

August 13, 2006

John Gregory Lambros  
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Website: [www.BrazilBoycott.org](http://www.BrazilBoycott.org)

**TO: BOYCOTT BRAZIL SUPPORTERS**

**RE: PABLO JOAQUIN RAYO-MONTANO - RECEIVING LIFE SENTENCE IF EXTRADITED  
FROM BRAZIL TO USA.**

Dear Supporter's:

I have just reviewed the docket sheet and indictment in **USA vs. PABLO JOAQUIN RAYO-MONTANO, Criminal Docket No. 06-20139, U.S. District Court for the Southern District of Florida.**

As you know from my earlier release, Rayo-Montano, 46, was arrested in Brazil on or about May 17, 2006, by U.S. Drug Enforcement Agents. Rayo-Montano was an alleged Colombian drug kingpin who is accused of shipping more than 70 tons of cocaine to the United States. Also the news service reports that \$70 million in assets have been seized by the USA. See, GOOGLE search - "PABLO RAYO-MONTANO" (attached are three (3) pages from GOOGLE SEARCH) USA TODAY, May 18, 2006, Page 3A, "A grand jury in Miami this month indicted Rayo-Montano and 31 others on charges of trafficking cocaine and laundering more than \$150 million."

The attached indictment in USA vs. PABLO JOAQUIN RAYO-MONTANO, Docket No. 06-20139, clearly states that RAYO-MONTANO is indicted on the following four (4) counts:

1. **COUNT ONE (1): Title 21 USC § 963 (involving more than 5 kilo's of cocaine)**
2. **COUNT TWO (2): Title 21 USC § 846 (involving more than 5 kilo's of cocaine)**
3. **COUNT THREE (3): Title 46 USC § 1903(j) (involving more than 5 kilo's of cocaine)**
4. **COUNT FOUR (4): Title 18 USC § 1956 (Laundering of monetary instruments)**

Counts 1, 2, and 3 allow the District Court in Miami to sentence RAYO-MONTANO to a **LIFE SENTENCE** in each count, when consulting the **STATUTE** and the **U.S. FEDERAL SENTENCING GUIDELINES** (18 USCS Appx.).

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RE: PABLO JOAQUIN RAYO-MONTANO - RECEIVING LIFE SENTENCE IF EXTRADITED FROM BRAZIL TO USA.

The Miami District Court that will sentence RAYO-MONTANO, if extradited from Brazil, **MUST** consider the U.S. Federal Sentencing Guidelines which requires the court to sentence RAYO-MONTANO to a LIFE SENTENCE if convicted on anyone of Counts 1, 2, or 3. The Eleventh Circuit Court of Appeals states same in U.S. vs. SCOTT, 441 F.3d 1322, 1329 (11th Cir. 2006): See attached.

"... U.S. vs. CRAWFORD, 407 F.3d 1174, 1178-79 (11th Cir. 2005) ("[A]fter BOOKER, '[t]he district courts, while not bound to apply the Guidelines, **MUST CONSIDER THOSE GUIDELINES AND TAKE THEM INTO ACCOUNT WHEN SENTENCING.**' This consultation requirement, at a minimum, obliges the district court to calculate correctly the sentencing range prescribed by the Guidelines.")" (emphasis added)

See, U.S. vs. SCOTT, 441 F.3d at 1329.

Also see, U.S. vs. ELDIRICK, 443 F.3d 783, 789 (11th Cir. 2006), "after calculating the guidelines, the [court] is free to impose a MORE OR LESS severe sentence than the guidelines recommend so long as it is reasonable." Id. at 789. (emphasis added)

U.S. vs. BOOKER, 160 L.Ed.2d 621 (2005) requires the District Court's in the USA to obtain "accurate advice" from the guidelines, the following guidelines **MUST BE** applied to RAYO-MONTANO if sentenced in the USA:

**RELEVANT CONDUCT BY PABLO RAYO-MONTANO (Title 18, USCS Appx § 1B1.3)**

5. The following point system is the basis for ascertaining the "**BASE OFFENSE LEVEL**" for a sentence issued by a Federal Judge in the USA. The attached copy of the Guideline "**SENTENCING TABLE**" offers a range of "**OFFENSE LEVELS**" from one (1) thru forty-three (43), which in turn states the number of months of imprisonment the defendant will receive. The following characteristics of the offenses RAYO-MONTANO was indicted on and the information released by the United States government and news sources would reflect the following relevant conduct being applied to RAYO-MONTANO:

a. **GUIDELINE § 2D1.1 (DRUG OFFENSES):** RAYO-MONTANO would receive a **BASE OFFENSE LEVEL** of 43 if information states that death or serious bodily injury resulted from the use of drugs he sold or imported and that RAYO-MONTANO had one or more prior convictions for a similar offense. § 2D1.1(b)(1) states that the base offense level will increase by **TWO (2) LEVELS** if a dangerous weapon (including a firearm) was possessed. If only the controlled substance and quantity is used to establish the **BASE OFFENSE LEVEL**, RAYO-MONTANO would receive a **LEVEL 38** (150 Kilo's or more of Cocaine).

b. **GUIDELINE § 3B1.1 (ROLE IN OFFENSE - AGGRAVATING ROLE):** RAYO-

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MONTANO would receive a FOUR (4) LEVEL INCREASE WITHIN HIS BASE OFFENSE LEVEL, as he is labeled as an organizer or leader of the criminal activity that involved five (5) or more participants. See, § 3B1.1(a).

c. **GUIDELINE § 2S1.1 (MONEY LAUNDERING TITLE 18 USC § 1956)**  
RAYO-MONTANO would receive a TWO (2) LEVEL INCREASE WITHIN HIS OFFENSE LEVEL, as he is charged and very likely will be convicted on Count 4, Title 18 USC § 1956. See, § 2S1.1(b)(2)(B).

d. **GUIDELINE § 3C1.1. (OBSTRUCTING OR IMPEDING THE ADMINISTRATION OF JUSTICE)** - RAYO-MONTANO would receive a TWO (2) LEVEL INCREASE WITHIN HIS OFFENSE LEVEL, as the government is stating that he has avoided arrest for several years during the investigation.

RAYO-MONTANO'S "TOTAL BASE OFFENSE LEVEL": 53 POINTS MAXIMUM - 48 POINTS MINIMUM.

6. Therefore, the only sentence RAYO-MONTANO can receive if convicted on Counts 1, 2, or 3 is a LIFE SENTENCE, as a **BASE OFFENSE LEVEL OF 43 OR GREATER CARRIES A LIFE SENTENCE**. See, SENTENCING TABLE.

MAXIMUM SENTENCE IN BRAZIL IS 30 YEARS

7. The 1988 new Constitution of Brazil reaffirmed Article 5, Clause XLVII(b), that there will be no LIFE SENTENCE in Brazil and the legal norm consolidated by Article 75 of the Brazilian Criminal Code, which limits the maximum prison sentence to thirty (30) years. See, STATE vs. PANG, 940 P.2d 1293, 1345 and 1352 (Washington, 1997 - USA)(This Article limits the prison sentence time, conforming exactly with the present constitutional dictamen, as it was the case with the Constitutions [Brazil] of 1937 (Article 122, 13), 1946 (Article 41 Par. 31) and 1969 (Article 153 Par. 1) which prohibited life sentences. Now, if that is the case, how can we give up a constitutional precept in face of a **REQUEST FOR THE EXTRADITION OF AN INDIVIDUAL WHO ONE WAY OR ANOTHER, SUBJECTS HIMSELF TO BRAZILIAN LAW?**) Id. at 1345-1346. RAYO-MONTANO can not be extradited from Brazil to the United States of America.

8. Brazilian Attorney Dr. Roberto B. Dias da Silva stated in 1997, that cocaine trafficking carries a sentence of three (3) to fifteen (15) years, Law No. 6368/76, Article 12, in Brazil. As for cocaine conspiracy, referred to in Brazil's Penal Code as "concurso de agentes", which is specifically addressed in Law No. 6368, Article 14, carries a sentence of three (3) to ten (10) years.

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HOW TO CALCULATE THE MAXIMUM PENALTY IN USA COURTS!!

9. The U.S. Department of State will not advise RAYO-MONTANO how the U.S. District Court calculates the maximum prison sentence he can receive in the USA, as the State Department WILL NOT DISCUSS SUPERVISED RELEASE. Every conviction under the U.S. drug laws carry a penalty of SUPERVISED RELEASE in addition to the sentence. Therefore, if RAYO-MONTANO is convicted on Count Two (2), he may be sentenced to a term of imprisonment of no more than LIFE or a sentence of MANDATORY LIFE WITHOUT RELEASE if he has two or more prior convictions for drug offenses. Any sentence under Title 21 USC § 846 and § 841 IMPOSES A TERM OF SUPERVISED RELEASE OF AT LEAST FIVE (5) YEARS IN ADDITION TO SUCH TERM OF IMPRISONMENT.

