

**Criminal Law**—Federal Sentencing Guidelines Remain an Important Consideration in the Sentencing Process—*United States v. Jimenez-Beltre*, 440 F.3d 514 (1st Cir. 2006)

In 1984, Congress enacted the Sentencing Reform Act (SRA) with the purpose of restoring fairness, consistency, and proportionality to the practice of sentencing in the federal courts.<sup>1</sup> Pursuant to the SRA, Congress adopted the Federal Sentencing Guidelines (Guidelines)—an elaborate system of sentencing recommendations intended to assist federal judges in imposing criminal punishment.<sup>2</sup> The Guidelines were binding authority on federal courts until a 2005 Supreme Court decision relegated them to an advisory role.<sup>3</sup> In *United States v. Jimenez-Beltre*,<sup>4</sup> the First Circuit Court of Appeals considered the influence of the Guidelines on the practice of federal sentencing in their modified capacity.<sup>5</sup> The First Circuit held that the Guidelines are still an important factor that should be given adequate consideration in the sentencing process.<sup>6</sup>

In October 2004, Lenny Jimenez-Beltre pled guilty to the charge of illegal re-entry into the United States.<sup>7</sup> At the sentencing hearing, the district court explained that it would first calculate a sentence according to the Guidelines,

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1. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, § 212, 98 Stat. 1987, 1987-92 (codified as amended at 18 U.S.C. § 3553) (2000) (listing concerns for sentence proportionality, consistency, deterrence, and rehabilitation). The SRA established the United States Sentencing Commission (Commission), an independent commission located within the judicial branch, whose essential purposes are to carry out the goals of federal sentencing reform. See 18 U.S.C. § 3553(a) (2000) (requiring courts to consider guidelines and policy statements issued by Sentencing Commission); 28 U.S.C. § 991(a) (2000) (empowering Commission and defining its goals).

2. See U.S. SENTENCING GUIDELINES MANUAL § 1A1.1. cmt. background (2003) (setting forth statutory authority for promulgating Guidelines Manual). The seven-person Commission held numerous hearings and meetings with prison officials, federal judges, and others to determine what aspects of the sentencing system needed the most reform. Charles J. Ogletree, Jr., *The Death of Discretion? Reflections on the Federal Sentencing Guidelines*, 101 HARV. L. REV. 1938, 1948-50 (1988). The Commission also consulted statistical data from over 100,000 federal criminal cases to help them construct the initial Guidelines system. *Id.* at 1948. The Commission submitted the Guidelines to Congress on April 13, 1987, and they became law on November 1 of that year. U.S. SENTENCING GUIDELINES MANUAL § 1A1.2 (2003).

3. See *United States v. Booker*, 543 U.S. 220, 245-46 (2005) (holding mandatory application of Guidelines unconstitutional).

4. 440 F.3d 514 (1st Cir. 2006) (en banc), *cert. denied*, 127 S. Ct. 928 (2007).

5. *Id.* at 518 (introducing central issue before court).

6. *Id.* at 518-19 (supporting district court's method of incorporating Guidelines into ruling).

7. *Id.* at 516 (stating charge against defendant). Immigration officers deported Jimenez-Beltre in 2002 after he served a sentence of two and one-half years imprisonment for drug trafficking. *Id.* Without authorization from the United States government, Jimenez-Beltre unlawfully re-entered the country. *Id.* On October 1, 2003, the Fitchburg, Massachusetts police arrested him on separate drug charges. *Id.* A jury convicted Jimenez-Beltre of the charges, and a grand jury later indicted him under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1326 (2000). *Id.*

and then consider any factors that might warrant a departure.<sup>8</sup> Using the appropriate Guidelines variables, the court arrived at a sentencing range of forty-six to fifty-seven months.<sup>9</sup> After denying Jimenez-Beltre's request for a departure from the Guidelines range, the court sentenced Jimenez-Beltre to forty-six months in prison.<sup>10</sup>

In its justification, the district court asserted that the Guidelines would bear "substantial weight" in the sentencing process.<sup>11</sup> While acknowledging their advisory status, the court maintained that it would only diverge from a prison sentence within the applicable Guidelines range if it found "clearly identified and persuasive reasons" to do so.<sup>12</sup> On appeal, the First Circuit upheld Jimenez-Beltre's sentence and expressed approval over the district court's utilization of the Guidelines in determining the proper sentence.<sup>13</sup>

