

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA, §  
v. § CRIMINAL NO. 4:17-cr-00514-3  
CESAR DAVID RINCON GODOY § UNDER SEAL  
§  
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§

**GOVERNMENT’S CONSOLIDATED MOTION FOR DEPARTURE  
PURSUANT TO U.S.S.G. § 5K1.1 AND MEMORANDUM IN AID OF  
SENTENCING**

The United States, by and through its undersigned attorneys, hereby respectfully submits this Consolidated Motion for Departure Pursuant to U.S.S.G. § 5K1.1 and Memorandum in Aid of Sentencing for Cesar David Rincon Godoy (“Defendant Cesar Rincon” or “Defendant”). On April 19, 2018, Defendant Cesar Rincon pleaded guilty under seal pursuant to a plea agreement to Count 1 of the Indictment, which charged him with conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h).

For the reasons discussed below, the United States requests that the Court: (1) adopt the government’s calculation of the advisory Guidelines; (2) grant the government’s Motion for a Departure Pursuant to U.S.S.G. § 5K1.1 based on Defendant Cesar Rincon’s substantial assistance and reduce Defendant’s advisory

guideline range by [REDACTED] and (3) sentence Defendant to a term of imprisonment of [REDACTED].

## **I. FACTUAL BACKGROUND**

Defendant Cesar Rincon is expected to be sentenced in connection with the government's long-running investigation into bribery and corruption at Petróleos de Venezuela, S.A. ("PDVSA"), the Venezuelan state-owned and state-controlled oil company. At present, the government has announced charges against 29 individuals in connection with the investigation, 23 of whom have pleaded guilty, and 20 of whom have already been sentenced. The charges range from violations of the FCPA, money laundering, wire fraud, conspiracy, and tax offenses. In order to better enable this Court to assess the relative culpability of each of the defendants appearing before it and to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), the government sets forth below a summary of the wider investigation into bribery and corruption within PDVSA, as well as a description of Defendant's role within the broader conspiracy.

### **1. The Government's Investigation**

The initial focus of the investigation was on Roberto Rincon Fernandez ("Roberto Rincon") and Abraham Shiera Bastidas ("Shiera"), businessmen living in Houston and Miami, respectively, who ran American corporations that provided goods and services to PDVSA. The investigation revealed that Roberto Rincon and Shiera

were paying bribes to PDVSA officials in charge of procurement in order to obtain improper business advantages—namely, additional contracts with PDVSA and the ability to get paid on outstanding invoices ahead of other PDVSA vendors. [REDACTED]

[REDACTED] Ramos, Gravina, and Maldonado each admitted to having accepted bribes from Roberto Rincon and Shiera and to having conspired to launder the proceeds of the bribery scheme. [REDACTED]

[REDACTED]. *See United States v. Christian Javier Maldonado Barillas*, No. 4:15-cr-00635; *United States v. Jose Luis Ramos Castillo*, No. 4:15-cr-00636; *United States v. Alfonso Eliezer Gravina Munoz*, No. 4:15-cr-00637.

On December 10, 2015, Roberto Rincon and Shiera were indicted under seal on 18 counts of conspiracy to violate the FCPA and to commit wire fraud, substantive violations of the FCPA, conspiracy to commit money laundering, and substantive money laundering. *See United States v. Roberto Enrique Rincon Fernandez and Abraham Jose Shiera Bastidas*, No. 4:15-cr-00654. Shiera pleaded guilty in March 2016, and Roberto Rincon pleaded guilty in June 2016. In connection with the government’s ongoing investigation, several of Shiera’s and Roberto Rincon’s business partners and associates

have also been charged, pleaded guilty, and sentenced, as have additional PDVSA officials who accepted and laundered bribes, and additional PDVSA vendors who were also paying bribes.<sup>1</sup>

Most significantly, in August 2017, a grand jury sitting in the Southern District of Texas returned a 20-count indictment charging Defendant Cesar Rincon and four other former Venezuelan government officials with various money laundering and FCPA offenses. *See United States v. Luis Carlos De Leon Perez, et al.*, No. 4:17-cr-00514. The indictment alleged that, in or about 2011, a group of then-current and former high-level officials of PDVSA and PDVSA subsidiaries (referred to in the Indictment as the “management team”) solicited several PDVSA vendors for bribes and kickbacks in exchange for providing assistance to those vendors in connection with their PDVSA business. The indictment further alleged that the co-conspirators laundered the proceeds of the bribery scheme through a series of complex international financial transactions.

In addition to Defendant Cesar Rincon, the indictment charged four other members of the management team: Luis Carlos De Leon Perez (“De Leon”), the former finance director for Electricidad de Caracas, a majority-owned subsidiary of PDVSA;

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<sup>1</sup> *See United States v. Moises Abraham Millan Escobar*, No. 4:16-cr-00009, and *United States v. Juan Jose Hernandez Comerma*, No. 4:17-cr-00005 (Shiera’s former employee and business partner respectively who each participated in the scheme); *see also United States v. Karina del Carmen Nunez Arias*, No. 4:16-cr-00436 (PDVSA official who conspired with Rincon and Shiera to launder proceeds of the bribery scheme).

