

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

No. 10 Cr 10122 RWZ

V.

LUPE VELEZ RAMOS

DEFENDANTS' MEMORANDUM IN AID OF SENTENCING

INTRODUCTION

Defendant Lupe Velez Ramos respectfully submits this memorandum in aid of the Court's sentencing in connection with her plea of guilty to one count of Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. Section 1957. The defendant has been continuously incarcerated for more than two years since her arrest in Colombia, South America on June 25, 2010. Although her presumptive guideline range is 63-78 months (after an agreed upon two level downward adjustment for "minor role"), under the sentencing factors set forth in 18 U.S.C. Section 3553(e) and the unique circumstances of this case, the defense believes that a downward variance to a sentence of time served is appropriate and would achieve the "overarching goal" that the district courts impose a sentence "sufficient, but no greater than necessary" to punish and deter. Kimbrough v. United States, 552 U.S. 85, 101 (2007).

As set forth in greater detail herein, these reasons include: (1) the defendant's limited involvement in the money laundering conspiracy charged in this case was almost exclusively the result of her brief – but abuse filled - marriage to co-defendant Roberto Hurtado-Mendez, a world renown drug trafficker currently under indictment in three

separate United States federal district courts; (2) the defendant did not personally profit from the money laundering scheme and indeed, as the result of her arrest and conviction she has been left destitute; (3) the defendant's seventeen year old son, Pedro Jose Werleman, suffers from schizophrenia and is currently hospitalized in Stockholm, Sweden after suffering a relapse since his mother's arrest and she is the only parent left to care for him; (4) the defendant accepted responsibility for her criminal conduct and debriefed with the DEA agents and federal prosecutor assigned to this case and also met with Dutch authorities and provided them with a detailed affidavit concerning her activities; and (5) the defendant is a foreign national and is thus ineligible for halfway house release for up to six months before the end of her jail sentence and will also be detained in an immigration detention facility upon her release pending deportation.

LEGAL OVERVIEW

In United States v. Booker, 542 U.S. 220 (2005), the Supreme Court ruled that the federal sentencing guidelines were no longer mandatory, but merely advisory upon the district courts. Thus, while a sentencing court will generally begin its analysis with consideration of the relevant guideline range, it should entertain arguments from the parties as to whether a non-guidelines sentence is appropriate. Rita v. United States, 551 U.S. 338, 351 (2007). In making this decision, the trial court will generally consider the other sentencing factors set forth in 18 U.S.C. Section 3553(a). Kimbrough v. United States, 552 U.S. 85, 109 (2007). These statutory factors include: (1) the nature and circumstances of the offense and history and characteristics of the defendant; (2) the need for the sentencing to reflect the seriousness of the offense, to promote respect for law, and to provide just punishment; (3) specific and general deterrence; (4) the need to

provide the defendant with training, medical care, or treatment; available sentencing alternatives; (5) consistency in sentencing among similarly-situated defendants; and (6) the need to provide restitution. 18 U.S.C. § 3553(a).

Moreover, as a result of Booker and its progeny, the district courts have discretion to impose a non-guideline sentence based upon their assessment of each individual case. Thus, in Gall v. United States, 552 U.S. 38, 47-48 (2007), the Supreme Court rejected the suggestion that it takes “extraordinary circumstances” to sentence a defendant outside of the guideline range or the use of a “rigid mechanical formula” based upon the percentage of departure from the guidelines as a test of the reasonableness of a sentence. Similarly, in Kimbrough v. United States, 552 U.S. 85, 109 (2007), the Supreme Court noted that the sentencing judge has greater familiarity with any particular defendant and any particular case than the generic guidelines and that the decision to “vary” from the advisory guidelines was entitled to the greatest respect when the court finds that a particular case is “outside the heartland” for which the federal sentencing commission intended the guidelines to apply.