Prior to the SRA, federal courts possessed nearly unlimited discretion in handing down criminal sentences, restricted only by broadly defined statutory limits.<sup>14</sup> In response to proposals for reforming the system in the 1970s, Congress enacted the SRA in 1984, authorizing an independent commission of the judicial branch to create a standardized system of sentencing for all federal crimes.<sup>15</sup> Essential to the impact of the Guidelines was their mandatory

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8. 440 F.3d at 516 (explaining district court's sentence calculation process). A Guidelines range is calculated by plotting two variables—offense level and criminal history—on a grid called a sentencing table. LUCIEN B. CAMPBELL & HENRY J. BEMPORAD, AN INTRODUCTION TO FEDERAL SENTENCING 6 (2006), <http://www.ussc.gov/training/intro9.pdf>. With one variable plotted along each axis on the grid, courts determine the appropriate sentencing range where the two variables intersect. *Id.*

9. 440 F.3d at 517 (explaining district court's determination of sentencing range). Key Guidelines factors considered by the courts include the crime committed, the individual's past criminal record, and whether or not the individual takes responsibility for his or her conduct. Ogletree, *supra* note 2, 1950 (explaining characteristics used in sentencing calculations under Guidelines system); *see also* U.S. SENTENCING GUIDELINES MANUAL § 1B1.4 (2004) (listing information about defendant courts may consider in imposing sentences); U.S. SENTENCING GUIDELINES MANUAL § 5H1.1-.12 (2004) (listing specific offender characteristics not relevant to sentencing calculation).

10. 440 F.3d at 517 (providing lower court's sentence).

11. *Id.* at 516-17 (recounting district court's explanation of Guidelines treatment).

12. *Id.* (explaining district court's reasoning). The district court stated in full:

I'm certainly treating the Guidelines as advisory, not mandatory, but I feel I need to start someplace, and that's where I'm going to start. I do intend to give them substantial weight, but they don't have controlling weight; and if there are clearly identified and persuasive reasons why I should not impose a Guidelines sentence, I will consider those and impose a sentence accordingly.

*Id.*

13. 440 F.3d at 518-19 (discussing role of Guidelines and endorsing district court's overall approach).

14. *See* Ogletree, *supra* note 2, at 1940-42 (noting breadth of discretion available to sentencing judges prior to reform efforts); U.S. SENTENCING COMM'N, FINAL REPORT ON THE IMPACT OF *United States v. Booker* ON FEDERAL SENTENCING 2 (2006), *available at* [http://www.ussc.gov/booker\\_report/Booker\\_Report.pdf](http://www.ussc.gov/booker_report/Booker_Report.pdf) [hereinafter FINAL REPORT] (discussing state of federal sentencing prior to passing of SRA); *see also* Marvin E. Frankel, *Lawlessness in Sentencing*, 41 U. CIN. L. REV. 1, 14 (1972) (criticizing extensive discretion granted to judges in American sentencing system).

15. *See* Ogletree, *supra* note 2, at 1942-44, 1948 (discussing efforts to reform sentencing system and describing Commission's overall composition and early work). Essential to the sentencing reform movement

application; save for limited discretion, the SRA required federal courts to impose sentences within a specified range based on the type of offense committed and the conduct of the criminal.<sup>16</sup>

Almost immediately, individuals sentenced under the Guidelines regime brought challenges questioning the legality of the new system.<sup>17</sup> These challenges were routinely rejected by the Supreme Court.<sup>18</sup> Then, in the 2005 case of *United States v. Booker*,<sup>19</sup> the Supreme Court considered whether the Guidelines system violated the Sixth Amendment by allowing judges to enhance a criminal's sentence beyond the statutory maximum based on additional facts found at the sentencing stage.<sup>20</sup> The Supreme Court held that the Guidelines system violated the Sixth Amendment, but chose only to excise the specific portions of the SRA that offended the Constitution rather than invalidate the system in its entirety.<sup>21</sup> As a result, *Booker* relieved district

