

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CASE NO. 4-17-CR-514-3

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CESAR DAVID RINCON-GODOY,

Defendant,

_____ /

**DEFENDANT CESAR DAVID RINCON-GODOY'S RESPONSE TO THE
PRESENTENCE INVESTIGATION REPORT AND
REQUEST FOR A NON-CUSTODIAL SENTENCE**

The Defendant, Cesar David Rincon-Godoy, by and through his undersigned counsel, and pursuant to U.S.S.G. § 6A1.2-3, p.s., Fed. R. Crim. P. 32 (d), (e)(2) and (f), and the Fifth Amendment to the United States Constitution, respectfully registers his Response to the Presentence Investigation Report (PSR) and Request for a Non-Custodial Sentence, and as grounds therefore, states as follows:

I. INTRODUCTION:

On October 27, 2017, more than six years ago, Cesar Rincon-Godoy was arrested on the streets of Madrid, Spain on charges stemming from the instant offense. According to the Factual Basis for Guilty Plea contained in the written Plea Agreement signed in this case on April 10, 2018, and the Offense Conduct section of the PSR, from in or about January 2012 through in or

about 2013, Mr. Rincon-Godoy was part of a conspiracy with a group of then-current and former high-level officials of PDVSA, the Venezuelan state-owned and controlled oil company, or other agencies of the Venezuelan government, to solicit PDVSA vendors for bribes and kickbacks in exchange for providing assistance with their PDVSA business. The offense conduct in this case concluded more than ten years ago.

In late 2014, Mr. Rincon-Godoy, his wife and youngest daughter, who was then ten years old, were all kidnapped in Maracaibo and threatened with physical harm. This was related to his position at PDVSA. At that time, his wife insisted they leave Venezuela, and, in October 2014, they left for Spain. Cesar Rincon-Godoy had been living in Madrid with his wife and daughter until his arrest. During those years, he completed two graduate degrees, and he was self-employed as a public administration and forensic psychology consultant. Mr. Rincon-Godoy is a highly educated, highly motivated, hard-working man. He has held very responsible employment in both government and the private sector while completing advanced studies in a variety of fields. Once arrested, he remained in custody in Madrid until his extradition and eventual release on bond in Houston, Texas, six months later, on April 26, 2018.

Fast forward almost six years, much has changed in Mr. Rincon-Godoy's life. During all of those years, he provided the Government with extraordinary substantial assistance in many investigations in the SDTX and beyond.

Perhaps equal to his extraordinary assistance to the Government all those years were the conditions of his bond. From April 2018 until November 30, 2020 (31 months), Mr. Rincon-Godoy was on the most restrictive conditions of bond. In addition to wearing an electronic

monitoring device, he was only authorized to leave his house on Mondays, Wednesdays, and Fridays from 9 am to 1 pm to make purchases or medical appointments. On Sundays, he was allowed to leave from 12 noon to 3 pm to attend church. For 31 months, he wore an electronic monitoring device and was only allowed to leave his home a total of 15 hours a week.

From December 1, 2020, until September 14, 2023, for another 33 months, Mr. Rincon-Godoy continued to wear an electronic monitoring device; however, bond conditions were somewhat less restrictive. He could leave his house from 7am to 7pm daily for a full 64 months, more than five years continuously, Mr. Rincon-Godoy wore an electronic monitoring device until his bond conditions were modified, and it was finally removed on September 14, 2023.¹ During those 64 months, Mr. Rincon-Godoy abided by his conditions of bond and paid \$255 a month toward the cost of the electronic monitoring.²

Mr. Rincon-Godoy's arrest and transfer to Houston separated him from his wife, Rosemary, and his then 14-year-old daughter, Catalina. Mr. Rincon-Godoy's cooperation included visas for his wife and daughter to visit him in Houston; however, his arrest and the associated bond

1

Mr. Rincon-Godoy has pled guilty to a conspiracy to commit money laundering, 18 USC § 1956(h), a Class C felony. Pursuant to 18 USC § 3561(c)(1), the maximum term of probation allowed is five years. Pursuant to 18 USC § 3583(b)(2), the maximum term of supervised release for a Class C felony is three years.

2

PSR, ¶ 11. According to the assigned probation officer providing supervision in the Southern District of Florida, Mr. Rincon-Godoy has remained in compliance with the conditions of his release.

conditions proved too great for his wife and, instead, he was served with a “Dear John” letter. He is now divorced, and he has not seen his daughter since 2018. We submit that punishment in the case of Mr. Rincon-Godoy began years ago.

