

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Crim. No. 13-CR-53 (SRN)

Plaintiff,

v.

**UNITED STATES'
SENTENCING MEMORANDUM**

JONY RAFAEL SEVILLA CERNA,

Defendant.

Plaintiff, the United States of America, by and through John R. Marti, Acting United States Attorney for the District of Minnesota, and Surya Saxena, Assistant United States Attorney, respectfully submits this memorandum detailing the United States' sentencing position.

I. RECOMMENDATION

For the reasons stated below, the United States respectfully requests that the Court issue a sentence within the applicable Guidelines range.

II. FACTUAL BACKGROUND

The United States agrees that Probation has accurately described the relevant offense conduct in its Presentence Investigation Report ("PSR"). As described in the PSR, Defendant Cerna violated Title 18, United States Code, Section 922(a)(6) by making false statements to federally licensed firearms dealers ("FFLs") in connection with at least 26 different firearms during a two year period of time. (PSR ¶ 15; Plea Agreement ¶ 2). Defendant sent 33 firearms to Honduras during this timeframe. (*Id.*).

Defendant did not use his real name when shipping firearms to Honduras, and typically concealed the firearms he was shipping inside other items, including electronic equipment. (PSR ¶ 10). There is no indication that the Defendant profited to any degree from his export of firearms to Honduras. However, the Defendant frequently traveled to Honduras from Minneapolis by plane, and then distributed the firearms he had shipped via cargo service. (PSR ¶ 8; Plea Agreement ¶ 2).

The Defendant quickly accepted responsibility for his actions upon being confronted by law enforcement. (PSR ¶ 13). Notably, while Defendant claims that he did not sell any of the firearms to “bad” people, he indicates that he himself has suffered bullet wounds in Honduras, and some of his family members have been murdered in Honduras. (PSR ¶ 13).

III. SENTENCING GUIDELINES CALCULATION

The United States agrees with the Guidelines calculation set forth in the PSR.

IV. ARGUMENT

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 552 U.S. 38, 49 (2007).

“[U]nder the advisory guidelines scheme, sentencing judges are required to find sentence-enhancing facts only by a preponderance of the evidence.” *United States v. Scott*, 448 F.3d 1040, 1043 (8th Cir.2006).

“[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Id.* at 49-50. Section

3553(a) requires the Court to analyze a number of factors, including, “the nature and circumstances of the offense,” “the history and characteristics of the defendant,” “the need for the sentence to reflect the seriousness of the offense,” “the need for deterrence,” “the need to protect the public from further crimes of the defendant,” and “the need to avoid unwarranted disparities.” 18 U.S.C. § 3553(a).

A. Section 3553(a) Factors.

1. The Nature and Circumstances of the Offense.

There are plainly two sides to the Defendant. The impact that this case will continue to have on the Defendant and his family is hard to quantify, and it is in many ways heart-wrenching.

However, the details of his conduct suggest that may have been involved in a much more dangerous operation than he seems to be willing to acknowledge. While Defendant suggests that he was providing firearms only to his friends and relatives, he provided 33 separate firearms over the course of just two years to many different people. He concealed the firearms and used a false name when making shipments to Honduras. Further, Defendant apparently spent a significant amount of money to travel between Minneapolis and Honduras by plane to distribute these firearms, but made only a negligible profit on the firearms he was selling.

Defendant’s statements regarding the extreme violence his family has suffered in Honduras may provide an explanation for this curious offense conduct. However, the fact of this violence may also suggest that these firearms were being provided for improper, and potentially dangerous purposes. Thus, the United States requests that the

Court take into account the serious risks the Defendant created by engaging in this firearms trafficking activity.

2. The History and Characteristics of the Defendant.

The United States submits that the PSR accurately and adequately describes Defendant's criminal history.

3. Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense; to Afford Adequate Deterrence to Criminal Conduct; and to Protect the Public from Further Crimes of the Defendant.

The United States submits that a Guidelines sentence would accurately reflect the seriousness of this offense. In this regard, it is important to note that, had the Defendant not pleaded guilty immediately to the Information, the United States would have sought to charge the Defendant with violating 18 U.S.C. § 554, 22 U.S.C. § 2278(b)(1), and 22 C.F.R. § 123.1. These charges, alleging the unlawful export of defense articles without a license, would lead to a base offense level of 26 (*see* U.S.S.G. § 2M5.2). Thus, as a result of his plea, the Defendant has already received an additional 4-level reduction in his Sentencing Guidelines calculation.

4. Need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

In addressing this factor, the United States requests that the Court consider the recent case of *United States v. Galimah*, 12-cr-214 (ADM) (D. Minn). In that case, the defendant was convicted at trial of violating 18 U.S.C. § 554. The Defendant was sentenced to 30 months imprisonment, a downward variance from his Guidelines range. *See* 12-cr-214 (Docket No. 66).

Respectfully submitted,

Dated: August 26, 2013

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