

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

JUAN MANUEL AVILA MEZA,

Defendant.

S1 15 Cr. 174 (LGS)

THE GOVERNMENT'S SENTENCING SUBMISSION

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The Government respectfully submits this memorandum in advance of the defendant's sentencing, which is scheduled for February 9, 2021. This memorandum supersedes the Government's original sentencing memorandum of July 2, 2019. (Dkt. 383).

The defendant is one of six members of the Honduran National Police convicted in this case of drug-trafficking crimes in connection with their support, in varying degrees, of a violent Honduran drug-trafficking organization known as the *Cachiros*.¹ As a member of the *Cachiros*, the defendant participated in meetings regarding criminal objectives with immediate relatives of the last two presidents of Honduras within a six-month period between February and June 2014. But the defendant's crime did not start in 2014. He joined the *Cachiros* in approximately 2004. His offense conduct is also unique relative to that of his co-defendants because he abused his positions as both a law enforcement official and an attorney to support several facets of the *Cachiros* criminal enterprise, including drug trafficking, money laundering, sanctions evasion, and debt collection. Accordingly, for the reasons set forth below, the Government respectfully submits that the Court should impose a term of imprisonment within the

¹ A seventh member of the Honduran National Police, Carlos Jose Zavala Velasquez, was convicted of a drug-trafficking crime in this case related to his support of a separate Honduran criminal organization operated by Hector Emilio Fernandez Rosa.

stipulated Guidelines range of 210 to 262 months' imprisonment, impose forfeiture in the amount of \$42,000, and order the defendant to pay a fine.

BACKGROUND

I. The Defendant's Offense Conduct

The defendant was a full-fledged member of the *Cachiros*. He participated in the criminal activities of this violent large-scale drug-trafficking organization beginning in approximately 2004, including by helping to distribute hundreds of kilograms of cocaine, conduct money-laundering transactions in Honduras involving real estate and front companies, collect debts owed to the *Cachiros*, and evade financial sanctions imposed in 2013 by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC").

Beginning in late 2013, the Drug Enforcement Administration ("DEA") relied on assistance from the leaders of the *Cachiros*—Javier Rivera Maradiaga ("Javier") and Devis Leonel Rivera Maradiaga ("Leonel")—to target, among others, the defendant and other corrupt Honduran officials. With respect to the defendant, the DEA's sting investigation yielded recordings of two criminal meetings. First, in February 2014, the defendant helped set up a meeting between Leonel and Juan Antonio Hernandez Alvarado, another major drug trafficker who is the brother of current Honduran president Juan Orlando Hernandez,² to discuss money-laundering transactions between a *Cachiros* front company and the Honduran government. Leonel recorded the meeting at the

² In October 2019, Hernandez Alvarado was convicted at trial in this District of drug-trafficking, weapons, and false-statements charges, and he is awaiting sentencing. *See United States v. Hernandez Alvarado*, No. 15 Cr. 379 (PKC). The Government established at trial that Hernandez Alvarado helped to import almost 200,000 kilograms of cocaine into the United States. Hernandez Alvarado also coordinated and, at times, participated in providing heavily armed security for cocaine shipments transported within Honduras, including by members of the Honduran National Police and drug traffickers armed with machineguns and other weapons. Hernandez Alvarado also used members of the Honduran National Police to coordinate two drug-related murders.

direction of the DEA. Second, in June 2014, the defendant met with six other members of the Honduran National Police, Fabio Lobo, the now-convicted son of the Honduran president who preceded Hernandez, and two DEA confidential sources (the “Sources”) purporting to be members of the Sinaloa Cartel. The Sources recorded the meeting, during which the defendant led a discussion of how best to rely on the National Police to secure safe passage for a large cocaine shipment. The recordings from the DEA’s investigation do not reflect, as the defendant claims, isolated or “aberrant” episodes in an otherwise law abiding life. Rather, the recordings serve as concrete, irrefutable examples of the types of egregious criminal conduct in which the defendant engaged for years.

A. 2004 – 2014: The Defendant Joins the *Cachiros* and Participates in Large-Scale Drug Trafficking

In approximately 2004, the defendant joined the *Cachiros* after he was introduced to Javier by Ruben Santos. (Def. Mem. at 4-5).³ Following that introduction, the defendant spent nearly a decade participating in the *Cachiros* drug-trafficking activities. (PSR ¶¶ 14-16). The defendant worked directly with, among others, Javier, Leonel, and Santos on cocaine shipments that varied in size from hundreds of kilograms to well over a ton. In connection with these drug-trafficking activities, the defendant personally helped escort large drug shipments as they were transported through Honduras over land toward the Guatemalan border, so that the drugs could be brought by others to the United States via Mexico and Guatemala. The defendant also provided Leonel with sensitive law enforcement information to facilitate the transportation of cocaine, and

³ “Def. Mem.” refers to the defendant’s June 25, 2019 sentencing submission (Dkt. 376); “Def. Supp. Mem.” refers to the defendant’s January 15, 2021 “revised sentencing submission” (Dkt. 487), which the defendant states is meant to “supplement” his initial June 25, 2019 submission; “PSR” refers to the December 18, 2020 Presentence Investigation Report; and “Ex.” refers to the exhibits to the Government’s sentencing submission.

offered members of the *Cachiros* access to large quantities of cocaine seized from other drug traffickers by the Honduran National Police.

B. 2013 – 2014: The Defendant Assists the *Cachiros* With Money Laundering and Evasion of U.S. Sanctions

The defendant admits to participating in “real estate ventures” for the leaders of the *Cachiros*, which he characterizes as “legal work that helped pay the bills.” (Def. Mem. at 22). Once the admissions are stripped of surrounding rhetoric and placed in context, however, the defendant has simply acknowledged participating in additional criminal activity with the *Cachiros*, which involved money laundering and efforts to evade U.S. sanctions.

In May 2013, OFAC publicly identified the *Cachiros* as a significant foreign narcotics group pursuant to the Foreign Narcotics Kingpin Designation Act. (*See* Ex. A). Nevertheless, beginning in August 2013, the defendant—as an active member of both the Honduran National Police and the *Cachiros*—assisted Leonel with an asset-based money laundering transaction related to a large piece of real estate in San Pedro Sula, Honduras. (Def. Mem. at 7). Notwithstanding the OFAC sanctions, the defendant sought out Leonel for the deal because he believed Leonel “was one of the few individuals who had enough funds to purchase the property.” (*Id.*). The defendant helped structure the transaction to conceal the illicit drug proceeds involved in the deal, including by (i) accepting payment consisting of \$150,000, a house in San Pedro Sula, and “titles to 2 armored cars,” and (ii) conveying title to the real estate to a straw owner rather than Leonel. (*Id.* at 8). In exchange for a 15% commission, the defendant handled the “title/deed transfer” himself by filing the false document with the Honduran government, delivered part of the “cash” payment to the seller of the property, and helped monetize an “armored Lexus SUV” held “in the name of a third party.” (*Id.* at 8-9).

In September 2013, OFAC doubled down on its efforts to sanction the *Cachiros* by designating individual members, including Javier and Leonel, as well as several of their front companies, including *Inmobiliaria Rivera Maradiaga, S.A. de C.V.* (“INRIMAR”) and *Inversiones Turisticas Joya Grande, S.A. de C.V.* (the “Joya Grande Zoo”). (See Ex. A). The defendant acknowledges that the sanctions quickly “became public knowledge in Honduras.” (Def. Mem. at 10). In addition, after the second set of OFAC sanctions, the Honduran government seized property and assets linked to the *Cachiros*. (See Ex. B at 69 (Leonel’s testimony at sentencing hearing related to Fabio Lobo)). In the defendant’s words, around this time in “September or October 2013,” he learned from a “strawman” that the *Cachiros* were looking for “good attorneys” to “oppose” the “seizures.” (Def. Mem. at 10). Relatedly, in October 2013, the defendant “finally obtained possession” of the house that Leonel previously agreed to include as payment for the larger piece of real estate in San Pedro Sula. (*Id.* at 10). In reality, the defendant took possession of the property in an effort to avoid having the Honduran government seize it. (See Ex. B at 71 (Leonel describing paying Fabio Lobo a large bribe in order to obtain “a list of the properties that were going to be seized”)). And due to the connection between the house and the *Cachiros*, the defendant did not liquidate the property until 2015. (See Def. Mem. at 10).

By November 2013, the defendant was promoted to the recruiter of “good,” “experienced” attorneys for the *Cachiros*. (See Def. Mem. at 10-11). He started to “look for attorneys,” and quickly found two, Marlon Duarte and Dagoberto Aspra. (*Id.* at 11). In late 2013, the defendant and his new recruits were summoned to a meeting in San Pedro Sula. (*Id.*). The defendant claims that in San Pedro Sula “someone” asked one of the new attorneys to participate in a two-hour meeting while the defendant himself was directed “only to wait in a separate room.” (*Id.* at 11). On the defendant’s telling, he learned about the substance of the meeting from the

associate he brought into the scheme, who informed him that they would “focus on the seizure” of the OFAC-designated Joya Grande Zoo. (*Id.*). The defendant indicates that he was paid \$20,000 for his role in these efforts to help the *Cachiros* gain access to lawfully restrained, drug-derived property. (*Id.*).

