

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
HONORABLE MARCIA S. KRIEGER**

Criminal Action No. 05-cr-00545-MSK

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH P. NACCHIO,

Defendant.

**JOINT STATEMENT REGARDING SENTENCING PROCEDURES
AND MOTION FOR SCHEDULING/STATUS HEARING**

1. On October 7, 2009, defendant Nacchio filed a motion to set a resentencing date. Motion to Set a Scheduling Conference (Docket No. 575). The Court set a status date in response to Mr. Nacchio's motion. On October 23, 2009, the parties appeared before this Court for the status conference. During the status conference, the parties expressed differing views on the proper scope of the resentencing, in light of the 10th Circuit's opinion, and the Court ordered that the parties submit briefing on the issue. The Court also required the parties to exchange between themselves any reports they intended to rely on in connection with the resentencing. Finally, the Court required the parties to submit a Sentencing Statement on January 12, 2010.

2. On December 18, 2009, after the parties submitted briefs on the scope of the mandate, this Court issued an Order Regarding Re-Sentencing ("Order"). In the Order, the Court

discussed a two step process that it customarily uses in sentencing. “Phase I” involves a calculation of the sentence range in accordance with the Guidelines, and includes any factual objections to the contents of the pre-sentence investigation report. Once those disputes are resolved, the Court determines the guidelines sentencing range, which impacts various sentence components such as imprisonment (or probation), supervised release, fine, mandatory assessments and restitution. In “Phase II,” the Court addresses the requirements of 18 U.S.C. §3553(a). In Phase II, the focus is upon what sentence is appropriate for the particular defendant in light of the statutorily-defined sentencing objectives.

3. The Order required that the parties specify whether they desire a consolidated hearing or the setting of two hearings, one for each sentencing phase, and to designate the amount of time they require for a hearing or hearings. The Order went on to state that “[i]f they request two hearings, they should propose a schedule for the filing of a single brief by each party to address the 18 U.S.C. §3553(a) issues.”

4. On January 8, 2010, the parties conferred regarding whether to have one or two hearings and also how long the parties believed any hearing would take. The parties agreed that their submissions on January 12, 2010 would focus on the Phase I factors identified as relevant in this Court’s Order.¹ The parties further agreed that they believe the Court can decide the Phase I issues without the need for an evidentiary hearing.

5. The parties both intend to file a brief to address the 18 U.S.C. §3553(a) issues, and agree it makes sense to do so with the benefit of the Court’s ruling on the Phase I issues.

¹ The Order further states that the Probation Office will prepare an addendum within 14 days of the parties’ January 12 submission, and the parties reserve the right to file any necessary objections to the presentence investigation report.

The parties would be prepared to file such briefs within 10 days of the Court's ruling on the Phase I issues.

6. In light of the above, the parties respectfully request that this Court set a hearing to discuss the procedures for sentencing going forward, and the parties will also ask the Court to set a date for the resentencing as soon as reasonably practicable. The parties believe that the resentencing hearing, which would be held after the parties make their 3553 filings, should take no more than half a day.

Respectfully submitted this 12th day of January, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2010, I electronically filed the foregoing **JOINT MOTION REGARDING SENTENCING PROCEDURES AND MOTION FOR SCHEDULING/STATUS HEARING** with the Clerk of the Court using the Court's CM/ECF system, which will send notification of the filing to the following:

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