November 17, 2008

John Gregory Lambros
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LUIS IGNACIO GUZMAN, Consel General
Consulado General de Colombia
280 Aragon Avenue
Coral Gables, Florida 33134
Tel. (305) 448-5558

RE: YOUR LETTER DATED JULY 30, 2008 - See attached

Dear Luis Ignacio Guzman:

Thank you for responding to my June 3, 2008 letter to Paulina Gomez B., who works at you office in Chicago, Illinois.

Within my July 30, 2008 letter I offered an overview of the standard language within criminal extradition decrees by the Colombian Supreme Court, for those persons extradited to the United States of America, that must be enforced by the United States Federal Courts. The specific condition within every Colombian Supreme Court extradition decree is that the person extradited to the United States **CAN NOT RECEIVE MORE THAN A THIRTY-YEAR (30) SENTENCE. THIS CONDITION IS NOT BEING ENFORCED.**

My letter offered research and facts that proved persons extradited from Colombia to the United States are being subject to an "INJURY IN FACT", thus giving your office - Consulado General de Colombia and the Supreme Court of Colombia - STANDING to bring action to correct sentences of more than thirty-years (30), **DUE TO THE TERM OF SUPERVISED RELEASE.**

Within paragraph five (5) of my June 3, 2008 letter, I offered an example of how the court's within the United States have ruled that "SUPERVISED RELEASE" is a "TERM OF IMPRISONMENT", because the supervised release term itself is part of the punishment imposed for a person original crime. See, U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993):

> Roberts was advised by the Court that he faced a statutory maximum sentence of twenty (20) years, as per Title 21 U.S.C. §841(b)(1)(C).
>
> "At sentencing, Roberts received the twenty (20) year maximum **PLUS** a three (3) year term of **SUPERVISED RELEASE** pursuant to

> the Sentencing Guidelines. ..... If Roberts violates the conditions of his **SUPERVISED RELEASE**, the court may revoke his **SUPERVISED RELEASE AND SEND HIM BACK TO PRISON FOR UP TO THREE (3) MORE YEARS.** 18 U.S.C. §3583(e)(3). Thus, Robert's **MAXIMUM SENTENCE IS AT LEAST TWENTY-THREE (23) YEARS, NOT TWENTY (20) YEARS.** Because of the term of **SUPERVISED RELEASE**, Roberts received a **POTENTIALLY LONGER SENTENCE THAN HE WAS APPRISED OF AT HIS PLEA HEARING.** (emphasis added)

See, U.S. vs. ROBERTS, 5 F.3d 365, 368-369 (9th Cir. 1993).

Not included within my June 3, 2008 letter, was the most recent reference to "a term of **SUPERVISED RELEASE .... IS 'SIMPLY PART OF THE WHOLE MATRIX OF PUNISHMENT WHICH ARISES OUT OF A DEFENDANT'S ORIGINAL CRIMES.'"**, See, U.S. vs. ETHERTON, 101 F.3d 80, 81 (9th Cir. 1996)("it is the original sentence that is executed when the defendant is returned to prison after a violation of the terms of ... **SUPERVISED RELEASE.**") **EXHIBIT A.**, that was published by the "Sentencing Resource Counsel" on January 2, 2008, within a MEMORANDUM to "All [U.S. Federal Public] Defenders, CJA Panelists" regarding "Sentence Reductions Under the Retroactive Crack Amendment". The MEMORANDUM stated on Page 18 - under D. Supervised Release -:

> "This advice is contrary to an earlier Ninth Circuit case, which interpreted "**TERM OF IMPRISONMENT**" as used in §3582(c)(2) to encompass periods of incarceration for **SUPERVISED RELEASE** revocations because the **SUPERVISED RELEASE TERM ITSELF IS PART OF THE PUNISHMENT IMPOSED FOR THE DEFENDANT'S ORIGINAL CRIME".** See, U.S. vs. ETHERTON, 101 F.3d 80, 81-82 (9th Cir. 1996).

