

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

CASE NO. 8:04-cr-348-T-24TGW

v.

JOHN ALITE

**SECOND MOTION BY THE UNITED STATES FOR
DOWNWARD DEPARTURE OF DEFENDANT'S SENTENCE
BASED UPON SUBSTANTIAL ASSISTANCE**

Pursuant to Rule 35 of the Federal Rules of Criminal Procedure, the United States moves this Court to grant a 2-level downward departure from the sentencing guidelines and in support thereof states as follows:

1. In July 2005, Alite, Ronald J. Trucchio, Michael Malone, Steven Catalano, Kevin McMahon, and Terry L. Scaglione, were indicted in a Superseding Indictment that charged RICO conspiracy in Count One, and included additional charges and counts against defendants Alite, Malone, and Scaglione (the "Trucchio Case").¹

2. Alite had his initial appearance in the Middle District of Florida on December 26, 2006, following his extradition from Brazil to the United States. Shortly thereafter, Alite agreed to plead guilty and to fully debrief about all criminal

¹ The case was originally indicted on August 14, 2004, and included Pasquale Andriano as a defendant. Andriano entered into a Plea Agreement prior to the presentation of the Superseding Indictment to the grand jury.

conduct in which he and others had engaged, including his role in the alleged drug trafficking conduct and in all other violent and nonviolent criminal conduct.

3. Alite's initial proffer session was held in March 2007. Thereafter, Alite's substantial assistance involved an extensive series of debriefings – that is ongoing – during which Alite provided details about his powerful role as an associate of the Gambino Crime Family, dating back to the early-1980s. Alite also detailed the roles of other Gambino Crime Family members and associates, as well as the roles of members and associates of other La Cosa Nostra Crime Families.

4. On January 16, 2008, Alite pleaded guilty during a sealed proceeding to his leadership role in the charged RICO conspiracy, and specifically acknowledged his direct participation in the alleged drug trafficking activity and in an array of other violent and nonviolent criminal conduct.

5. On April 26, 2011, Alite appeared before the Court for a sentencing hearing. Prior to the hearing, the government filed a motion for a 14-level departure downward pursuant to the provisions of Section 5K1.1 of the United States Sentencing Guidelines. Additional information concerning Alite's substantial assistance was presented to the Court during the sentencing hearing. At the conclusion of the hearing, Alite was sentenced to a total term of 120 months' imprisonment (Level 27, Category V).

MEMORANDUM OF LAW

The Court, on motion of the government, may reduce a defendant's sentence to reflect a defendant's substantial assistance. Fed. R. Crim. P. 35. As set forth in this filing and as more fully detailed in the accompanying *United States' In Camera Memorandum In Support of Second Motion for Downward Departure Based upon Substantial Assistance* ("Memorandum in Support of Second Government Motion"), filed *in camera* and under seal on January 9, 2012,² defendant Alite has remained available to law enforcement in the Middle and Southern Districts of Florida, the Eastern and Southern Districts of New York, the Eastern District of Pennsylvania, and other New York state jurisdictions.

From March 2007 through April 26, 2011, the date of his initial sentencing hearing, Alite participated in an extensive series of proffer sessions and provided truthful, substantial information used to indict more than thirty members and associates of the Gambino Crime Family of La Cosa Nostra. The details of that substantial assistance were included in the *In Camera Memorandum in Support of Government's Motion for Downward Departure of Defendant's Sentence Based upon Substantial Assistance*, filed *in camera* and under seal on April 22, 2011.

Following his sentencing hearing, Alite was transported from Tampa, Florida to a secure prison facility where he continued to provide substantial assistance to the Southern and Eastern Districts of New York in the following cases:

² The government reviewed the substance of the memorandum with counsel for Alite.

1. *U.S. v. Joseph Corozzo, et al.* (Case No.1:11-cr-12);
2. *U.S. v. John A. Burke, et al.* (Case No. 09-135 (S-3) (SJ)); and
3. *U.S. v. Peter Plaia*, (Case No. 1:11-cr- 787).

Said substantial assistance is further described in the Memorandum in Support of Second Government Motion.

Alite agreed to plead guilty in this case to the most serious criminal conduct and to provide continuing substantial assistance in the government's investigations and prosecutions. He has done that. Since his initial sentencing hearing, Alite has provided additional substantial assistance in the above three cases that have resulted in four additional convictions.

CONCLUSION

Accordingly, the United States believes that, because of his efforts and sacrifice on behalf of the United States, Alite should receive a 2-level reduction in his offense level for his additional substantial assistance to the United States.

If the Court is inclined to grant this motion outright, the government respectfully requests that the Court provide the undersigned with 48 hours advance notice so that the government can coordinate all necessary arrangements concerning defendant Alite. Should the Court require the defendant's appearance at any hearing, the government also respectfully requests that the defendant be permitted to appear via telephone conference, which can also be arranged within 48 hours of any notice. Should the Court require that the defendant appear before the

Court in person, the government respectfully request that the Court set any hearing for on or after Tuesday, January 17, 2012. The defendant's counsel, Timothy Fitzgerald, has been queried concerning the above information and requests and has no objection thereto.

Respectfully submitted,

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v

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Timothy Fitzgerald, Esquire

Respectfully submitted,

s/ Jay G. Trezevant

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