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of the 1970s was Judge Marvin E. Frankel, a former United States District Court Judge for the Southern District of New York. *Id.* at 1942. Due in large part to his efforts, which culminated in his book entitled *Criminal Sentences: Law Without Order*, Congress began entertaining proposals to improve the practice of federal sentencing. See Ogletree, *supra* note 2, at 1944; see also Kate Stith & Steve Y. Koh, *The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines*, 28 WAKE FOREST L. REV. 223, 228 (1993) (calling Frankel's book "the most influential criticism of indeterminate federal sentencing"). The primary objective of the Commission was to enhance the ability of the federal government to deter crime through fair, effective, and consistent sentencing. U.S. SENTENCING GUIDELINES MANUAL § 1A1.3 (2003) (introducing basic approach to understanding Guidelines). Through the Guidelines, the Commission sought mainly to address the growing problems of sentencing disparity and indeterminacy. See FINAL REPORT, *supra* note 14, at 2-3.

16. See 18 U.S.C. § 3553(b)(1) (2000) (mandating courts impose sentences within Guidelines ranges), *overruled by* *United States v. Booker*, 543 U.S. 220 (2005). Even though the Guidelines were only one factor among seven listed in the statute, subsection (b)(1) required courts to impose sentences within the Guidelines range in almost every case. See 18 U.S.C. § 3553(a), (b)(1) (2000); see also Steven G. Kalar et al., *A Booker Advisory: Into The Breyer Patch*, 29 CHAMPION 8, 10 (2005) (discussing interpretation of SRA before and after *Booker*). Before *Booker*, to depart from the Guidelines, a sentencing judge was required to find an "aggravating or mitigating circumstance" not already taken into consideration by the factors set forth in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3553(b)(1) (2000).

17. FINAL REPORT, *supra* note 14, at 7-9 (summarizing various legal challenges to judicial use of Guidelines).

18. In the first case challenging the Guidelines, the Supreme Court held that the Commission did not violate separation of powers principles by operating within the judicial branch. See *Mistretta v. United States*, 488 U.S. 361, 396-97 (1989); see also FINAL REPORT, *supra* note 14, at 7. Thereafter, the Court likewise rejected several other challenges to the operation of the Guidelines. See *Witte v. United States*, 515 U.S. 389, 406 (1995) (holding conduct considered in sentencing calculation not prohibited from consideration in subsequent legal action); *United States v. Dunnigan*, 507 U.S. 87, 88-89 (1993) (holding sentence enhancement for perjury does not violate criminal's constitutional protections); FINAL REPORT, *supra* note 14, at 8-9 (summarizing other failed challenges to legality of Guidelines).

19. 543 U.S. 220 (2005).

20. *United States v. Booker*, 543 U.S. 220, 229 n.1 (2005) (delineating issues before court). Six months prior to deciding *Booker*, the Supreme Court determined that a state sentencing scheme similar to the Guidelines violated a defendant's Sixth Amendment right to a jury trial. See *Blakely v. Washington*, 542 U.S. 296, 303-05 (2004) (ruling defendant's sentence invalid on account of Sixth Amendment violation).

21. *United States v. Booker*, 543 U.S. 220, 245-46 (2005) (excising specific SRA provisions). The Court determined that most of the SRA was valid and cautioned against invalidating more of the statute than necessary. See *id.* at 258-59. The Justices split the *Booker* decision into two parts. *Id.* at 226-27. The first

courts from imposing sentences in strict accordance with Guidelines procedures and instead instructed them to “take account of the Guidelines together with other sentencing goals.”<sup>22</sup>

The *Booker* decision produced a groundswell reaction within the legal community, much of which criticized the Supreme Court for confounding the Guidelines’ influence.<sup>23</sup> In the district courts especially, uncertainty over the role of the Guidelines initially produced two conflicting interpretational approaches.<sup>24</sup> The first approach called for the Guidelines to bear substantial weight in the sentencing process on the basis that they already accounted for the various goals of sentencing under section 3553(a) of the SRA.<sup>25</sup> The

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part, authored by Justice Stevens and joined by Justices Scalia, Souter, Thomas, and Ginsburg, held that the Guidelines violated the Sixth Amendment. *Id.* The second part, authored by Justice Breyer and joined by Chief Justice Rehnquist and Justices O’Connor, Kennedy, and Ginsburg, invalidated the specific provisions of the SRA that violated the Constitution. *Id.* The *Booker* decision prompted courts to overturn scores of sentences imposed prior to *Booker* on grounds of judicial error committed by the sentencing court. *See* United States v. Sanders, 404 F.3d 980, 988 (6th Cir. 2005) (remanding for re-sentencing because district court applied Guidelines as mandatory, not advisory); United States v. Barnett, 398 F.3d 516, 525-26, 531 (6th Cir. 2005) (remanding for plain error because district court sentenced defendant under mandatory Guidelines system). *But see* United States v. Riccardi, 405 F.3d 852, 875-76 (10th Cir. 2005) (upholding sentence, despite *Booker*, on grounds of harmless error).