Nervis Gerardo Villalobos Cardenas (“Villalobos”), the former Vice Minister of Energy for Venezuela; Alejandro Isturiz Chiesa (“Isturiz”), the former Assistant to the President of Bariven; and Rafael Ernesto Reiter Munoz (“Reiter”), the former Head of Security and Loss Prevention for PDVSA. In total, the indictment alleged that accounts controlled by Roberto Rincon and Shiera transferred over \$27 million to a Swiss bank account, from which \$27 million was then transferred to other accounts used in connection with the scheme.

In September 2019, a superseding indictment that charged three additional individuals—Javier Alvarado Ochoa (“Alvarado”), the former President of Bariven (who was also a member of the management team); Daisy Teresa Rafoi Bleuler (“Rafoi”), a Swiss banker; and Paulo Jorge Da Costa Casquero Murta (“Murta”), a Portuguese-Swiss banker—was unsealed. To date, De Leon has pleaded guilty and been sentenced by this Court. Murta has been extradited to the United States from Portugal and is scheduled for a plea and sentencing on May 21, 2024. Villalobos and Reiter were arrested in Spain and remain in extradition proceedings. Rafoi was arrested in Italy in July 2019, but has since fled the Italian extradition proceedings and returned to Switzerland. She remains a fugitive. Isturiz is also a fugitive; and Spain has denied the government’s request for Alvarado’s extradition.<sup>2</sup>

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<sup>2</sup> In addition to the original investigation, in which the government relied on information from Ramos, Gravina, Maldonado, and Millan to indict Roberto Rincon and Shiera, and then built on information from Roberto Rincon and Shiera to indict the higher-level officials charged in *United States v. De Leon et al.*, the government’s investigation into corruption at PDVSA and Bariven remains ongoing and has generated a number of spin-off investigations involving PDVSA vendors other than Rincon and

This memorandum will focus on Defendant Cesar Rincon, who is the former General Manager of Bariven, PDVSA's procurement subsidiary. Defendant Cesar Rincon was charged with two counts of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1965(h) (Counts 1 and 3), and four substantive counts of money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i) (Counts 8 through 11). On October 27, 2017, he was arrested in Spain in connection with this case, subsequently waived extradition, and was transported to the United States on February 9, 2018.

On April 19, 2018, Defendant Cesar Rincon pleaded guilty to Count 1 of the Indictment (conspiracy to commit money laundering), and on that same date, an unopposed motion for imposing money judgment in the amount of \$7,033,504.71 was granted. He is scheduled to be sentenced on May 21, 2024.

## **2. Defendant Cesar Rincon's Conduct**

From at least 2011 until June 2013, Defendant Cesar Rincon was employed by PDVSA or Bariven. In January 2012, he was named as the General Manager of Bariven. In his capacity as General Manager, Defendant had the responsibility for assembling and revising Bariven's weekly payment proposals, which set forth the debt Bariven owed to its numerous vendors and proposed payments of various amounts to selected

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Shiera, *see United States v. Darwin Enrique Padron Acosta*, No. 4:16-cr-00437 (S.D. Tex.); *United States v. Charles Quintard Beech III*, No. 4:17-cr-00006 (S.D. Tex.); *United States v. Juan Carlos Castillo Rincon*, No. 4:18-cr-00200 (S.D. Tex.); *United States v. Rafael Enrique Pinto Franceschi and Franz Herman Muller Huber*, No. 4:19-cr-00135 (S.D. Tex.); *United States v. Jose Manuel Gonzalez Testino*, No. 4:19-cr-00341 (S.D. Tex.), and other PDVSA officials who accepted bribes from those vendors, *see United States v. Jose Orlando Camacho*, No. 4:17-cr-00394; *United States v. Ivan Alexis Guedez*, No. 4:18-cr-00611.

vendors. These payment proposals were ultimately authorized by Alvarado, who was the President of Bariven. It was at this time that Defendant entered into the bribery and money laundering conspiracy with Shiera, Roberto Rincon and other members of the management team. His involvement in the conspiracy continued through 2013.

Specifically, from approximately January 2012 through 2013, Defendant Cesar Rincon entered into a conspiracy with a group of then-current and former high-level officials of PDVSA or other agencies of the Venezuelan government, including his co-defendants De Leon, Villalobos, Isturiz, Reiter, as well as Alvarado and others, to solicit PDVSA vendors Roberto Rincon and Shiera for bribes and kickbacks in exchange for providing assistance to Roberto Rincon and Shiera in connection with their PDVSA business. Roberto Rincon, a resident of the Southern District of Texas, was the owner of a number of U.S.-based energy companies, including several companies based in the Southern District of Texas, which supplied equipment and services to PDVSA. Shiera also owned a number of U.S.-based energy companies that supplied equipment and services to PDVSA. Roberto Rincon and Shiera worked together on a number of PDVSA contracts and contract bids.