10. The maximum sentence RAYO-MONTANO could receive if extradited to the United States would be a TWENTY-FIVE (25) YEAR SENTENCE WITH FIVE (5) YEARS OF SUPERVISED RELEASE. If RAYO-MONTANO violates the conditions of his supervised release, the court may revoke his supervised release and send him back to prison for up to five (5) more years. See, U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993).

11. Lambros does not believe the Brazilian Supreme Court will include the term of supervised release to be included as part of RAYO-MONTANO sentence, nor does Lambros believe the Brazilian Supreme Court can CHANGE a POTENTIAL STATUTORY MAXIMUM SENTENCE THAT A PERSON CAN RECEIVE WITHIN THE USA. The Brazilian Supreme Court is not the U.S. Congress. Therefore, RAYO-MONTANO can not be extradited to the USA.

MAXIMUM SENTENCE IN COLOMBIA IS 30 YEARS

12. RAYO-MONTANO is a citizen of COLOMBIA. Of interest is the fact that the maximum sentence for criminal conduct, like Brazil, is THIRTY (30) YEARS. Colombia has continually stated in all extraditions to the USA, that the person extradited may not receive more than a THIRTY (30) YEAR SENTENCE. See, U.S. vs. GALLO-CHAMORRO, 48 F.3d 502, 503 (11th Cir. 1995); U.S. vs. ABELLO-SILVA, 948 F.2d 1168, 1174 (10th Cir. 1991).

MEXICO WILL NOT EXTRADITE PERSONS FACING LIFE SENTENCES

13. On January 20, 2002, the New York Times reported that the

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the Supreme Court in Mexico ruled that persons facing **A POSSIBLE LIFE SENTENCE** in the USA will not be extradited to the USA. The article stated that the U.S. Justice Department would have to submit another indictment for those persons they wanted to extradite and only violations of U.S. law that carried a **MAXIMUM SENTENCE OF THIRTY (30) YEARS WOULD BE CONSIDERED.** See article, "MEXICAN RULING LIMITS EXTRADITION, Those facing life won't go to the U.S.", New York Times, January 20, 2002. This article is available within the BOYCOTT BRAZIL website: **www.BrazilBoycott.org** within the "INTERNATIONAL EXTRADITION NEWS" section. The Mexican Supreme Court stopped the extradition of over seventy (70) persons to the USA.

**LAMBROS WAS NOT GIVEN BRAZILIAN LAW WHEN EXTRADITED!**

14. Supporter's of BOYCOTT BRAZIL understand John Gregory Lambros was not to be extradited from Brazil to the USA, as the Brazilian Supreme Court understood that the only sentence Lambros could receive was a **MANDATORY LIFE SENTENCE WITHOUT PAROLE**, in which they authorized.

15. Lambros believes that the Brazilian Supreme Court will not extradite RAYO-MONTANO if they receive e-mails from Brazilian Citizens insisting that the Court uphold the Brazilian Constitution and Brazilian Criminal Code.

16. Also, if RAYO-MONTANO is not extradited to the USA due to Brazilian law, Lambros believes he would be entitled to request that the same law apply to him.

**DISTRIBUTION OF THIS LETTER AND VOICING YOUR OPINION TO BRAZILIANS!!!**

17. I believe the best way to distribute this letter and contact Brazilian's is via:

a. **ORKUT:** A social networking web site similar to MySpace that is owned by **GOOGLE.** **ORKUT IS KNOWN FOR ITS HIGH PERCENTAGE (almost 70% percent) OF BRAZILIAN USERS.**

GO TO: **www.ORKUT.COM**

**CONCLUSION**

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18. IN CONCLUSION, I support the above with the "CERTIFICATE OF TRIAL ATTORNEY" in this action, Assistant United States Attorney **ANDREA G. HOFFMAN**, Court ID# A5500885, which includes the following facts within the attached "PENALTY SHEET" for **DEFENDANT PABLO JOAQUIN RAYO-MONTANO**:

- a. **COUNT ONE (1): MAX. PENALTY: Life Imprisonment;**
- b. **COUNT TWO (2): MAX. PENALTY: Life Imprisonment;**
- c. **COUNT THREE (3): MAX. PENALTY: Life Imprisonment;**
- d. **COUNT FOUR (4): MAX. PENALTY: Twenty Years' Imprisonment.**

19. Due to the fact that U.S. Assistant Attorney **ANDREA G. HOFFMAN** has not made a reasonable inquiry into the laws of Brazil, as Brazil's Constitution does not allow a sentence of LIFE, the U.S. District Court for the Southern District of Florida should issue **JUDICIAL SANCTIONS** pursuant to Rule 11 of the Federal Rules of Civil Procedure against U.S. Assistant Attorney Hoffman. See, COBURN OPTICAL INDUSTRIES, INC. vs. CILCO, INC., 610 F.Supp. 656 (M.D.N.C. 1985)(The failure of local counsel to review papers of foreign lead counsel and to conduct a reasonable inquiry into the FACTS AND LAW can result in Rule 11 sanctions.); HAYS, 847 F.2d at 419 (7th Cir. 1988)(A lawyer who lacks relevant expertise must either associate with him a lawyer who has it, or must bone up on the **RELEVANT LAW AT EVERY STEP IN THE WAY** in recognition that his lack of experience makes him prone to error.)

20. I believe U.S. Assistant Attorney **ANDREA G. HOFFMAN** and the U.S. Embassy in Brasilia, Brazil have committed legal fraud and fraud on the Brazilian Court system by negotiating an illegal extradition of PABLO RAYO-MONTANO on crimes that only carry a sentence of **LIFE**.

21. Also, I strongly believe that the Brazilian Supreme Court was not presented with the CERTIFICATE OF TRIAL ATTORNEY ANDREA G. HOFFMAN, which included an attached **PENALTY SHEET** which states RAYO-MONTANO can receive **LIFE SENTENCES** in Counts 1, 2, and 3. See, CLEVELAND vs. RICHARDSON, 132 U.S. 318, 33 L.Ed. 384 (1889) (persons who misrepresent facts or exercise such conduct for a fraudulent purpose as will mislead or throw the other party off guard and cause the other party to omit inquiry or examination which otherwise would have been made, **COMMITTS LEGAL FRAUD.**); BROWNING vs. NAVARRO, 826 F.2d 335, 344, fn. 12 (5th Cir. 1987)(explaining that "fraud upon the court" embraces conduct "perpetrated by **OFFICERS OF THE COURT**").

22. The Brazilian Supreme Court can only extradite RAYO-MONTANO on Count Four (4) of the **MAY 05, 2006, SUPERSEDING INDICTMENT**, which carries a maximum sentence of twenty (20) years, as per the "**PENALTY SHEET**" offered by U.S. Assistant Attorney Andrea G. Hoffman. Don't forget that the Brazilian Supreme Court must subtract the **TERM OF SUPERVISED RELEASE** that will be imposed from the twenty (20) year maximum sentence.

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23. Thanking all my supporters in advance for there continued assistance and distribution of this letter to Brazilian's and the press.

Sincerely,



John Gregory Lambros  
Website: [www.BrazilBoycott.org](http://www.BrazilBoycott.org)

**ENCLOSURES:**

1. CERTIFICATE OF TRIAL ATTORNEY - Assistant U.S. Attorney Andrea G. Hoffman, Court ID# A5500885, in USA vs. PABLO JOAQUIN RAYO-MONTANO, et al., Case No. 06-20139-CR-MIDDLEBROOKS. (One (1) Page)
2. **PENALTY SHEET** - This "PENALTY SHEET" was attached to the above "CERTIFICATE OF TRIAL ATTORNEY." This is the "PENALTY SHEET" for PABLO JOAQUIN RAYO-MONTANO, in the above-entitled action. (One (1) Page)
3. May 05, 2006, **SUPERSEDING INDICTMENT** in USA vs. PABLO JOAQUIN RAYO-MONTANO, Case No. 06-20139-CR. (Fourteen (14) Pages)
4. U.S. vs. SCOTT, 441 F.3d 1322, 1329 (11th Cir. 2006). (One (1) Page)
5. Newspaper article: "MEXICAN RULING LIMITS EXTRADITION - Those facing life won't go to U.S." This article was written by the New York Times and appeared within the STAR TRIBUNE newspaper on Sunday, January 20, 2002, Page A4. (One (1) Page)
6. **SENTENCING GUIDELINES FOR THE U.S. COURTS 2005:** (Nine (9) Pages)
  - a. Title 18 USCS Appx, Ch 5, prec. Part A. SENTENCING TABLE used to determine the guideline range.
  - b. Title 18 USCS Appx., USSG § 2D1.1 - OFFENSES INVOLVING DRUGS.
  - c. Title 18 USCS Appx., USSG § 3B1.1 - AGGRAVATING ROLE.
  - d. Title 18 USCS Appx., USSG § 2S1.1 - MONEY LAUNDERING.
  - e. Title 18 USCS Appx., USSG § 3C1.1 - OBSTRUCTING JUSTICE.
7. GOOGLE: [www.google.com](http://www.google.com) - Search results for "PABLO RAYO-MONTANO." (two (2) Pages)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. 06-20139-CR-MIDDLEBROOKS(s)

vs.