SENTENCING GUIDELINE GUIDELINE CALCULATION

Adjusted Guideline Calculation

The defense believes that the defendant’s guideline calculation should be computed as follows:

Base Offense Level (laundering between 1 million and 2.5 million dollars in criminal proceeds)	24
Adjustment because portion of funds derived from drug trafficking activities	6
Adjustment because defendant pled guilty to violation of 18 U.S.C. Section 1957	1

Downward Adjustment Acceptance of Responsibility and	-2
Early Entry of Plea	-1
Downward Adjustment for Minor role	-2
Adjusted Total Offense Level	26
	(63-78 months)

**FEDERAL SENTENCING GUIDELINE FACTORS
UNDER 18 U.S.C. SECTION 3553(e) FACTORS**

1. Lupe Velez-Ramos’ Personal History

Defendant Lupe Velez-Ramos has endured a difficult and complicated life, filled with loss and seemingly unrelenting sorrow. Born on July 4, 1970, in Colombia, South America, she was abandoned by her father when she was just three years old; although they reunited when Lupe was in her early twenties, one year later her father committed suicide.

When Lupe was six years old her mother remarried and the family moved to Aruba and then to the island of St. Maartin. In 1993, when Lupe was twenty-three, her mother and sister were shot to death during a trip to Medellin, Colombia. The perpetrator was never caught and Lupe thereafter assumed responsibility for raising her two half siblings: sister Crystal and brother Sylvester, ultimately adopting them both and raising them as her own.

Lupe’s own personal life has also been filled with conflict and tragedy. She was married briefly to Marlon Werlemen, a Dutch businessman, but thereafter left him to marry her co-defendant, Roberto Mendez-Hurtado in 1992. By all accounts, Mendez-

Hurtado was a physically abusive and controlling husband, who regularly assaulted Lupe, including when she was pregnant with her children: (1) Robert Werleman, now age 18; and (2) Pedro Werleman, now age 17. The beating caused Lupe to lose approximately thirty percent hearing in her left ear; she finally decided that she could no longer endure living with Mendez-Hurtado and she ended her relationship in 1996 by moving to the island of Aruba.¹

Lupe's youngest son, Pedero Werleman, was diagnosed with disorganized schizophrenia when he was approximately fourteen years old; he experiences hallucinations and other thought disorders as a result of his mental illness. Although he had gone approximately one year without any serious schizophrenic episodes, since his mother's arrest he has refused to take his anti-psychotic medication and is currently hospitalized in a mental health asylum in Stockholm, Sweden. Because Lupe is incarcerated in the United States, she has only infrequent phone contact with her son – who of course is oftentimes laboring under his major medical illness and cannot communicate coherently with her. Lupe is distraught over the situation and feels that she has abandoned her son – who cannot understand why her mother is not there to help care for him. The undersigned has recently received copies of Pedro Werleman's medical records, which are attached hereto as Exhibit 2.

¹ Lupe ended her relationship with Mendez-Hurtado in 1996, although she had some continuing contact with him because he provided sporadic support for their children and would occasionally visit them in Aruba. Mendez-Hurtado, also known as "El Loco Catalino," Pluma Blanco ("white feather"), or "Carolo," is currently currently under indictment in the United States District Court for the Southern District of Florida (11 Cr. 20478) on international drug trafficking charges and in the United States District Court for the District of Puerto Rico (10 Cr. 115) on international money laundering charges. Despite the fact that his ex-wife was arrested in June of 2010 and the indictment in this case was unsealed, Mendez-Hurtado took no steps to surrender or otherwise attempt to resolve the numerous cases against him. Instead, he was arrested on August 21, 2011 attempting to cross the border from Ecuador into Colombia using a false passport. He is currently detained at Picota Prison in Bogota, Colombia awaiting extradition to the United States. A copy of several articles describing Mendez-Hurtado's notorious drug trafficking activities, are attached hereto as Exhibit 1.

Lupe is currently married to her other co-defendant Jorge Sanchez-Torres, who is also currently pending sentencing in this case. She intends to obtain a divorce as soon as practical upon her release from custody. Her general physical health is fair; medical records obtained from the Wyatt Detention Center indicate that she suffers from hypothyroidism and high cholesterol. The defendant admitted to the Presentence Report writer that she has experienced “fleeting” thoughts of suicide, but has no actual intention to take her life; rather, the undersigned believes that the mental pressure from her overwhelming feelings of guilt and desperation concerning her son are causing her to manifest signs of depression.

