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U.S. Courts
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Cameron S. Burke
Clerk, Idaho

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HONORABLE JUDGE Gary Carter

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Counsel for Mr. Villegas-Delgadillo

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
BOISE**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
FLORENTINO VILLEGAS-DELGADILLO,)
)
Defendant.)

No. 03CR-00109-001-BLW

**DEFENDANT'S SECOND
SENTENCING MEMO**

SUMMARY

The defendant respectfully requests that his sentencing be set over for 60 days to enable this court to fully appreciate and understand the nature and extent of his cooperation. As noted in the Government's §5K1.1 motion, he will be testifying in the trial of his co-defendant.

In the event this matter proceeds to sentencing, counsel for the defendant previously indicated his intent to argue that the undercover officers engaged in

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1 sentencing entrapment because they should have arrested him and the other
2 individuals in this case deliveries instead of allowing dozens of small quantity deliveries.

3 Finally, the defendant objects to the imposition of the recommended four-point
4 enhancement for leader/organizer. This defendant served as the go between for the
5 actual source/owner of the drugs. The defendant obtained the drugs from the source,
6 provided them to other individuals who in turn brought payment for the drugs to the
7 defendant, who in turn would pay the source. In any event, he was not the
8 leader/organizer of the 13 plus drug distributors during the course of this investigation
9 though he did aid the source in providing the drugs and receiving payment.

10 SUPPLEMENTAL FACTS

11 At the outset, it is important to note that the defendant was in Mexico from
12 December 2001 until April 2002 and then again from September 2002 until May 2003.
13 Yet, during these dates the defendant is alleged to be responsible for deliveries
14 conducted by other individuals who he supposedly supplied. As he was not even in this
15 country, and no wire transfers were ever sent to him, it is somewhat clear the deliveries
16 in these time periods should be excluded from the relevant conduct.

17 ARGUMENT

18 THIS COURT SHOULD SENTENCE THE DEFENDANT 19 WITHOUT REGARD TO THE ENTIRE AMOUNT OF 20 DRUGS ATTRIBUTED TO HIM BECAUSE 21 SENTENCING ENTRAPMENT OCCURRED

22 The court at sentencing determines the quantity of drugs for which a defendant
23 is responsible. See United States v. Castaneda, 94 F.3d 592, 594 (9th Cir. 1996).
24 Sentencing entrapment or sentence factor manipulation occurs when a defendant,
25 although predisposed to commit a minor or lesser offense, is entrapped in committing a
26 greater offense subject to greater punishment." United States v. Staufer, 38 F.3d 1103,
27 1106 (9th Cir. 1994) (internal quotation marks and citation omitted). A defendant bears
28 the burden of proving sentencing entrapment only by a preponderance of the

1 evidence. See United States v. Parrilla, 114 F.3d 124, 127 (9th Cir. 1997). The district
2 court is obligated to make express factual findings as to whether the defendant met this
3 burden. See *id.*

4 There are two possible remedies for sentencing entrapment. "First, a sentencing
5 court may decline to apply the statutory penalty provision for the greater offense that
6 the defendant was induced to commit, and instead apply the penalty provision for the
7 lesser offense that the defendant was predisposed to commit." *Id.* Alternatively, the
8 sentencing court may grant a downward departure from the sentencing range for the
9 greater offense that the defendant was induced to commit. See *id.*

10
11 **THE DEFENDANT SHOULD ONLY BE ASSESSED A TWO
POINT ENHANCEMENT FOR LEADER/ORGANIZER**

12 This court can only be reversed if its decision is clearly erroneous. United States
13 v. Phillips, 959 F.2d 1187, 1191 (3rd Cir. 1992). A findings is clearly erroneous if, after
14 reviewing all of the evidence, it is left with a firm conviction that a mistake has been
15 made. *Id.* at 1191 (citing Ciba-Geigy Corp. v. Bolar Pharmaceutical Co., 747 F.2d 844,
16 850 (3d Cir. 1984) cert. denied, 471 U.S. 1137, 105 S.Ct. 2678, 86 L.Ed.2d 696 (1985). In
17 any event, an upward adjustment must be based on more than a hunch, no matter
18 how sound his instincts or how sagacious his judgment. United States v. Ortiz, 966 F.2d
19 707, 717 (1st Cir. 1992).

20
21 The factors to be considered when determining whether a defendant was an
22 organizer or leader include: the exercise of decision making authority, the nature of
23 the offense, the defendant's participation in the offense, the recruitment of
24 accomplices, the claimed right to a larger share of the fruits of the crime, and the
25 degree of control and authority exercised over others. U.S.S.G. § 3B1.1, comment. n.4.
26 "[T]he adjustments authorized for role in the offense are directed to the relative
27

1 culpability of participants in *group* conduct." United States v. Bierley, 922 F.2d 1061,
2 1065 (3rd Cir. 1990).