**CERTIFICATE OF TRIAL ATTORNEY\***

PABLO JOAQUIN RAYO-MONTANO, et al,

Defendants.

Superseding Case Information:

Court Division: (Select One)

Miami  Key West  
 FTL  WPB  FTP

New Defendant(s) Yes  No   
Number of New Defendants \_\_\_\_\_  
Total number of counts \_\_\_\_\_

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) Yes  
List language and/or dialect Spanish

4. This case will take 15 days for the parties to try.

5. Please check appropriate category and type of offense listed below:  
(Check only one) (Check only one)

I	0 to 5 days	_____	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	<u>X</u>	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) Yes

If yes:  
Judge: Donald M. Middlebrooks Case No. 06-20139-CR-DMM

(Attach copy of dispositive order)  
Has a complaint been filed in this matter? (Yes or No) No

If yes:  
Magistrate Case No. \_\_\_\_\_  
Related Miscellaneous numbers: \_\_\_\_\_  
Defendant(s) in federal custody as of \_\_\_\_\_  
Defendant(s) in state custody as of \_\_\_\_\_  
Rule 20 from the \_\_\_\_\_ District of \_\_\_\_\_

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003?  Yes  No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999?  Yes  No

If yes, was it pending in the Central Region?  Yes  No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003?  Yes  No

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003?  Yes  No

  
ANDREA G. HOFFMAN  
ASSISTANT UNITED STATES ATTORNEY  
Court ID# A5500885

\*Penalty Sheet(s) attached



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: PABLO JOAQUIN RAYO-MONTANO  
a/k/a "Don Pa," a/k/a "El Tio," a/k/a "El Loco"

Case No: 06-20139-CR-MIDDLEBROOKS(s)

Count #: 1

Conspiracy to import cocaine.

Title 21, United States Code, Section 963.

**\* Max. Penalty:** Life Imprisonment

Count #: 2

Conspiracy to possess with intent to distribute cocaine.

Title 21, United States Code, Section 846.

**\* Max. Penalty:** Life Imprisonment

Count #: 3

Conspiracy to possess with the intent to distribute cocaine on board a vessel.

Title 46, United States Code Appendix, Section 1903(j).

**\* Max. Penalty:** Life Imprisonment

Count #: 4

Conspiracy to launder money.

Title 18, United States Code, Section 1956(h).

**\* Max. Penalty:** Twenty Years' Imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-20139-CR-MIDDLEBROOKS(S)

21 U.S.C. § 963  
21 U.S.C. § 846  
46 U.S.C. App. § 1903(D)  
18 U.S.C. § 1956(b)  
18 U.S.C. § 982  
21 U.S.C. § 853  
46 U.S.C. App. § 1904

UNITED STATES OF AMERICA

vs.

-PABLO JOAQUIN RAYO-MONTANO,

a/k/a "Don Pa,"

a/k/a "El Tio,"

a/k/a "El Loco,"

-MARS MICOLTA-HURTADO,

a/k/a "Omar,"

a/k/a "Calvo,"

-DOMINGO MICOLTA-HURTADO,

a/k/a "La Empleada,"

a/k/a "Tocayo,"

-JACKSON OROZCO-GIL,

a/k/a "TK,"

a/k/a "Jake,"

a/k/a "J,"

-HECTOR EDUARDO AGUILAR,

a/k/a "Compadre,"

a/k/a "Robledo,"

-MONICA PATRICIA RUIZ-MATOREL,

a/k/a "La Doctora,"

-JAIR CHANTRE-MORENO,

a/k/a "Armando,"

-LUIS SEGUNDO POLANCO-GARCIA,

a/k/a "El Indio,"

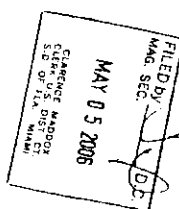
a/k/a "Quinto,"

-IVAN GUSTAVO HURTADO-PAZ,

a/k/a "El Borracho,"

a/k/a "El Grandote,"

a/k/a "El Ronco,"



-LUIS REINAL GRISALES-HERRANDEZ,

a/k/a "El Amigo,"

-VICTOR HUGO SERNA-RAYO,

a/k/a "Pelusa,"

-SANDRA OROZCO-GIL,

-YOHIBEL JOSE DUNN-AGUILERA,

-RAMON EUSTURGIO MATAMBA-PORTOCARRERO,

-JOSE MARIA BERMUDEZ,

a/k/a "Chepe,"

-VICTOR FIDELTORRES-TORRES,

a/k/a "El Medico,"

-EVER GIOVANNI HURTADO-PAZ,

a/k/a "Nani,"

-EYDER XIOMARA BEJARANO-OLAYA,

a/k/a "La X,"

-RUBEN MENACA,

a/k/a "Caliche,"

-WILMAR PAZ-PRECIADO,

-DEGIUS DAVID ROMERO-ACOSTA,

-DAINER CAMACHO-BENITEZ,

a/k/a "Capayo,"

-JOSE ADOLFO HURTADO-PAZ,

a/k/a "Donk,"

-JOSE EDUARDO ARANGO-JARAMILLO,

a/k/a "Chepo,"

-FIDEL SANDOVAL-ROSERO,

-JORGE LUIS DUNN-AGUILERA,

-GUSTAVO MELENDEZ-DIAZ,

a/k/a "El Mono,"

-JHON JAIRO MORENO-BETANCOURT,

a/k/a "El Gordo,"

END LNU,

a/k/a "Toronjil,"

-YOYANY JARAMILLO-TOVAR,

(MARIO LEONE-KAM, and

ADALBERTO PENNA-CORDOBA,

a/k/a "Capi,"

a/k/a "Pena,"

Defendants.

38  
N/A

The Grand Jury charges that: **INDICTMENT**

**COUNT 1**

Beginning in or about January 2003, and continuing through the date of the return of this Superseding Indictment, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

- PABLO JOAQUIN RAYO-MONTANO,**
  - a/k/a "Don Pa,"
  - a/k/a "El Tito,"
  - a/k/a "El Loco,"
- MARS MICOLTA-HURTADO,**
  - a/k/a "Omar,"
  - a/k/a "Calvo,"
- DOMINGO MICOLTA-HURTADO,**
  - a/k/a "La Emplenda,"
  - a/k/a "Tocayo,"
  - a/k/a "TK,"
- JACKSON OROZCO-GIL,**
  - a/k/a "Jake,"
  - a/k/a "J,"
- MONICA PATRICIA RUIZ-MATOREL,**
  - a/k/a "La Doctora,"
- JAIR CHANTRE-MORENO,**
  - a/k/a "Armando,"
- LUIS SEGUNDO POLANCO-GARCIA,**
  - a/k/a "El Indio,"
  - a/k/a "Quinto,"
- IVAN GUSTAVO HURTADO-PAZ,**
  - a/k/a "El Borracho,"
  - a/k/a "El Grandote,"
- LUIS REINAL CRISALES-HERVANDEZ,**
  - a/k/a "El Amigo,"
  - a/k/a "Peluzza,"
- SANDRA OROZCO-GIL,**
- YOHIBEL JOSE DUNN-AGUILERA,**
- RAMON EUSTURGIO MATAMBA-PORTOCARRERO,**
- JOSE MARIA BERMUDEZ,**

- a/k/a "Chepe,"
- VICTOR FIDEL TORRES-TORRES,**
  - a/k/a "El Medico,"
- EVER GIOVANNI HURTADO-PAZ,**
  - a/k/a "Nano,"
  - RUBEN MENACA,**
    - a/k/a "Caliche,"
  - WILMAR PAZ-PRECIADO,**
  - DEGUIS DAVID ROMERO-ACOSTA,**
  - DAINER CAMACHO-BENITEZ,**
    - a/k/a "Capuy,"
  - JOSE ADOLFO HURTADO-PAZ,**
    - a/k/a "Donk,"
  - JORGE LUIS DUNN-AGUILERA,**
    - a/k/a "Chepo,"
  - GUSTAVO MELENDEZ-DIAZ,**
    - a/k/a "El Mono," and
    - FNULNU,
    - a/k/a "Torregil,"

did knowingly and intentionally combine, conspire, confederate and agree with each other and with other persons both known and unknown to the Grand Jury to import into the United States, from a place outside thereof, a controlled substance, in violation of Title 21, United States Code, Section 952(a), all in violation of Title 21, United States Code, Section 963.