The “following week” in November or December 2013, the defendant returned to San Pedro Sula with the second attorney he recruited to assist the *Cachiros*, Dagoberto Aspra. (*Id.* at 11-12). This time, Leonel asked the defendant directly to “work on seizure issues” concerning OFAC-designated INRIMAR. (*Id.* at 12). The defendant received an additional up-front payment of \$20,000 for agreeing to carry out this work. (*Id.*).

In December 2013, the defendant—still an active member of the Honduran National Police—tried to broker the sale of another piece of property in Tegucigalpa, Honduras to Leonel despite the OFAC sanctions and related ongoing Honduran law enforcement efforts. (*See* Def. Mem. at 12). The defendant had already agreed to hold the title to the property in connection with a “sham donation” intended to “avoid the tax liabilities.” (*Id.* at 13). Although the defendant suggests that the initial fraudulent conveyance was not linked to the *Cachiros*, one of the documents that he submitted to the Court shows that Francisco Arturo Mejía was involved in the transaction. (Def. Mem., Ex. H at 11). Arturo Mejía was an associate of the *Cachiros* who assisted with money laundering and had ties to Fabio Lobo and his family. (*See* Def. Mem. at 14 (referring to “money owned by Francisco Mejia, to Devis”)). Documents submitted by Lobo in connection with his sentencing indicate that Arturo Mejia helped establish INRIMAR for the *Cachiros*. (Dkt. No. 147-1 at 2, 26; Dkt. No. 147-3 at 2; Dkt. No. 147-4 at 2).

Defendant Exhibit H

1320514
 TESTIMONIO.
 INSTRUMENTO NÚMERO SETENTA Y CINCO (75). En la Ciudad de Tegucigalpa, Municipio del Distrito Central, a los tres (3) días del mes de julio del año dos mil trece (2013), siendo las ocho de la mañana (8:00 A.M). ANTE MI, MARIA DE JESUS PALACIOS ZELAYA DE VENEGAS, Abogada y Notario de este domicilio, con número del Colegio de Abogados de Honduras mil doscientos cuarenta y nueve (1249) y Exequatur de Notario otorgado por la Honorable Corte Suprema de Justicia mil treinta y seis (1036), prestando sus servicios profesionales en el Bufete Venegas y Asociados, situado en la Colonia Miraflores Sur, bloque número treinta y ocho (38), casa número tres (3), de Tegucigalpa, Municipio del Distrito Central, con número de teléfono veinte dos veinte ocho guion cero cinco setenta y tres (2228-0573) y con dirección de correo electrónico maridejesus.palacios@yahoo.com, comparecen personalmente los señores JOSÉ INOCENTE ROSA, comerciante, soltero, actuando en su condición de Administrador y apoderado General de su madre Jesús Lilia Rosa y de sus tíos Edgardo Rosa, Luisa Silvia Escoto Rosa y Danila Escoto Rose según Testimonio de escritura Pública número cincuenta y cinco (55) autorizada por el Notario Francisco Arturo Mejía que se inscribiera en el Registro de la Propiedad, en el Registro de Sentencias bajo el asiento Número doce (12) del Tomo ciento setenta y tres (173) y que le otorga facultades amplias y suficientes para celebrar esta clase de actos y por otra parte el señor JUAN MANUEL AVILA MEZA, abogado, casado, ambos mayores de edad, hondureños y de este domicilio y quienes asegurándose hallarse en el pleno goce de sus derechos civiles, libre y espontáneamente manifiestan: PRIMERO: El señor José Inocente Rosa manifiesta que sus representados son dueños y están en posesión de un predio ubicado en el lugar denominado "El Arenal" a inmediaciones de la Aldea de las Casitas de este Municipio del Distrito Central el que originalmente tenía un área de veinticinco Manzanas (25Mzs.) y que lo adquirieron por

Fabio Lobo Exhibit

1 en sesión Extraordinaria, legalmente comprobada y reunida.- Así lo dicen y
 2 otorgan los comparecientes, quienes enterados del derecho que la Ley les
 3 confiere para leer por sí este Instrumento, por su acuerdo le di lectura
 4 Integramente, cuyo contenido ratifican los otorgantes y firman e insertan la huella
 5 digital, de todo lo cual, del conocimiento, estado civil, edad, profesión,
 6 nacionalidad y vecindad de los comparecientes, doy fe, así como de haber
 7 tenido a la vista sus documentos personales consistentes en Tarjeta de
 8 Identidad número que por su orden son: 0209-1977-00375 y 0209-1979-
 9 00433.- DOY FE.- FIRMA Y HUELLA DIGITAL.- DEVIS LEONEL RIVERA
 10 MARADIAGA.- FIRMA Y HUELLA DIGITAL.- NOHELIA MERCEDES
 11 PACHECO MURILLO.- FIRMA Y SELLO NOTARIAL. FRANCISCO ARTURO
 12 MEJIA.
 13 Y a requerimiento de la Sociedad "INMOBILIARIA RIVERA MARADIAGA,
 14 SOCIEDAD ANONIMA DE CAPITAL VARIABLE "INRIMAR, S.A. DE
 15 C.V.", libro, sello y firma esta primera copia, en el mismo lugar y fecha de su
 16 otorgamiento, en el papel sellado correspondiente y con los timbres de ley
 17 debidamente cancelados, quedando su original, con el que concuerda bajo el
 18 número preinserto de mi Protocolo corriente del presente año, en donde
 19 anoté este libramiento.
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 21
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 24

According to media reports, as of March 2019, Arturo Mejia was incarcerated in Honduras based on a money-laundering charge. (Ex. C).⁴

After taking control of the Tegucigalpa property in 2013, the defendant tried to sell it to Leonel in exchange for assets worth \$2 million. (See Def. Mem. at 13). The defendant now claims that he “did not follow through on the deal” because Leonel “threatened [him] with physical harm.” (Id.). But this purported threat did not stop the defendant from adding to his Cachiros positions of cocaine-security consultant and recruiter of “good” attorneys by becoming

⁴ Exhibit C is a draft translation of a Honduran article regarding Arturo Mejia’s incarceration.

a debt collector for Leonel. In early 2014, Dagoberto Aspra was appointed to a position in the Honduran government and stopped returning calls from the *Cachiros*. (*Id.* at 14). The defendant “told” Aspra “that [Leonel] wanted his \$50,000 back.” (*Id.*). The defendant also “convinced” another *Cachiros* debtor, who owed Leonel 5 million Lempira, to “pay what was owed.” (*Id.*). Upon resolving these debt-collection matters for one of the largest and most violent criminal syndicates operating in Honduras, the defendant felt that he was “trusted” by the *Cachiros*. (*Id.*).

In February 2014—notwithstanding all the threats the defendant now alleges—he worked with an “attorney friend” named Oscar Ramirez to set up a meeting between Leonel and Hernandez Alvarado in an effort to help the *Cachiros* with the “INRIMAR issue” by collecting on government contracts they had obtained for INRIMAR in connection with a money-laundering scheme.⁵ (*Id.* at 12, 14-15).

Defendant



Hernandez Alvarado



⁵ During testimony in connection with a sentencing hearing related to Fabio Lobo, Leonel explained that the *Cachiros* capitalized INRIMAR using drug proceeds and operated the company as a money-laundering front. (*E.g.*, Ex. B at 30-32). Leonel also explained that the Joya Grande Zoo was established in a similar fashion. (*Id.* at 33-34). The Court found Leonel “credible in light of the entirety of the record and observations of his tone, demeanor and straightforward answers.” *United States v. Lobo*, No. 15 Cr. 174 (LGS), 2017 WL 2838187, at *2 (S.D.N.Y. June 30, 2017).

The defendant and Ramirez also set up “a ‘front’ company” that they used to “recover” 21 million Lempira “owed by the Honduran government” to the *Cachiros*, as the government would not have paid these funds to the *Cachiros* or INRIMAR directly. (*Id.* at 15; *see also id.* at 14 (“The problem was that because INRIMAR had been frozen under the OFAC sanctions, a new entity was needed”)).

C. 2014: The Defendant Helps Plan and Recruits Others to Join a Large-Scale Drug Deal

Leonel and Javier started to cooperate in approximately late 2013, at which point the DEA began a sting investigation targeting the defendant and other Honduran officials.

1. The Defendants Meet with Purported Sinaloa Cartel Personnel in San Pedro Sula

The first meeting conducted at the direction of the DEA in connection with this case occurred in approximately June 2014 at a mechanic shop in San Pedro Sula. (Ex. B at 83). Carlos Alberto Valladares Garcia invited the defendant and Ludwig Criss Zelaya Romero to the meeting. (Def. Mem. at 16).⁶ The defendant admits that he, in turn, invited co-defendants Mejia Vargas and Lopez Flores. (*Id.*).

Leonel drove the Sources to the meeting and provided them with funds to bribe the police, but he did not attend. *Cachiros* assassin Melvin Sandres, a/k/a “Metro,” drove the defendant and three of his co-defendants to the meeting. (Def. Mem., Ex. A ¶ 9). At the mechanic shop, the Sources introduced themselves as members of the Mexican Sinaloa Cartel, described an impending drug shipment that was also to involve “the Honduran Armed Forces,” and requested law enforcement information that would assist in securing safe passage for the drugs through

⁶ Valladares Garcia was charged initially as “Carlos Alberto Valladares Zuniga.” (*See* Dkt. No. 355).