After his release on bond on April 26, 2018, Mr. Rincon-Godoy remained unemployed and eventually went through most of his life’s savings until his ex-wife’s family gave him work in August 2020, maintaining a 78-foot Sunseeker sailboat. His ex-wife’s family also provides a home for Mr. Rincon-Godoy in Sunrise, Florida, just outside Fort Lauderdale, at a substantially reduced rental rate. In June 2023, the boat was sold, and Mr. Rincon-Godoy was left unemployed. He has since been working from home doing academic and business consulting. He also occasionally makes deliveries for clients. Notwithstanding this employment, since his release on bond in 2018, Mr. Rincon-Godoy’s assistance to the Government has been his job. Despite his education and employment history, he has not been able to secure or maintain employment in South Florida beyond the charity of his ex-wife’s family and others. Again, we believe punishment in this case began years ago.

The PSR recommends an *advisory* guideline range of 151 to 188 months. Objections have been filed and we believe the *advisory* guideline range is 57 to 71 months. There are also substantial grounds for a downward variance, including one under 18 USC § 3553(a)(6).

Mr. Rincon-Godoy is a Venezuelan citizen with ties to Spain. He was notified by Homeland Security on March 24, 2023, that he was placed in “Deferred Action” status for a period of one year from that date. The written Plea Agreement is silent as to obtaining an “S” visa or any assurance Mr. Rincon-Godoy may legally remain in the United States beyond 2024. It is not safe

for him to travel to Venezuela to see his 84-year-old mother, his two sisters, or his three adult children. He has not seen his children since 2018. Further, since he was brought to the United States in 2018, his now ex-wife and his daughter, now age 19, have remained in Spain. He has not seen them in more than five years.

Today, Mr. Rincon-Godoy is 56 years old. He has been suffering from depression since his arrest in 2017. He will tell this Court he is a broken man; physically, mentally, emotionally, professionally, and financially. His arrest in this case has cost him his marriage, his children, his home, his freedom, money, and his career.³ Currently, he has been reduced to a man who survives off the goodwill of others. Again, we believe punishment in this case began years ago. With that said, this Court will be asked to consider *Pepper v. United States*, 131 S. Ct. 1229 (2011), in which the court addressed the importance of considering events that transpire between the criminal conduct and the sentence in the punishment decision. We believe a non-custodial sentence in this case is reasonable and supported by the many 18 USC § 3553 sentencing factors identified in this filing. We further believe, even the Government would agree, it is extremely doubtful this Court will ever see Cesar Rincon-Godoy again.

II. ADDITIONAL OBJECTIONS TO GUIDELINE CALCULATIONS AND SENTENCING OPTIONS:

3

He has been ordered to forfeit \$7,033,504.71. To date he has paid \$1,330,905.87.

The PSR was disclosed to the parties on December 19, 2023. Counsel for Mr. Rincon-Godoy filed objections to guideline calculations, the Offense Conduct, and the Personal/Family section of the PSR on January 2, 2024. The Probation Officer disclosed an Addendum, addressing the objections, and a Revised PSR on January 16, 2024. The Revised PSR contains an additional enhancement at § 2C1.1(a)(1), resulting in an increased *advisory* guideline range. Therefore, there is a new defense objection that the PSR has relied on the wrong section of the sentencing guidelines in calculating the base offense level. The following are the remaining unresolved sentencing issues.

1. **Paragraph 46** of the Revised PSR states “the underlying offense is a violation of the foreign corrupt trade practices act, 15 U.S.C. § 78dd-2, the guideline for which is found at USSG § 2C1.1. The base offense level at USSG § 2C1.1(a)(1) is 14 as the defendant was a public official.” Mr. Rincon-Godoy is neither guilty of a violation of 15 U.S.C. § 78dd-2, nor did he act as a public official within the meaning of § 2C1.2, comment. (n.1), and 18 USC § 201(a)(1).

First, during all times of the offense conduct, Mr. Rincon-Godoy never lived in the United States, he was not employed in the United States, nor was he a public official in the United States. Soliciting and accepting bribes as a Venezuelan official may be a crime against Venezuela, but not the United States. With that said, PDVSA officials are not charged with 15 U.S.C. § 78dd-2, unlike the many vendors who offer the bribes in cases of trade affecting the United States. However, PDVSA officials are routinely charged with what they did with the bribes; i.e., money laundering, 18 U.S.C. § 1956(h). In this case, Mr. Rincon-Godoy was charged with 18 U.S.C. § 1956(h).

Second, § 2C1.2, comment. (n.1), clearly defines who is a “public official,” consistent with 18 U.S.C. 201(a)(1), which states:

The term public official means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person **acting on or behalf of the United States**, or any department, agency, or branch of government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

With that said, we object to **paragraph 45** of the Revised PSR and the use of § 2C1.1, Offering, Giving, Soliciting, or Receiving a Bribe by a Public Official. We also object to this paragraph applying § 2S1.1(a)(1), which was relied on to then apply § 2C1.1, for the following reason.

Section 2S1.1(a)(1) applies when (A) the defendant committed the underlying offense (or was accountable for the underlying offense under subsection (a)(1)(A) of § 1B1.3 (Relevant Conduct); and (B) the offense level for that offense can be determined.

