

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09 CR 383-13
)	Chief Judge Ruben Castillo
)	
EDGAR VALENCIA ORTEGA,)	
)	
Defendant.)	

**EDGAR VALENCIA ORTEGA’S OBJECTION TO THE PRESENTENCE
INVESTIGATION REPORT AND POSITION PAPER ON SENTENCING**

Defendant, EDGAR VALENCIA ORTEGA, by and through his attorneys, PAUL M. BRAYMAN and LISA L. WOOD, pursuant to Rule 32 of the Federal Rules of Criminal Procedure, and 18 U.S.C. § 3553(a), as well as the Sixth Amendment to the Constitution of the United States and the Supreme Court’s opinion in *United States v. Booker*, 543 U.S. 220 (2005), respectfully submits the following objection to the Presentence Investigation Report (“PSR”) and position paper on sentencing.

I. Introduction

On April 27, 2016, Mr. Valencia Ortega entered a plea of guilty to a superseding information charging him with conspiracy to commit money laundering in violation of 18 U.S.C. § 1956. Mr. Valencia Ortega admitted that between 2012 and January 2014 he conspired with others to knowingly conduct financial transactions involving the proceeds of federal drug offenses taking place in the United States and Mexico, knowing those transactions were designed to conceal and disguise the nature, locations, sources, ownership, and control of the drug proceeds.

Specifically, Mr. Valencia Ortega admitted that he acted as a money laundering broker, from 2012 to January 2014, causing between \$1.5 million and \$3 million in proceeds derived from the sale of drugs in the United States to be laundered to Mexico, generally in amounts between \$50,000 and \$300,000 per transaction. In exchange for a commission on each transaction, Mr. Valencia Ortega would contact other money laundering facilitators who, in turn, arranged for couriers to take possession of narcotic proceeds in and around Chicago and Los Angeles. Mr. Valencia Ortega was aware that those proceeds were then transported to Mexico through a variety of laundering methods.

While Mr. Valencia Ortega was primarily a money laundering broker, he admits that he also on occasion worked with his co-conspirators to broker cocaine transactions. Similar to the money laundering transactions he arranged, Mr. Valencia Ortega, in exchange for a commission on the sale, brought cocaine sellers and cocaine buyers together and negotiated deals involving multiple kilograms of cocaine.

Specific examples of Mr. Valencia Ortega's conduct are included in the plea agreement. R. 469, pp. 4-6. One clarification should be made¹: in regards to the September 1, 2013 cocaine seizure (R. 469, p. 6), Mr. Valencia-Ortega was only aware of 43 kilograms of cocaine, as opposed to the 93 kilograms ultimately seized. While he understands that he is liable under *Pinkerton* for the entire amount, he would like the record to be clear about the extent of his direct knowledge. Mr. Valencia Ortega deeply regrets his involvement in the drug trade, which he recognizes has done immeasurable harm not only to himself and his loved ones, but also both to the United States and his home country of Mexico.

¹ This was also noted on the record during Mr. Valencia-Ortega's plea colloquy.

II. Corrections to the Presentence Investigation Report

Mr. Valencia Ortega has two corrections to the PSR in addition to the guideline disagreement which is discussed in Section III below. First, Mr. Valencia-Ortega was arrested on January 26, 2014, not January 30, 2014. PSR, p. 2. Second, Mr. Valencia Ortega's home in Guadalajara is not worth \$2,166,872. PSR, p. 15, ¶73. He bought it in 2009 for approximately \$160,000-170,000. His best estimate is that it is now worth approximately \$210,000.

III. Guideline Calculation

As stated in the Plea Agreement, the government and Mr. Valencia Ortega have one disagreement over the guideline range: whether or not Mr. Valencia Ortega qualifies as a manager, and thus an aggravating role enhancement, under U.S.S.G. § 3B1.1(c). If the Court determines he does, his total offense level will be 33, which, when combined with criminal history category I, yields an advisory guideline range of 135-168 months' imprisonment. PSR, pp. 9, 16. If this Court determines that Mr. Valencia Ortega does not qualify as a manager, his total offense level will be 31, which results in an advisory guideline range of 108-135 months' imprisonment. R. 469, pp. 8-9.