2. Defendant Velez-Ramos Had A Minor Role in the Instant Offense

Although Lupe Velez-Ramos was originally charged with both international drug trafficking and money laundering offenses, upon review of the evidence, the Government permitted her to plead guilty solely to the money laundering conspiracy count and agreed to dismiss all other pending charges in the indictment. The defendant was involved in the money laundering conspiracy only because of the relationship with her ex-husband Roberto Mendez-Hurtado. In large measure, she was merely the nominee owner of assets that were actually controlled by Mendez-Hurtado and the Government has agreed that her role in the offense was minor within the meaning of the federal sentencing guidelines.

Thus, for example, although Mendez-Hurtado claimed that he was working in the “milk” industry, at some point in their marriage, Lupe began to suspect that that he must be involved in some sort of illegal activity. These suspicions crystallized in 1996, when he told her to open a bank account in a German bank and then attempted to transfer approximately 1.9 million dollars into the account. Although the funds came via wire

transfer from, *inter alia*, an entity called “Milk Powder of U.S.A.,” the German banking authorities froze the funds and subsequently reversed the deposits. Lupe never exercised any control over the source of the funds or profited from this venture.

Subsequently, Mendez-Hurtado, in consort with a corrupt Aruban lawyer, began to create offshore holding companies for the purpose of buying real estate. Mendez-Hurtado gave Lupe a nominal ownership interest in these companies. During the course of their relationship, Lupe was often directed by Mendez-Hurtado to sign her name to certain legal documents involving the purchase or sale of these properties. Because of the physical violence that pervaded the marriage, Lupe had no choice but to comply with the demand.

After Lupe was arrested on these charges in Colombia, South America, the Aruban government brought a criminal action against the Aruban attorney (who orchestrated the criminal scheme) and initiated a series of forfeiture actions against the remaining properties in her name. Those properties have all been seized by the Aruban government, sold at auction, and Lupe’s legal interest extinguished. The defendant spent two days meeting with Dutch law enforcement agents from Aruba concerning the properties and confirmed for them the details of these financial transactions and explained the limited role she played in the purchase and sale of the real estate. The Aruban government has not brought any criminal charges against Lupe for her involvement in these matters and the Dutch law enforcement agents never once suggested that she had a larger role in these activities.

The bulk of the Government’s evidence in this case derives from intercepted phone conversations conducted by the Dutch authorities in Aruba, along with undercover money

pickups in Puerto Rico. A review of the Government's detailed summary of the evidence reveals that defendant Velez-Ramos was not involved at all in the physical laundering of cash. Moreover, she was only intermittently intercepted on the wiretap and in most of the conversations she has a brief conversation with Mendez-Hurtado and then simply passes the telephone to Sanchez-Torres. None of this conduct appears to fall within the ambit of the charged money laundering conspiracy.

Rather, the Government's factual predicate for the guilty plea concerns Lupe's involvement in the wire transfers of approximately nine hundred thousand dollars in 2008 to a Colombian named Nelson Aristizabal.² The money was the proceeds of the sale of a home that Hurtado-Mendez purchased for Lupe and his children in Miami, Florida several years earlier. She sold the dwelling to realize the increased value in the home and to have savings upon which to live and educate her children. Unfortunately, upon the advice of her then husband – Jorge Sanchez Torres – she lent the money to Aristizabal and when he disappeared, all of the funds was lost. Lupe was arrested shortly thereafter and has no means to recover the money. She has been left penniless and helpless.

Due to her limited involvement in the case, the Government stipulated in the Plea Agreement that Lupe was entitled to a two level downward adjustment for minor role pursuant to U.S.S.G. Section 3B1.2(b). Although this agreement is not binding on the Court, the defense believes that it is well justified under relevant caselaw and that this Court should accept the downward adjustment.