Pursuant to Title 21, United States Code, Section 960(b)(1)(B), it is further alleged that this violation involved five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine.

**COUNT 2**

Beginning in or about January 2003, and continuing through the date of the return of this Superseding Indictment, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

- PABLO JOAQUIN RAYO-MONTANO,**
  - a/k/a "Don Pa,"

a/k/a "El Tio,"  
 a/k/a "El Loco,"  
 MARS MICOLTA-HURTADO,  
 a/k/a "Omar,"  
 a/k/a "Calvo,"  
 a/k/a "La Empleada,"  
 DOMINGO MICOLTA-HURTADO,  
 a/k/a "Tocayo,"  
 a/k/a "TK,"  
 JACKSON OROZCO-GIL,  
 a/k/a "J,"  
 a/k/a "J,"  
 MONICA PATRICIA RUIZ-MATOREL,  
 a/k/a "Compadre,"  
 a/k/a "La Doctora,"  
 JAIR CHANTIRE-MORENO,  
 a/k/a "Armando,"  
 LUIS SEGUNDO POLANCO-GARCIA,  
 a/k/a "El Indio,"  
 a/k/a "Quinto,"  
 IVAN GUSTAVO HURTADO-PAZ,  
 a/k/a "El Borracho,"  
 a/k/a "El Grandote,"  
 a/k/a "El Roneo,"  
 LUIS REINAL GRISALES-HERNANDEZ,  
 a/k/a "El Amigo,"  
 a/k/a "Peluza,"  
 VICTOR HUGO SERNA-RAYO,  
 SANDRA OROZCO-GIL,  
 YOHIBEL JOSE DUNN-AGUILERA,  
 RAMON EUSTURGIO MATAMBA-PORTOCARRERO,  
 JOSE MARIA BERMUDEZ,  
 a/k/a "Chepe,"  
 VICTOR FIDEL TORRES-TORRES,  
 a/k/a "El Médico,"  
 EVER GIOVANNI HURTADO-PAZ,  
 a/k/a "Nao,"  
 RUBEN MENACA,  
 a/k/a "Caliche,"  
 WILMAR PAZ-PRECIADO,  
 DEGUIS DAVID ROMERO-ACOSTA,  
 DAINER CAMACHO-BENITEZ,  
 a/k/a "Capuyo,"  
 a/k/a "Donk,"

JOSE ADOLFO HURTADO-PAZ,  
 a/k/a "Chepo,"  
 JORGE LUIS DUNN-AGUILERA,  
 GUSTAVO MELENDEZ-DIAZ,  
 a/k/a "El Mono," and  
 FNU LNU,  
 a/k/a "Toronjih,"

did knowingly and intentionally combine, conspire, confederate and agree with each other and with other persons both known and unknown to the Grand Jury to possess with the intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1); all in violation of Title 21, United States Code, Section 846.

Pursuant to Title 21, United States Code, Section 841(b)(1)(A)(ii), it is further alleged that this violation involved five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine.

**COUNT 3**

Beginning in or about January 2003, and continuing through the date of the return of this Superseding Indictment, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PABLO JOAQUIN RAYO-MONTANO,  
 a/k/a "Don Pa,"  
 a/k/a "El Tio,"  
 a/k/a "El Loco,"  
 MARS MICOLTA-HURTADO,  
 a/k/a "Omar,"  
 a/k/a "Calvo,"  
 a/k/a "La Empleada,"  
 DOMINGO MICOLTA-HURTADO,  
 a/k/a "Tocayo,"  
 JACKSON OROZCO-GIL,  
 a/k/a "J,"  
 a/k/a "J,"

12.

a/k/a "Compadre,"  
 MONICA PATRICIA RUIZ-MATOREL,  
 a/k/a "La Doctora,"  
 JAIR CHANTRE-MORENO,  
 a/k/a "Armando,"  
 LUIS SEGUNDO POLANCO-GARCIA,  
 a/k/a "El Indio,"  
 a/k/a "Quinto,"  
 IVAN GUSTAVO HURTADO-PAZ,  
 a/k/a "El Borracho,"  
 a/k/a "El Grandote,"  
 a/k/a "El Ronco,"  
 LUIS REINAL GRISALES-HERNANDEZ,  
 a/k/a "El Ambio,"  
 a/k/a "Peluza,"  
 SANDRA OROZCO-GIL,  
 YOHIBEL JOSE DUNN-AGUILERA,  
 RAMON EUSTURGIO MATAMBA-PORTOCARRERO,  
 JOSE MARIA BERMUDEZ,  
 a/k/a "Chepe,"  
 VICTOR FIDEL TORRES-TORRES,  
 a/k/a "El Medico,"  
 EVER GIOVANNI HURTADO-PAZ,  
 a/k/a "Nado,"  
 RUBEN MENACA,  
 a/k/a "Caliche,"  
 WILMAR PAZ-PRECIADO,  
 DEGUIS DAVID ROMERO-ACOSTA,  
 DAINER CAMACHO-BENITEZ,  
 a/k/a "Capuyo,"  
 a/k/a "Donk,"  
 JOSE ADOLFO HURTADO-PAZ,  
 a/k/a "Chepo,"  
 JORGE LUIS DUNN-AGUILERA,  
 GUSTAVO MELENDEZ-DIAZ,  
 a/k/a "El Mono," and  
 FNU LNU,  
 a/k/a "Toroguil,"

did knowingly and intentionally combine, conspire, confederate and agree with each other and with other persons, known and unknown to the Grand Jury, to possess with intent to distribute a controlled substance that was on board motor vessels that were subject to the jurisdiction of the

United States, in violation of Title 46, United States Code Appendix, Section 1903(e), all in violation of Title 46, United States Code Appendix, Section 1903(f).  
 Pursuant to Title 46, United States Code Appendix, Section 1903(g) and Title 21, United States Code, Section 960(b)(1)(B), it is further alleged that this violation involved five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine.

**COUNT 4**

Beginning in or about January 2003, and continuing through the date of the return of this Superseding Indictment, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

PABLO JOAQUIN RAYO-MONTANO,  
 a/k/a "Don Pa,"  
 a/k/a "El Tio,"  
 a/k/a "El Loco,"  
 MARS MICOLTA-HURTADO,  
 a/k/a "La Empleada,"  
 a/k/a "Calvo,"  
 JACKSON OROZCO-GIL,  
 a/k/a "Jake,"  
 a/k/a "J,"  
 HECTOR EDUARDO AGUILAR,  
 a/k/a "Bolido,"  
 MONICA PATRICIA RUIZ-MATOREL,  
 a/k/a "La Doctora,"  
 VICTOR HUGO SERNA-RAYO,  
 SANDRA OROZCO-GIL,  
 RAMON EUSTURGIO MATAMBA-PORTOCARRERO,  
 EYDER XIOMARA BELARANO-OLAYA,  
 a/k/a "La X,"  
 RUBEN MENACA,  
 a/k/a "Caliche,"  
 JOSE EDUARDO ARANGO-JARAMILLO,  
 a/k/a "Pochon,"  
 FIDEL SANDOVAL-ROSERO,  
 JHON JAIRO MORENO-BETANCOURT,

**m/a/a "El Gordo,"**  
**FNU LNU**  
**m/a/a "Torongli,"**  
**YOVANY JARAMILLO-TOVAR,**  
**MARIO LEONE-KAM, and**  
**ADALBERTO PENA-CORDOBA,**  
**m/a/a "Capl,"**  
**m/a/a "Panda,"**

did willfully, that is with the specific intent to further the unlawful purpose, and knowingly, combine, conspire, confederate and agree with each other and with other persons both known and unknown to the Grand Jury, to commit offenses against the United States, in violation of Title 18, United States Code, Section 1956, that is:

A. To knowingly conduct financial transactions, affecting interstate and foreign commerce, which transactions involved the proceeds of some specified unlawful activity, with the intent to promote the carrying on of said specified unlawful activity; and knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i); and

B. To knowingly conduct financial transactions, affecting interstate and foreign commerce, which transactions involved the proceeds of some specified unlawful activity, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of some specified unlawful activity, and knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i)

C. To knowingly transport, transmit and transfer a monetary instrument and funds from a place in the United States to and through a place outside of the United States, with the intent to

promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

D. To knowingly transport, transmit and transfer a monetary instrument and funds to a place in the United States from and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

It is further alleged that the specified unlawful activity referred to above is the felonious importation, receiving, concealment, buying, selling and otherwise dealing in a controlled substance, punishable under the laws of the United States.