There is no factual disagreement between the parties regarding the actions that Mr. Valencia Ortega took during his criminal activity—the only disagreement is whether or not these actions qualify him for an aggravating role enhancement. In determining whether a defendant is eligible for such an enhancement, “a key inquiry, though not the only inquiry, is whether the defendant exercised some control over at least one other participant.” *United States v. Mustread*, 42 F.3d 1097, 1104 (7th Cir. 1994). Here, while Mr. Valencia made arrangements for drug proceeds and, on occasion, drugs themselves, to be transported and/or laundered from Point A to Point B, he never exercised supervisory responsibility over anyone else involved in the

conspiracy. He did not have employees or subordinates; rather, he operated independently as a middleman, putting cocaine dealers in contact with money launderers. Both the cocaine dealers and money launderers would then arrange for their subordinates to handle ground-level aspects of the transactions—picking up the money, depositing it into various bank accounts or converting it to other commodities, etc. Mr. Valencia Ortega served as a point of contact for both ends of the transaction, and often monitored the progress of the laundering/transportation, but had no supervisory authority over the couriers and other low-level participants in the transaction.

In addition to this consideration, commentary to the guideline encourages the Court to analyze six additional factors in determining whether a defendant qualifies for an aggravating role enhancement: “1) the exercise of decision making authority; 2) the nature of participation in the commission of the offense; 3) the recruitment of accomplices; 4) the claimed right to a larger share of the fruits of the crime; 5) the degree of participation in planning or organizing the offense; [and] 6) the nature and scope of the illegal activity. U.S.S.G § 3B1.1 n. 4. While the nature and scope of the illegal activity was quite broad in this case, other factors weigh against an enhancement. For example, Mr. Valencia had no decision-making authority within the conspiracy; instead, he was a broker whose main role was to put people in contact with one another. He did not have authority to set the price of cocaine or the price of laundering cocaine proceeds back to Mexico. Rather, he charged a commission for himself based on the amount of money that was laundered. *See Mustread*, 42 F.3d 1097 (Making decisions for oneself is not “decision making authority” under § 3B1.1.) Notably, this commission, and the percentage of the proceeds he ultimately accumulated as compensation, was significantly less than the wealth accumulated by the “owners” of the cocaine in Mexico. His fee was also driven, to some extent, by the market price of such broker services, as he was far from the only money laundering broker

utilized as part of the conspiracy. Finally, there is no evidence Mr. Valencia Ortega recruited anyone into the conspiracy. While Mr. Valencia Ortega often arranged for money launderers to assist his drug dealing contacts, there is nothing to suggest that he is the one who first brought these individuals into the conspiracy, which had been in existence for many years.

Put simply, Mr. Valencia Ortega's role in the conspiracy is not the type of aggravated role that § 3B1.1 contemplates. As such, the two-level enhancement is not warranted under §3B1.1(c).

IV. Factors under 18 U.S.C. 3553(a)

The Court is no doubt familiar with the wide sentencing discretion provided under 18 U.S.C. § 3553(a) since the Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005), and reiterated that discretion in cases such as *United States v. Rita*, 551 U.S. 338 (2007), and *Gall v. United States*, 552 U.S. 38 (2007)². The statutory sentencing factors found in § 3553(a) provide the Court with the framework upon which to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing by taking into account, among other things, the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence imposed to satisfy the purposes of sentencing.

² The *Gall* court explained the post-*Booker* sentencing procedure as follows:

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines. As a matter of administration and to ensure nationwide consistency, the Guidelines should be starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In doing so, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variance...After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.”

The defense contends that even the low end of the 108-135 month guideline range is greater than necessary to satisfy the purposes of sentencing. For the following reasons, the defense requests a reasonable sentence below the low end of that guideline range.

a. History and Characteristics of the Defendant

Mr. Valencia Ortega was born and raised in Guadalajara, Mexico. Though his parents separated when he was a teenager, they provided Mr. Valencia Ortega and his three siblings with a comfortable childhood. His father financially supported the family and his mother provided day-to-day care and emotional support. He was close with both his parents and siblings while growing up, and the family remains close today.

As Mr. Valencia Ortega entered his later teenage years, his adolescent rebellious streak amplified. He began drinking and partying regularly, and at 16, moved out of the family home. During his senior year of high school, he married his girlfriend, Jessica, and ceased attending school. Marriage can be a stabilizing force for some, but for Mr. Valencia Ortega and his wife, it was not. In fact, both increased their use of alcohol and illicit substances (ecstasy and marijuana) in the following years.

Until approximately 2010, Mr. Valencia Ortega worked at his father's meat company in Guadalajara, first as a truck loader, then a delivery driver, and finally in accounting. In 2010 he left to begin his own venture of buying and selling cars. It was around this time that Mr. Valencia Ortega's substance abuse peaked, and he began making destructive decisions, including the decision to become involved in criminal activity.