Throughout § 1B1.3, Relevant Conduct is repeatedly referred to as “criminal activity” whether the defendant’s own relevant conduct or the conduct of others in a jointly undertaken criminal activity. (See § 1B1.3(a)(1) and comment. (n. 1, 2 and 3). Relevant Conduct is limited to criminal conduct, and; therefore, the defendant’s sentence cannot be based on non-criminal acts. *United States v. Dove*, 247 F. 3d 152 (4th Cir. 2001) (reversing where defendant’s sale of 118 black bear gall bladders did not violate Virginia law because it occurred outside the boundaries of Virginia jurisdiction and holding that conduct which is not illegal cannot be relevant conduct.)

Relevant Conduct in this case cannot include 15 U.S.C. § 78dd-2 for the already stated reasons. Mr. Rincon-Godoy did not violate 15 USC § 78dd-2. He did not commit the underlying offense and he is not accountable for the underlying offense. As a result of the above, the guideline calculations must start with § 2S1.1(a)(2), not § 2S1.1(a)(1).

The correct guideline calculations are as follows, and we ask that the referenced paragraphs of the Revised PSR be amended as follows:

§ 2S1.1 (a)(2)	
Base Offense Level: 8 + 18 (see PSR, ¶ 48)	26
§2S1.1(b)(2)(B) (see PSR, ¶ 50)	+2
§2S1.1(b)(3)(B) (see PSR, ¶ 51)	<u>+2</u>
Adjusted Offense Level (see PSR, ¶ 55)	30
Acceptance of Responsibility (see PSR, ¶ 56)	-2
Acceptance of Responsibility (Government's motion (PSR, ¶ 56) -1	-1
Zero-point Offender Amendment (see PSR, ¶ 57)	<u>-2</u>
Total Offense Level (see PSR, ¶ 58)	25
Advisory Guideline Range (see PSR, ¶ 96)	57 to 71 months

2. As to **paragraph 111** of the Revised PSR, we object to the probation officer's finding that there are no factors that warrant a sentence outside the *advisory* guideline range. This Memorandum in Aid of Sentencing has identified many factors for this Court to consider a sentence outside the *advisory* guideline range. These guideline related objections remain unresolved.

III. OBJECTIONS/CLARIFICATIONS TO NON-SENTENCING FACTORS:

1. As to **paragraph 20** of the Revised PSR, the report states that from 2011 until at least 2014, Mr. Rincon-Godoy conspired to solicit bribes and commissions. These dates are not accurate. Mr. Rincon-Godoy's tenure as General Manager of Bariven was effective until July 1, 2013. He was then assigned to Bariven until October 2013, when he submitted his management report to the PDVSA Internal Audit unit, covering the period from January 1, 2012, to July 1, 2013. After submitting the report, he was reassigned to PDVSA GAS as Advisor to the Presidency and served until April 2014 as Principal Director of PDVSA's subsidiary "VENRUS." This matter is unresolved.

2. As to **paragraph 28** of the Revised PSR, Mr. Rincon-Godoy was not serving as General Manager of Bariven in 2011, and he was not involved in any scheme of Bariven's management team. He was the Manager of Procurement at PDVSA GAS and was assigned by the Bariven Board of Directors as General Manager of the Bariven-China Office. Regarding Mr. Sheira's March 2012 comment in Caracas, Mr. Rincon-Godoy's response was he asked him to talk to Mr. Nevis about this because no one had informed him of anything. Regarding the documents he had to sign for the account, they told him they would soon send him the information. Abraham told him, "Primo, don't worry, I'll find out about that and talk to the Enano." This matter is unresolved.

3. As to **paragraph 30** of the Revised PSR, about Mr. Rincon-Godoy's conversation with Abraham and Roberto, Abraham told him "I spoke to Nervis (Enano) and he said the team will recognize 0.50% of the commissions to you, because Javier Alvarado does not agree to grant you the 1%, as the previous manager. At that moment, Roberto spoke up and said, "we have to see that Javier is a miser, Primo." At that moment, Abraham and Roberto agreed with Mr. Rincon-Godoy to give 1% of the amounts paid with Bariven's weekly payment proposal, directly to Mr. Rincon-Godoy. At no time did Mr. Rincon-Godoy demand any percentage amount. This matter is unresolved.

4. As to **paragraph 34** of the Revised PSR, the claim Mr. Rincon-Godoy attended a meeting with contractors or groups at Luis Carlos Leon's apartment is false. In March 2011, he was working as Manager of Planning and Management at PDVSA GAS-MATURIN. He was appointed Procurement Manager of PDVSA GAS at its Caracas offices in July 2011, where he reported directly to the Managing Director of Bariven, Edgar Romero. This matter is unresolved.

5. As to **paragraph 36** of the Revised PSR, regarding the meetings with Ms. Rafoi in Switzerland by the executive team, Abraham Sheira and Roberto Rincón introduced Ms. Rafoi to Cesar Rincón in Aruba. At no time did Mr. Rincon-Godoy meet Ms. Rafoi in Switzerland. Additionally, the testimony by Roberto Rincon-Fernandez about Mr. Rincon-Godoy demanding the purchase of handbags and perfumes for his wife is false. This matter is unresolved.