All in violation of Title 18, United States Code, Section 1956(f).

**FORFEITURE ALLEGATIONS**

1. The allegations of Counts 1 through 4 of this Superseding Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America of property in which the defendants have an interest.

2. Upon conviction of any violation of Title 21, United States Code, Section 963 and or any violation of Title 21, United States Code, Section 846, the defendants shall forfeit to the United States any property constituting or derived from any proceeds which the defendants obtained, directly or indirectly, as the result of such violations, and any property which the defendants used or intended to be used in any manner or part to commit or to facilitate the commission of such violations pursuant to the provisions of Title 21, United States Code, Section 853.

3. Upon conviction of any violation of Title 46, United States Code Appendix, Section 1903(f), the defendants shall forfeit to the United States any property that was used or intended to

be used to commit, or to facilitate the commission of such offense pursuant to Title 46, United States Code Appendix, Section 1904.

4. Upon conviction of any violation of Title 18, United States Code, Section 1956, the defendants shall forfeit to the United States any property real or personal, involved in such offense or any property traceable to such property pursuant to Title 18, United States Code, Section 982(a)(1).

5. The property which is subject to forfeiture includes, but is not limited to, the following:

A) U.S. Currency

A sum of money equal to \$150,000,000.00 in United States currency, representing the amount of money involved in the money laundering offense charged in Count 4 and/or proceeds obtained as a result of the narcotics offenses charged in Counts 1-3, for which the defendants are jointly and severally liable.

B) Real Property

1. 11343 SW 87<sup>th</sup> Terrace, Miami, Florida 33173;
2. Proceeds from sale of 4231 Justison Court, Miami, Florida 33133;
3. 313 NE 2<sup>nd</sup> Street, Unit #403, Ft. Lauderdale, Florida 33301;
4. 7441 Santa Monica Drive, Margate, Florida 33063;
5. 303 Racquet Club Road, Unit #301, Weston, Florida 33326;
6. 1401 SW 22<sup>nd</sup> St. (Coral Way) Apt. 1501, Miami, Florida 33145;
7. 1333 Sago Lane, Weston, Florida 33327;
8. 602 Pigeon Plum Way, Weston, Florida 33327;
9. 16500 Collins Avenue, Unit TH - 10, Sunny Isles, Florida 33160.

C) Automobiles

1. 2006 Chevrolet Silverado Pick-up truck, VIN: 3GCEC14X66G194676;
2. 2004 Toyota Camry, VIN: 4T1BE32KX4U903339;
3. 2003 Honda CR-V Station Wagon, VIN: SHSRD68443U101216;
4. 2003 Lexus IS300, VIN: JTHBD1921310080225;
5. 2003 Jaguar, VIN: SAJDA14CX3LF56056;
6. 2001 Toyota Sequoia, VIN: STDZT734A71S031179;

D) Vessels

1. 65' Hatteras, "King of the Seas," Hull ID: HATDA374A39523344;
2. 35' Albin, "Dora Barbara," Hull ID: ALU35229E001;
3. 35' "Mirage," Hull ID: HZJ40Y01B304.

E) Bank Accounts

1. all the contents of account # 009437902673, in the name of Mirza Fiedberg Felmanas at Bank of America, New York, New York;
  2. all the contents of account # 510083205 at Intercredit Bank, Miami, Florida;
  3. all the contents of account # 011278989506, in the name of Natural Beef Company, Inc., at TerraBank Miami, Florida;
  4. all the contents of account # 011287827806, in the name of Consolidated Boat Services, Inc., at TerraBank, Miami, Florida;
  5. all the contents of account # 011275365306, in the name of HECTOR AGUILAR at TerraBank, Miami, Florida;
  6. all the contents of account # 9600759907, in the name of Elizabeth Manrique Albear at Union Planters Bank, Miami, Florida.
6. Pursuant to Title 21 United States Code, Section 853(g), as incorporated by reference

51

by Title 18, United States Code, Section 982(b), if any of the forfeitable property, or any portion thereof, as a result of any act or omission of the defendants:

- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred, or sold to, or deposited with a third party;
- (C) has been placed beyond the jurisdiction of the Court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be subdivided without difficulty.

It is the intent of the United States to seek the forfeiture of other property of the defendants up to the value of the above-described forfeitable property:

All pursuant to Title 21, United States Code, Section 853, Title 46, United States Code Appendix, Section 1904 and Title 18, United States Code, Section 982(a)(1).

A TRUE BILL

*Carol J. Longo*  
FOREPERSON

*1 Sept. 2006*  
R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

*Andrea G. Hoffman*  
ANDREA G. HOFFMAN  
ASSISTANT UNITED STATES ATTORNEY

No. 06-20139-CR-MIDDLEBROOKS(s)

**UNITED STATES DISTRICT COURT**

SOUTHERN District of FLORIDA

THE UNITED STATES OF AMERICA

vs.

PABLO JOAQUIN RAYO-MONTANO, ET AL.,

Defendants./

**INDICTMENT**

- 21 U.S.C. § 963
- 21 U.S.C. § 846
- 46 U.S.C. App. § 1903(j)
- 18 U.S.C. § 1956(h)
- 21 U.S.C. § 853
- 46 U.S.C. App. § 1904

A True Bill *Carol J. Longo* 5/5/06  
 Filed in open court this 31<sup>st</sup> day, May of 2006 A. D. 2006  
 Foreman  
 Clerk  
 Bail, \$ \_\_\_\_\_

FORM DBD-04  
MARCH 04

**06 - 20139**

Indictment No. 05-104-MCN-0376  
**CR-MIDDLEBROOKS**

**MAISTRATE JUDGE  
BROWN**



sufficiently direct connection between the defendant's pre-threat conduct and his threat." *Id.* We concluded that this conduct was serious and specifically connected to the threatened parties. *Id.* We also found that these activities were closely linked with the offense of sending threatening communications through the mail. *Id.*

As our *Barbour* and *Taylor* decisions indicate, and the commentary to § 2A6.1(b)(1) says, the six-level enhancement under that provision is appropriate where serious conduct committed before or during the offense indicates an intent to carry out the threat. *See Taylor*, 88 F.3d at 943; *Barbour*, 70 F.3d at 586; U.S.S.G. § 2A6.1, cmt. n. 1. Scott's statement to the FBI does not amount to that. It was not conduct before or during the criminal offense but simply an answer (and a somewhat ambiguous one at that) given by Scott while in custody and in response to an investigator's question, and it occurred after the crime had been completed. The district court erred by applying the § 2A6.1(b)(1) enhancement.

Since the Supreme Court issued its decision in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), a district court is no longer required to sentence within the guidelines range, but is still obligated to correctly calculate the range. *United States v. Gibson*, 434 F.3d 1234, 1243 (11th Cir.2006); *United States v. Crawford*, 407 F.3d 1174, 1178-79 (11th Cir.2005) ("[A]fter *Booker*, [t]he district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing." This consultation requirement, at a minimum, obliges the district court to calculate *correctly* the sentencing range prescribed by the Guidelines.") (citation omitted);

*United States v. Shelton*, 400 F.3d 1325, 1332 n. 9 (11th Cir.2005) ("A sentencing court under *Booker* still must consider the Guidelines, and, such consideration necessarily requires the sentencing court to calculate the Guidelines sentencing range in the same manner as before *Booker*."). We have noted that "[a] misinterpretation of the Guidelines by the district court effectively means that [the district court] has not properly consulted the Guidelines." *Gibson*, 434 F.3d at 1243 (internal quotation marks and citation omitted).

[5] Notwithstanding the district court's error, we are not required to vacate the sentence and remand the case if the court would have likely sentenced Scott in the same way without the error. *See Williams v. United States*, 503 U.S. 193, 203, 112 S.Ct. 1112, 1120-21, 117 L.Ed.2d 341 (1992) ("[O]nce the court of appeals has decided that the district court misapplied the Guidelines, a remand is appropriate unless the reviewing court concludes, on the record as a whole, that the error was harmless, *i.e.*, that the error did not affect the district court's selection of the sentence imposed."); *United States v. Williams*, 431 F.3d 767, 775 (11th Cir. 2005) (Carnes, J. concurring) ("The Supreme Court and this Court have long recognized that it is not necessary to decide guidelines issues or remand cases for new sentence proceedings where the guidelines error, if any, did not affect the sentence."); *United States v. Blas*, 360 F.3d 1268, 1272-73 (11th Cir.2004) (declining to decide whether the district court misapplied the guidelines where the district court would have reached the same sentence regardless of any error).

If the district court had not erroneously applied the six-level enhancement, Scott would have had an offense level of 17.