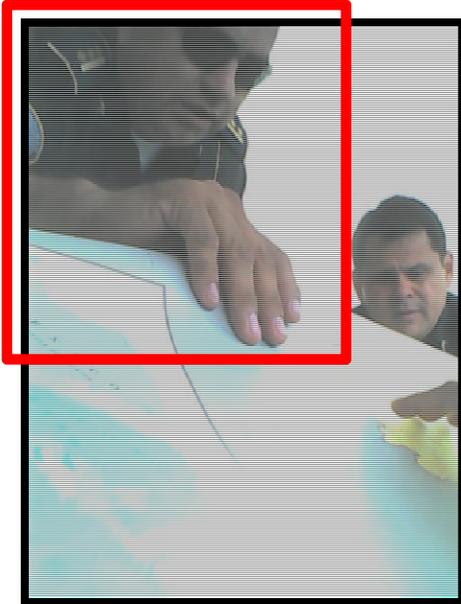
Honduras. (*Id.*). At the conclusion of the meeting, the Sources indicated that the group would reconvene in Tegucigalpa. (Def. Mem. at 17). One of the Sources gave the defendant approximately \$6,000 at the shop. The defendant kept \$2,000 and “distributed the rest of the money.” (*Id.* Ex. A ¶ 9).

2. The Defendants Meet with Purported Sinaloa Cartel Personnel in Tegucigalpa

Valladares Garcia subsequently called the defendant and invited him to another meeting in Tegucigalpa. (Def. Mem. at 17). The seven Honduran National Police defendants attended the meeting in June 2014, which was held at a house owned by an associate of Mejia Vargas. At sentencing, the defendant claims that his six co-defendants were at the house when he arrived. (*Id.* at 17). He told the DEA prior to surrendering, however, that he personally drove Mario Guillermo Mejia Vargas, Victor Oswaldo Lopez Flores, and Carlos Jose Zavala Velasquez to the house. (*Id.* Ex. A ¶ 4).⁷

The defendant was a central participant in the meeting in Tegucigalpa. He told the Sources about the locations of police checkpoints in the vicinity of *Cachiros* cocaine routes. For example, the defendant told the Sources that the “hottest zone” that they would have to transit with the drugs was along the Atlantic coastline of Honduras. (Def. Mem., Ex. L at 4). Moreover, the defendant did not just “bring a map of Honduras.” (*Id.* at 17). Rather, he displayed a map to the Sources that contained “arrows” identifying some of the police checkpoints. (*Id.* Ex. L at 22).

⁷ Despite admitting to the DEA that he rode with Zavala Velasquez to the meeting in San Pedro Sula and drove him to the meeting in Tegucigalpa, the defendant professes surprise in his sentencing submission that Zavala Velasquez was present for the Tegucigalpa meeting. (Def. Mem. at 17).



The defendant supplemented his map presentation by using a laptop to display and discuss additional sensitive law enforcement information:



For example, the defendant told the Sources about the numbers and types of law enforcement at some of the checkpoints. (*E.g.*, Def. Mem., Ex. L at 7 (“only twenty seven”); *id.*

at 8 (“Ten . . . members of the Preventive [Police]”); *id.* (“The option here is that there is a detour located before the checkpoint.”)). He confirmed that “there will be two of us there” near Ceiba, Honduras, that “[w]e all have to watch over” the shipment, and that he would be able to divert non-participating law enforcement personnel “once it [*i.e.*, the cocaine] arrives.” (*Id.* at 10-11). The defendant proposed that they use vehicles with a “low profile” to transport the cocaine. (*Id.* at 14). He also agreed that it would not be ideal if they killed anyone during the shipment because, in his words, “[d]ead people heat things up.” (*Id.* at 34).

The defendant made other specific proposals for coordinating the transportation. He suggested establishing a “center of operations” for the cocaine shipment in San Pedro Sula to “avoid bringing any heat.” (*Id.* at 15-16). He also told the Sources that it would be better to transport the cocaine “[o]n Friday” or “[d]uring the “weekend” because law enforcement would be less active. (*Id.* at 19). During a conversation about weapons, the defendant confirmed that the police assisting with the drug shipment would be armed “just in case, there is some sort of mishap.” (*Id.* at 7). When the Sources said they would provide encrypted phones to ensure secure communication, the defendant directed the group that following the shipment the devices should be “douse[d] . . . with gasoline,” “set on fire,” and “run . . . over with a car” to destroy the evidence. (*Id.* at 27).

The defendant also raised the topic of “[t]he payment” on behalf of his co-defendants. (*Id.* at 28). The Sources offered the group \$100,000 per person, a pool of \$200,000 to bribe other officers, and vehicles. (*Id.*; *see also id.* Ex. A ¶ 5). After the terms of the agreement were set, the defendant noted that “[w]e will be graduating on Friday” from their police training. (Def. Mem., Ex. L at 34). But the defendant did not report any of the above-described criminal activity to Honduran authorities at any time, including after obtaining a “prestigious posting as the

Assistant to the Director of Operations . . . at the Main HNP Headquarters in Tegucigalpa.” (Def Mem. at 18; *see also id.* Ex. A ¶ 11).

II. Procedural History

A. The Charges

On June 29, 2016, a grand jury in this District returned Superseding Indictment S1 15 Cr. 174 (the “Indictment”), which charged the defendant in two of the three counts:

- Count One: participating in a conspiracy to import cocaine into the United States, between 2004 and approximately June 2014, in violation of 21 U.S.C. § 963; and
- Count Three: participating in a conspiracy to use and carry machineguns and destructive devices in furtherance of Count One, between 2004 and approximately June 2014, in violation of 18 U.S.C. § 924(o).⁸

The Government announced the filing of the Indictment on June 29, 2016, and the charges were the subject of significant media coverage in Central America.

B. The Defendant’s Pre-Surrender Statements to Law Enforcement

On July 5, 2016, the defendant contacted DEA personnel operating out of the U.S. Embassy in Tegucigalpa, and he met with DEA agents at the Embassy later that day. (Def. Mem., Ex. A ¶ 2). The defendant lied initially and claimed that there was only a single meeting with the Sources. (*Id.* ¶ 7). Later in the interview, he admitted to participating in the first meeting at the mechanic shop in San Pedro Sula. (*Id.*). The defendant also minimized his role and his knowledge of the transaction proposed by the Sources—claiming that they had proposed “some type of illegal business, such as drugs or weapons”—and lied to the DEA by claiming that he believed the deal proposed by the Sources was “baloney.” (*Id.* ¶¶ 4, 7).

⁸ Count Two charged Zelaya Romero, only, with the substantive offense of using and carrying machineguns and destructive devices in furtherance of Count One, in violation of 18 U.S.C. § 924(c).

C. The Defendant's Guilty Plea

The defendant surrendered voluntarily on or about July 11, 2016. On April 18, 2018, the defendant pleaded guilty to a lesser-included offense under Count One, which carries a five-year mandatory minimum term of imprisonment. The defendant stipulated in his plea agreement that the Guidelines recommend a range of between 210 and 262 months' imprisonment. He also agreed, among other things, that the offense involved (i) more than 450 kilograms of cocaine—the maximum under the Guidelines, *see* U.S.S.G. § 2D1.1(c)(1); and (ii) possession of a weapon under U.S.S.G. § 2D1.1(b)(1).

DISCUSSION

The defendant was a corrupt police officer and a corrupt attorney, who abused his authority and used his training to facilitate the distribution of huge amounts of cocaine by an incredibly violent drug-trafficking organization. His conduct was prolonged and egregious. Accordingly, a within-Guidelines term of imprisonment is appropriate, and the Court should impose forfeiture in the amount of \$42,000 and order the defendant to pay a fine.

I. A Guidelines Sentence Is Appropriate

The Probation Office properly recommends a Guidelines term of imprisonment. (PSR at 21). The conclusion in the PSR is supported by all of the Section 3553(a) factors.

A. The Nature and Seriousness of the Defendant's Crime

The nature, circumstances, and seriousness of the defendant's crime cannot be overstated. *See* 18 U.S.C. § 3553(a)(1), (a)(2)(A). The defendant joined the *Cachiros* in 2004, and participated in at least four of the core functions of the criminal enterprise: drug trafficking, money laundering, sanctions evasion, and debt collection.

First, as a member of the Honduran National Police and an attorney, the defendant helped transport huge quantities of cocaine, provided the *Cachiros* with sensitive law enforcement

information, and even offered the organization access to seized cocaine. In connection with those activities, the defendant worked closely with leaders and managers of the *Cachiros*, such as Leonel, Javier, Valladares Garcia, and Ruben Santos. The defendant showed just how comfortable he was in that role during the recorded meeting with the Sources in June 2014. In many respects, the defendant led the conversation during the meeting, and the transcript of the recording that he submitted to the Court refutes the defendant's assertion that his conduct was "passive" and "inconsequential." (Def. Mem. at 18; *see also id.* Ex. L). Through drug-trafficking activities that began long before the DEA's investigation, the defendant contributed to deteriorating conditions that make Honduras one of the most dangerous places on earth, and he is responsible for helping to send a large and steady stream of poison to this country for nearly a decade.