The management team agreed to give Roberto Rincon's and Shiera's companies payment priority over other PDVSA vendors, ensuring that Roberto Rincon's and Shiera's companies, including their U.S.-based companies, would get at least weekly payments on outstanding PDVSA invoices, despite the fact that Venezuela was experiencing a liquidity crisis and not all of PDVSA's suppliers were being paid, and to

provide Roberto Rincon's and Shiera's companies with assistance in winning future PDVSA business. In exchange for this assistance, Roberto Rincon and Shiera paid bribes, including by using wire transfers from, to, or through financial institutions in the United States, in the amount of 10% of all payments Roberto Rincon and Shiera received from PDVSA to an account in Switzerland for the benefit of the management team, including De Leon, Villalobos, and Alvarado.

As part of the bribery scheme, Defendant Cesar Rincon and Isturiz were responsible for ensuring that Roberto Rincon's and Shiera's companies, including their U.S. based companies, were included in Bariven's weekly payment proposals and identified on the payment proposal as companies that would receive payment priority. In addition, Defendant and Isturiz shared draft payment proposals, before they were finalized, with Roberto Rincon and Shiera for their review. In an attempt to conceal the fact that he was sharing such inside information with Roberto Rincon and Shiera, Defendant used private email accounts to forward the payment proposals to Roberto Rincon and Shiera or saved the proposals in the draft folder of a private email account and then shared the password with Roberto Rincon and Shiera to enable them to access the documents without creating a paper trail. Often, after reviewing the payment proposals, Roberto Rincon and Shiera would contact Defendant or Isturiz and request that their companies receive additional payments or that the distribution of proposed payments be reallocated among their various companies. After Isturiz left Bariven at



the end of 2012, Defendant assumed primary responsibility for these duties until Defendant resigned as General Manager of Bariven on or about June 2013.

In exchange for these official acts that Defendant Cesar Rincon took in his capacity as General Manager of Bariven in order to assist Roberto Rincon's and Shiera's companies, including their U.S.-based companies, in receiving payment priority and receiving additional PDVSA contracts, Roberto Rincon and Shiera offered to pay bribes directly to Defendant, in the amount of an additional 1-2% above what they were already paying to the management team. Defendant then agreed with Roberto Rincon and Shiera to launder the proceeds of their bribery scheme by engaging in financial transactions, including transactions to, from, or through bank accounts in the United States, designed to conceal the nature, source, and ownership of the bribe proceeds. For example, Defendant was paid from multiple bank accounts controlled by Roberto Rincon and Shiera, and typically the payments came from accounts which were in the names of companies other than the companies being awarded PDVSA contracts and receiving payments from PDVSA. In order to further conceal the nature and ownership of the bribe proceeds, Defendant directed Shiera to send bribe payments to accounts held in the names Defendant's relatives or accounts held in the name of companies controlled by Defendant's relatives. Defendant also received bribe payments into bank accounts opened for his benefit in Switzerland. Specifically, Shiera introduced Defendant to an individual identified in the Indictment as "Swiss Banker 1" (Rafoi, who

was later charged in the Superseding Indictment), who helped Defendant open a bank account in the Switzerland into which Roberto Rincon sent a bribe payment.

In total, Roberto Rincon sent at least \$851,000 in bribes to Defendant Cesar Rincon, including two wire transfers totaling \$315,000 that were sent from an account in the Southern District of Texas held in the name of a company owned and controlled by Roberto Rincon to an account in Switzerland for the benefit of Defendant. Defendant received at least \$540,122.03 in bribes from Shiera.

In addition, Defendant Cesar Rincon also solicited and received bribes from other owners of energy companies based in the United States in exchange for his assistance in helping those individuals and their companies win business with PDVSA and obtain payment from PDVSA on outstanding invoices ahead of other PDVSA vendors. Specifically, Defendant received at least \$1,625,696 in bribes from an individual identified in the Indictment as “Businessman 3,” a U.S. lawful permanent resident and a resident of Florida who owned and controlled companies based in the United States that did business with PDVSA; at least \$729,000 in bribes from a pair of Florida-based businessmen who jointly owned and controlled several businesses based in the United States that did business with PDVSA; and at least \$645,963.86 in bribes from a resident of the Southern District of Texas who owned and controlled a business based in the Southern District of Texas that did business with PDVSA. Defendant then conspired with those individuals to launder the proceeds of their schemes. In total, Defendant conspired with others to launder at least \$7,033,504.71 in proceeds

from the various bribery schemes in which he participated through various financial transactions, including wire transfers to, from, or through bank accounts in the United States.

## **II. DISPUTED SENTENCING GUIDELINES**

The United States Probation Office (“Probation”) prepared an initial PSR for Defendant Cesar Rincon, which was provided to the parties on December 19, 2023. On January 2, 2024, Defendant Cesar Rincon filed objections to that PSR. Probation responded to the objections on January 16, 2024, through an Addendum and Revised PSR. On February 26, 2024, Defendant filed a Response to the [PSR] and Request for Non-Custodial Sentence, which contained additional objections along with a sentencing recommendation. On March 12, 2024, Probation submitted a final PSR and a Second Addendum to the Pre-Sentence Report, with an explanation for its revised calculation of the advisory Guideline range.