6. As to **paragraph 56** of the Revised PSR and Mr. Rincon-Godoy's complete and timely acceptance of responsibility in this case, his remorse to U.S. authorities included the delivery of a Dell Inspiron laptop with database, document files, and emails of Mr. Rincon-Godoy during his

tenure as an official of PDVSA and its subsidiaries to government attorneys. Counsel will have further remarks at sentencing.

7. As to **paragraph 73** of the Revised PSR, Mr. Rincon-Godoy has shown, through evidence from Venezuelan press reports, the inhumane treatment received by former PDVSA officials at the hands of Venezuelan authorities. They have spent up to six years in jail without a fair trial, in deplorable conditions. Two former colleagues arrested in Venezuela have even died in jail. Mr. Rincon-Godoy and his family were also the victims of a kidnaping in Maracaibo, Venezuela, linked to the mafia of contractors working for PDVSA ORIENTE. Counsel for Mr. Rincon-Godoy will provide further remarks at sentencing as to why his cooperation would make it very unsafe should Mr. Rincon-Godoy be returned to Venezuela after he serves any sentence imposed by this Court. It is noted that the Probation Officer has deferred to the Court for a ruling.

IV. 18 USC § 3553 FACTORS IN SUPPORT OF NON-CUSTODIAL SENTENCE:

Nature and Circumstances of Offense:

1. **Specific Case Facts:** The written Plea Agreement, at pages 10 through 16, provides a “Factual Basis for Guilty Plea.” The Offense Conduct section of the PSR further describes the offense and Mr. Rincon-Godoy’s role. Objections have been filed as to the guideline calculations and further objections and clarifications have been offered as to the Offense Conduct section of the PSR.

2. **Speedy Resolution of Criminal Liability:** Once Mr. Rincon-Godoy was returned to Houston, his acceptance of responsibility and assistance to the Government were immediate. Mr. Rincon-Godoy and counsel are confident the Government will tell this Court he has done so

completely and timely, and his assistance to the Government has continued for years.⁴ In short, Mr. Rincon-Godoy has done all he can to quickly resolve his criminal liability in this case.

3. Mr. Rincon-Godoy's Substantial Assistance to the Government: Consistent with Mr. Rincon-Godoy's acceptance of responsibility, his guilty plea, and his profound remorse for his involvement in this offense, he continues to provide the Government with substantial assistance. With that said, although we are confident the Government will file a substantial assistance motion on Mr. Rincon-Godoy's behalf, courts have made clear that even without a Government sponsored motion, his substantial assistance to the Government may be considered in fashioning a below-guideline sentence in his case. Post *Booker*, the Government conceded in *U.S. v. Fernandez*, 443 F. 3d 19, 33 (2nd Cir. 2006) and appellate courts have held, that the sentencing judge may consider a defendant's cooperation as one factor bearing on a proper sentence, even if the Government did not make a "departure" motion, *U.S. v. Barner*, 572 F. 3d 1239 (11th Cir. 2009). Therefore, this Court, under 18 USC § 3553, may apply any weight to Mr. Rincon-Godoy's assistance in determining a sentence consistent with the Agreement between the parties.

In support of a below-guidelines sentence, this Court may also consider *United States v. Knox*, 573 F. 3d 441 (7th Cir. 2009) (we agree with Davis that, as a general matter, a district court may consider a defendant's cooperation with the government as a basis for a reduced sentence, even if the government has not made a § 5K1.1 motion); *United States v. Fernandez*, 443 F. 19, 33 (2nd Cir. 2006) (reasoning that a district court should consider "the contention that a defendant

4

Counsel will have further comments at sentencing.

made efforts to cooperate even if those efforts did not yield a Government motion for a downward departure pursuant to U.S.S.G. § 5K1.1"); *United States v. Doe*, 398 F. 3d 1254, 1260-61 (10th Cir. 2005) (concluding that "a defendant's assistance should be fully considered by the district court at sentencing even if that assistance is not presented to a court in the form of a § 5K1.1 motion"); *United States v. Murray*, 2005 WL 1200185 (S.D.N.Y. May 20, 2005 (unpub.)) ("fact that defendant testified as witness for the government at time when he had nothing to gain provides support for his genuine contrition"); *United States v. Hubbard*, 369 F. Supp. 2d 146, 150 (D. Mass. 2005) (suggesting court can correct for government's bad faith not making motion under 3553(a)(2)(C); and *United States v. Khoury*, 62 F. 3d 1138 (9th Cir. 1995) (court may depart downward where government refuses to make § 5K1.1 motion because defendant went to trial although government initially offered to do so and where defendant's cooperation led to arrest of co-defendant).