See, **EXHIBIT B.**

Hopefully the above references and exhibits will assist you in enforcing the specific condition within every Colombian Supreme Court criminal extradition decree to the United States which states that a person extradited to the United States can not receive more than a thirty (30) year sentence which must include the term of **SUPERVISED RELEASE.**

DAINER CAMACHO-BENITEZ

Within paragraph six (6) of my June 3, 2008 letter to you, I offered information as to the extradition of Dainer Camacho-Benitez from Colombia to the United States on or about 2008 and the appointment of Attorney Hugo A. Rogriguez, Miami, Florida to

represent him in criminal action USA vs. RAYO-MONTANO, et. al., Criminal Docket No. 1:06-CR-20139-DMM-ALL, U.S. District Court for the Southern District of Florida (Miami). See, Docket Sheet entries 569, 570, 573, 574, 575, 581, etc.

Also, I informed you of my contact with Attorney Rodriquiz by U.S. Certified Mail advising him of the fact that the **TERM OF SUPERVISED RELEASE MUST BE INCLUDED WITHIN CAMACHO-BENITEZ's TOTAL SENTENCE WHICH CAN NOT BE MORE THAN THIRTY (30) YEARS.** As you may or may not know, CAMACHO-BENITEZ can only receive life sentences on several of the counts he was indicted on by the United States. To date, Attorney Rodriquiz has not contacted me as to motions filed as to CAMACHO-BENITEZ only receiving a thirty (30) year sentence including the term of **SUPERVISED RELEASE.**

Please advise me if you have contacted Attorney Rodriquez, the District Court or U.S. Assistant Andrea G. Hoffman (who is prosecuting CAMACHO-BENITEZ) as to the term or supervised release being included within the total sentence of thirty (30) years Mr. Camacho-Benitez is allowed to receive, as per the decree of the Colombian Supreme Court. Thank you!!!!

PABLO JOAQUIN RAYO-MONTANO

(A CITIZEN OF COLOMBIA)

As of May 5, 2008 PABLO JOAQUIN RAYO-MONTANO (hereinafter RAYO-MONTANO) - a citizen of Colombia - was awaiting extradition from **BRAZIL** to the United States in criminal action USA vs. RAYO-MONTANO, et. al., Criminal Docket No. 1:06-CR-20139-DMM-ALL, U.S. District Court for the Southern District of Florida (Miami). Please note that this is the same indictment that **DAINER CAMACHO-BENITEZ** was indicted within. See above.

The following facts exist as to RAYO-MONTANO's extradition from **BRAZIL:**

1. On May 5, 2006, Andrea G. Hoffman, Asst. U.S. Attorney filed an INDICTMENT against RAYO-MONTANO and Dainer Camacho-Benitez.

2. Attorney HOFFMAN filed with the indictment a **"PENALTY SHEET"** which clearly states RAYO-MONTANO has a **MAXIMUM PENALTY OF "LIFE IMPRISONMENT"** for Counts 1, 2, and 3.

3. If RAYO-MONTANO is extradited from **BRAZIL** and found guilty on Counts 1, 2, or 3, the District Court **MUST** consider the U.S. Federal Guidelines which **REQUIRES** the court to sentence RAYO-MONTANO to **LIFE SENTENCES.**

4. **MAXIMUM CRIMINAL SENTENCE IN BRAZIL IS THIRTY (30) YEARS - THE SAME AS COLOMBIA:**

The 1988 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 P2d 1293, 1345 & 1352 (Wash. 1997).

5. The BRAZILIAN SUPREME COURT does not respect its own Constitution and laws when extraditing person to the United States, as it does not and refuses to include a resolution and decree that states that if the person is convicted within the United States that he/she must not be sentenced to prison for more than thirty (30) years. This is a proven fact, as I - John Gregory Lambros - was illegally extradited from Brazil in 1993 when the Brazilian Supreme Court was informed by the U.S. Department of State that the only sentence I could receive was a **MANDATORY LIFE SENTENCE WITHOUT PAROLE.** I John Gregory Lambros was sentenced to a **MANDATORY LIFE SENENCE WITHOUT PAROLE** on the indictment I was extradited from Brazil on. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995).