In the PSR, Probation miscalculated the advisory guideline range. First, Probation erroneously concluded that the base offense level was an 8, pursuant to U.S.S.G. § 2S1.1(b). Probation opined in its Second Addendum to the PSR that since Defendant was a public official and not criminally liable for a FCPA violation, it could not be used as the underlying offense in calculating the base offense level. *See* DE 608 at 1. As discussed below, Defendant Cesar Rincon’s base offense level should be calculated using U.S.S.G. § 2S1.1(a). The proper analysis for determining its

applicability is whether the defendant was accountable for the conduct as Relevant Conduct, and not whether he committed the conduct or was criminally liable for the conduct.

The PSR also failed to include a two-level increase to the advisory Guidelines, pursuant to U.S.S.G. § 2C1.1(b)(1), since the conduct involves more than one bribe. Finally, Defendant Cesar Rincon would be entitled to an additional one-point reduction to his guidelines for acceptance of responsibility. *See* U.S.S.G. § 3E1.1(b).

### **1. Base Offense Level**

The base offense level for money laundering is determined by U.S.S.G. § 2S1.1(a). Subsection (a)(1) provides that the base offense level is determined by the underlying offense from which the laundered funds were derived, if “(A) the defendant committed the underlying offense (**or would be accountable for the underlying offense under subsection (a)(1)(A) of U.S.S.G. § 1B1.3 (Relevant Conduct)**); and (B) the offense level for that offense can be determined.” (emphasis added). Here, the underlying offense is a violation of the FCPA.

In this case, Defendant Cesar Rincon is “accountable for the underlying offense” as Relevant Conduct. The Sentencing Guidelines define Relevant Conduct as “(A) all acts and omissions committed, aided, abetted, counseled, commanded, indicted, procured, or willfully caused by the defendant; and (B) in the case of a jointly undertaken criminal activity . . . , all acts and omissions of others that were – (i) within

the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity – that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.” *See* U.S.S.G. § 1B1.3. In § 1B1.3(A), the “focus is on specific acts and omissions for which the defendant is to be held accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator,” *See Id.*, App. Note 1. Similarly, in § 1B1.3(B, “[i]n the case of jointly undertaken criminal activity, . . . a defendant is accountable for the conduct (acts and omissions) of others that was: (i) within the scope of the jointly undertaken criminal activity; (ii) in furtherance of that criminal activity; and (iii) reasonably foreseeable in connection with that criminal activity.” *See Id.*, App. Note 3(A). If a defendant meets these requirements, he is accountable for the Relevant Conduct – including the underlying offense (FCPA) – regardless of whether he committed the act or was able to commit it.

Defendant Cesar Rincon clearly meets these requirements. In this case, Defendant entered a plea to a two-object money laundering conspiracy: (1) to conduct financial transaction involving proceeds of a specified unlawful activity (FCPA), knowing that the transaction was designed in whole or in part to conceal and disguise the nature and source of the specified unlawful activity (FCPA); and (2) to promote the carrying on of specified unlawful activity (FCPA). For the money laundering

conviction, it is not necessary that he committed the underlying offense, or that he could legally commit it.

Similarly, Defendant Cesar Rincon need not have committed the underlying offense (or be legally capable of committing it) to be held accountable for it as Relevant Conduct. The Application Note to the § 1B1.3 provides further guidance as to whether a defendant can be held accountable for the acts or omissions of others in a “jointly taken criminal activity” (which in this case, is the conspiracy to commit money laundering). The court must first determine the scope of the criminal activity that the particular defendant agreed to jointly undertake, that is, “the scope of the specific conduct and objectives embraced by the defendant’s agreement.” *Id.*, at App. Note 3(B). The “court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of others.” *Id.* Second, “the court must determine if the conduct (acts or omissions) of others was in furtherance of the jointly undertaken criminal activity.” *Id.*, at App. Note 3(C). And finally, “the court must determine if the conduct (acts or omissions) of others . . . was reasonably foreseeable in connection with the criminal activity. *Id.*, at App. Note 3(D).

Here, the very purpose of the money laundering was to advance the underlying offense (FCPA), by both concealing and promoting it. As such, it is clearly within the scope and in furtherance of the money laundering conspiracy. It was also reasonably foreseeable in the context of the money laundering conspiracy. Hence, Defendant Cesar Rincon is accountable for the conduct amounting to the FCPA violation as

Relevant Conduct – even if the acts or omissions constituting the offense were committed by his co-conspirators.

It therefore follows that U.S.S.G. § 2C1.1(a), which covers offenses involving the bribery of public officials, be used in calculating the base offense level. Since Defendant Cesar Rincon was a foreign official during the criminal conspiracy, his base offense level is 14. *See* U.S.S.G. § 2C1.1(a)(1).