Mr. Valencia Ortega did not begin his foray into criminal activity by laundering hundreds of thousands of dollars in drug money. To the contrary, he started off as a gopher for someone he knew who was involved in the drug trade. Mr. Valencia Ortega's social circle, however, set

him apart from other “entry level” criminals. Mr. Valencia Ortega and his siblings grew up with the children of high level Sinaloa cartel members. This social circle provided Mr. Valencia Ortega access to individuals engaged in large scale criminal activity relatively quickly—much more quickly, at least, than someone without such a network. It also provided him with credibility that outsiders did not have. Thus, Mr. Valencia Ortega was able to swiftly ascend from gopher to international money launderer, despite the short amount of time he had been involved in criminal activity.

While Mr. Valencia Ortega’s rapid ascension in criminal activity is not a mitigating factor, the fact that he was involved in the drug trade for a relatively brief amount of time (approximately 3.5 years), in comparison to the amount of time he spent working at a legitimate job (approximately 8 years), is mitigating, and should be considered under 18 U.S.C. § 3553(a).

b. The Need for the Sentence Imposed

In determining a sentence, section 3553(a) instructs the court to consider the “need for the sentence imposed to satisfy the purposes of sentencing.” Undoubtedly, one of the purposes of sentencing is to rehabilitate defendants. Mr. Valencia Ortega possesses qualities and has taken actions that demonstrate he has the ability to change for the better.

i. Immediate Acceptance of Responsibility

Upon his arrest, Mr. Valencia Ortega admitted to his crimes and accepted responsibility. While it is anticipated Mr. Valencia Ortega will receive a three-level reduction for acceptance of responsibility under § 3E1.1, this Court can also consider the immediate nature of his acceptance of responsibility under § 3553(a). *See United States v. McQueen*, 2006 WL 3206150 at *7 (S.D. Ind. Apr. 20, 2006)(Hamilton, J., presiding). In *McQueen*, where the defendant also immediately accepted responsibility, then-District Court Judge David F. Hamilton found that the “one-size-

fits-all discount of three offense levels” was insufficient to account for the defendant’s remorse.

Id. Judge Hamilton noted that “[o]ne reason for the reduction for acceptance of responsibility is that a defendant who recognizes his wrongdoing and accepts responsibility for it is more likely to learn the lesson from the experience and more likely to avoid committing future crimes.” *Id.*, (citing *United States v. Lopinski*, 240 F.3d 574, 575 (7th Cir.2001); *United States v. Cunningham*, 103 F.3d 596, 599 (7th Cir.1996); *United States v. Pryor*, 32 F.3d 1192, 1195 (7th Cir.1994)). “In other words,” Judge Hamilton found, “a guilty defendant’s immediate acceptance of responsibility is a test of character.” *Id.* For these reasons, Mr. Valencia Ortega requests that this Court consider his immediate acceptance of responsibility, in mitigation under § 3553(a).

ii. Mr. Valencia Ortega’s Personal Growth

Additionally, Mr. Valencia Ortega has matured since his arrest in January 2014. He recognizes that his excessive use of alcohol and abuse of drugs played a role in the irrational thinking that led him to engage in criminal activity.³ While incarcerated at the MCC, Mr. Valencia Ortega participated in the non-residential drug counseling program, which lasted several months.⁴ The program has given Mr. Valencia Ortega greater insight into the destructive choices he made throughout his teens and early adulthood, and has provided him with strategies he intends to use to maintain his sobriety after he is released from prison.

Mr. Valencia Ortega also has a plan for his life after his release. He endeavors to obtain a college degree, assist his father at his father’s business, and eventually expand the business. PSR, p. 13. Additionally, Mr. Valencia Ortega intends to provide financial and emotional support for his late brother’s family upon his return to Mexico. His family is aware of and

³ The irony that he helped make illicit drugs available to others, when he himself was suffering from their ill-effects, is not lost on Mr. Valencia Ortega. The fact that his actions furthered others’ pain and turmoil is deeply upsetting to him.

⁴ Mr. Valencia Ortega will not be permitted to participate in the Residential Drug Abuse Program within the BOP because of his immigration status.

supportive of this plan. Mr. Valencia Ortega's mother has informed the probation office that he has "repeatedly apologized [for his conduct], is remorseful" and wants to "make amends" for missing his brother's funeral due to his detainment and not being able to provide full emotional support for his mother during her grieving period." PSR, p. 12.

iii. Mr. Valencia Ortega Poses a Low Risk of Recidivism

The United States Sentencing Commission has conducted numerous studies that demonstrate that individuals facing their first term of incarceration, like Mr. Valencia Ortega, pose a remarkably low risk of recidivism. The fact that he has no prior convictions places Mr. Valencia Ortega in the category of those least likely to commit further crimes. *See A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factors Score*, p. 14-15 (January 4, 2005) (suggesting that Criminal History Category I does not adequately take into account the lack of recidivism for first time offenders).