6. On March 27, 2007, John Gregory Lambros wrote U.S. Assistant Attorney Andrea G. Hoffman, via U.S. Certified Mail No. 7002-2410-0001-3730-3795, as to RAYO-MONTANO arrest in **BRAZIL** on or about May 17, 2006 by U.S. Drug Enforcement Agents and Brazilian Officials and extradition to the United States. Lambros informed Attorney HOFFMAN as to the above facts and offered an excellent overview of the charges RAYO-MONTANO was facing and the **MANDATORY PENALTY PROVISIONS OF THE STATUTES** Rayo-Montano had been indicted on. - Attorney HOFFMAN has never responded to John G. Lambros to date, as per her CONTINUING DUTY and responsibility to "REVIEW, REEXAMINE AND REEVALUATE" her position in all legal matters in all legal actions she is involved within. See, FEDERAL RULES OF CIVIL PROCEDURE, Rule 11. See, THOMAS vs. CAPITAL SECURITY SERVICES, INC., 836 F.2d 866 (5th Cir. 1988).

7. John Gregory Lambros has reviewed all docket entries within USA vs. RAYO-MONTANO, et. al., Criminal Docket Sheet No. 1:06-CR-20139-DMM-ALL, for the U.S. District Court, Southern District of Florida (Miami) through May 5, 2008. **See, EXHIBIT C** (Cover page of Docket Report/Sheet)

I am requesting the U.S. Consulado General de Colombia to offer assistance to RAYO-MONTANO as to assuring that he does not receive a criminal penalty of over thirty (30) years - including the term of **SUPERVISED RELEASE** - as a total sentence in USA vs. RAYO-MONTANO, Criminal No. 1:06-CR-20139-DMM-ALL, as RAYO-MONTANO is a **CITIZEN OF COLOMBIA.**

Also, please advise if RAYO-MONTANO has been extradited from Brazil to the United States. Thank you!!!

Thank you in advance for your consideration in this most important matter and your forthcoming response to this letter. I believe my friendly intervention

RE: COLOMBIAN SUPREME COURT EXTRADITION DECREES OF SENTENCES NOT MORE THAN THIRTY (30) YEARS NOT BEING ENFORCED BY U.S. COURTS

as a victim to call your attention and the court's attention to the legal matter stated above, will only assure the citizens of Colombia that due process of the Colombian Constitution applies to all persons/citizens of Colombia. In fact, please feel free to request my assistance within your **"AMICUS CURIAE"** filings in the above judicial proceedings.

Respectfully submitted,

John Gregory Lambros
Website: www.BrazilBoycott.org

ENCLOSURES:

1. EXHIBIT A: U.S. vs. ETHERTON, 101 F.3d 80, 81 (9th Cir. 1996).
2. EXHIBIT B: January 2, 2008, MEMORANDUM from "Sentencing Resource Counsel".
3. EXHIBIT C: USA vs. RAYO-MONTANO, et. al., Criminal Docket for Case No. 1:06-CR-20139-DMM-ALL, U.S. District Court for the Southern District of Florida (Miami), first page of docket sheet.
4. July 30, 2008, letter from Luis Ignacio Guzman, Consul General for the Consulado General de Colombia, Coral Gables, Florida to John Gregory Lambros, as to the receipt of Lambros' June 3, 2008 letter.

UNITED STATES of America, Plaintiff–Appellant,

v.

Gregory Alan ETHERTON, Defendant–Appellee.

No. 95–30381.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Sept. 19, 1996.

Decided Nov. 18, 1996.

Defendant pleaded guilty to conspiracy to manufacture and distribute more than 50 marijuana plants, completed prison term, and was subsequently reimprisoned for violating terms of his supervised release. On motion by defendant, the United States District Court for the District of Oregon, Helen J. Frye, J., reduced prison term imposed on defendant following revocation of his supervised release to time served. Government appealed. The Court of Appeals, Boochever, Circuit Judge, held that district court could reduce sentence imposed upon revocation of supervised release under statute that grants court discretion to modify previously imposed term of imprisonment when sentencing range is subsequently lowered by sentencing commission.