3 **THIS COURT SHOULD GRANT THE GOVERNMENT'S**
4 **MOTION FOR A DOWNWARD DEPARTURE**

5 The defendant concurs, and respectfully requests that this court adopt, the
6 Government's recommendation that a downward departure is warranted based upon
7 his substantial assistance. It is only the extent of the departure that the defendant takes
8 issue with.

9 The government has recommended a 2-point departure or 33 months from the
10 low end of the guideline ranges (33/III vs. 31/III). This departure is deminimis given
11 the overall departures granted throughout the country. As noted in the attached
12 United States Sentencing Commission chart, the median departure in drug cases was
13 48.1 percent from the minimum of the guideline range. In that regard, an appropriate
14 or heartland departure in this case would be approximately 80 months (168 x48.1%) .
15 This would result in a term of imprisonment of 88 months.

16 **CONCLUSION**

17 The defendant respectfully requests that this court 1) impose only 2 points for
18 leader or organizer points; and 2) reduce the base level offense based upon the
19 unwarranted multiple deliveries that took place prior to his arrest.

20 The defendant has jeopardized himself and his family. He is not only facing
21 banishment from the United States, but will live under threats in Mexico. In light of his
22 unusual and significant cooperation, he respectfully requests an 80-month departure.

23 Dated this 3rd day of February 2004.

24 **TREJO LAW OFFICES**

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26 _____
27 George Paul Trejo, Jr.
28 Attorney for Mr. Villegas-Delgadillo

Table 30

**SUBSTANTIAL ASSISTANCE CASES: DEGREE OF DEPARTURE
FOR OFFENDERS IN EACH PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2001**

PRIMARY OFFENSE	n	Median Sentence in Months ²	DEGREE OF DECREASE FOR SUBSTANTIAL ASSISTANCE	
			Median Decrease in Months From Guideline Minimum	Median Percent Decrease From Guideline Minimum
TOTAL	8,649	30.0	25.0	50.0
Murder	9	84.0	45.0	44.8
Manslaughter	1	--	--	--
Kidnapping/Hostage Taking	6	58.0	43.0	57.1
Sexual Abuse	0	--	--	--
Assault	4	29.5	34.0	49.1
Robbery	192	48.0	25.5	34.1
Arson	10	29.5	44.0	56.8
Drugs - Trafficking	5,671	42.0	36.0	48.1
Drugs - Communication Facility	76	9.5	12.0	72.9
Drugs - Simple Possession	10	0.0	21.5	100.0
Firearms	465	24.0	18.0	45.9
Burglary/B&E	3	24.0	9.0	27.3
Auto Theft	29	7.0	10.0	60.0
Larceny	147	0.0	9.0	100.0
Fraud	923	0.0	10.0	99.6
Embezzlement	20	0.0	7.5	99.7
Forgery/Counterfeiting	116	2.0	7.0	83.3
Bribery	48	0.0	8.0	100.0
Tax	79	0.0	10.0	100.0
Money Laundering	208	18.0	27.0	58.6
Racketeering/Extortion	137	30.0	30.5	55.4
Gambling/Lottery	31	0.0	6.0	100.0
Civil Rights	11	12.0	7.0	40.0
Immigration	225	10.0	12.0	47.4
Pornography/Prostitution	24	12.5	15.5	42.1
Prison Offenses	12	8.5	6.0	33.3
Administration of Justice Offenses	110	0.0	12.0	100.0
Environmental/Wildlife	18	0.0	10.0	100.0
National Defense	0	--	--	--
Antitrust	8	0.0	12.5	100.0
Food & Drug	8	0.0	12.0	100.0
Other Miscellaneous Offenses	48	0.0	10.5	100.0

*80 months
departure*

¹Of the 59,897 cases, 9,390 received a substantial assistance departure. Of these, 9,033 had complete guideline application information. An additional 277 cases were excluded due to several logical criteria. Of the remaining 8,756 cases, 107 were excluded due to missing sentence information.

²Cases with guideline minimums of life or probation (i.e., sentence lengths of zero months) were included in the sentence average computations as 470 months and zero months respectively, but were excluded from measures of decrease in the table.

SOURCE: U.S. Sentencing Commission, 2001 Datafile, USSCFY01.

CERTIFICATE OF SERVICE

1
2 I certify that on this 3rd day of February, 2004, a true and correct copy of the
3 Defendant's Second Sentencing Memorandum was served upon the following person,
4 by hand delivery, addressed as follows:

5 U.S. Probation Office
6 Boise, Idaho 83701

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11 George P. Trejo, Jr.
12 Attorney for Mr. Villegas
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