The cases in this circuit have noted that there are two reference points for determining minor role in the offense: (1) the conduct of other participants; and (2) whether the

² Aristizabal is also charged in the instant case and was indicted by the U.S. Attorney's Office for the Southern District of Florida in case 04 Cr. 20065. Aristizabal disappeared from Medellin, Colombia in approximately December 2009, has not been heard from since, and is presumed by many to be dead.

defendant is less culpable than most other persons convicted of similar offenses. United States v. Cabrera, 567 F.Supp.2d 271, 277-789 (D. Mass. 2008). Under either standard, defendant Lupe Velez-Ramos had a minor role in this offense. First, it seems clear beyond dispute that her co-defendants had much more significant roles in the offense because they were actively involved in the narcotics trafficking which resulted in the criminal proceeds.

Second, Lupe's conduct was much less culpable than persons convicted of similar offenses. The overwhelming majority of defendants charged in money laundering conspiracies arising out of drug trafficking are typically involved in some aspect of the conversion and movement of illicit drug proceeds to benefit themselves or other members of the drug trafficking conspiracy. See, e.g., United States v. Sidhom, 142 F.Supp.2d 150, 155- 158 (D. Mass. 2001). In this case, the financial transactions that form the heart of the case against Lupe were far removed from the actual drug trafficking. For example, the transfer of the \$900,000.00 derived from the sale of her home in Florida took place years after the property had been purchased. Moreover, Lupe's purpose in the transfers was not to further a drug trafficking conspiracy or pay other members of the criminal organization – she sold her house and lent the money out for the purpose of providing for the financial security of her children. In sum, Lupe Velez-Ramos has paid for the choices she made by marrying the wrong man with two years of her life and has not profited from her involvement in these activities. A downward adjustment for her role in the offense seems eminently reasonable and justified. See United States v. Jurado-Lopez, 338 F.Supp.2d 246 (D.Mass. 2004)(minor role adjustment given to international drug courier).

3. Seriousness of the Offense/Promote Respect for the Law/Just Punishment

There is no doubt that the crime for which defendant Lupe Velez Ramos has acknowledged her guilt is a serious matter and that there is a need to impose a just punishment for illegal conduct in order to promote the rule of law. The Government – which has a complete overview of the facts and circumstances of the entire conspiracy in this case – has determined that her role was minor and the defense believes that a sentence of incarceration of two years – particularly two years served in a jail thousands of miles from her family, friends and loved ones, constitutes just punishment and promote respect for the law.

4. Specific and General Deterrence/Prevent Future Crimes

With respect to the factor of specific deterrence, it is clear that the defendant will never again commit a similar offense. Lupe Velez-Ramos simply wants to be released from custody in order to care for her schizophrenic son and start a life far removed from the life she previously led. The undersigned can represent that he has had numerous conversations with the defendant, who has expressed her remorse for the damage that her activities have cause herself and her family. The defendant has written a letter to the Court explaining her remorse and asking this Court to impose a sentence of time served. It is attached hereto as Exhibit 3.

In addition, as a result of her incarceration in the United States, the defendant has seen first-hand the devastating effects that cocaine has on individual lives in this country. She is committed to having absolutely nothing to do with anyone involved in drugs, money laundering, or any other illegal activity in any way, shape or form. Upon her release from custody she will enjoy the support of family and friends, several of whom

have also written letters to the Court, which are attached hereto, along with a letter and certificate from the Wyatt Detention Center as Exhibit 4.

As to the issue of general deterrence, the defendant's extradition to the United States reaffirms the message that persons involved in international criminal activity - regardless of gender and level of participation - will be arrested and extradited to the United States. This message is made clear through international print media, television news, and the Internet, which regularly provide detailed information about extraditions to the United States. No further general deterrence would be accomplished by additional punishment for this defendant.³

5. Other Grounds Warranting a Downward Variance

Several other factors would support a downward variance in this case. First, the defendant is a foreign national who was arrested and held under very harsh conditions of imprisonment in Colombia, South America while pending extradition. The inhumane conditions in Colombian prisons are well known. A recent new article concluded that:

Women prisoners in Colombia face poor medical care and hygiene conditions, overcrowding, harassment by male guards, mistreatment and abuses at the hands of staff, and lack of privacy . . . according to complaints filed with state oversight agencies. In addition, they are often transferred to prisons far from their homes and families.

See *Women Punished Twice Over in Colombia's Prisons*, International Press Service (May 10, 2010).