## **2. Appropriate Increases (Specific Offense Characteristics) and Decreases to the Base Offense Level**

An increase to the base offense level is warranted due to several specific offense characteristics – including: (1) a two-level increase since the offense involved more than one bribe, *see* U.S.S.G. § 2C1.1(b)(1); (2) a two-level increase since the conviction was under 18 U.S.C. § 1956, *see* U.S.S.G. § 2S1.1(b)(2)(B); (3) a two-level increase since the offense involved sophisticated money laundering, *see* U.S.S.G. §§ 2S1.1(b)(3)(A) and(B); and (4) an eighteen-level increase due to the amount of the benefit received, *see* U.S.S.G. §§ 2C1.1(b)(2) and 2B1.1(b)(1)(J).<sup>3</sup>

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<sup>3</sup> Defendant Cesar Rincon acknowledged as part of the plea agreement that he conspired with others to launder \$7,033,504.71 in illicit proceeds. This amount is therefore attributable to him for the purpose of the “benefit received” calculation; and hence, he would receive an 18-level increase to his base offense level, pursuant to USSG § 2B1.1(b)(1)(J).

Defendant Cesar Rincon is entitled to the following decreases to his offense level: (1) three-level decrease for acceptance of responsibility, *see* U.S.S.G. § 3E1.1;<sup>4</sup> and (2) two-level decrease as a “Zero Point Offender,” *see* U.S.S.G. § 4C1.1.<sup>5</sup>

The government proposes the following advisory Guideline range for Defendant Cesar Rincon:

|                                  |           |  |
|----------------------------------|-----------|--|
| Base Offense Level               | <b>14</b> | USSG. § 2S1.1(a)(1),<br>2C1.1(a)(1)<br>(underlying offense is the FCPA violation, and the offense level is determined under<br>USSG § 2C1.1; defendant is a public official under § 2C1.1(a)(1)) |
| Specific Offense Characteristics | <b>+2</b> | U.S.S.G. § 2C1.1(b)(1)<br>(more than one bribe)  |
| Specific Offense Characteristics | <b>+2</b> | U.S.S.G. § 2S1.1(b)(2)(B)<br>(conviction for conspiracy to violate § 1956)   |

<sup>4</sup> Consistent with its obligations under Defendant Cesar Rincon’s plea agreement, the government hereby moves for an additional one-level reduction under U.S.S.G. § 3E1.1 in light of the fact that he “has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.”

<sup>5</sup> The revised PSR includes the “Zero-Point Offender” reduction, which came into effect last year. On April 5, 2023, the U.S. Sentencing Commission promulgated a series of amendments to the U.S. Sentencing Guidelines due to take effect on November 1, 2023 – including U.S.S.G. § 4C1.1, which provides for a two-level reduction for defendants who have zero criminal history points if the defendant meets ten listed criteria (including a zero criminal history from Chapter 4, Part A). Defendant Cesar Rincon satisfies the criteria provided in § 4C1.1, and is therefore entitled to a two-level reduction to his base offense level.



|                                  |            |  |
|----------------------------------|------------|--|
| Specific Offense Characteristics | <b>+2</b>  | U.S.S.G. §§ 2S1.1(b)(3)(A) and(B) (sophisticated laundering) |
| Value of the Benefit Received    | <b>+18</b> | USSG § 2C1.1(b)(2)<br>USSG § 2B1.1(b)(1)(J)                  |
| Acceptance of Responsibility     | <b>-3</b>  | U.S.S.G. § 3E1.1   |
| “Zero-Point Offenders”           | <b>-2</b>  | U.S.S.G. § 4C1.1   |
| Total Offense Level              | <b>33</b>  |  |
| Criminal History Category        | <b>I</b>   |  |

The overall advisory Guideline range associated with a Total Offense Level of 33 and a Criminal History Category of I is 135-168 months. U.S.S.G. § 5 Part A (Sentencing Table).

### **3. Defendant Is Properly Considered a Public Official under the Guidelines**

In Defendant’s Sentencing Memorandum, he contests using U.S.S.G. § 2C1.1(a)(1) as the base offense level, arguing that he is not a “public official” because he does not fall within the definition of a public official, as defined by 18 U.S.C. § 201(a)(1). DE 628 at 2. While this may be true, Application Note to U.S.S.G. § 2C1.1 states that the definition for public official (in the context of the Guidelines) is not limited to this statutory provision and “shall be construed broadly.” U.S.S.G. § 2C1.1 App. Note 1. It provides five categories that qualify as public officials, which, pursuant to subsection (E), includes an individual who: “(i) is in a position of public trust with official responsibility for carrying out a government program or policy; (ii) acts under color of law or official right; or (iii) participates so substantially in government

operations as to possess de facto authority to make governmental decisions.” *Id.* There is no requirement that the public official be a U.S. official. In this case, Defendant Cesar Rincon served as the General Manager of Bariven, an instrumentality of the Venezuelan government. As such, he was in a position of trust and had decision-making responsibility concerning significant equipment purchases for and on behalf of PDVSA, a Venezuelan state-owned and state-controlled oil company. Furthermore, Defendant, by his plea to the Indictment, acknowledged that he is in fact a “foreign official,” as that term is defined under the FCPA. *See* Indictment at ¶ 2 (DE 1). Hence, for purposes of the Guidelines, Defendant is properly considered a public official, and § 2C1.1(a)(1) is the appropriate provision for determining his base offense level.<sup>6</sup>