The Court has recognized the gravity of this conduct in related sentencings. At the sentencing of Lopez Flores, the Court explained:

[T]his is a very serious offense in the context of tons of cocaine that are being shipped into the United States via Honduras. The offense that you pleaded guilty to was being part of a conspiracy that, between 2006 and 2013, worked to import or export, as it were, drugs from Honduras to the United States, but importantly, with the help of politicians and law enforcement officials, like yourself, and military personnel, and to receive multi-hundred kilogram loads of cocaine to Honduras from Venezuelan and Colombia via air and water, and also to transport the drugs westward in Honduras towards the border with Guatemala and eventually the United States.

(Sentencing Tr. 21, *United States v. Lopez Flores*, No. 15 Cr. 174 (LGS) (Feb. 6, 2018)). When sentencing Valladares Garcia, the Court aptly summarized the harm to Honduras and the United States arising from this type of drug trafficking:

It is sometimes difficult in drug cases to realize how serious the crime is and its impact on people, but I am sure just from looking at the society in Honduras and how it has been ravaged by drug dealers, that you have seen how serious and how negative drugs can be on the population in many ways, and so it is not just the people in Honduras that have been affected, it is also the people in the United States who were the ultimate consumers and buyers of these drugs.

(Sentencing Tr. 20, *United States v. Valladares Garcia*, No. 15 Cr. 174 (LGS) (Sept. 27, 2018)).

Finally, at the sentencing of Zavala Velasquez, the Court emphasized the abuse of trust connected to this type of conduct by members of the Honduran National Police:

So this is an extremely serious violation of the law, but also a very serious violation of your duties as a senior law enforcement officer. You were endowed with the public trust, and you abused that trust, and that means, to me, that you took advantage of a situation and a privilege you had in your society.

(Sentencing Tr. 44, *United States v. Zavala Velasquez*, No. 15 Cr. 174 (LGS) (June 28, 2018)).

The Probation Office used similar language with respect to the defendant: “Avila Meza willingly used his power in a trusted position to help facilitate unlawful activities to satisfy his greed for more.” (PSR at 22). The seriousness of the defendant’s drug-trafficking conduct strongly supports the imposition of a within-Guidelines sentence.

Second, more than other former members of the Honduran National Police that the Court has sentenced to date, the defendant participated in sophisticated money laundering schemes with the *Cachiros*. These schemes involved, among other things, using front companies such as INRIMAR, effecting fraudulent third-party transactions using real estate and vehicles, and debasing Honduran institutions in connection with public works projects that purported to help the Honduran people but in reality benefited criminals. The defendant’s money-laundering activities were not “matters within the purview of legal and business work.” (Def. Mem. at 18). The defendant used the knowledge and skills that he developed as an attorney to abuse his position by helping the *Cachiros* to access the Honduran financial system and convert drug money into seemingly untainted assets.

During one of the sentencings in *United States v. Rosenthal*, No. 13 Cr. 413 (JGK), a case the defendant correctly describes as “related” (Def. Mem. at 18), Judge Koeltl emphasized

the seriousness of money laundering, by itself, because it is a critical link in the chain of activities that helps drug traffickers to thrive:

It's serious because it's a step that aids drug trafficking. It is part of a chain, a link, if you will, which, if you took them away, these various links, the drug traffickers would find it extremely difficult to operate. The whole chain of a drug trafficking operation depends upon various links. This is one of them.

(Sentencing Tr. 33, *United States v. Rosenthal Hidalgo*, No. 13 Cr. 413 (JGK) (Dec. 15, 2017)).

Judge Koeltl found this type of conduct so serious that, notwithstanding the presence of mitigating factors absent here, he sentenced Yankel Rosenthal Coello to a 29-month term of imprisonment based on an *attempted, uncompleted* money laundering transaction involving a piece of property in Florida. (*See United States v. Rosenthal Coello*, No. 13 Cr. 413 (JGK) (Dkt. Nos. 279, 294)).⁹ Focusing on just the defendant's money laundering conduct, he is no less culpable than the Rosenthals in light of the extended period of time during which the defendant successfully facilitated efforts by the *Cachiros* to conduct transactions using drug-derived proceeds and assets that concealed the nature of the funds and promoted large-scale drug trafficking. *Cf.* 18 U.S.C. § 1956(a)(2). This part of his offense conduct contributed to one of the critical functions of the *Cachiros*, and illustrates that he was a fully integrated member of the organization.

Third, beginning in May 2013, the defendant helped the leaders of the *Cachiros* evade sanctions imposed by OFAC pursuant to the Kingpin Act, as well as related Honduran law enforcement efforts. In this regard, the defendant took steps to conceal *Cachiros* assets, he

⁹ For example, whereas the defendant assisted the *Cachiros* between at least 2004 and 2014, Rosenthal Coello's conduct spanned less than a year in 2013. (*See United States v. Yankel Rosenthal Coello*, No. 13 Cr. 413 (JGK) (Dkt. No. 238)). Rosenthal Coello and Rosenthal Hidalgo pleaded guilty to a money laundering offense involving drug-derived proceeds, in violation of Title 18, United States Code, Section 1957, which carries a statutory maximum penalty of 20 years' imprisonment and no mandatory minimum sentence. Rosenthal Hidalgo was sentenced principally to 36 months' imprisonment and a \$2.5 million fine.

defrauded the Honduran government and caused it to issue payments to a front company that he established called “CC Construcciones,” and he recruited at least two other attorneys to assist with these efforts, Marlon Duarte and Dagoberto Aspra. (Def. Mem. at 11, 15). He went so far as to set up a meeting in February 2014, after two rounds of widely publicized OFAC sanctions, between Leonel and Hernandez Alvarado—another major drug trafficker and the brother of the Honduran president. Those efforts by the defendant show his commitment to the *Cachiros* and refute his claim at sentencing that he was simply a “poorly compensated low level” police officer. (Def. Mem. at 19).

OFAC imposes sanctions pursuant to the Kingpin Act because “[t]here is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.” 21 U.S.C. § 1901(a)(4). The defendant’s conduct is an example of why that remains true today. He appears to miss the import of his observation that “[t]he problem was that because INRIMAR had been frozen under the OFAC sanctions, a new entity was needed.” (Def. Mem. at 14). Evasion of Kingpin Act sanctions is another distinct category of conduct undertaken by the defendant as a means of enriching himself by assisting the *Cachiros*, through which he sought to weaken the impact of one of the key tools in the Government’s arsenal to combat drug trafficking. The defendant was not involved in creative legal work bounded by the rule of law, he was operating as corrupt house counsel for a violent criminal enterprise.

Finally, the defendant acted as a debt collector for Leonel and Javier. While doing so, he relied at least implicitly on a *Cachiros* reputation he now bemoans “for running a violent and comprehensive drug organization in Honduras” with “mendacity [that] was universally known across all strata of society in Honduras.” (Def. Mem. at 22). In a manner that illustrates the level

of impunity that the defendant believed he wielded, he brazenly confronted Aspra at the office of a government agency tasked with rooting out corruption and demanded that Aspra repay Leonel. (Def. Mem. at 14). The defendant went to that office to pass on “mortal threats” from Valladares to Aspra: “give the money back or he would be killed.” (*Id.*). The defendant describes his behavior in a separate incident, in an extremely understated fashion, as having “convinced” another *Cachiros* associate, Francisco Arturo Mejía, to “pay what was owed.” (*Id.*). Thus, the defendant has—perhaps unintentionally—admitted to participating in the very type of thuggish behavior that he has attempted to use—unpersuasively—as justification for his crime. This is another aspect of his conduct that warrants further punishment.

* * *

In sum, the defendant’s conduct was prolonged, multi-faceted, and serious. He was a “trusted” member of the *Cachiros*. (Def. Mem. at 14). He earned that status not because of his legal acumen, but because of his appetite for large-scale drug trafficking, money laundering, sanctions evasion, and debt collection. The defendant spent years, including as a member of the Honduran National Police, in a position from which he could have helped combat these often deadly activities. Thus, there is great irony in his fixation at sentencing on observing which members of the organization he believes have been charged with crimes. (*E.g.*, Def. Mem. at 4 n.3, 7 n.10, 11 n.16). The defendant declined to report this criminal activity when he had the ability, and indeed the obligation, to do so. Moreover, the defendant was exactly the type of corrupt law enforcement official whose betrayal of his country, and crimes against this one, led to the declaration of an emergency with respect to the Honduran National Police. (*See* Def. Mem. Ex. P). To the extent he was not sanctioned in connection with the Honduran investigation of police, that is because the investigating body lacked access to the full scope of the evidence of his

crimes, corruption, and misconduct. Accordingly, the nature and seriousness of the defendant's offense conduct counsels strongly in favor of a Guidelines sentence.