³ The three remaining sentencing factors are: (4) the need to provide the defendant with training, medical care, or treatment; available sentencing alternatives; (5) consistency in sentencing among similarly-situated defendants; and (6) the need to provide restitution. There does not appear to be any need to mandate medical treatment or care for defendant Velez-Ramos. Likewise, since none of the other co-defendants in this case have been sentenced, the defense cannot assess consistency in sentencing. The defense also requests that this Court not impose an order of restitution because there is no definable group of victims. See 18 U.S.C. Section 3663(a). Similarly, the defense request that no fine be imposed. The Presentence Report correctly notes that the defendant has no available assets to use for such payment. Indeed, undersigned counsel is representing the defendant *pro bono*.

Moreover, under Colombian law, Lupe was not eligible for a bond pending extradition – despite the fact that she had no prior convictions. Worse, under Colombia law she could not even voluntarily have waived the extradition process in order to more quickly arrive in the United States. Federal courts in the United States have recognized that pre-extradition conditions of confinement are a basis for a downward sentencing adjustment. See, e.g., United States v. Carty, 264 F.3d 191 (2d Cir. 2001); United States v. Francis, 129 F.Supp.2d 612 (S.D.N.Y. 2001). The circumstances of this case – particularly given her minor role in this offense – provide a basis for adjusting her sentence downward as the result of her incarceration in Colombia pending extradition.

Similarly, the defendant’s status as a foreign national precludes her from even the possibility of being sent to a halfway house six months before the conclusion of her sentence. Other courts have noted that this lack of what is essentially early release from custody can serve as the basis for a downward sentencing adjustment. See United States v Smith, 27 F.Supp.2d 649 (D.D.C. 1994). Likewise, even upon the completion of her sentence, defendant Velez-Ramos will not be immediately released. Rather, she will be sent to the custody of Immigration and Customs Enforcement (“ICE”), pending her removal and deportation from the United States. This process could easily take six months (or more) and the defendant would not be eligible for a bond or other release. Indeed, even if she had the financial ability to pay for a plane ticket to Colombia or the Netherlands, she would not be allowed to “self deport,” but instead would be incarcerated – probably in an ICE detention facility in Mississippi - pending the coordination of her deportation. This “post sentencing” period of incarceration similarly warrants consideration by this Court for a downward adjustment to her sentence.

Finally, although the defendant was not convicted of a drug related offense, the computation of her sentence was adjusted upward by six (6) levels because the laundered funds were derived from drug trafficking. Although the defendant is not directly eligible for a two level reduction for the so-called “safety valve,” this Court should take into consideration that a defendant charged with a drug trafficking offense would be eligible for such a reduction. One of the mandates of the federal sentencing guideline factors is to eliminate sentencing disparities between similarly situated defendants. See 18 U.S.C. Section 3553(e)(6). Since defendant Velez-Ramos’ presumptive guideline sentence was enhanced because of the interrelationship between drug trafficking and money laundering, in the interest of fairness she should be entitled to a concomitant reduction.

CONCLUSION

The sole purpose of the criminal justice system is not to inflict punishment through incarceration. The Supreme Court has stated that a jail sentence should be enough – but not more – than is necessary to punish and deter. For Lupe Velez-Ramos every day, every hour, every second of the last two years has been a nightmare. She is separated by thousands of miles from her loved ones and her seventeen year old son is locked away in a mental institution while she is unable to even sit by his side, hold his hand, or hug him for comfort in a mother’s embrace. The criminal justice system in the United States has largely – and in the undersigned’s opinion, incorrectly - been reduced to a chart in the back of a complicated set of mathematical sentencing calculations. The true administration of a criminal justice system requires more – it needs elements of compassion and sympathy. This is a case where the Court has within it the power to administer justice – to sentence Lupe Velez-Ramos to time served and to let her be united

with her family. She is not the same person she was when this process began and there seems no chance that she will have any future involvement in illegal activities.

For all these reasons and for any other that the Court may believe appropriate, the defense respectfully requests that the defendant be sentenced to a period of time served.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served electronically upon the Court, Assistant United States Attorney Neil Gallagher, and all other parties via the Electronic Case Filing System, this 9th day of July, 2012.

Robert Feitel

Robert Feitel