### III. SECTION 5K1.1 MOTION FOR SUBSTANTIAL ASSISTANCE

Under Section 5K1.1 of the Sentencing Guidelines, “[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.” U.S.S.G. § 5K1.1. According to the Commentary of Section 5K1.1, though substantial weight should be given to the government’s evaluation of the defendant’s assistance, the Court must still conduct its

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<sup>6</sup> The following PDVSA officials have been sentenced by the Court and qualified as public officials under the Guidelines: Maldonado, Ramos, Nunez, Gravina, Camacho, Guedez, Pena, and De Jongh.

own inquiry into the extent of the defendant's cooperation, and must state the reasons for reducing the otherwise applicable sentence under this section. *Id.*

Defendant Cesar Rincon has provided substantial assistance to the government in its investigation of PDVSA. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

It is the government's position that Defendant Cesar Rincon provided substantial assistance within the meaning of U.S.S.G. § 5K1.1. Consequently, the government requests that this Court reduce his sentence [REDACTED] below the advisory Guidelines range. As set forth above, the government's position is that Defendant's advisory Guidelines range is 135-168 months. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### IV. GOVERNMENT’S POSITION ON SENTENCING

##### 1. Applicable Law

While the Sentencing Guidelines are no longer mandatory, they nevertheless continue to play a critical role in the federal sentencing process. *See United States v. Booker*, 543 U.S. 220, 252 (2005). “Although *Booker* rendered the Guidelines advisory, district courts are still required to properly calculate the advisory guidelines range prior to imposing a sentence.” *United States v. Williams*, 520 F.3d 414, 422 (5th Cir. 2008); *see also United States v. Perez-Pena*, 453 F.3d 236, 241 (4th Cir. 2006) (“That the guidelines are non-binding in the wake of *Booker* does not mean that they are irrelevant to the imposition of a sentence. To the contrary, remaining provisions of the Sentencing Reform Act require the district court to consider the guideline range applicable to the defendant and pertinent policy statements of the Sentencing Commission.”).

Apart from the Sentencing Guidelines, this Court also must consider the other factors set forth in 18 U.S.C. § 3553(a). Section 3553(a) directs the Court to impose a sentence “sufficient, but not greater than necessary” to further the following purposes:

- (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). Section 3553(a) further directs the Court—in determining the particular sentence to impose—to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense.<sup>7</sup> 18 U.S.C. § 3553(a).

**2. A Custodial Sentence Is Warranted in Light of the § 3553(a) Factors**

The nature and circumstances of the offense and the history and characteristics of Defendant Cesar Rincon are adequately set forth above, in the PSR, and in the other filings in this case. Although, as explained previously, the government recognizes that Defendant’s assistance to the government’s investigation makes him deserving of a downward departure under U.S.S.G. § 5K1.1, the remaining factors set forth in 18 U.S.C. § 3553(a), particularly the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment

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<sup>7</sup> With respect to restitution, the government agrees with Probation that there are no identifiable victims in this offense and that “[r]estitution is not an issue in this case.” PSR ¶¶ 106, 107 (DE 607).

for the offense, and to afford adequate deterrence to criminal conduct, warrant a custodial sentence in this case.

The corrosive effects of corruption of foreign officials can hardly be debated: among other harms, money laundering and bribery schemes undercut fair business practices, undermine the rule of law, destabilize countries and even entire regions, and facilitate human rights abuses. Only the corrupt prosper; societies, governments, and legitimate businesses lose. The United States has long recognized the ills caused by bribery of foreign officials and sought to combat them. The FCPA was enacted by Congress in 1977 to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, to level the playing field between corrupt businesses and those who refused to pay bribes, and to ensure stability in the U.S. economy by forcing companies to give potential investors an accurate picture of their finances. *See United States v. Kay*, 359 F.3d 738, 746 (5th Cir. 2004) (noting that, in passing the FCPA, "Congress resolved to interdict such bribery, not just because it is morally and economically suspect, but also because it was causing foreign policy problems for the United States"). A term of imprisonment in this case would send a strong message that violations of the FCPA and money laundering are a serious crime that undermine basic values of fair play and the rule of law.