This Court is aware of many cooperators charged and sentenced in the SDTX in recent years. However, as far as cooperators, we believe Mr. Rincon-Godoy has been exceptional, he has done so under exceptional conditions. In the case before this Court, Mr. Rincon-Godoy, through counsel, asks that his substantial assistance to the Government be fully considered in fashioning a Non-Custodial sentence in his case. Counsel will have more to say about this at sentencing.

4. Extraordinary Efforts to Satisfy Financial Sanctions: Several courts have recognized that truly extraordinary efforts to satisfy court-ordered financial sanctions may be a permissible basis to vary downward from the *advisory* guideline range. In *United States v. Kim*, 364 F. 3d 1235 (11th Cir. 2004), the district court departed downward based on the defendants' efforts to pay their restitution obligation of \$268,237.03 promptly. The defendants tendered

\$50,000 on the day they pled guilty and paid the remaining balance at sentencing. Although troubled by the post-indictment timing of the payments, the Eleventh Circuit nevertheless overruled the Government's challenge and affirmed the sentences, explaining:

We agree with the Government that the timing of Appellees' payment - specifically, their failure to pay restitution before criminal indictment, and only pursuant to a negotiated plea agreement - cuts against the voluntariness of their act and militates against granting a downward departure. However, we see no need to draw a bright line rule that limits departures based on extraordinary restitution to those defendants who paid restitution before indictment and not pursuant to a plea agreement.

Id. At 1245.

Pursuant to paragraph 21 of the written Plea Agreement, Mr. Rincon-Godoy agreed to a criminal forfeiture in the amount of \$7,033,504.71. To date, he has paid \$1,330,905.87.⁵ We believe this is further reason to impose a Non-Custodial sentence in Mr. Rincon-Godoy's case.

History and Characteristics of Defendant:

5

The Office of Inspector General of the United States Department of Justice (OIG) has published a Review of the Debt Collection of the United States Attorneys' Offices, which found there was \$101.5 billion in outstanding criminal debt FYE 2014, and that only approximately 8% of criminal debt is collectable. <https://oig.justice.gov/reports/2015/el506.pdf>. A more recent OIG report is not available. Mr. Rincon-Godoy's substantial payment will be among the 8% collected.

1. **Cesar David Rincon-Godoy's Personal and Family History:** Cesar David Rincon-Godoy is a 56-year-old Venezuelan citizen who has never lived in the United States. He is the son of Cesar David Rincon and Ysle Judith Godoy-Villasmil, the brother of Aura Elena Rincon-Godoy and Dunia Rincon-Garcia, the ex-husband of Rosemary Labarca, and the father of Ylse Maria Rincon-Buenaga, Milagros Elena Rincon-Buenaga, and Catalina Rincon-Labarca. His 84-year-old mother lives in Maracaibo, Venezuela with his sister, Aura, and his daughter, Catalina, also lives in Maracaibo. His paternal half-sister, Dunia, lives in Caracas. It would be very dangerous for Mr. Rincon-Godoy to return to Venezuela.⁶ His ex-wife and his daughter, Catalina, live modestly in Madrid, Spain, and his oldest daughter, Ylse Maria, lives in Barcelona. Mr. Rincon-Godoy would be able to live and work in Spain.

Mr. Rincon-Godoy comes from a highly educated, middle income family. Both parents were university professors, his sister is a pediatrician, and his half-sister is a dentist. His parents divorced when he was two years old, and his father remarried. However, his father remained nearby with his new family and played an active role, both financially and emotionally, during his formative years. His half-sister was born when Mr. Rincon-Godoy was already 12 years old. Mr. Rincon-Godoy was raised in the church, and he attended regularly with his mother and sister. At the present time, he practices the Catholic religion and attends Saint Marks church in Southwest Ranches, Florida.

6

Counsel will explain at sentencing.

Mr. Rincon-Godoy described his father as an alcoholic who physically abused his mother. His mother was his primary care giver and she never married again after the divorce. He spent all his formative years in Maracaibo and was raised mostly in middle income neighborhoods. His mother did struggle financially immediately following the divorce and she had to work days and nights to provide for him and his sister. Mr. Rincon-Godoy was often left alone as a child and had to learn to care for himself. He described himself as a bit of a nerd because he was smart, and he was often bullied at school. He also dealt with health issues before he was ten years old. He was born with pyloric stenosis, a narrowing of the stomach opening which required several surgeries as a newborn to correct. He also had surgery to his right ankle to correct a circulatory problem, an appendectomy at age seven, and his adenoids were removed at ten.

Mr. Rincon-Godoy completed high school in Maracaibo in 1984 and an undergraduate degree in 1986. He was then awarded a scholarship to attend the University of Lodz, Poland, where he learned Polish and earned a master's degree in clinical psychology in 1993.⁷ His father had died a year earlier after several heart attacks. By 1993, he and Ana Maria Buenaga-Quevedo had been together four years and had two children. He returned to Maracaibo where he pursued employment and further education.