Affirmed.

T.G. Nelson, Circuit Judge, filed dissenting opinion.

1. Criminal Law ⇐996(1.1)

District court had discretion to reduce defendant's sentence that was imposed pursuant to revocation of supervised release, under statute granting court discretion to modify previously imposed term of imprisonment when sentencing range is subsequently lowered by sentencing commission; range for defendant's underlying offense of conspiracy to manufacture and distribute marijuana was significantly lowered, sentence upon revocation of supervised release was part of sentence for underlying offense, and court retained broad sentencing discretion despite existence of Sentencing Guidelines. 18 U.S.C.A. § 3582(c)(2); U.S.S.G. §§ 1B1.10, 2D1.1 Table n., 18 U.S.C.A.; § 2D1.1(c) (1994).

2. Criminal Law ⇐982.9(8)

Seven months' imprisonment imposed upon defendant for violating terms of supervised release was not punishment for new substantive offense, but, rather, was original sentence for underlying offense that was executed when defendant was returned to prison after violating terms of supervised release.

Lisa Simotas, United States Department of Justice, Washington, D.C., for plaintiff-appellant.

Wendy Willis, Assistant Federal Public Defender, Portland, Oregon, for defendant-appellee.

Appeal from the United States District Court for the District of Oregon, Helen J. Frye, District Judge, Presiding. D.C. No. CR–90–00028–3–HJF.

Before: PREGERSON, BOOCHEVER and T.G. NELSON, Circuit Judges.

BOOCHEVER, Circuit Judge:

The United States appeals the district court's reduction of the prison term imposed on Gregory Alan Etherton ("Etherton") following the revocation of his supervised release to time served. We affirm.

I. FACTS AND PROCEDURAL HISTORY

In February of 1991 Etherton pleaded guilty to a one-count information charging him with conspiracy to manufacture and distribute more than 50 marijuana plants, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. The marijuana equivalency guidelines in effect at the time treated each marijuana plant as equivalent to one kilogram of dry marijuana. Etherton's 683 marijuana plants were thus equivalent to 683 kilograms of dry marijuana. [ER 9] *See* U.S.S.G. § 2D1.1(c) (Nov.1994) (amended 1995). After adjustments, the final guideline range called for 51–63 months in prison.

The district court sentenced Etherton to 51 months in prison to be followed by a three-year term of supervised release subject to standard and special conditions. [ER 6–7] Etherton completed his prison term and began serving his supervised-release term in March 1995. Three months later, Etherton's probation officer informed the district court that Etherton had violated his release conditions. Following a hearing at which Etherton admitted to violating the terms of his supervised release, the district court revoked Etherton's supervised release and sentenced him to seven months in prison.

In November of that year the Sentencing Commission issued a retroactive amendment reducing the marijuana plant equivalency ratio to treat each marijuana plant as equivalent to 100 grams of marijuana. U.S.S.G. §§ 1B1.10, 2D1.1(c)(E) (Nov.1995). Etherton filed a motion pursuant to 18 U.S.C. § 3582(c) requesting that the district court reduce his release-violation prison term to time served. Section 3582(c)(2) grants the court discretion to modify a previously imposed term of imprisonment, when the sentencing range has subsequently been lowered by the Sentencing Commission.

The district court held a hearing at which the Government argued that section 3582(c) did not grant the court authority to reduce the sentence for the supervised-release violation. The court issued a summary order reducing the seven-month term to time served.

II. ANALYSIS

[1] The question presented is whether the district court had discretion under section 3582(c)(2) to reduce Etherton's sentence pursuant to the revocation of supervised release. Section 3582(c)(2) provides in relevant part that:

> The court may not modify a term of imprisonment once it has been imposed except that—
>
> (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant ..., the court may reduce the term of imprisonment....

