



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

S3 10 Crim. 336 (LAK)

BRENT BECKLEY,

Defendant.
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ORDER

LEWIS A. KAPLAN, *District Judge.*

The Court hereby notifies the parties that it intends to consider an upward departure under USSG § 5K2.0 on the ground that there is an aggravating circumstance in this case of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. Specifically, the applicable guideline, USSG § 2B1.1, depends heavily on the loss amount, which is defined in terms of “the reasonably foreseeable pecuniary harm,” *id.* App. Note 3(A). Here the government acknowledges that it is not in a position to establish pecuniary harm in view of the nature of the offenses of conviction. But, as the Presentence Report and, to an extent, the defendant’s allocation, make plain, the defendant deliberately and unlawfully conspired to circumvent, and circumvented, governing laws of the United States in order to conduct or facilitate an unlawful business or businesses involving billions of dollars from which those businesses gained many millions of dollars. The failure of the guideline so heavily dependent on loss amount to fix an appropriate sentencing range in a case like this may warrant an upward departure. *See, e.g., United States v. Spiegelman*, 4 F. Supp.2d 275, 287-92 (S.D.N.Y. 1998); USSG § 2B1.1, App. Note 19(A).

In the circumstances, the sentencing previously scheduled for May 21, 2012 is adjourned until June 28, 2012 at 2:30 p.m. Any submission on behalf of the defendant with respect to the proposed departure shall be filed no later than June 8, 2012. Any submission on behalf of the government shall be filed no later than June 18, 2012. Any reply submission by the defendant shall be filed no later than June 25, 2012.

SO ORDERED.

Dated: May 18, 2012

Lewis A. Kaplan
United States District Judge