

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

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**RAFAEL PINA-NIEVES,**

Defendant.

**CRIMINAL CASE NO.:** 20-258 (FAB)

**RESPONSE OF RAFAEL PINA-NIEVES TO GOVERNMENT'S  
SUPPLEMENT TO NOTICE OF SENTENCING FACTOR (D.E. 292)**

COMES NOW the defendant, Rafael Pina-Nieves, through this undersigned counsel, and files this response to the "SUPPLEMENT TO NOTICE OF 18 U.S.C. § 3553(a) SENTENCING FACTOR: 2022 INCOME REPORTED TO HACIENDA" ("Supplemental Motion")(D.E. 292), filed by the government on the evening of March 29, 2022. The government's supplemental notice suggests, in a public filing, that Mr. Pina-Nieves failed to report to the Puerto Rico Treasury Department ("Departamento de Hacienda") income realized in his personal capacity which he received from Mr. Soldout.<sup>1</sup> As noted in the government's filing the income alluded to is reflected in a deposit made to the defendant's bank account at Banco Popular of Puerto Rico on January 31, 2020. That payment represents earnings that Mr. Soldout, Inc. obtained for the production of concerts given by Daddy Yankee in December 2019 at the Jose Miguel Agrelot Collisium in San Juan, Puerto Rico. (<https://www.concertarchives.org/concerts/daddy-yankee-6e7fb5e2-cfe4-4e09-9e81-98430dd2edaf>). Prior to the end of the 2019 tax year, Mr. Pina-Nieves and his accounting team had made the decision to inform this income in the 2019 tax return, even though the monies had not yet been paid by Mr. Soldout, Inc. to Mr. Pina-Nieves. This method of accounting is based on the Accrual Basis of accounting, and is required under Generally Accepted Accounting Principles.<sup>2</sup>

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<sup>1</sup> Mr. Soldout, Inc. is a company owned and controlled by the defendant, Rafael Pina-Nieves.

<sup>2</sup> Generally accepted accounting principles (GAAP) refer to a common set of accounting principles, standards, and

The government's supplemental notice leaves little doubt to the reader that the government is alleging that Mr. Pina-Nieves is a tax evader. The government attempts to support this meritless label on the basis of comparing the amount of the check deposited in the defendant's Banco Popular of Puerto Rico account (\$1,862,120.97) with the income reported in the defendant's 2020 personal income tax return, in which Mr. Pina-Nieves reported income "from various corporate sources, including Mr. Souldout, Inc.". Government's Supplemental Motion at 3. The government further notes that the income reported by Mr. Pina-Nieves for services rendered to Mr. Soldout, Inc. in the 2020 return is \$176,000. *Id.* at 4. Using some simple mathematical computations, the government, concludes that the reported income in the 2020 tax return (\$176,000) is less than 10% of the amount of the check deposited in Mr. Pina-Nieves' bank account on January 31, 2020.

Finally, in a rather shocking display of prosecutorial recklessness, the government concludes its supplemental notice by suggesting to the Honorable Court that these facts constitute *prima facie* evidence of tax evasion on the part of Mr. Pina-Nieves and represent a violation of the defendant's conditions of bond, which should be considered by the Court as a relevant sentencing factor under the authority of 18, *United States Code*, § 3553(a). *Id.*

The government's motion was clearly filed without the benefit of any reasonable due diligence. In particular, this *faux pas* is inconceivable because the government has had access to the defendant's corporate and personal tax returns for many months, and his business affairs and income have come under severe government scrutiny. In order to respond to the government's specious claims, the defendant again finds himself in the position of having to come forward and

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procedures issued by the Financial Accounting Standards Board (FASB). Public companies in the U.S. must follow GAAP when their accountants compile their financial statements. <https://www.icaew.com/technical/by-country/north-america/us/accounting-in-us/usgaap#:~:text=The%20Financial%20Accounting%20Standards%20Board,authoritative%20source%20for%20US%20GAAP>.  
Accrual basis is a method of recording accounting transactions for revenue when earned and expenses when incurred.

transparently places his tax filings at the disposition of the government and the Honorable Court, in order to disprove the scurrilous claim that he is a tax evader.

The deposit referenced by the government in its supplemental motion, in the amount of \$1,862,120.97, was, in fact, reported in Mr. Pina-Nieves' 2019 income tax return, filed with the Puerto Rico Treasury Department. A copy of the 2019 return is being filed under separate cover, with a Selected Parties restriction, in order to preserve what is left of the defendant's privacy rights. We bring to the Honorable Court's attention that filed together with the return is a Form 480.6SP, Informative Declaration of Services Rendered ("Declaración Informativa – Servicios Prestados") which reported income paid to Mr. Pina-Nieves from Mr. Soldout, Inc. for tax year 2019 in the amount of \$2,408,272.65, with a retained amount of \$481,654.50. We note for the government's benefit that this is an amount which is \$546,151.68 greater than the amount of the deposit made into Mr. Pina-Nieves' bank account on January 31, 2020 (\$1,862,120.97); roughly 30% more than the amount of the deposit.

The amount of the gross payment noticed by Mr. Pina-Nieves to the Puerto Rico Treasury Department is greater than the amount of the deposit made on January 31, 2020 into his bank account because certain retentions required by law were made and subsequently reported to the Federal and state tax authorities. These calculations are noted below:

<b>Income reported in the 2019 Tax Return for Mr. Pina-Nieves</b>	<b>\$2,408,272.65</b>
<b>Retention of the 20% for Tax Payment - Puerto Rico</b>	<b>(\$481,654.53)</b>
<b>Federal Retention for Social Security</b>	<b>(\$ 64,479.15)</b>
<b>Net Payment to Mr. Pina-Nieves</b>	<b>\$1,862,138.97</b>
<b>Payment Deposited 1/31/2020</b>	<b>\$1,862,120.97</b>
<b>Difference</b>	<b>\$ 18.00</b>

Far from being a reputed tax evador, Mr. Pina-Nieves actually reported to the Puerto Rico

Treasury Department an amount received from Mr. Soldout for services rendered that was in excess of the amount of the deposit referenced in the government's supplemental notice, which ironically formed the basis for the government's unfortunate allegation that Mr. Pina-Nieves was a tax evador.

We reiterate our earlier request that Mr. Pina-Nieves' business success, contributions to the economy of the Commonwealth of Puerto Rico, and lawful compliance with his tax responsibilities are all factors that warrant positive consideration by the Honorable Court at the time of sentencing pursuant to Title 18, *United States Code*, §3553(a).

We likewise urge the government to ensure that future allegations of impropriety or misconduct on the part of Mr. Pina-Nieves be preceded by a responsible due diligence, in order to ensure that, in fairness, Mr. Pina-Nieves does not continue to be the object of adverse and widely reported media accounts that propagate misinformation contained in government filings. Such prudence prior to making public filings of this nature is commensurate with the ethical and professional responsibilities that govern the conduct of lawyers and required by the valued notion of civility in litigation.

**WHEREFORE**, the defendant Rafael Pina-Nieves respectfully requests that the Court take notice of this response.

Respectfully submitted on this 1st day of April 2022, in San Juan, Puerto Rico.

**I HEREBY CERTIFY** that on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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s/ Maria A. Dominguez

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