve the living conditions of the community. He worked 7 days a week – sometimes 18 hours a day. He did this out of a deep and abiding sense of service because his job as mayor provided little financial incentive. He was a rare find among the political class. His dedication to his community was compensated, not with money, but with something the defendant values much more – the affection and respect of his much-loved town, where he continues to be welcomed with warm embraces when he visits. Because of this respect and affection, Mr. Nazario-Quiñones served Yauco as mayor for 15 straight years.

Mr. Nazario-Quiñones continues to be committed to his innocence, although he is a man who respects our criminal justice system and understands this Court’s duty to sentence him. We have the ultimate faith that Your Honor will be equitable and just in the imposition of a fair sentence. The law, just as life itself and the varied elements of nature that surround us every day, invites balance. The statutory mandate for Federal Judges is to strike that balance by imposing a fair sentence that is not harsher than necessary to achieve the sentencing objectives of Section 3553. Fairness requires an assessment of the defendant not in the vacuum of the false statement convictions, but in the entirety of the man that he is and the totality of the life that he has lived.



We urge the Honorable Court to consider the resilient public servant who stands here today, awaiting his fate, with an understanding that the good which he has imparted overwhelms any potential bad. Abel is the man who took the initiative to reduce his mayoral salary to \$1,500 per month in order to maximize the municipal budget for his constituents. He is the man who never turned anyone away – whether at his home or at his office – when they needed help. The man who took money from his own pocket to help a needy family feed their children. The man who cared for his aging parents with admirable devotion, and always made time for them despite the exacting demands his job made on his time. We could go on and on, almost endlessly.

We need not belabor the counts of conviction nor the conduct imputed to the defendant, but must highlight certain pertinent facts. We understand that the jury convicted Mr. Nazario-Quinones of various false statement counts to the U.S. Department of labor, based on his signing of a U.S. Department of Labor WH-58 forms whereby he stated that he would not retaliate against employees who received a check for back wages. The government's theory was that Abel retaliated against 28 employees, although a total of 177 employees received checks for back wages, and had hundreds of other were employed by the Municipality. No facts were presented at trial which would suggest why this minute number of employees would have been singled out for the alleged retaliation. Any motive remains a mystery but most certainly questions the soundness of the government's theory. There is no debate that Mr. Nazario-Quinones did not benefit from the false statements he is alleged to have made. But even accepting the convictions at face value, Mr. Nazario-Quinones was not alleged to have pocketed a single cent of public money – neither in the indictment and nor during his illustrious political career that has spanned all of his adult life. In this day and age, where public corruption abounds, and public officials sell their influence and

their vote, that integrity should be valued. The monies unpaid to those 22 employees are in the coffers of the Municipality of Yauco, not in Mr. Nazario-Quinones' pocket.

As a result of these convictions, Mr. Nazario-Quinones has lost his career in public service. His criminal convictions prevent his candidacy for any public office in Puerto Rico. That is more punitive than any sentence this Honorable Court could impose. Remarkably, in the face of this loss, Mr. Nazario-Quinones has retained his sense of purpose, the love of his island, and has found other ways to continue to serve his community. He has not succumbed to anger, bitterness or frustration. These emotions have no place in his heart. He continues to be productive and is not shamed by laboring in jobs that some would consider menial or beneath them. The defendant has a weekend waitressing job that he is grateful for. He continues to smile, to thank the Lord for a new day every morning, and he continues to visit his community of Yauco regularly.

We respectfully suggest that Abel has already been punished enough for the offenses of conviction. He is a decent, caring and honest man. We urge this Honorable Court to allow him to remain in the free community.

### **CONCLUSION**

The provisions of 18 U.S.C. § 3553 support the imposition of a just and reasonable sentence that considers the circumstances of this case and personal circumstances of the defendant. Mr. Nazario-Quiñones has so much to offer Puerto Rico during these trying times. He is not alleged to have pocketed a single cent of public money during his stellar political career. He has never been alleged to have been involved in acts of public corruption. Assuming the veracity of the facts underlying his case, and taking the jury's conviction at face value, his conduct is not deserving of a sentence of incarceration, particularly with the risks implicated in incarceration during the

COVID-19 Pandemic. Many of the employees who claim not to have been paid by the defendant were rewarded with permanent positions, raises, and other personal benefits by him. The life of the defendant must be viewed fairly in its entirety. Mr. Nazario-Quinones is not defined by the conduct underlying this case, which represents a minute slice of his life in public service. He has served many and sacrificed his life for the good of his constituents. His commitment to his elderly parents is also a reflection of his moral standards, loyalty, and gratitude for the parents who took him in as a baby and raised him with much love and attention. Considering all of these factors, we urge the Honorable Court to impose a sentence of probation. A sentence of probation is sufficient, but not greater than necessary, and would permit the defendant to achieve his full potential, continue to serve his community, and to spend the few remaining days with his elderly father.

**WHEREFORE**, Defendant Mr. Nazario-Quiñones respectfully requests the Court sentence him to a sentence of probation in accordance with the arguments made in the instant memorandum.

**RESPECTFULLY SUBMITTED.**

**WE HEREBY CERTIFY:** That today we have electronically filed the foregoing document with the Clerk of the Court for the District of Puerto Rico, using the CM/ECF system which will send a copy and notification of filing to all counsel of record.

In San Juan, Puerto Rico on February 5, 2021.

By:  
**DMRA Law LLC**  
**Counsel for Defendant Abel Nazario Quiñones**  
Centro Internacional de Mercadeo  
Torre 1, Suite 402

Guaynabo, PR 00968  
Tel. 787-331-9970

s/Maria A. Dominguez  
Maria A. Dominguez  
USDC-PR No. 210908  
maria.dominguez@dmralaw.com

s/ Javier Micheo Marcial  
Javier Micheo Marcial  
USDC-PR No. 305310  
[javier.micheo@dmralaw.com](mailto:javier.micheo@dmralaw.com)

s/ Carlos J. Andreu-Collazo  
Carlos J. Andreu-Collazo  
USDC-PR No. 307214  
carlos.andreu@dmralaw.com

s/ Edgar R. Vega  
Edgar R. Vega-Pabón, Esq.  
USDC-PR No. 200710  
239 Arterial Hostos Ave.  
Capital Center Building  
South Tower, Suite 201  
San Juan, PR 00918-1477  
Tel.: (787) 771-9056  
Fax: (787) 771-4482  
edgarrvp13@gmail.com