Likewise, defendants such as Mr. Valencia Ortega who have never before been incarcerated generally require a shorter term of imprisonment to achieve the same goal of protecting the public from further crimes of the defendant. *See, United States v. Baker*, 445 F.3d 987, 992 (7th Cir. 2006); *United States v. Qualls*, 373 F.Supp.2d 873, 877 (E.D.Wisc. 2005) (Adelman, J.). *See also*, U.S. Dept. Of Justice, *An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories*, Executive Summary (February 4, 1994) (shorter prison sentence in drug cases will deter as well as long sentences); Miles D. Harar, *Do Guideline Sentences for Low-Risk Drug Traffickers Achieve Their Stated Purpose?*, 7 Fed.Sent.Rep. 22 (1994) (a guidelines sentence has no deterrent value and can actually increase recidivism).

Additionally, lengthy prison sentences do little to rehabilitate defendants. Long prison sentences can, in fact, increase the likelihood of recidivism. For example, “[a]mong low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences. *See, Valerie Wright, Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment*, The Sentencing Project (November 2010) at 6-7. While perhaps contrary to our expectations, upon further review, this correlation makes sense. “[W]hen prison sentences are relatively short, offenders are more likely to maintain their ties to family, employers, and their community, all of which promote successful reentry into society.” *Id.* at 7. Conversely, longer prison sentences estrange defendants from these ties—“children grow up; loved ones drift away; employment opportunities fade; parents die.” *United States v. Diaz*, No. 11 CR 821-2, 2013 WL 322243 at *18 (E.D.N.Y Jan. 28, 2013) (Gleeson, J.)

The position that Mr. Valencia Ortega finds himself in today, convicted of a federal offense, separated from his family, and facing the daunting tasks of maintaining a relationship with his family members and rebuilding his life, is significant punishment. This, in and of itself, should assure the Court that he will never again participate in criminal activity.

c. Collateral Consequences of Criminal Activity

Mr. Valencia Ortega submits himself to the Court, and is prepared to accept whatever sentence the Court may impose. It should be recognized, however, that Mr. Valencia Ortega has already suffered greatly as a result of his criminal conduct.

Initially, all of Mr. Valencia Ortega’s family resides in Mexico. Unlike many non-citizen defendants, Mr. Valencia Ortega has never resided in the United States—he was arrested when he traveled here legally for a vacation. For the past two and a half years, Mr. Valencia Ortega has been separated from his family not just by prison bars, but by thousands and thousands of

miles. While a few of Mr. Valencia Ortega's family members have made the trip to Chicago to visit him, these visits are few and far between. Mr. Valencia Ortega is particularly heartbroken about not being able to see his daughter and mother. This situation will, of course, continue after he is sentenced and sent to a BOP facility.⁵

Secondly, Mr. Valencia Ortega now recognizes that the drug trade has robbed him of some of the most important things in his life. It was his involvement in drugs that led to the deterioration of his marriage and the separation from his wife. This situation has, unsurprisingly, grown tenuous since his arrest, and the two are in the process of divorcing. Mr. Valencia Ortega has also lost his brother and best friend, Hector. In May 2015, Hector, who was also charged in the instant case, was murdered in Mexico. While the circumstances of his murder remain unclear, it appears Hector may have been an unintended victim in a drug-related shooting. The devastation Mr. Valencia Ortega felt as a result of Hector's death was only compounded by his incarceration in Chicago, and his inability to provide emotional and financial support for his family and Hector's wife and children.

Mr. Valencia Ortega blames the drug trade for Hector's death and wants to distance himself from the drug trade as far as possible. This has made him more determined to lead a productive, law-abiding life upon his release from prison. He respectfully requests that the Court consider this in determining his sentence.

⁵ Mr. Valencia Ortega would like to serve his time in Mexico, and defense counsel intend to make this request to the appropriate government agency. However, based on discussions with the government, the prospect of Mr. Valencia Ortega being transferred to a Mexican prison appears far from certain. Additionally, even if such a request is granted, Mr. Valencia Ortega will serve at least a portion of his sentence in the United States.

V. Conclusion

For all of the reasons stated above, it is submitted that a guideline sentence is greater than necessary in this case. Instead, Mr. Valencia Ortega respectfully requests that this Court impose a reasonable sentence below the applicable guideline range.

Respectfully submitted,

s/Lisa L. Wood
LISA L. WOOD, Attorney for Defendant
Edgar Valencia Ortega

Lisa L. Wood
Blegen & Garvey
53 West Jackson Boulevard, Suite 1437
Chicago, Illinois 60604
(312) 957-0100

Paul M. Brayman
Law Offices of Paul M. Brayman
727 S. Dearborn St., Suite 712
Chicago, IL 60605
(312) 427-9766