A sentence of incarceration is also necessary to promote the goal of general deterrence. In white collar cases, particularly complex economic crimes, general deterrence is of particular importance because the crimes are often difficult to detect,



investigate, and prosecute. *See, e.g., United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) (“Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it.”). Furthermore, as the Fifth Circuit has noted, scholarly research supports the view that “there is a greater connection in white collar cases between sentencing and future as financial crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity.” *United States v. Hoffman*, 901 F.3d 523, 556 (5th Cir. 2018) (internal quotation marks and citations omitted), *cert. denied*, No. 18-1049, 2019 WL 536773 (May 20, 2019); *see also United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (“Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.”); *United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006) (deterrence of white-collar crime is “of central concern to Congress”).<sup>8</sup>

In addition, a government recommendation for a term of imprisonment of [REDACTED] [REDACTED] appropriately situates Defendant Cesar Rincon with respect to the government’s recommendation for other defendants who have pleaded guilty to similar

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<sup>8</sup> The government acknowledges that specific deterrence is likely not an issue in this case. That fact, however, does not mean that a custodial sentence is not warranted. “Indeed, the Congress that adopted the § 3553 sentencing factors emphasized the critical deterrent value of imprisoning serious white collar criminals, even where those criminals might themselves be unlikely to commit another offense.” *Martin*, 455 F.3d at 1240.

conduct, as well as to other individuals in the broader PDVSA investigation. To date, twenty defendants in the broader PDVSA corruption investigation in this district have been sentenced, as summarized below:

|   | Name/<br>Case Number                   | Offense(s)  | Laundered<br>Funds/Personal<br>Benefit/Benefit<br>Received  | Sentence  |
|---|--|---|---|---|
| 1 | Maldonado,<br>15-cr-635                | 18 U.S.C. § 371 ( <i>money laundering</i> )   | \$235,915<br>(bribe proceeds<br>laundered)  | 2 years' probation  |
| 2 | Ramos,<br>15-cr-636                    | 18 U.S.C. § 371;<br>18 U.S.C. § 371 ( <i>two separate conspiracies to launder money</i> )   | \$7,814,315.15<br>(bribe proceeds<br>laundered)   | 18 months' imprisonment;<br>2 years SR;<br>\$15,000 fine  |
| 3 | Gravina,<br>15-cr-637 and<br>18-cr-670 | 18 U.S.C. § 371 ( <i>money laundering</i> );<br>26 U.S.C. § 7206(1); ( <i>false statements on tax return</i> )<br>18 U.S.C. § 371 ( <i>obstruction of justice</i> ) | \$590,446<br>(value of laundered funds)   | 70 months' imprisonment;<br>3 years SR                    |
| 4 | Millan,<br>16-cr-009                   | 18 U.S.C. § 371 ( <i>FCPA</i> )   | \$533,578.13<br>(personal benefit)<br><br>\$102,567,282.63<br>(benefit received by Shiera's companies as a result of corrupt contracts) | 3 years' probation;<br>\$15,000 fine                      |
| 5 | Nunez,<br>16-cr-436                    | 18 U.S.C. § 371 ( <i>money laundering</i> )   | \$3,238,720.19<br>(bribe proceeds<br>laundered)   | 36 months' imprisonment;<br>1 year SR                     |
| 6 | Padron,<br>16-cr-437                   | 18 U.S.C. § 371 ( <i>money laundering and FCPA</i> )  | \$9,052,397.73<br>(personal benefit)  | 18 months' imprisonment;<br>3 years SR                    |
| 7 | Hernandez,<br>17-cr-005                | 18 U.S.C. § 371 ( <i>FCPA</i> )<br>15 U.S.C. § 78dd-2 ( <i>substantive FCPA violation</i> )   | \$3,000,000<br>(personal benefit)<br><br>\$145,465,892.38<br>(benefit received by Shiera's companies as a result of corrupt contracts)  | 48 months' imprisonment;<br>3 years SR;<br>\$127,000 fine |
| 8 | Beech,<br>17-cr-006                    | 18 U.S.C. § 371 ( <i>FCPA</i> )   | \$833,452<br>(personal benefit)   | 12 months and 1 day of imprisonment; 2                    |