Between 1993 and 1999, Mr. Rincon-Godoy had several positions in Zulia, Venezuela's most populous state with Maracaibo as its capital. He began as a therapist/psychologist with the Ministry of Youth, then a teaching researcher for the university, Chief of Staff at Zulia state

7

Mr. Rincon-Godoy speaks Spanish English, Italian, Polish and Portuguese.

government, Ministry of Education, and Director of Human Resources. His relationship with Ana Maria ended in December 1997, but he remained close with his children and provided financially. In 1998, he earned another master's degree, this one in administration and labor law. In 2000, he earned a degree in Business Management.

Between January and May 1999, Mr. Rincon-Godoy worked as a senior human resources specialist at the World Bank. He then returned to employment as Manager of Operational Development and then Director of Human Resources in Maracaibo/Zulia. During this time, he met and married Rosemary Labarea, in December 2001. Catalina, his youngest child, was born in March 2004.

Mr. Rincon-Godoy began work at PDVSA's gas subsidiary in November 2004, and he held responsible management-level positions until he resigned in June 2015. The written Plea Agreement, Factual Basis for Guilty Plea section, references Mr. Rincon-Godoy's involvement in the PDVSA conspiracy from in or about January 2012 through in or about 2013, He had held a number of positions at PDVSA and Bariven, ultimately being named General Manager of Bariven on or about January 2012. His responsibilities then included 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 vendors. These payment proposals were then authorized by a senior executive at Bariven. Mr. Rincon-Godoy would tell this Court his involvement in the conspiracy was "natural" in that it was how business was done at PDVSA before, during and after his employment and he was expected to participate. Mr. Rincon-Godoy believes a group of Venezuelan American businessmen paid an American law firm to discredit

him before the PDVSA Board and paid for several threats, attacks, and kidnapping, which all led to his resignation and exit from Venezuela.

Mr. Rincon-Godoy left Venezuela for Spain in 2014. He lived in Madrid with his wife and Catalina, who was 11 years old when they left Venezuela. From July 2015 until his arrest on October 26, 2017, he was self-employed, working as a life and neuro-therapy coach, and an independent business consultant, specializing in talent management, projects, materials procurement, and supply chain. Also, during his years in Madrid, he managed to earn his third and fourth graduate degrees; a master's degree in forensic psychology in October 2017, and a master's degree in contextual therapies in July 2018.

Following his arrest in October 2017, Cesar Rincon-Godoy remained jailed until his release on bond in Houston on April 20, 2018. He had been in custody six months. Following his arrival in the United States, he wore an electronic locator monitor for 61 continuous months as a condition of his bond until those conditions were modified on September 14, 2023. Pretrial Services has informed this Court he has remained fully compliant all these years.⁸ This Court is also aware he has continued to assist the Government all these years. Presently, he lives in Sunrise, Florida with his girlfriend, who he met while attending the Virtual School of Broward International University. Since June 2023, he has been doing consulting work and making deliveries. He has four graduate degrees, he speaks four languages, yet labor and now consulting is the only employment he has been able to secure in South Florida. Incredibly, Mr. Rincon-Godoy has even participated in

8

medical trials of vaccines to supplement his income since his arrival in the United States. He has made some friends here and has been attending Saint Marks Catholic church since he was released on bond. His ex-wife's petition for divorce is now final. His daughter, Ylse, is a social media manager in Barcelona. Milagros is a psychologist in Maracaibo. Catalina is a college student in Madrid. Cesar Rincon-Godoy was always a very involved father, and he is still close to his children. Ylse once visited him more than a year ago; however, he has not seen his other children since 2018.

As stated, Mr. Rincon-Godoy never lived in the United States before his release on bond. He was placed on "Deferred Action" by Homeland Security on March 24, 2023, and this deferred action will allow him "to remain in the United States until it has been determined by the United States Government that the need for this type of action is no longer warranted." Mr. Rincon-Godoy's 84-year-old mother, his siblings, and his daughter, Milagros, all live in Venezuela, but it would be far too dangerous for him to return. His ex-wife and his two other daughters are in Spain. He could live and work in Spain or he could pursue an "S" visa and remain in South Florida with his girlfriend, if the Department of Justice would support this request. In any event, we believe his assistance to the Government and that he had been on bond 61 months with an ankle bracelet, all without incident, are both extraordinary, if not unprecedented. Council will have further remarks at sentencing.

2. Cesar Rincon-Godoy is a 56-Year-Old Man with Physical and Mental Health Problems: Cesar Rincon-Godoy had been on bond with an electronic locator monitor for 61 months. He has poor vision, hypertension, chronic allergic rhinitis, and GERD. For these conditions, he takes Amlodipine, Lisinopril, Omeprazde, Hydrochlorothiazide and Loratadine, all

daily. He has also experienced depression since his arrest in 2017. He has managed these conditions on his own.