22. United States v. Booker, 543 U.S. 220, 259 (2005) (announcing new interpretation of Guidelines). Specifically, the goals referred to by the Court are the sentencing factors set forth in section 3553(a), which, in addition to the Guidelines themselves, include six other factors for courts to consider when sentencing individuals. *See* 18 U.S.C. § 3553(a) (2000). Among these factors are “the nature and circumstances of the offense and the history and characteristics of the defendant”; “the kinds of sentences available”; “any pertinent policy statement . . . issued by the Sentencing Commission”; “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. § 3553(a)(1), (3), (5)(A), (6), (7) (2000). Subsection (2) of the statute lists the four primary aims of sentencing as promulgated by the Commission:

(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.

18 U.S.C. § 3553(a)(2) (2000).

23. *See* Frank O. Bowman, III, *Beyond Band-Aids: A Proposal for Reconfiguring Federal Sentencing After Booker*, 2005 U. CHI. LEGAL F. 149, 181-83 (2005) (explaining why *Booker* “stunned and amazed the sentencing world”); *see also* FINAL REPORT, *supra* note 14, at 17 (discussing how *Booker* decision raised immediate questions regarding weight of Guidelines); Kalar et al., *supra* note 16, at 8 (commenting on *Booker*’s negative effect on legal community). To circumvent *Booker*’s holding and restore certainty to the Guidelines, some courts have held that the Guidelines should carry more weight than other sentencing considerations. *See* Timothy A. Johnson, Note, *Sentencing Organizations After Booker*, 116 YALE L.J. 632, 659 (2006) (observing legislative and judicial attempts to restore mandatory sentencing).

24. *See* FINAL REPORT, *supra* note 14, at 17 (explaining emergence of two different schools of thought regarding Guidelines’ role).

25. FINAL REPORT, *supra* note 14, at 17 (explaining first of two different approaches to weighing Guidelines). The Utah Federal District Court was the first court to adopt this position. *See* United States v. Wilson, 350 F. Supp. 2d 910, 912 (D. Utah 2005); FINAL REPORT, *supra* note 14, at 17 (concluding court should give considerable weight to Guidelines in determining sentence). The *Wilson* court held that it would

opposing method treated the Guidelines as just one factor for sentencing courts to consider, bearing equal weight to the other six factors listed in the statute.<sup>26</sup> Most appellate courts declined to set a standard in their circuits, preferring simply to echo *Booker* by requiring courts to “consider” the Guidelines in light of the other statutory factors.<sup>27</sup>

In *United States v. Jimenez-Beltre*, the First Circuit began its assessment of the Guidelines by stating that they cannot be “just another factor” in the sentencing process because they are the “only integration” of all sentencing factors under section 3553(a).<sup>28</sup> The court then observed that the Guidelines are still only generalizations, and, depending on the circumstances in any given

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only depart from the Guidelines in unusual cases. *United States v. Wilson*, 350 F. Supp. 2d 910, 912 (D. Utah 2005).

26. See *United States v. Ameline*, 400 F.3d 646, 655-56 (9th Cir. 2005) (holding Guidelines “only one of many factors that a sentencing judge must consider”); FINAL REPORT, *supra* note 14, at 17 (summarizing alternative interpretational approach).