|    | Name/<br>Case Number   | Offense(s)   | Laundered<br>Funds/Personal<br>Benefit/Benefit<br>Received |  | Sentence   |
|----|------------------------|--|--|--|--|
|    |                        |  |  |  | years SR; \$10,000 fine  |
| 9  | Camacho,<br>17-cr-394  | 18 U.S.C. § 371<br>( <i>money laundering</i> )   | \$1,318,648<br>(personal benefit)                          |  | 12 months and 1 day of imprisonment; 2 years SR; \$20,000 fine   |
| 10 | Guedez,<br>18-cr-611   | 18 U.S.C. § 371<br>( <i>money laundering</i> )   | \$978,339.50<br>(personal benefit)                         |  | 28 months' imprisonment; 2 years SR; \$20,000 fine   |
| 11 | Muller,<br>19-cr-135   | 18 U.S.C. § 371 ( <i>wire fraud</i> ); 18 U.S.C. § 371 ( <i>FCPA</i> )                             | \$263,402.83<br>(personal benefit)                         |  | 20 months' imprisonment; 3 years SR; \$65,000 fine   |
| 12 | Pinto,<br>19-cr-135    | 18 U.S.C. § 371 ( <i>wire fraud</i> ); 18 U.S.C. § 371 ( <i>FCPA</i> )                             | \$985,416.60<br>(personal benefit)                         |  | 24 months' imprisonment; 3 years SR; \$12,500 fine   |
| 13 | Morales,<br>19-cr-148  | 18 U.S.C. § 371<br>( <i>FCPA</i> )   | \$2,534,365.65<br>(personal benefit)                       |  | 6 months imprisonment; 6 months of home confinement during which time Morales must complete 120 hours a month of community service; 3 years SR; \$100,000 fine |
| 14 | Pena,<br>19-cr-186     | 18 U.S.C. § 371<br>( <i>money laundering</i> )   | \$332,308<br>(personal benefit)                            |  | 3 years probation; No fine   |
| 15 | Castillo,<br>18-cr-200 | 18 U.S.C. § 371<br>( <i>FCPA</i> )   | \$1,061,000<br>(personal benefit)                          |  | Time served; 2 year SR<br>No fine  |
| 16 | De Jongh,<br>20-cr-305 | 18 U.S.C. § 1956(h)<br>( <i>conspiracy to launder money</i> )                                      | \$8,887,759.62<br>(value of bribes/laundered funds)        |  | 48 months; 1 year SR; \$149,654 fine, \$100 SA   |
| 17 | Shiera,<br>15-cr-654-2 | 18 U.S.C. § 371<br>( <i>FCPA</i> )<br>15 U.S.C. § 78dd-2.<br>( <i>substantive FCPA violation</i> ) | \$18,824,797.67<br>(personal benefit)                      |  | 12 months and 1 day; 1 year SR; \$6,269 fine   |

|    | Name/<br>Case Number        | Offense(s)   | Laundered<br>Funds/Personal<br>Benefit/Benefit<br>Received |  | Sentence  |
|----|-----------------------------|--|--|--|---|
| 18 | Roberto Rincon<br>15-cr-654 | 18 U.S.C. § 371<br>( <i>FCPA</i> );<br>15 U.S.C. § 78dd-2<br>( <i>substantive FCPA<br/>violation</i> );<br>26 U.S.C. § 7206(1)<br>( <i>false statement on tax<br/>return</i> ) | \$51,651,219.23<br>(personal benefit)                      |  | 18 months; 1 year<br>SR; \$100 SA; \$300<br>fine waived |
| 19 | Farias,<br>20-cr-89         | 18 U.S.C. § 371<br>( <i>FCPA</i> )   | 1,500,000<br>(personal benefit)                            |  | 3 years probation                                       |
| 20 | De Leon,<br>15-cr-514       | 18 U.S.C. § 371<br>( <i>FCPA</i> );<br>18 U.S.C. § 1956(h)<br>( <i>conspiracy to launder<br/>money</i> )   | \$16,125,302.06<br>(personal benefit)                      |  | 12 months and 1<br>day; \$472,064 fine                  |

The government believes that the serious nature of the corruption in which Defendant Cesar Rincon was involved warrants a custodial sentence. Defendant was involved in a sophisticated and ongoing bribery and money laundering scheme that laundered approximately \$29,429,557.90 in bribe proceeds through various financial transactions. He personally participated in the conspiracy for a year and half, during his time as General Manager of Bariven. In this capacity, he was a public official in a senior role; and in addition to betraying the public's trust, he played an important and active role in the conspiracy – regularly engaging and negotiating with vendor-bribers. Defendant also profited significantly from the scheme, personally receiving and participating in the laundering of approximately \$7,033,504.71 in bribe proceeds.

The government also acknowledges that Defendant Cesar Rincon's cooperation substantially assisted the government by providing information that corroborated the

government's broad investigation into corruption at PDVSA and led to the convictions of several co-conspirators. Nonetheless, that cooperation does not alleviate the need for a custodial sentence. For the foregoing reasons, the government submits that a sentence of [REDACTED] incarceration is "sufficient, but not greater than necessary" to serve the purposes set forth in 18 U.S.C. § 3553(a).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 20, 2024, I submitted an electronic copy of the foregoing to the Court, and on that same day served a copy on counsel for Defendant Cesar Rincon and the United States Probation Office via electronic mail.

/s/  
\_\_\_\_\_  
Trial Attorney  
Fraud Section, Criminal Division  
U.S. Department of Justice

## General Information

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| <b>Case Name</b>              | USA v. De Leon-Perez et al.  |
| <b>Court</b>                  | U.S. District Court for the Southern District of Texas   |
| <b>Date Filed</b>             | Wed Aug 23 00:00:00 EDT 2017   |
| <b>Judge(s)</b>               | RANDY CRANE  |
| <b>Federal Nature of Suit</b> | Criminal   |
| <b>Docket Number</b>          | 4:17-cr-00514  |
| <b>Parties</b>                | USA; Nervis Gerardo Villalobos-Cardenas; Cesar David Rincon-Godoy; Paulo J.D.C. Casqueiro-Murta; Luis Carlos De Leon-Perez; Rafael Ernesto Reiter-Munoz; Daisy Teresa Rafoi Bleuler; Alejandro Isturiz-Chiesa; Javier Alvarado-Ochoa |