The sentencing range for Etherton's underlying offense, conspiracy to manufacture and distribute marijuana, was substantially reduced when the Sentencing Commission amended the marijuana plant equivalency ratio. Under the original guidelines, Etherton served 51 months, the minimum sentence for a base level of 28 with six points of reduction and a criminal history score of III. He was then subject to three years supervised release. Under the amended guidelines, Etherton's base level would be 22, which, with the same reductions, would call for a sentence of 27–33 months. *See* U.S.S.G. § 1B1.10(b) (Nov.1995) ("In determining whether ... a reduction ... is warranted ... under 18 U.S.C. § 3582(c)(2), the court should consider the sentence that it would have imposed" under the amended guidelines.).

[2] The seven months imprisonment is not punishment for a new substantive offense, rather "it is the original sentence that is executed when the defendant is returned to prison after a violation of the terms of ... supervised release." *United States v. Paskow*, 11 F.3d 873, 881 (9th Cir.1993). We held in *Paskow* that "a term of supervised release ... is 'simply part of the whole matrix of punishment which arises out of a defendant's original crimes.'" *Id.* at 883 (citation omitted). Moreover, in *Koon v. United States*, — U.S. —, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996), the Supreme Court recognized that even in this era of the Sentencing Guidelines, district courts retain broad sentencing discretion. — U.S. at —, 116 S.Ct. at 2046 ("[a] district court's decision ... will in most cases be due substantial deference, for it embodies the traditional exercise of discretion by a sentencing court"). In light of *Paskow* and the sentencing discretion granted to district courts in *Koon*, we interpret the statute's directive that "the court may reduce the term of imprisonment" as extending to the entirety of the original sentence, including terms of imprisonment imposed upon revocation of supervised release.

Because Etherton had been sentenced "based on a sentencing range that has subsequently been lowered," the court had authority to exercise its discretion to reduce the sentence under section 3582(c)(2). In the

EXHIBIT A.

MEMORANDUM

To: All Defenders, CJA Panelists

From: Sentencing Resource Counsel

Re: Sentence Reductions Under the Retroactive Crack Amendment

Date: January 2, 2008

"In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant, the director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *See* 18 U.S.C. § 3582(c)(2). 28 U.S.C. § 994(o) requires the Commission to "periodically . . . review and revise . . . the guidelines." The Commission's policy statement on retroactivity is found at USSG § 1B1.10, and the amendments the Commission intends to have retroactive effect are listed in § 1B1.10(c).

On December 11, 2007, the Commission voted to give retroactive effect as of March 3, 2008 to the amendment to the crack guideline, and also voted to amend § 1B1.10 in ways that could be used to deny or reduce the two level reduction and to deny more than the two level reduction. This memo will identify the changes to § 1B1.10 that will go into effect on March 3, 2008 and suggest some arguments to get your clients more appropriate sentences. Although the substantive arguments appear first, you may want to look first at Part IV(A) regarding the right to appointed counsel.

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factors set forth in § 3553(a) – the same reasons for the crack amendment – to grant the defendant at least the two-level reduction.

C. Mandatory Minimums

You can seek relief from a mandatory minimum under §§ 3553(e) or 3553(f) in the context of a § 3582(c)(2) re-sentencing, even if the defendant was originally sentenced before those sections were enacted.[56] And the reasoning of the cases cited in the footnote is not limited to cases in which the defendant was originally sentenced before §§ 3553(e) or 3553(f) were enacted. In a § 3582(c) re-sentencing, the judge first determines what the guideline sentence would have been at the time of the original sentencing if the amended guideline applied, then determines whether to exercise her discretion under "all relevant statutory sentencing factors" that exist at the time of re-sentencing, whether they existed at the original sentencing or not.[57]

D. Supervised Releasees

Application Note 4 of revised § 1B1.10 still prohibits courts from reducing the term of imprisonment for those incarcerated on a supervised release revocation.[58] This advice is contrary to an earlier Ninth Circuit case, which interpreted "term of imprisonment" as used in § 3582(c)(2) to encompass periods of incarceration for supervised release revocations because the supervised release term itself is part of the punishment imposed for the defendant's original crime. *See United States v. Etherton*, 101 F.3d 80, 81-82 (9th Cir. 1996). After *Booker*, *Etherton* can be cited in support of a § 3582(c)(2) motion to reduce the term of imprisonment they are currently serving on the basis that the policy statement's commentary is advisory only.