B. The Defendant's Personal Characteristics

The defendant's personal circumstances do not merit leniency. *See* 18 U.S.C. § 3553(a)(1). In his view, the "most important" consideration under Section 3553 is that he "has no criminal history." (Def. Mem. at 35). The absence of criminal history is only relevant in a mitigating sense when the lack of arrests results from a lack of crimes. That is not the situation here. The defendant spent years engaging in crime and corruption with the *Cachiros*. The polygraph examinations that he submitted in connection with sentencing demonstrate only that he was good at evading detection and helping others to do the same. It is likely that additional obfuscation by the defendant was necessary in connection with background checks related to the "prestigious posting" in a "national security" position that he assumed in January 2015. (Def. Mem. at 18; PSR ¶ 65). These are considerations that suggest that more punishment is needed rather than less.

Moreover, the defendant has not identified mitigating characteristics in his personal history. He grew up under "good" economic conditions and experienced a "normal childhood." (PSR ¶ 46).¹⁰ He benefited from an "excellent" relationship with his mother and had four "close knit" siblings. (*Id.* ¶ 45). One of those siblings is a lawyer who, unlike the defendant, has apparently practiced law in Honduras in an honorable way without joining the *Cachiros*. (*Id.*; *but see* Def. Mem. at 22 (arguing that "[s]ome level of participation in the interests of the Maradiagas['] real estate ventures was not uncommon")).

¹⁰ Although the defendant described his relationship with his father as abusive and strained, he also benefitted from a "very good relationship" with his mother's boyfriend. (PSR ¶¶ 44, 46).

The solid foundation of the defendant's family afforded him numerous opportunities to live a law-abiding life. There is no evidence that he faced "economic imperatives." (Def. Mem. at 22). Rather, in the words of the Probation Office, "[f]rom the defendant's description of his upbringing and the life he created for himself, there was no indication that the defendant was experiencing any financial hardships." (PSR at 22). In 1989, the defendant started to work as an elementary school teacher. (Ex. D at 1 (translation of resume from Def. Mem. Ex. Q)). In 1994, he graduated from the police academy and earned a bachelor's degree in criminal sciences. (PSR ¶ 62). The defendant was an active member of the Honduran National Police until he was suspended in 1999. He asserts at sentencing that the suspension occurred "because of" a tax offense by his wife. (Def. Mem. at 32). To be clear, the defendant participated in that offense. (Def. Mem. Ex. E at 28 ("The examining magistrate found enough national evidence to decree the complicity of Police Officer JUAN MANUEL AVILA MEZA.")). He also continued to collect salary from the Honduran National Police while suspended. (Def. Mem., Ex. E at 10 (the defendant while "subjected to judicial proceedings shall be suspended in the performance of his functions, but shall be entitled to his salary during the trial"))).

In any event, during the period of the defendant's suspension—in addition to his drug trafficking—the defendant earned advanced degrees in 2002, 2005, and 2008. (PSR ¶¶ 59-61). In 2003, he opened a "[s]uccessful and well-respected" law firm. (Def. Mem. at 31; *see also* PSR ¶ 67). The defendant also operated "other business ventures," including "the importation and resale of passenger vehicles" and "several passenger bus lines." (Def. Mem. at 34). In a document attached to the defendant's sentencing submission, he identified as assets a house, four cars, and a pistol. (Ex. E at 3-4 (translation of pages from Def. Mem. Ex. V)). With respect to income, he described a separate rental apartment, "taxis," and "[t]ransportation of executive passengers." (*Id.*

at 2). When speaking to the Probation Office, the defendant identified two additional vehicles, a 1999 Toyota Corolla and a 2003 Mercedes Benz. (PSR ¶ 69). Thus, the record establishes that the defendant benefited from a relatively stable family life, substantial education, several legitimate business opportunities, and a career in law enforcement. His crime was motivated by greed alone, and he is personally responsible for the collateral consequences faced by his relatives due to his conviction.

C. The Need to Avoid Unwarranted Sentencing Disparities

In light of the seriousness of the offense and the defendant's personal characteristics, the need to avoid unwarranted sentencing disparities also supports the imposition of a Guidelines sentence. *See* 18 U.S.C. § 3553(a)(6). “[T]he primary purpose of § 3553(a)(6) is to reduce unwarranted sentence disparities on a nationwide level.” *United States v. Simpson*, 898 F.3d 287, 314 (2d Cir. 2018) (internal quotation marks omitted). As a starting point, the defendant's stipulation to a level-38 drug quantity under the Guidelines illustrates the uniquely serious nature of his cocaine-distribution conduct, alone, without accounting for his money laundering, sanctions evasion, and *Cachiros* debt collection. In 2017, only approximately six percent of 18,935 drug-trafficking cases across the country involved quantities that reached the thresholds of level 38. (Ex. F at 2). During the same period at the national level, only approximately one percent of the defendants in 3,736 cases involving cocaine were held responsible for the Guidelines drug quantity in excess of 450 kilograms that is applicable to the defendant. (*Id.*). In the Second Circuit, only approximately nine percent of 364 cases involving cocaine in 2017 resulted in a level-38 drug quantity. (*Id.* at 3).

Although co-defendant sentences are not dispositive with respect to Section 3553(a)(6), there are three benchmarks in this case for the Court to consider. First, the Court

sentenced Lopez Flores principally to the 60-month term of imprisonment the defendant seeks. There, however, the Court found that there was “nothing in the record to show that [his] involvement either preceded or extended after” the 2014 meetings that were part of the DEA’s sting investigation. (Sentencing Tr. 23, *United States v. Lopez Flores*, No. 15 Cr. 174 (LGS) (Feb. 6, 2018)). The defendant, on the other hand, joined the *Cachiros* in 2004. Second, the Court sentenced Zavala Velasquez principally to 144 months’ imprisonment. Zavala Velasquez was not a member of the *Cachiros*, and, unlike the defendant, there was no evidence that he participated in money laundering, sanctions evasion, and debt collection in addition to his drug trafficking. Zavala Velasquez presented more sympathetic personal characteristics, in light of a job-related PTSD diagnosis in 2010. And although the Government did not credit his position, he proffered non-frivolous evidence that he reported the 2014 meetings with the Sources to his superiors prior to the public filing of charges in June 2016. Third, the Court sentenced Valladares Garcia principally to 168 months’ imprisonment. Although the defendant and Valladares Garcia worked for the *Cachiros* for roughly the same period dating back to 2004, they are not similarly situated. In particular, and as the Court is aware, Valladares Garcia approached his case far differently than the defendant in terms of accepting responsibility for the nature and scope of his conduct. The defendant also participated in more aspects of the *Cachiros* organization (*e.g.*, money laundering, debt collection, and sanctions evasion) than did Valladares. Therefore, national sentencing statistics and other sentences in this case support the imposition of a Guidelines sentence.

D. The Need for Deterrence and Just Punishment

The need for general deterrence and just punishment of large-scale drug trafficking by public officials, and attorneys, such as the defendant further supports the imposition of a Guidelines sentence. *See* 18 U.S.C. § 3553(a)(2). The Court has emphasized these considerations

in the context of this case at related sentencings. For example, at the sentencing of Lopez Flores, the Court reasoned:

I do think it's important to impose a substantial sentence of incarceration to set an example so that not only you but so that other law enforcement officers in your country and other countries might be deterred from committing similar crimes.

(Sentencing Tr. 25, *United States v. Lopez Flores*, No. 15 Cr. 174 (LGS) (Feb. 6, 2018)). In connection with the direct appeal of Fabio Lobo, the Second Circuit endorsed this approach: “[T]he district court acted well within its discretion when it imposed a sentence reflecting the need to deter government officials from using their positions of power to facilitate drug trafficking.” *United States v. Romero*, 749 F. App’x 31, 35 (2d Cir. 2018). The Court can and should do the same here by imposing a Guidelines sentence.

II. The Defendant’s Sentencing Arguments Are Meritless

As the Court is aware, the defendant’s sentencing was originally scheduled for July 18, 2019. The Court adjourned that sentencing in light of certain factual disputes and arguments made by the defendant that the Government argued breached his plea agreement. On December 3, 2020, the Government filed a letter on behalf of the parties that set forth an agreement resolving the remaining sentencing disputes. (Dkt. 477). Among other things, the defendant agreed to withdraw any arguments that are inconsistent with the plea agreement, including arguments that he was a minor participant in the offense; that there was no connection between the possession of a firearm and the offense conduct; and that the resulting Guidelines range should be 168 to 210 months’ imprisonment.

It is not clear from the defendant’s “Revised Sentencing Memorandum” that he has completely withdrawn from those arguments. In particular, on page one of that submission the defendant “incorporates by reference the arguments” submitted in his original sentencing

submission, and in particular those related to his role in the offense and the connection of firearms to his criminal activity. (Def. Mem. at 26). The defendant otherwise uses his “Revised Sentencing Memorandum” to make arguments almost exclusively related to COVID-19. (Def. Supp. Mem. at 3-9). For the reasons set forth below, the Government respectfully submits that all of the defendant’s arguments should be rejected.

A. The Defendant’s Arguments With Respect to His Role in the Offense and the Use of Firearms are Belied by the Record and the Plea Agreement

The defendant’s arguments with respect to his role in the offense are without merit. As an initial matter, based on the parties’ December 3, 2020 agreement, the Government understands that the defendant is no longer asserting that he is entitled to a downward adjustment to the Guidelines range as a minor participant. The defendant, of course, could not pursue such a claim because doing so would violate the defendant’s plea agreement, which contains a Guidelines stipulation without a mitigating-role reduction and specifically bars the defendant from seeking or suggesting in any way that there be a departure from the Guidelines range.