In *United States v. Lucania*, 379 F. Supp. 2d 288, 297 (E.D. N.Y. 2005), the district judge found that “Post-*Booker* courts have noted that recidivism is markedly lower for older defendants” and in *United States v. Nellum*, 2005 WL 300073 (N.D. Ind. Feb. 3, 2005)(unpub.), the court cited lower recidivism rates for older defendants and granted a downward departure. In this case, Cesar Rincon-Godoy, through counsel, asks this be considered as a sentencing factor under 18 USC § 3553 in fashioning a below-guidelines sentence.

The “Silver Tsunami” And Sentencing - Age and Health as Mitigating Factors, by Evan A. Jenness, published in the September/October 2013 *Champion*, discusses the issue of elderly and infirmed inmates. What is “old” when it comes to sentencing a defendant to prison is not the equivalent of “old” in the outside world. The medium age of a federal defendant at sentencing is 34.⁹ The National Institute of Corrections defines prisoners 50 and older as “elderly” and “aging”,¹⁰ and 15 states specifically define an “older” inmate as 50 or older.¹¹ Only 10.8 % of all federal defendants are over 50.¹² Cesar Rincon-Godoy is now 56 years old with physical and

9

Sourcebook, Table 6

10

Dr. Joann B. Morton, *An Administrative Review of the Older Inmate*, USDOJ, National Institute of Corrections, 4 (1992)

11

Old Behind Bars, at 17

12

mental health problems. Pursuant to the most recent amendment (739) to § 5H1.4, a defendant's physical condition, individually or in combination with other offender characteristics, such as age and the length of any expected sentence, may be considered as sentencing factors in fashioning a below-guidelines sentence.

Even when the sentencing guidelines were mandatory, downward departures under § 5H1.4 were permissible. Again, Mr. Rincon-Godoy asks that his age and health be considered as sentencing factors under 18 USC § 3553 in fashioning a below-guidelines sentence in his case.

V. Additional Sentencing Factors:

1. **18 USC § 3553(a)(6), Proportionality Among the Sentences/Punishment of Co-Conspirators and Avoidance of Unwarranted Sentence Disparities:** There should be proportionality among the sentences of any co-conspirators. The statutory mandate that punishment be just and promote respect for the law incorporates the principle that “punishment should correlate with culpability...” This means that in appropriate cases, a court has discretion to “align codefendants’ sentences somewhat in order to reflect comparable degrees of culpability.” *United States v. Martin*, 520 F.3d 87, 95 (1st Cir. 2008). This Court is aware that among the many § 3553 sentencing factors to be considered in the imposition of a sentence is subsection (a)(6). “The court, in determining the particular sentence to be imposed, shall consider—(a)(6), the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” With that said, only one of the eight defendants named in 17-cr-

Sourcebook, Table 6

514, filed with this Court, has been sentenced. Charges against Daisy T. Rafoi-Bleuler and Paulo Jorge De Costa Casqueiro-Murta are pending before this Court after reversals by the Fifth Circuit. Nervis Gerardo Villalobos-Cardenas, Javier Alvarado-Ochoa and Rafael Ernesto Reiter-Munoz have been arrested in Spain and their extradition is pending. (Mr. Rincon-Godoy waived extradition from Spain in 2018 and has since been cooperating with the U.S. government, all while on pretrial release and mostly with an affixed electronic monitoring device.)

Related to this case are defendants Roberto Enrique Rincon-Fernandez and Abraham Jose Shiera-Bastidas. Dkt. No. 15-cr-654, SDTX. On October 17, 2022, Shiera was sentenced on Conspiracy to Violate Foreign Corrupt Practices Act and Violation of the Foreign Corrupt Practices Act and was sentenced to a year and a day imprisonment. On January 25, 2023, Roberto Enrique Rincon-Fernandez was sentenced on the same charges to 18 months' imprisonment.

Rincon-Fernandez was a resident of Texas who controlled, with others, a number of closely held companies which were used to secure contracts with PDVSA. Shiera was a Venezuelan national who lived in Florida and controlled, with others, a number of closely held companies which were used to secure contracts with PDVSA. As such, we believe both Rincon-Fernandez and Shiera were more culpable than Mr. Rincon-Godoy because they enriched themselves by obtaining and retaining lucrative energy contracts with PDVSA through corrupt and fraudulent means, including by paying bribes to PDVSA officials, including Mr. Rincon-Godoy. Over the course of their participation in the scheme, 2009 to 2014, they paid about \$1.6 million in bribes.

On August 7, 2023, United States District Court Judge Kenneth M. Hoyt sentenced Luis Carlos De Leon-Perez to a year and a day imprisonment followed by two years' supervised release. According to The Court's Omnibus Memorandum Addressing The Defendant's Motion to Dismiss

(Filed 7/11/22, #332), DeLeon Perez set up offshore bank accounts at BES for the benefit of Venezuelan officials, knowing that such would be used to receive bribe payments from the companies and accounts of Rincon-Fernandez and Shiera-Bastidas. We believe these defendants are more culpable than Mr. Rincon-Godoy.