27. See, e.g., *United States v. Cunningham*, 429 F.3d 673, 675-76 (7th Cir. 2005) (holding sentencing judge must consider whether Guidelines sentence conforms to statutory factors); *United States v. George*, 403 F.3d 470, 472 (7th Cir. 2005) (noting Guidelines should continue to inform sentencing judges); *United States v. Webb*, 403 F.3d 373, 385 n.9 (6th Cir. 2005) (declining to indicate Guidelines’ significance), *cert. denied*, 126 S. Ct. 1110 (2006); *United States v. Crosby*, 397 F.3d 103, 111 (2nd Cir. 2005) (holding sentencing judges remain under duty to consider Guidelines). By the time the First Circuit decided *Jimenez-Beltre*, all of the circuit courts had issued decisions instructing district courts on how to integrate Guidelines calculation into the sentencing process. See FINAL REPORT, *supra* note 14, at 17-18, 20 n.147. The first step was to calculate a sentence according to the Guidelines; then, the courts were to consider the other section 3553(a) factors before issuing their decisions. *Id.* at 17-18. As a separate matter, each of the circuit courts has ruled on the significance of a Guidelines sentence when tested on appellate review. See FINAL REPORT, *supra* note 14, at 26. Six circuits have declared that a sentence imposed within the applicable Guidelines range carries a presumption of reasonableness. See *United States v. Green*, 436 F.3d 449, 457 (4th Cir. 2006), *cert. denied*, 126 S. Ct. 2309 (2006); *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006); *United States v. Buchanan*, 449 F.3d 731, 735 (6th Cir. 2006), *petition for cert. filed*, (August 23, 2006) (No. 06-6155); *United States v. Kristl*, 437 F.3d 1050, 1054 (10th Cir. 2006); *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005); *United States v. Lincoln*, 413 F.3d 716, 718 (8th Cir. 2005), *cert. denied*, 126 S. Ct. 840 (2005). The remaining circuits have thus far declined to adopt the “presumptively reasonable” standard, including the First Circuit, as suggested in *Jimenez-Beltre*. See *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006), *cert. denied*, 127 S. Ct. 192 (2006) (avoiding formulation of per se rules to govern reasonableness review); 440 F.3d at 518 (declining to bestow presumption of reasonableness upon sentence imposed within Guidelines range); *United States v. Cooper*, 437 F.3d 324, 331 (3d Cir. 2006) (viewing Guidelines sentences as less likely unreasonable than sentences outside Guidelines range); *United States v. Cantrell*, 433 F.3d 1269, 1281 n.5 (9th Cir. 2006) (reviewing reasonableness of Guidelines sentence in light of all section 3553(a) factors); *United States v. Talley*, 431 F.3d 784, 788 (11th Cir. 2005) (stating sentences within Guidelines range carry expectation of reasonableness).

28. 440 F.3d at 518 (internal quotations omitted) (justifying enhanced treatment of Guidelines in comparison to other statutory factors). The court also remarked that the Guidelines carry special significance because they are based in large part on empirical sentencing data. *Id.* at 518. The First Circuit heard this case en banc in order to provide “stable guidance” on the Guidelines’ role in the sentencing process. *Id.* at 516. Prior to *Jimenez-Beltre*, the First Circuit had twice stated its opinion on the role of the Guidelines, but on neither occasion was the subject the primary issue before the court. See *United States v. Pho*, 433 F.3d 53, 61-62 (1st Cir. 2006) (holding that Guidelines remain “part and parcel” to sentencing); *United States v. Robinson*, 433 F.3d 31, 33 (1st Cir. 2005) (referring to Guidelines as “merely advisory but nevertheless an important consideration in sentencing”).

case, they may not always produce a reasonable sentence.<sup>29</sup> Recognizing merit in both positions, the First Circuit held that sentencing courts must “continue to consider the Guidelines sentencing range.”<sup>30</sup> The First Circuit instructed future sentencing courts to first calculate a sentence according to the Guidelines, and then decide whether departure from that range is justified.<sup>31</sup> Turning to the case at bar, the First Circuit affirmed the lower court’s sentence of Jimenez-Beltre and commended the court on its use of the Guidelines.<sup>32</sup>

The First Circuit properly acted within the bounds of its authority by declining to impart any more significance to the Guidelines than the Supreme Court deemed appropriate in *Booker*.<sup>33</sup> Giving the Guidelines “substantial weight” undoubtedly would have bolstered uniformity in sentencing—one of the founding principles of the SRA—and prevented courts from exercising the unbridled discretion that induced the SRA in the first place.<sup>34</sup> By contrast, treating the Guidelines on par with the rest of the section 3553(a) factors would have emphasized the importance of balancing statutory aims with the unique circumstances of every case.<sup>35</sup> Faced with a choice, the First Circuit successfully avoided the temptation to quantify the Guidelines’ significance.<sup>36</sup>