X

17.

# Mexican ruling limits extradition

*Those facing life won't go to U.S.*

New York Times

MEXICO CITY — Mexico's Supreme Court has blocked the extradition of criminal suspects facing life sentences in the United States, confounding U.S. authorities seeking to convict defendants accused of drug trafficking and murder.

The ruling, handed down in October but published in full last month, has stopped the extradition of more than 70 high-profile defendants.

The decision is rooted in Mexico's constitution, which says that all people are capable of rehabilitation. A life sentence, the court ruled, flies in the face of that concept. The maximum sentence in Mexico is 40 years, although sometimes a 60-year term may be imposed.

The prisoners for whom extradition has been barred include a former state governor, Mario Villanueva, indicted in New York on charges of smuggling 200 tons of cocaine into the United States. Another is Augustin Vazquez Mendoza, who was on the FBI's list of the 10 most-wanted fugitives, charged with the 1994 murder of an undercover drug-enforcement officer in Arizona.

The Drug Enforcement Administration (DEA) spent six years and more than \$1 million pursuing Vazquez before his arrest in July 2000. Now it appears that, in order to extradite him, Arizona may have to dismiss the case and try him on lesser charges.

Similarly, the indictment against Villanueva, a fugitive for two years before his arrest in May 2001, will have to be redrawn if he is ever to face justice in the United States, officials said.

The court, in a 6-2 ruling, said a life sentence negated the Mexican constitution's provisions for rehabilitation. "It would be absurd to hope to rehabilitate the criminal if there were no chance of his returning to society," Justice Roman Palacios wrote for the majority.

## Trafficking

The decision was a bitter pill for U.S. officials, who cite the Villanueva and Vazquez cases as crucial for establishing a foundation of justice in matters between the countries.

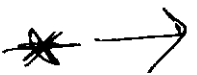
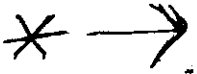
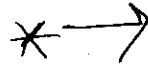
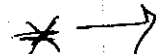
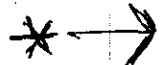
Villanueva, governor of the state of Quintana Roo from 1993 to 1999, is the highest-ranking Latin American politician to face drug charges filed in a U.S. court since the arrest of Gen. Manuel Noriega, the dictator of Panama, in 1989. Villanueva is accused of working with traffickers to import cocaine into the United States, taking a \$500,000 bribe for every major shipment that passed through his state in the mid-1990s.

The charges against him filed in U.S. District Court in New York City — two counts of running a "continuing criminal enterprise" — carry a maximum sentence of life in prison for each charge and a \$4 million fine. Law enforcement officials in Mexico said the U.S. attorney's office in New York might have to seek a new indictment on lesser charges, carrying a maximum 20-year sentence, against Villanueva, 55.

Vazquez, 31, is charged as the mastermind in the 1994 killing of Richard Fass, a U.S. DEA agent working undercover, in Glendale, Ariz.

The state of Arizona charges that Vazquez ordered that Fass be killed to recoup a 22-pound shipment of methamphetamine and the \$160,000 that Fass had brought along to pay for it. After six years as a fugitive, and a national manhunt, he was arrested by Mexican authorities 18 months ago.

But last week, a judge ruled that the recent Mexican Supreme Court decision barred his extradition. Arizona has two hard choices if it wants to try Vazquez: drop the murder charge or promise Mexico that he will receive a fixed sentence of 60 years or less if convicted.





# UNITED STATES CODE SERVICE



*Lawyers Edition*

All federal laws of a general and permanent nature arranged in accordance with the section numbering of the United States Code and the supplements thereto.

## 18 USCS Appendix

### Sentencing Guidelines for the United States Courts

2005



LexisNexis®

19.

# SENTENCING TABLE

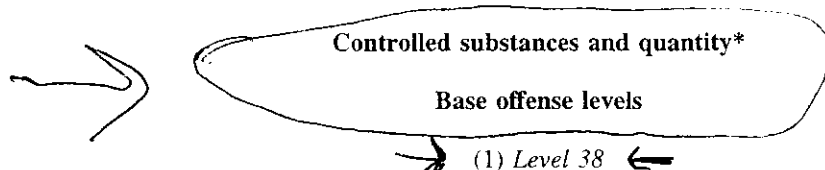
(in months of imprisonment)

		Criminal History Category (Criminal History Points)					
		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
↓	→	Offense Level					
		1	0-6	0-6	0-6	0-6	0-6
		2	0-6	0-6	0-6	0-6	1-7
		3	0-6	0-6	0-6	2-8	3-9
Zone A		4	0-6	0-6	0-6	2-8	6-12
		5	0-6	0-6	1-7	4-10	9-15
		6	0-6	1-7	2-8	6-12	12-18
		7	0-6	2-8	4-10	8-14	15-21
		8	0-6	4-10	6-12	10-16	18-24
		9	4-10	6-12	8-14	12-18	21-27
Zone B		10	6-12	8-14	10-16	15-21	24-30
		11	8-14	10-16	12-18	18-24	27-33
Zone C		12	10-16	12-18	15-21	21-27	30-37
		13	12-18	15-21	18-24	24-30	33-41
		14	15-21	18-24	21-27	27-33	37-46
		15	18-24	21-27	24-30	30-37	41-51
		16	21-27	24-30	27-33	33-41	46-57
		17	24-30	27-33	30-37	37-46	51-63
		18	27-33	30-37	33-41	41-51	57-71
		19	30-37	33-41	37-46	46-57	63-78
		20	33-41	37-46	41-51	51-63	70-87
		21	37-46	41-51	46-57	57-71	77-96
		22	41-51	46-57	51-63	63-78	84-105
		23	46-57	51-63	57-71	70-87	92-115
		24	51-63	57-71	63-78	77-96	100-125
		25	57-71	63-78	70-87	84-105	110-137
		26	63-78	70-87	78-97	92-115	120-150
Zone D		27	70-87	78-97	87-108	100-125	130-162
		28	78-97	87-108	97-121	110-137	140-175
		29	87-108	97-121	108-135	121-151	151-188
		30	97-121	108-135	121-151	135-168	168-210
		31	108-135	121-151	135-168	151-188	188-235
		32	121-151	135-168	151-188	168-210	210-262
		33	135-168	151-188	168-210	188-235	235-293
		34	151-188	168-210	188-235	210-262	262-327
		35	168-210	188-235	210-262	235-293	292-365
		36	188-235	210-262	235-293	262-327	324-405
		37	210-262	235-293	262-327	324-405	360-life
		38	235-293	262-327	292-365	324-405	360-life
		39	262-327	292-365	324-405	360-life	360-life
		40	292-365	324-405	360-life	360-life	360-life
		41	324-405	360-life	360-life	360-life	360-life
		42	360-life	360-life	360-life	360-life	360-life
	→	43	life	life	life	life	life



(7) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.

(c) Drug Quantity Table



- 30 KG or more of Heroin (or the equivalent Level 38 amount of other Schedule I or II Opiates);
- 150 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- 1.5 KG or more of Cocaine Base;
- 30 KG or more of PCP, or 3 KG or more of PCP (actual);
- 15 KG or more of Methamphetamine, or 1.5 KG or more of Methamphetamine (actual), or 1.5 KG or more of "Ice";
- 15 KG or more of Amphetamine, or 1.5 KG or more of Amphetamine (actual);
- 300 G or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- 12 KG or more of Fentanyl;
- 3 KG or more of a Fentanyl Analogue;
- 30,000 KG or more of Marihuana;
- 6,000 KG or more of Hashish;
- 600 KG or more of Hashish Oil;
- 30,000,000 units or more of Schedule I or II Depressants;
- 1,875,000 units or more of Flunitrazepam.

(2) Level 36

- At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- At least 500 G but less than 1.5 KG of Cocaine Base;
- At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual);
- At least 5 KG but less than 15 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of Methamphetamine (actual), or at least 500 G but less than 1.5 KG of "Ice";
- At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);
- At least 4 KG but less than 12 KG of Fentanyl;
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish; At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam.

(3) Level 34

- At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);
- At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);
- At least 150 G but less than 500 G of Cocaine Base;
- At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of PCP (actual);
- At least 1.5 G but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of "Ice";
- At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);

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cation n. 4, because government failed to show that defendant's violations of 50 USCS § 1705 involved conduct relevant to his convictions or were calculated to influence or affect conduct of government by intimidation or coercion. United States v Biheiri (2004, ED Va) 299 F Supp 2d 590.

3. Miscellaneous

Terrorism enhancement did not hinge upon defendant's ability to carry out specific terrorist crimes or degree of separation from their actual implementation; rather, it was defendant's purpose that was relevant and, if that purpose was to promote terrorism crime, enhancement was triggered. United States v Mandhai (2004, CA11 Fla) 375 F3d 1243, 17 FLW Fed C 721.