In the SDFL, case no. 19-cr-20725, *U.S. v. Edoardo Orsoni*, Orsoni was a Venezuelan attorney and General Counsel at PDVSA from 2012 to 2016. He solicited and received bribes and, similar to Mr. Rincon-Godoy, he passed on the bribes to his superiors at PDVSA. He cooperated with the Government, including in the SDTX, just as Mr. Rincon-Godoy has done. His advisory guideline range was 37 to 46 months and Mr. Orsoni received a sentence of three years' probation and a condition of 18 months home confinement with an electronic monitor bracelet. His 18 months of home confinement was terminated early by the Court after 13 months.¹³ Mr. Rincon-Godoy and Mr. Orsoni currently reside in the SDFL. Mr. Orsoni has received an "S" visa and Cesar Rincon-Godoy will also need an "S" visa to remain in the United States.

Most recently, on January 17, 2024, in SDTX, case no. 20-cr-00089, *U.S. v. Tulio Anibal Farias-Perez*, Farias, a dual U.S.-Venezuelan citizen and former official at Citgo Petroleum Corporation, a Houston-based subsidiary of PDVSA, was sentenced to three years' probation after he pleaded guilty to laundering millions in bribes and corruptly providing business advantages to multiple individuals who obtained contracts with Citgo and PDVSA. Reports reflect the government sought a three-year term of imprisonment for Mr. Farias.

13

U.S. District Court Judge Marcia Cooke, May 26, 2022.

This Court is aware of many cooperators charged and sentenced in the SDTX in recent years. However, as far as cooperators, we believe Mr. Rincon-Godoy has been exceptional, he has done so under exceptional conditions, and counsel will have more to say about this at sentencing.

2. Mr. Rincon-Godoy's Status as a Removable Convicted Felon: Pursuant to paragraph 4 of the written Plea Agreement, "Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States..." In short, pleading guilty in this case makes Mr. Rincon-Godoy removable. Once removed, he could not return to the United States.

Not mentioned in the written Plea Agreement is if Mr. Rincon-Godoy requests an "S" visa, would the Government recommend to the Department of Justice he be issued an "S" visa Classification, understanding the Office has authority to only recommend, and that the decision to certify the recommendation rests with the Department of Justice, and further that the final decision whether to grant such relief rests with the Department of Homeland Security. Although Mr. Rincon-Godoy understands there is no guarantee he will be granted "S" non-immigration status, he believes he has done everything to fulfill his obligations to the Government, including his extraordinary and continuing cooperation.

Notwithstanding that the filing of the "S" visa would begin after sentencing and any term of incarceration imposed by this Court, we submit that a term of incarceration is not needed in Mr. Rincon-Godoy's case. First, as a removable alien at the time of his BOP designation, he is not eligible for designation to a minimum-security camp. Next, the BOP may not designate him within 500 miles of his family or the district in which he would be released, because he is removable.

Finally, his immigration status would not allow him to benefit from an early release to a community corrections facility (see 18 USC § 3624). In short, any term of incarceration would impose special restrictions on Mr. Rincon-Godoy because of his immigration status. Again, the process of obtaining an “S” visa for Mr. Rincon-Godoy would not begin until he completed any prison sentence in this case. With that said, we do not believe any term of incarceration is needed in this case. Mr. Rincon-Godoy is an excellent candidate for a Non-Custodial sentence. At 56 years of age, he just wants the chance to start life over. To that end, we offer the following.

In the Opinion of the Court in *Padilla v. Kentucky*, 559 U.S. 356 (2010), Justice Stevens wrote....

“We have long recognized that deportation is a particularly severe ‘penalty,’ *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893); but it is not, in a strict sense, a criminal sanction. Although removal proceedings are civil in nature, see *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984), deportation is nevertheless intimately related to the criminal process.” “Thus, we find it ‘most difficult’ to divorce the penalty from the conviction in the deportation context.” “We too have previously recognized that [p]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.

VI. Conclusion

Based upon the facts and factors set forth in this filing, Cesar David Rincon-Godoy, through counsel, respectfully requests this Court impose a Non-Custodial sentence below the *advisory* guideline range after considering all of the 18 USC § 3553

factors identified in this filing. Specifically, this Court is asked to sentence Mr. Rincon-Godoy to Time Served, followed by a term of supervised release.

Cesar David Rincon-Godoy and Counsel thank this Court for considering our Response to the Presentence Investigation Report and Request for a Non-Custodial sentence. Counsel will have further remarks at the time of sentencing.

DATED: February 6, 2024

Respectfully submitted,

SHAHADY & WURTENBERGER, P.A.

/s/ Fred A. Schwartz

Fred A. Schwartz, Esq.

fschwartz@swlawyers.law

Florida Bar No. 360538

200 East Palmetto Park Road, Suite 103

Boca Raton, FL 33432

Direct telephone: 561-910-3064

Cellular telephone: 561-504-8534