Turning to its endorsement of the lower court’s approach to sentencing Jimenez-Beltre, the First Circuit fell short in its duty to advance the mandate of the SRA because it chose to certify an oversimplified treatment of the section 3553(a) factors.<sup>37</sup> In *Booker*, the Supreme Court’s decision to sever the mandatory nature of the Guidelines obligated sentencing courts to consider all of these factors equally.<sup>38</sup> The district court in *Jimenez-Beltre* chose not to follow this direction, deciding instead that it would only move away from a Guidelines sentence if it found “clearly identified and persuasive reasons” to do

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29. 440 F.3d at 518 (stressing importance of flexibility in cases where Guidelines sentence inappropriate). The court noted that some of the Guidelines sentencing ranges intentionally deviated from historical tendencies in an effort to effectuate change in those areas. *Id.*

30. *Id.* (internal quotations omitted) (announcing court’s holding).

31. *Id.* (explaining proper approach to sentence calculation). With this instruction, the First Circuit joined its sister circuits, all of which had already adopted a similar instruction. *See supra* note 27 (discussing circuit court consensus regarding placement of Guidelines in sentencing process).

32. *See* 440 F.3d at 518-19 (agreeing with lower court’s general approach).

33. *See id.* at 518 (endorsing practical applications of *Booker*).

34. *See id.* at 522-23 (Howard, J., concurring) (arguing purposes of SRA only achieved by according Guidelines substantial weight).

35. *See id.* at 526 (Lipez, J., dissenting) (stressing sentencing decisions must consider all statutory factors).

36. *See* 440 F.3d at 518 (affording Guidelines “important consideration” in sentencing). *See generally* FINAL REPORT, *supra* note 14, at 17-18 (examining treatment of Guidelines’ significance across circuit courts).

37. *See* 440 F.3d at 525-26 (Lipez, J., dissenting) (maintaining statute requires consideration of all factors).

38. *See* 18 U.S.C. § 3551(b) (2000) (requiring sentences “in accordance with the provisions set forth in section 3553”); *see also* Kalar et al., *supra* note 16, at 14 (finding merit in post-*Booker* sentencing approach where judge conducts detailed analysis of section 3553(a) factors).

so.<sup>39</sup> In effect, the lower court's method created an erroneous presumption that a Guidelines sentence is appropriate, even though they represent just one of the factors courts must consider.<sup>40</sup>

By endorsing the lower court's truncated approach to weighing the statutory factors, the First Circuit failed to emphasize the exhaustive and methodical analysis that section 3553(a) implores.<sup>41</sup> Such an endorsement served only to minimize the significance of the non-Guidelines factors and inflate the value of mechanical sentence calculation.<sup>42</sup> By sending this message to the district courts, the First Circuit arguably gave the Guidelines the controlling influence they previously enjoyed.<sup>43</sup>

The First Circuit attempted to give district courts stable guidance on how to use the Guidelines by emphasizing their procedural significance over their weight of authority. In the process, the court backed a simplistic approach to sentencing that focused too heavily on the Guidelines at the expense of other statutory considerations. Instead, the First Circuit should have followed the decree of the SRA and compelled future courts to give all of the statutory factors their due regard.

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39. See *supra* note 12 and accompanying text (reviewing district court's approach to sentencing Jimenez-Beltre).

40. See 440 F.3d at 525-26 (Lipez, J., dissenting) (maintaining district court gave Guidelines disproportionate weight compared to rest of section 3553(a) factors).

41. See *id.* at 530 (objecting to majority's approval of district court's sentencing methodology). Judge Lipez criticized the district court for merely assuming that the Guidelines sentence complied with section 3553(a). See *id.*; *supra* note 38 and accompanying text (arguing for fair consideration of all section 3553(a) factors).

42. See 440 F.3d at 528 (Lipez, J., dissenting) (suggesting future courts may focus too heavily on rigid application of Guidelines); see also Johnson, *supra* note 23, at 659 (noting *Jimenez-Beltre* grants Guidelines "more weight than other sentencing factors").

43. See 440 F.3d at 528 (Lipez, J., dissenting) (predicting impact of majority decision). Judge Lipez cautioned against affording the Guidelines presumptive validity since that would effectively give them binding authority in violation of *Booker*. See *id.*