Terrorism enhancement of USSG § 3A1.4 was proper, even though conspiracy to destroy buildings used in interstate commerce by fire or explosives under 18 USCS § 844(n) was not specifically listed as federal terrorism crime in 18 USCS § 2332b(g)(5)(B), because, under plain reading, phrase "intended to promote" meant that, if goal or purpose was to bring or help bring into being crime listed in 18 USCS § 2332b(g)(5)(B), terrorism enhancement applied; it was defendant's purpose that was relevant and, if that purpose was to promote terrorism crime, enhancement was triggered. United States v Mandhai (2004, CA11 Fla) 375 F3d 1243, 17 FLW Fed C 721.

Court upheld terrorism and money laundering en-

hancements imposed under USSG §§ 3A1.4, 2S1.1(b)(3), and 2M5.3 during sentencing of defendant convicted of providing material support to designated foreign terrorist organization in violation of 18 USCS § 1956 because evidence established that defendant had close connections with organization's officials (including its spiritual leader and senior military commander), that he was well aware of organization's terrorist activities and goals, and that he personally supported that aspect of organization; furthermore, defendant and his coconspirators employed fictitious entities and shell corporations in course of laundering proceeds from their cigarette smuggling operation. United States v Hammoud (2004, CA4 NC) 381 F3d 316.

In action in which, pursuant to plea agreement with U.S., defendant pleaded guilty to conspiracy to murder federal officials at correctional facility, in violation of 18 USCS § 1114, and attempted murder of corrections officer, in violation of 18 USCS § 1117, court found that since aggregate maximum sentence for "group" of counts underlying defendant's Base Offense Level was life imprisonment, Apprendi did not bar application of USSG § 3A1.4 to defendant's case, even though application of § 3A1.4 would result in sentence in excess of 20 year maximum under 18 USCS § 1114. United States v Salim (2003, SD NY) 287 F Supp 2d 250.

PART B. ROLE IN THE OFFENSE

Introductory Commentary

This Part provides adjustments to the offense level based upon the role the defendant played in committing the offense. The determination of a defendant's role in the offense is to be made on the basis of all conduct within the scope of § 1B1.3 (Relevant Conduct), i.e., all conduct included under § 1B1.3(a)(1)-(4), and not solely on the basis of elements and acts cited in the count of conviction.

When an offense is committed by more than one participant, § 3B1.1 or § 3B1.2 (or neither) may apply. Section 3B1.3 may apply to offenses committed by any number of participants.

**Historical Note:** Effective November 1, 1987. Amended effective November 1, 1990 (see Appendix C, amendment 345); November 1, 1992 (see Appendix C, amendment 456)



§ 3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

- (a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.
- (b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.
- (c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

Commentary

Application Notes:

1. A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.
2. To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.
3. In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.

considering as well the sale prices that were influenced, or sales that were affected in other ways; while price-fixing conspiracy is operating and has any influence on sales, it is reasonable to conclude that all sales during that period are "affected" by conspiracy. *United States v SKW Metals & Alloys, Inc.* (1999, CA2 NY) 195 F3d 83, 1999-2 CCH Trade Cases ¶ 72691, 52 Fed Rules Evid Serv 1694, subsequent app (2001, CA2 NY) 6 Fed Appx 65, 2001-1 CCH Trade Cases ¶ 73208 and (criticized in *United States v Giordano* (2001, CA11 Fla) 261 F3d 1134, 2001-2 CCH Trade Cases ¶ 73381, 57 Fed Rules Evid Serv 1336, 14 FLW Fed C 1140).

In calculating volume of commerce for sentencing purposes under § 2R1.1 in sentencing defendants for conspiracy to fix prices in market for ferrosilicon, district court erred in failing to consider volume of commerce affected by silicon metal conspiracy, even though defendants were acquitted of separate charge of conspiracy to fix price of silicon metal, where court misapprehended its authority to take account of acquitted conduct; if conspirators agreed to fix prices of silicon metal, and conspiracy affected prices, court may consider this as relevant conduct for sentencing purposes without regard to whether sales were at or above price fixed by illegal agreement. *United States v SKW Metals & Alloys, Inc.* (1999, CA2 NY) 195 F3d 83, 1999-2 CCH Trade Cases ¶ 72691, 52 Fed Rules Evid Serv 1694, subsequent app (2001, CA2 NY) 6 Fed Appx 65, 2001-1 CCH Trade Cases ¶ 73208 and (criticized in *United States v Giordano* (2001, CA11 Fla) 261 F3d 1134, 2001-2 CCH Trade Cases ¶ 73381, 57 Fed Rules Evid Serv 1336, 14 FLW Fed C 1140).

Trial court correctly determined that volume of commerce affected by conspiracy to restrain trade by fixing prices and allocating each participant's output of lysine was greater than \$100 million pursuant to § 2R1.1 based on all sales within scope of conspiracy, notwithstanding defendants' claim that "affected commerce" means only sales that reflect a successful price agreement, meaning sales at or above target price; presumption must be that all sales during period of conspiracy have been affected by illegal agreement. *United States v Andreas* (2000, CA7 Ill) 216 F3d 645, 2000-1 CCH Trade Cases ¶ 72944, 54 Fed Rules Evid Serv 1290, reh den, reh. en banc, den (2000, CA7 Ill) 2000 US App LEXIS 18222, cert den (2000) 531 US 1014, 148 L Ed 2d 491, 121 S Ct 573

and cert den (2000) 531 US 1014, 148 L Ed 2d 491, 121 S Ct 573.

District court did not err in including in volume of commerce affected by price-fixing conspiracy in scrap metal industry pursuant to § 2R1.1 all sales affected during period that conspiracy was effective, despite defendants' claim that volume of commerce should include only sales that were made at targeted price, where detailed pricing summaries presented by government showed that defendants companies' sales during this period were consistently at or near prices agreed upon, and there was no evidence that any particular sales were unaffected by illegal agreement or that conspiracy was ineffective for any period; once conspiracy is found to have been effective during a certain period, there arises a rebuttable presumption that all sales during that period were affected by conspiracy. *United States v Giordano* (2001, CA11 Fla) 261 F3d 1134, 2001-2 CCH Trade Cases ¶ 73381, 57 Fed Rules Evid Serv 1336, 14 FLW Fed C 1140.

4. Miscellaneous

Court erred in imposing \$25,000 fine for bid rigging conspiracy because court failed to make explicit findings regarding applicable guideline range: fine could be imposed only if court departed and gave sufficient reasons or, if court did not depart, court was required to impose community service and find that defendant lacked ability to pay. *United States v Pippin* (1990, CA11 Fla) 903 F2d 1478, 1990-1 CCH Trade Cases ¶ 69068.

District court may downwardly depart in order to avoid imprisoning antitrust offender when imprisonment would impose extraordinary hardship on defendant's employees, despite government's claim that departure is inconsistent with deterrence rationale of § 2R1.1, and evidence supported downward departure for defendant, a principal in two steel-related businesses; district court concluded that companies' continuing livelihood depended entirely on defendant's personal involvement and that in his absence, creditor might withdraw credit, leading to companies' immediate bankruptcy and loss of employment. *United States v Milikowsky* (1995, CA2 Conn) 65 F3d 4, 1995-2 CCH Trade Cases ¶ 71125 (criticized in *United States v Lawrence* (1997, CA4 Va) 1997 US App LEXIS 23849).

PART S. MONEY LAUNDERING AND MONETARY TRANSACTION REPORTING

Historical Note: Introductory Commentary to this Part, effective November 1, 1987, was deleted effective November 1, 1990 (see Appendix C, amendment 342)

§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level:

(1) The offense level for 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 § 1B1.3 (Relevant Conduct)); and (B) the offense level for that offense can be determined; or

(2) 8 plus the number of offense levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the value of the laundered funds, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; and (B) the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote (i) an offense involving the manufacture, importation, or distribution of a controlled substance or a listed chemical; (ii) a

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## OFFENSE CONDUCT

crime of violence; or (iii) an offense involving firearms, explosives, national security, or the sexual exploitation of a minor, increase by 6 levels.

(2) (Apply the Greatest):

(A) If the defendant was convicted under 18 U.S.C. § 1957, increase by 1 level.

→ (B) If the defendant was convicted under 18 U.S.C. § 1956, increase by 2 levels. ←

(C) If (i) subsection (a)(2) applies; and (ii) the defendant was in the business of laundering funds, increase by 4 levels.

(3) If (A) subsection (b)(2)(B) applies; and (B) the offense involved sophisticated laundering, increase by 2 levels.