Putting that aside, to the extent the defendant is asserting that his role in the offense is mitigating under § 3553(a), that argument is contrary to the evidentiary record. (Def. Supp. Mem. at 1, incorporating by reference Def. Mem. at 26-27). For example, the defendant’s statements during the meeting with the Sources demonstrate that he (i) “participated in planning . . . the criminal activity” by showing the Sources the locations of law enforcement checkpoints in Honduras and discussing potential drug-transportation routes, (ii) “understood the scope and structure of the criminal activity” because the Sources were abundantly clear during the meeting about their drug-trafficking objective, the role to be played by the Honduran National Police, and the separate role to be played by the Honduran military, and (iii) agreed to operate with “decision-making authority” as well as “discretion” while disbursing the \$200,000 pool of bribes that he and

his co-defendants agreed to accept from the Sources. U.S.S.G. § 3B1.2 App. N.3(C)(i)-(iv). The defendant also “stood to benefit” substantially from the proposed drug shipment by making \$100,000 and keeping the vehicle that the Sources said they would provide for him to use. *Id.* App. N.(3)(C)(v). The defendant’s meetings with the Sources was just one aspect of approximately 10 years of criminality with the *Cachiros*. Thus, the undisputed record demonstrates without question that the defendant was not a minor participant in this criminal activity.

The defendant is also wrong to continue to argue that “there was, in fact, no nexus between the firearm and the criminal activity.” (Def. Supp. Mem. at 1, incorporating by reference Def. Mem. at 26). In this regard, the defendant stipulated in his plea agreement that “a dangerous weapon was possessed” under U.S.S.G. § 2D1.1(b)(1). “The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.” *Id.* App. N.11(A). That standard is plainly met based on the facts of this case. The defendant and other members of the *Cachiros* possessed firearms in furtherance of the ongoing drug-trafficking conspiracy long before the June 2014 recorded meeting. *See id.* § 1B1.3(a)(1)(B). The nexus between the officers’ guns and the discussion at the recorded meeting is demonstrated by conversation regarding the defendants using their “registered weapons,” *i.e.*, firearms issued by the Honduran National Police, in connection with the drug shipment. (Def. Mem. Ex. L at 7).

The defendant’s sentencing argument that the “savvy [Sources] had him wear his uniform and bring his weapon” is also belied by the record. (Def. Mem. at 25; *see also id.* at 26; *id.* at 35 (referring to “unscrupulous cooperators with a self-serving agenda”)). The defendant’s own sentencing submission makes clear that the alleged instructions came from Valladares Garcia—who was not cooperating—rather than the Sources. (Def. Mem. at 17). Similarly, during

the defendant's July 2016 pre-surrender interview at the U.S. Embassy, he told the DEA that he was invited to the meeting in Tegucigalpa by Valladares Garcia and Zelaya Romero. (*Id.* Ex. A ¶ 3). The defendant told the DEA during that interview that Valladares Garcia asked him to bring a map of Honduras, but the defendant did not claim that he was instructed to wear his uniform or bring a firearm. (*Id.*). Moreover, no other defendant in this case has argued that he was directed by the Sources or Valladares Garcia to wear a uniform or bring a gun, and Zelaya Romero came to the Tegucigalpa meeting in plain clothes rather than his uniform. Therefore, the Court should reject these claims as false.

Finally, the defendant continues to argue that “ineligibility for Safety Valve consideration is inconsistent with the principles underlying the First Step Act.” (Supp. Mem. at 1, incorporating by reference Def. Mem. at 35). However, the defendant agreed in his plea agreement—categorically—that he was not eligible for safety-valve relief. Part of the basis for his ineligibility is the possession of a firearm in connection with the offense. *See* 18 U.S.C. § 3553(f)(2). The offense also resulted in death and serious bodily injury to numerous people between 2004 and 2014. *See id.* § 3553(f)(3). In addition, the defendant has not “truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.” *Id.* § 3553(f)(5). The First Step Act did not modify these aspects of the safety valve, as they relate to the defendant, and his arguments to the contrary fail.

B. The Defendant Has Not Displayed “Unprompted,” “Super-Acceptance” of Responsibility

The defendant argues that his acceptance of responsibility was “unprompted” and “super.” (Def. Mem. at 21). He is wrong. Assuming, *arguendo*, that the defendant withdrew from the conspiracy at some point after the June 2014 recorded meeting, he did not self-report his

negotiations involving other Honduran National Police, the Honduran military, and the son of a former president. (Def. Mem., Ex. A ¶ 11). He failed to do so despite a promotion to a job involving Honduran national security. (PSR ¶ 65). The defendant came forward only after the Government issued a press release in June 2016 in connection with public charges filed against him and others in the United States.

When the defendant approached law enforcement in July 2016, he initially lied to the DEA by suggesting that his role was limited to the recorded meeting described in the press release and the Indictment. (Def. Mem. Ex. A ¶ 7). Even after being confronted about additional meetings during the July 2016 interview, the defendant minimized his actions by suggesting that his work for the *Cachiros* was limited to the two meetings conducted in connection with the DEA's sting investigation. For example, the defendant failed to mention the money laundering, sanctions-related, and debt-collection activities that he now concedes in his sentencing submission, and he said nothing about having set up a meeting in February 2014 between Leonel and Hernandez Alvarado. Of course, the defendant was not required to talk to the DEA at all in July 2016. But he chose to, and he chose to withhold information. That approach, as well as several of the defendant's sentencing arguments, are in tension with a complete—much less “super”—acceptance of responsibility. The Government does not dispute the defendant's eligibility for a reduction pursuant to U.S.S.G. § 3E1.1, but no additional downward variance is appropriate on this basis.

C. There Was No Coercion by Other Members of the *Cachiros*

Based on arguments sounding in duress, the defendant asserts that he was coerced into participating in the drug-trafficking meetings that were conducted pursuant to the DEA's sting investigation. (Def. Mem. at 23). These coercion claims are false and should be rejected.

In July 2016, the defendant told the DEA that he attended the summer 2014 meetings because he understood from Zelaya Romero that there was “job” that he “could get paid for.” (Def. Mem. Ex. A ¶ 3). At the defendant’s guilty plea, the Court asked, “Did anyone threaten or coerce you or force you to do these things?” (Tr. 21). The defendant responded, under oath, “No.” (*Id.*). Counsel subsequently tried to walk back the defendant’s answer by asserting that “there were issues of pressure that were put upon them that may constitute coercion but not enough for a defense in this matter.” (*Id.*). But “[s]olemn declarations in open court carry a strong presumption of verity.” *Blackledge v. Allison*, 431 U.S. 63, 74 (1977). And counsel’s argument is not enough, at the plea or at sentencing, to avoid the defendant’s sworn, unambiguous—and truthful—statement that he perceived no coercion from his co-conspirators. This is particularly true here because the defendant is an adult attorney with substantial education, training, and experience in both law enforcement and the practice of law, who did not allege coercion or duress when speaking to the DEA in 2016.

Insofar as the defendant suggests that he acted under duress, he has “failed to make any showing that he tried to flee or seek the intervention of law enforcement instead of participating in the conspiracy.” *United States v. Ahlijah*, No. 14 Cr. 527 (GBD), 2016 WL 3269716, at *2 (S.D.N.Y. June 7, 2016). Rather, he was a long-term, trusted member of the *Cachiros*, well versed in their criminal activities, who did not seek to withdraw from the conspiracy before 2014 or to report the ongoing crimes before he was publicly charged with them. For example, when Valladares Garcia instructed the defendant, in the defendant’s words, “to tell Aspra to either answer the phone and give the money back or he would be killed,” the defendant dutifully passed on that “mortal threat[.]”—in a government office building. (Def. Mem. at 14). The defendant was a part of the violence, not a victim of it, and the Court should reject coercion

arguments that do little more than contradict the defendant's sworn statement under oath at his guilty plea.

D. There Was No Misconduct by the Government and the Defendant Was Not Entrapped

In addition to the defendant's duress and coercion arguments, he claims that he was "entrapped" and "manipulated" through "questionable" conduct by the Government. (Def. Mem. at 24). These claims are meritless.

"Sentencing manipulation has been described as occurring when the Government engages in improper conduct that has the effect of increasing the defendant's sentence." *United States v. Gomez*, 103 F.3d 249, 256 (2d Cir. 1997) (internal citations and quotation marks omitted). "Sentencing entrapment is a related concept that normally requires that a defendant convince the fact-finder that Government agents convinced her to commit an offense that she was not otherwise disposed to commit." *United States v. Deacon*, 413 F. App'x 347, 351 (2d Cir. 2011). The Second Circuit "has not yet recognized the doctrines of sentencing manipulation or sentencing entrapment." *Id.*; see also *United States v. Caban*, 173 F.3d 89, 93 n.1 (2d Cir. 1999) ("[T]he status of each doctrine in this Circuit is unclear."). Even to the extent these doctrines are viable, they are unavailing to the defendant because there was no impropriety on the part of the Government.