Non-incarcerated supervised releasees who wound up serving more time than their amended crack guidelines would have required can move pursuant to 18 U.S.C. §§ 3583(e)(1) and (e)(2) to reduce their term of supervised release or modify release

[56] *United States v. Mihm*, 134 F.3d 1353, 1355 (8th Cir. 1998) (in a § 3582(c) resentencing, district court can apply § 3553(f)'s safety valve to reduce sentence below the mandatory minimum because § 3553(f) is a general sentencing consideration that the district court must take into account in exercising its present discretion to resentence under § 3582(c)(2)); *United States v. Reynolds*, 111 F.3d 132 (Table) (6th Cir. 1997) (defendant eligible for § 3582(c)(2) resentencing is also eligible for reduction based on § 3553(f) because it applies "to all sentences that are imposed" after the statute's effective date); *United States v. Williams*, 103 F.3d 57, 58-59 (8th Cir.1996) (in a § 3582(c)(2) resentencing, court can consider government's motion under § 3553(e) to further reduce sentence for defendant's substantial assistance); *Settembrino v. United States*, 125 F.Supp.2d 511, 517 (S.D. Fla. 2000) ("when faced with a Section 3582(c)(2) resentencing, a district court may consider grounds for departure unavailable to a defendant at the original sentencing, including safety valve relief of Section 3553(f)"); *but see United States v. Stockdale*, 129 F.3d 1066, 1068-69 (9th Cir. 1997) (district court cannot apply § 3553(f) to defendant being resentenced under § 3582(c)(2)).

[57] *See Mihm*, 134 F.3d at 1355.

[58] *See* amended U.S.S.G. § 1B1.10, p.s. comment. (n. 4(A)).

EXHIBIT B.

BLG, INTERPRETER, REF_PLEA, REF_PTRL

U.S. District Court
Southern District of Florida (Miami)
CRIMINAL DOCKET FOR CASE #: 1:06-cr-20139-DMM-ALL

Case title: USA v. Rayo-Montano, et al Date Filed: 03/03/2006

Assigned to: Judge Donald M. Middlebrooks

Defendant

Pablo Joaquin Rayo-Montano (1)
also known as
El Tio (1)
also known as
El Loco (1)
also known as
Don Pa (1)

Pending Counts	**Disposition**
21:963=NI.F CONSPIRACY NARCOTICS IMPORT/EXPORT (COCAINE) (1)	
21:963=NI.F CONSPIRACY NARCOTICS IMPORT/EXPORT (COCAINE) (1s)	
21:846=ND.F CONSPIRACY TO DISTRIBUTE NARCOTICS (COCAINE) (2)	
21:846=ND.F CONSPIRACY TO DISTRIBUTE NARCOTICS (COCAINE) (2s)	
46A:1903J=ND.F NARCOTICS SELL/DISTRIBUTE/DISPENSE (COCAINE) (3)	
46A:1903J=ND.F NARCOTICS	

EXHIBIT C.

CONSULADO GENERAL DE COLOMBIA
280 ARAGON AVENUE, CORAL GABLES, FLORIDA 33134
Tel.: 305- 448-5558 / 448-8402 / 442-9215 • Fax: 305- 441-9537
E-mail: cgcmiami@bellsouth.net

C.G 1602

Miami, July 30th, 2008

Mr.
JOHN GREGORY LAMBROS
Reg # 00436-124
US PENITENTIARY LEAVENWORTH
PO Box 1000
Leavenworth, Kansas 66048-1000

Dear Mr. Lambros:

We are hereby confirming receipt of your letter dated June 3rd, 2008 addressed to our Consulate General in Chicago in regards to Extraditions from Colombia to the United States.

Please be informed that we have taken due note of its contents.

Sincerely,

LUIS IGNACIO GUZMAN
CONSUL GENERAL