## Commentary

Statutory Provisions: 18 U.S.C. §§ 1956, 1957, 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. § 1960(b)(1)(C)). For additional statutory provision(s), see Appendix A (Statutory Index).

## Application Notes:

1. Definitions. For purposes of this guideline:

“Crime of violence” has the meaning given that term in subsection (a)(1) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

“Criminally derived funds” means any funds derived, or represented by a law enforcement officer, or by another person at the direction or approval of an authorized Federal official, to be derived from conduct constituting a criminal offense.

“Laundered funds” means the property, funds, or monetary instrument involved in the transaction, financial transaction, monetary transaction, transportation, transfer, or transmission in violation of 18 U.S.C. § 1956 or § 1957.

“Laundering funds” means making a transaction, financial transaction, monetary transaction, or transmission, or transporting or transferring property, funds, or a monetary instrument in violation of 18 U.S.C. § 1956 or § 1957.

“Sexual exploitation of a minor” means an offense involving (A) promoting prostitution by a minor; (B) sexually exploiting a minor by production of sexually explicit visual or printed material; (C) distribution of material involving the sexual exploitation of a minor, or possession of material involving the sexual exploitation of a minor with intent to distribute; or (D) aggravated sexual abuse, sexual abuse, or abusive sexual contact involving a minor. “Minor” means an individual under the age of 18 years.

2. Application of Subsection (a)(1).

(A) Multiple Underlying Offenses. In cases in which subsection (a)(1) applies and there is more than one underlying offense, the offense level for the underlying offense is to be determined under the procedures set forth in Application Note 3 of the Commentary to § 1B1.5 (Interpretation of References to Other Offense Guidelines).

(B) Defendants Accountable for Underlying Offense. In order for subsection (a)(1) to apply, the defendant must have committed the underlying offense or be accountable for the underlying offense under § 1B1.3(a)(1)(A). The fact that the defendant was involved in laundering criminally derived funds after the commission of the underlying offense, without additional involvement in the underlying offense, does not establish that the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the underlying offense.

(C) Application of Chapter Three Adjustments. Notwithstanding § 1B1.5(c), in cases in which subsection (a)(1) applies, application of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (i.e., the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived.

3. Application of Subsection (a)(2).

(A) In General. Subsection (a)(2) applies to any case in which (i) the defendant did not commit the underlying offense; or (ii) the defendant committed the underlying offense (or would be accountable for the underlying offense under § 1B1.3(a)(1)(A)), but the offense level for the underlying offense is impossible or impracticable to determine.

(B) Commingled Funds. In a case in which a transaction, financial transaction, monetary transaction, transportation, transfer, or transmission results in the commingling of legitimately derived funds with criminally derived funds, the value of the laundered funds, for purposes of subsection (a)(2), is the amount of the criminally derived funds, not the total amount of the commingled funds, if the defendant provides sufficient information to determine the amount of criminally derived funds without unduly complicating or prolonging the sentencing process. If the amount of the criminally derived funds is difficult or impracticable to determine, the value

## ADJUSTMENTS

Body Armor Act of 2002 (section 11009(d) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273).

**Historical Note:** Effective November 1, 2003 (see Appendix C, amendment 659). Amended effective November 1, 2004 (see Appendix C, amendment 670)

## COMMENTARY

See commentary by the National Institute for Trial Advocacy following USSG § 3A1.1 (18 USCS Appx § 3A1.1).

## PART C. OBSTRUCTION

→ § 3C1.1. **Obstructing or Impeding the Administration of Justice**

→ If (A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense, increase the offense level by 2 levels.

## Commentary

*Application Notes:*

1. This adjustment applies if the defendant's obstructive conduct (A) occurred during the course of the investigation, prosecution, or sentencing of the defendant's instant offense of conviction, and (B) related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) an otherwise closely related case, such as that of a co-defendant.

2. This provision is not intended to punish a defendant for the exercise of a constitutional right. A defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision. In applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.

3. Obstructive conduct can vary widely in nature, degree of planning, and seriousness. Application Note 4 sets forth examples of the types of conduct to which this adjustment is intended to apply. Application Note 5 sets forth examples of less serious forms of conduct to which this enhancement is not intended to apply, but that ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range. Although the conduct to which this adjustment applies is not subject to precise definition, comparison of the examples set forth in Application Notes 4 and 5 should assist the court in determining whether application of this adjustment is warranted in a particular case.

4. The following is a non-exhaustive list of examples of the types of conduct to which this enhancement applies:

- (a) threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so;
- (b) committing, suborning, or attempting to suborn perjury;
- (c) producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding;
- (d) destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding (e.g., shredding a document or destroying ledgers upon learning that an official investigation has commenced or is about to commence), or attempting to do so; however, if such conduct occurred contemporaneously with arrest (e.g., attempting to swallow or throw away a controlled substance), it shall not, standing alone, be sufficient to warrant an adjustment for obstruction unless it resulted in a material hindrance to the official investigation or prosecution of the instant offense or the sentencing of the offender;
- (e) escaping or attempting to escape from custody before trial or sentencing; or willfully failing to appear, as ordered, for a judicial proceeding;
- (f) providing materially false information to a judge or magistrate;
- (g) providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense;
- (h) providing materially false information to a probation officer in respect to a presentence or other investigation for the court;
- (i) other conduct prohibited by obstruction of justice provisions under Title 18, United States Code (e.g., 18 U.S.C. §§ 1510, 1511);

(j) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. § 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. § 853(p).

This adjustment also applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of conviction for such conduct.

5. Some types of conduct ordinarily do not warrant application of this adjustment but may warrant a greater sentence within the otherwise applicable guideline range or affect the determination of whether other guideline adjustments apply (e.g., § 3E1.1 (Acceptance of Responsibility)). However, if the defendant is convicted of a separate count for such conduct, this adjustment will apply and increase the offense level for the underlying offense (i.e., the offense with respect to which the obstructive conduct occurred). See Application Note 8, below.

The following is a non-exhaustive list of examples of the types of conduct to which this application note applies:

(a) providing a false name or identification document at arrest, except where such conduct actually resulted in a significant hindrance to the investigation or prosecution of the instant offense;

(b) making false statements, not under oath, to law enforcement officers, unless Application Note 4(g) above applies;

(c) providing incomplete or misleading information, not amounting to a material falsehood, in respect to a presentence investigation;

(d) avoiding or fleeing from arrest (see, however, § 3C1.2 (Reckless Endangerment During Flight));

(e) lying to a probation or pretrial services officer about defendant's drug use while on pre-trial release, although such conduct may be a factor in determining whether to reduce the defendant's sentence under § 3E1.1 (Acceptance of Responsibility).

6. "Material" evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.

7. If the defendant is convicted of an offense covered by § 2J1.1 (Contempt), § 2J1.2 (Obstruction of Justice), § 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), § 2J1.5 (Failure to Appear by Material Witness), § 2J1.6 (Failure to Appear by Defendant), § 2J1.9 (Payment to Witness), § 2X3.1 (Accessory After the Fact), or § 2X4.1 (Misprision of Felony), this adjustment is not to be applied to the offense level for that offense except if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself (e.g., if the defendant threatened a witness during the course of the prosecution for the obstruction offense).

8. If the defendant is convicted both of an obstruction offense (e.g., 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 1621 (Perjury generally)) and an underlying offense (the offense with respect to which the obstructive conduct occurred), the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of § 3D1.2 (Groups of Closely Related Counts). The offense level for that group of closely related counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.

9. Under this section, the defendant is accountable for his own conduct and for conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.

**Historical Note:** Effective November 1, 1987. Amended effective November 1, 1989 (see Appendix C, amendments 251 and 252); November 1, 1990 (see Appendix C, amendment 347); November 1, 1991 (see Appendix C, amendment 415); November 1, 1992 (see Appendix C, amendment 457); November 1, 1993 (see Appendix C, amendment 496); November 1, 1997 (see Appendix C, amendment 566); November 1, 1998 (see Appendix C, amendments 579, 581, and 582); November 1, 2002 (see Appendix C, amendment 637); November 1, 2004 (see Appendix C, amendment 674)

COMMENTARY

See commentary by the National Institute for Trial Advocacy following USSG § 3A1.1 (18 USCS Appx § 3A1.1).

RESEARCH GUIDE

Federal Procedure:

9A Fed Proc. L Ed. Criminal Procedure § 22:1477.

Annotations:

Construction and Operation of "Willfulness" Requirement of U.S.S.G. § 3C1.1 [18 USCS Appx § 3C1.1] Pertaining to Obstructing or Impeding Administration of Justice. 185 ALR Fed 493.

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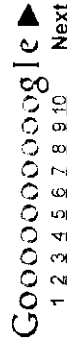
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