Moreover, the defendant was not entrapped, and there was no sentencing manipulation. He joined the *Cachiros* in 2004 on his own volition and remained a trusted member of the enterprise for years. The defendant cannot establish sentencing entrapment because there is substantial evidence that he was predisposed to engage in large drug transactions involving the use of weapons as security. Dating back to 2004, he participated in an "already formed design" and an "existing course of criminal conduct similar to the crime for which the defendant is charged."

United States v. Al-Moayad, 545 F.3d 139, 154 (2d Cir. 2008). The defendant’s “ready response to the inducement” offered by the Sources during the June 2014 recorded meeting is independently sufficient to reject his sentencing entrapment claim. *Id.* A valid claim of sentencing entrapment or sentencing manipulation would also require a showing of “outrageous government conduct.” *Deacon*, 413 F. App’x at 351 (internal quotation marks omitted); *see also United States v. Bala*, 236 F.3d 87, 93 (2d Cir. 2000). A defendant can meet his “very heavy burden” of demonstrating that official conduct was “outrageous” “only if the government was involved with the underlying criminal activity by means of coercion or violation of the defendant’s person.” *United States v. Cacace*, 796 F.3d 176, 193 (2d Cir. 2015) (internal quotation marks omitted). Even if the defendant’s claims regarding threats by members of the *Cachiros* were true—and they are not—such threats are not attributable to the Government and thus not a basis for a variance under these doctrines.

With respect to drug quantity, the defendant argues that there is “no proof that defendant knew of the amount of drugs” and that it would be “arguably impossible” to assess what was foreseeable to him. (Def. Mem. at 27, 28). No foreseeability analysis is required because the defendant stipulated in his plea agreement that the offense involved more than 450 kilograms of cocaine. The drug quantity in the agreement is based in part on actual drug shipments, involving more than a metric ton of real drugs, in which the defendant personally participated. (*See* PSR at 21 (“[T]he amount of drugs involved in this offense is unmeasurable . . .”).

The drug quantity is also based on the defendant’s agreement to assist the Sources in the large cocaine shipment that they proposed at the direction of the DEA during the summer of 2014. “At sentencing, [the defendant can] lawfully be held responsible for those drug quantities, notwithstanding that the idea of the quantities originated with the [g]overnment as part of a sting

operation.” *United States v. Soborski*, 708 F. App’x 6, 10 (2d Cir. 2017) (internal quotation marks omitted) (citing *United States v. Cromitie*, 727 F.3d 194, 226 (2d Cir. 2013)). The defendant knew the proposed quantity was greatly in excess of 450 kilograms because the Sources purported to have involved not only the Honduran National Police, but also the Honduran military and the son of a former president of his country. In addition, the Sources offered to pay almost a million dollars, in aggregate, for police assistance in transporting the drugs through just one of the countries that the cocaine would have to transit on its way to the United States, including \$100,000 for each of the six officers at the meeting, a vehicle for each officer, encrypted phones, and an additional \$200,000 for bribes to other officers. The extraordinary security measures in which the defendant agreed to participate, coupled with the extensive compensation proposed, demonstrate the foreseeability of the drug quantity at issue in the summer 2014 meetings.

The defendant also argues that he was entrapped with respect to jurisdiction, *i.e.*, his knowledge that the cocaine he helped, and agreed to help, distribute was destined for the United States. (Def. Mem. at 25).¹¹ The concept of “manufactured jurisdiction” is a defense on the merits—not a sentencing claim—that can proceed as a due process contention seeking dismissal of a charge or indictment, an entrapment argument at trial, or a challenge to the Government’s proof at trial on an intent element. *See, e.g., United States v. Al Kassar*, 660 F.3d 108, 119 (2d Cir. 2011). Once a defendant is proven to have attained the required knowledge, or, as in this case, allocutes to having the required knowledge under oath, manufactured jurisdiction arguments are no longer viable. In connection with sentencing, it is of no moment that the Sources brought up the issue of importing cocaine into this country because the defendant stated under oath during his

¹¹ The defendant also argues that he was entrapped with respect to the separate issue of venue. (Def. Mem. at 25). He is wrong. Venue is appropriate in this case based on Title 18, United States Code, Section 3238, irrespective of the defendant’s conversations with the Sources.

guilty plea that he was aware of this aspect of the proposed shipment based on the Sources' comments. He was also aware of the U.S. nexus in the deal based on his long-term experience with the *Cachiros*, the proposed involvement of U.S. dollars in the transaction, his knowledge that the *Cachiros* had been sanctioned by the United States based on drug-trafficking activities, and because it is widely known in the Americas region that "approximately 80 percent of the cocaine sent from Venezuela along the Central American corridor . . . is destined for the United States." *United States v. Campo Flores*, No. 15 Cr. 765 (PAC), 2017 WL 1133430, at *2 (S.D.N.Y. Mar. 24, 2017) (quoting expert testimony). Accordingly, the defendant's sentencing entrapment and sentencing manipulation arguments should be rejected.

E. The Defendant Is Not Entitled to Additional Leniency Based on the Sources' Separate Crimes

The defendant seeks a downward variance based on unrelated crimes committed by the Sources. (*E.g.*, Def. Mem. at 28-29). Those men were prosecuted separately, however, and their misconduct does not mitigate what the defendant did.

In or about the summer of 2016, the Government learned that the Sources were involved in drug trafficking that was not authorized by the DEA, constituted separate crimes, and had nothing to do with this case. The Government arrested the Sources, and they pleaded guilty pursuant to cooperation agreements. (Def. Mem. at 29). The Government subsequently terminated those agreements after testimony in *United States v. Campo Flores*, No. 15 Cr. 765 (PAC), during a September 2016 suppression hearing and a November 2016 trial. Despite the fact that these developments were not exculpatory with respect to this case, in an abundance of caution, the Government disclosed all of this information to the Honduran National Police defendants prior to their guilty pleas. *See United States v. Lobo*, No. 15 Cr. 174 (LGS), 2017 WL 1102660, at *4-5

(S.D.N.Y. Mar. 22, 2017).¹² The Government’s decision to extend lesser-included plea offers to the Honduran National Police defendants was based in large part on increased litigation risk arising from the prosecution of the Sources and the subsequent termination of their cooperation agreements. No further leniency is warranted for the defendant on this basis.

The defendant also claims, falsely, that the Sources “admitted to manipulation of evidence with respect to their use of cameras and other recording devices.” (Def. Mem. at 29 (bold typeface omitted)). In fact, Judge Crotty rejected allegations by the *Campo Flores* defendants that the Sources had destroyed evidence. The court found that, although “[t]here is no dispute that the deliberate destruction of exculpatory evidence may give rise to sanctions,” “that is not what happened here.” *United States v. Campo Flores*, No. 15 Cr. 765 (PAC), 2016 WL 5946472, at *3 (S.D.N.Y. Oct. 12, 2016). Following a two-day suppression hearing, there was “no reason to believe that [the Sources] modified or deleted any recordings.” *Id.* at *3 n.4. “[T]here was no evidence at the hearing showing that there were deliberate attempts to selectively record portions of meetings.” *Id.* at *3. “Nor is there any evidence of bad faith on the part of the Government.” *Id.*

In addition to mischaracterizing the findings in *Campo Flores*, the defendant has failed to identify any specific issues with the Sources’ recording in this case of the June 2014 meeting in Tegucigalpa. And Leonel, not the Sources, recorded the February 2014 meeting involving the defendant and Hernandez Alvarado. Retained counsel, with the benefit of at least one private investigator, has had access to these recordings for years. Yet, they allege no flaws or manipulation of the files. Thus, the defendant’s assertion that the unchallenged recordings should

¹² The defendant argues that the Government “has not provided certain discovery,” which he fails to identify but “considers” to be “*Brady* and *Giglio* material.” (Def. Mem. at 29). The Court has already rejected this argument. *See Lobo*, 2017 WL 1102660, at *5.

be “given no heed” in connection with his arguments for downward departures is frivolous. (Def. Mem. at 29). The defendant’s arguments regarding the Sources are little more than an effort to distract the Court from his own egregious conduct.

F. The COVID-19 Pandemic Does Not Support A Non-Guidelines Sentence

In his supplemental submission, the defendant focuses almost exclusively on the COVID-19 pandemic. In particular, he claims that he suffers from hypertension, fibromyalgia, and severe anxiety; the Bureau of Prisons (“BOP”) is unable to adequately care for his medical conditions; and his conditions of confinement justify a lower sentence. While COVID-19 is undoubtedly serious, the defendant’s arguments concerning the pandemic do not support his sentencing position.

First, with respect to the defendant’s health, the defendant is a healthy, 50-year old and thus, he is generally at a lower risk from the disease.¹³ While hypertension may place individuals at a higher risk of severe illness from COVID-19, the evidence on this question is “mixed,” meaning that “multiple studies . . . reached different conclusions about risk associated” with hypertension.¹⁴ The defendant’s other medical conditions are not recognized as placing the defendant at a higher risk of severe illness should he contract COVID-19. As a result, there is nothing about his current health conditions that necessarily place him at an increased risk should he contract COVID-19.

¹³ See Older Adults, CDC, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited on January 1, 2021).

¹⁴ See Evidence used to update the list of underlying medical conditions that increase a person’s risk of severe illness from COVID-19, CDC, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html> (last visited January 1, 2021).

Second, the defendant is wrong that BOP is unable “to attend to [the] defendant’s basic health issues.” (Def. Supp. Mem. at 5). In support of that claim, the defendant states that he “has not seen a medical doctor for updated analysis to learn if an adjustment to his prescribed medications was necessary although he has repeatedly made this request”; that his requests to see a dentist for a tooth issue have been ignored; and that “it is well known that sick call requests have been ignored or placed on the back burner.” (Def. Supp. Mem. at 5). The defendant’s BOP medical records, which are being submitted under seal as Exhibit G, belie each of those claims.

With respect to the defendant’s access to medical staff, on January 7, 2021, the defendant was examined by a Nurse Practitioner at the MDC, including to “review x-rays, EKG, & lab results.” During that visit, the defendant “appear[ed] well, alert and oriented”; had “[n]o complaints”; and “denie[d] adverse effects to medications.” (Ex. G at 2-3). The defendant also stated that he “sleeps 6 – 8 hours/night”; “exercises daily;” and “adhere[s] to diet, exercise & medications.” (*Id.* at 2). The Nurse Practitioner discussed with the defendant a variety of health topics including “clinical findings from [the] exam”; “lab results, EKG, & diagnostic test”; “medication adherence”; “reduc[ing] sodium intake”; “increa[ing] PO water intake”; “diet . . . , weight loss, stress management strategies, daily exercise . . . , and lifestyle modifications”; and “self-care & preventative health maintenance.” (*Id.* at 5). The defendant’s January 2021 examination was not aberrational; rather, throughout 2020, BOP effectively monitored the defendant’s health, including by thoroughly examining him on August 4, 2020, regularly renewing his medications, and ordering lab tests, including at least one time for the coronavirus on December 18, 2020, which was negative. (*Id.* at 7, 40; *see also id.* at 9-10 (August 4, 2020 examination notes reflecting that the defendant’s anxiety was under “good control” with medication; that his hypertension was within normal limits; and that he appeared well, alert, and oriented).

The defendant is also incorrect that medical staff did not respond to his requests for dental treatment. On March 19, 2020, the defendant's housing unit officer reported to medical staff that the defendant had tooth pain. Though dental staff was unavailable that day, the defendant was immediately prescribed ibuprofen. (*Id.* at 21). On July 21, 2020, the defendant was scheduled to see a dentist but "did not show" and his appointment was rescheduled. (*Id.* at 38). At the rescheduled dental visit on August 25, 2020, which the defendant did attend, the defendant said that "[s]ix months ago my tooth broke but I don't have pain now"; "he does not want the tooth extracted"; and he signed a "[r]efusal form." (*Id.* at 36).

The defendant is also incorrect that his sick call requests were ignored. As noted above, on the day the defendant reported tooth pain, medical staff immediately prescribed him with medication. Moreover, on July 27, 2020, in response to the defendant's submission of a "sick call slip" requesting a renewal of his medications, medical staff immediately renewed his medications. (*Id.* at 13). There is simply no indication from the defendant's medical records that sick call requests have gone unanswered. Rather, the records reflect that BOP has effectively monitored and treated the defendant's conditions, and modified his treatment plan to respond to changing symptoms as necessary.

Finally, it is of course true that the pandemic has presented challenges to BOP. However, BOP generally, and MDC Brooklyn specifically, are actively managing the risks presented by COVID-19. Starting in January 2020, the BOP implemented an Action Plan for COVID-19.¹⁵ The BOP continues to revise and update that Action Plan in response to the fluid nature of the COVID-19 pandemic, and in response to the latest guidance from experts at the World Health Organization ("WHO"), the CDC, and the Office of Personnel Management. In addition,

¹⁵ See https://www.bop.gov/coronavirus/overview.jsp#bop_covid-19_response.

BOP stood up an “agency task force” to study and coordinate its response to COVID-19, including using “subject-matter experts both internal and external to the agency including guidance and directives from the WHO, the CDC, the Office of Personnel Management, Department of Justice, and the Office of the Vice President.” BOP’s current Action Plan, which the MDC has implemented, includes numerous measures designed to protect inmates and staff from the coronavirus pandemic.¹⁶ Moreover, the BOP has begun administering vaccines to inmates and staff.¹⁷ These and other steps show that the BOP is meaningfully addressing the risk posed by COVID-19 to inmates, and that it has taken the threat seriously, has mitigated it, and continues to update policies and procedures in accord with the facts and recommendations, as well as directives from the Attorney General.

Relatedly, the Government recognizes that the pandemic has in some circumstances made inmates’ incarceration “harsher and more punitive than would otherwise have been the case . . . because the federal prisons . . . have had to impose onerous lockdowns and restrictions that have made the incarceration of prisoners far harsher than normal.” *United States v. Rodriguez*, No. 00 Cr. 761 (JSR), 2020 WL 5810161, at *3 (S.D.N.Y. Sept. 30, 2020) (internal quotation marks and citation omitted). The defendant, like other inmates, has been subject to lockdowns at MDC in an effort to prevent the spread of COVID-19 within that facility. However, on the current record, the defendant has not demonstrated that his incarceration has been substantially harsher because of COVID-19. *See United States v. Pinto-Thomaz*, 454 F. Supp. 3d 327, 331 (S.D.N.Y.

¹⁶ *See* https://www.bop.gov/coronavirus/covid19_status.jsp.

¹⁷ *See* <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

2020) (“[A]s stated by the Court during oral argument on the instant motions, lockdowns are a routine fact of life for incarcerated defendants and are hardly extraordinary.”).

In sum, the defendant has not articulated why current BOP policies and procedures are insufficient to provide him a reasonable level of care, let alone why the spread of COVID-19 in prison facilities should outweigh the gravity of the defendant’s offenses.

III. The Court Should Impose Forfeiture

The defendant admitted to the forfeiture allegation in the Indictment during his guilty plea (Tr. 22), and he has acknowledged receiving over \$42,000 in connection with his work for the *Cachiros*. Therefore, the Court should order the defendant to forfeit at least that amount.

Pursuant to Title 21, United States Code, Section 853, “a defendant convicted of a drug crime ‘shall forfeit . . . any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of’ the crime of conviction.” *United States v. Roberts*, 660 F.3d 149, 165 (2d Cir. 2011) (quoting 21 U.S.C. § 853(a)(1)). “Congress could not have chosen stronger words to express its intent that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited.” *United States v. Monsanto*, 491 U.S. 600, 607 (1989). The purpose of forfeiture is “punitive rather than restitutive,” *Roberts*, 660 F.3d at 166, and the defendant’s ability to pay is irrelevant, *United States v. Awad*, 598 F.3d 76, 78 (2d Cir. 2010); *see also United States v. Khan*, 761 F. App’x 43, 47 (2d Cir. 2019) (holding that “the forfeiture statute for drug crimes is not limited to *profits* from those crimes; rather, it extends to “any property constituting, or derived from, any *proceeds* the person obtained, directly or indirectly, as the result of” the crime of conviction.” (quoting 21 U.S.C. § 853(a)(1); citing *Honeycutt v. United States*, 137 S. Ct. 1626, 1632-33 (2017); and emphasis in original)).

The defendant was paid by Leonel \$20,000 for his sanctions-evasion efforts related to the Joya Grande Zoo (Def. Mem. at 11); \$20,000 for sanctions evasion related to INRIMAR (Def. Mem. at 12); and \$2,000 during the June 2014 meeting at a mechanic shop in San Pedro Sula (PSR ¶ 24 (\$2,000 bribe)). Accordingly, the Court should enter an order of forfeiture in the amount of at least \$42,000.

IV. The Court Should Order the Defendant to Pay a Fine

The Court should also order the defendant to pay a fine within the stipulated Guidelines range of \$20,000 to \$5 million.

The Guidelines provide that “[t]he court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine.” U.S.S.G. § 5E1.2(a). “The burden of establishing inability to pay rests on defendant.” *United States v. Salameh*, 261 F.3d 271, 276 (2d Cir. 2001) (citing *United States v. Thompson*, 227 F.3d 43, 45 (2d Cir. 2000)). Where a defendant fails to demonstrate an inability to pay a fine, the Court must craft one based in part on consideration of the § 3553(a) factors. *See* 18 U.S.C. § 3572(a).

The defendant cannot meet his burden of establishing inability to pay a fine through a conclusory, unsupported claim to the Probation Office that his assets have been seized. (*See* PSR ¶ 69). Prior to the defendant’s surrender, in addition to his criminal livelihood, he operated at least four businesses: a law firm (PSR ¶ 67); a taxi company and “transportation of executive passengers” (Ex. E at 2); “several passenger bus lines” (Def. Mem. at 34); and “Importaciones Sierra,” which was involved in the “importation and resale of passenger vehicles” (*id.*). He also owned a home, another rental property, and at least six vehicles. (Ex. E at 3; PSR ¶ 69 (“2002

C230 Mercedes Benz and a 1999 Toyota Corolla”)). Therefore, absent a stronger showing by the defendant and his retained counsel of an inability to pay, the Court should impose a fine.

CONCLUSION

For the foregoing reasons, the Government respectfully submits that the Court should sentence the defendant to a Guidelines term of imprisonment, require forfeiture in the amount of \$42,000, and order the defendant to pay a fine.

Dated: New York, New York
January 20, 2021

Respectfully Submitted,

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