UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, **CASE NO. 18-CR-20312-MGC-2**

Plaintiff,

vs.

JOSE LARREA,

Defendant.
_____/

DEFENDANT, JOSE LARREA'S
OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

COMES NOW the Defendant, **JOSE LARREA**, by and through his undersigned counsel, and presents herewith, her Objections to the Presentence Investigation Report ("PSI") [D.E. 85], and states as follows:

1. **Clarification Regarding Paragraphs 12 - 22: "Offense Conduct"**

By way of clarification, it should be noted that Jose Larrea had no involvement in the activities recounted in paragraphs 12 through 22, inclusive, as set forth in the PSI. Further, as stated in the PSI, Co-Defendant Chatburn introduced the Defendant to Luque (a defendant in the Eastern District of New York Case No. 17-CR-00537-AMON) in October of 2016, *after* the conclusion of Luque's participation in the bribery scheme involving the bribery of officials of Empresa Publica de Hidrocarburos del Ecuador (PetroEcuador).

2. **Objection to Paragraphs 23: "Offense Conduct"**

The Defendant objects to paragraph 23 of the PSI insofar as it infers that the Defendant used bank accounts in the Cayman Islands, Panama, and Switzerland to assist Luque in laundering the proceeds of the bribery scheme. The Defendant did not use bank accounts in the Cayman Islands, Panama, and Switzerland to assist Luque in laundering the proceeds of the

bribery scheme, rather it was Luque and Chatburn who *used* those accounts. Further, the Defendant did not know of these accounts, other than the account from which he merely received funds from a Cayman Islands account that was under the control of Chatburn, not the Defendant.

3. **Objection to Paragraphs 28 - 32, 35, 36: "Offense Conduct"**

With regard to these paragraphs of the PSI, as noted in the Factual Proffer as well as in the PSI at paragraphs 33 and 34, it was not until the early part of 2017 *via* "WhatsApp" that the Defendant had reason to know that Luque was involved in the oil business and was under investigation concerning corruption in Ecuador. Further, there is no indication that the Defendant knew that the company known as "Galileo Energy" was utilized by Luque to conduct his corruption/bribery scheme.

Therefore, where it is stated that the various receipts of funds were "proceeds of Galileo Energy's contracts with PetroEcudor," this language should be clarified so as not to imply that the Defendant specifically knew of "Galileo Energy."

4. **Clarification re Paragraphs 42: "Offense Conduct"**

By way of clarification, it should be noted that during the January 5, 2018 meeting between the Defendant and Luque, the "fraudulent invoices, paystubs, contracts, and promissory notes" that the Defendant admitted to creating concerned the initial activity between the Defendant and Luque, when Luque was trying to justify his house purchase to Ecuadorian tax authorities. This had nothing to do with the wire transfer money laundering activity.

Additionally by way of clarification, the documentation that Luque provided to the Defendant at Chayburn's request consisted of Luque's personal identification and tax identification documents which were returned to Luque at the conclusion of the meeting.

5. **Objection to Paragraph 50: "Role Assessment"**

The Defendant objects to paragraph 50 of the PSI insofar as it states that, "He did this through the use of falsified documents, offshore bank accounts, and shell corporations … Neither an aggravating nor a mitigating role adjustment is recommended as to Larrea."

First, it should be noted that the Government has agreed that the first sentence referred to above should read, "Larrea did this through the use of falsified documents and a domestic bank account under his control. His co-conspirators also used offshore bank accounts and shell corporations."

With regard to the assertion that the Defendant laundered funds through the use of falsified documents, it is submitted that this assertion is evidently in reference to the tax problem that Luque had in Ecuador. Sometime approximating October 2016 the Defendant created a false promissory note between Luque and his wife and a Minnesota company purporting to show that the funds Luque paid for a residence in Ecuador were obtained through a loan from the Minnesota company. Additionally, the Defendant prepared false receipts showing purported payments upon that loan. This was all before the Defendant knew of Luque's corrupt bribery scheme in Ecuador, therefore this should not be considered part of the offense conduct.

The other falsified documents situation is in the context of the 2 million dollars that Chatburn still owed Luque. In furtherance of effectuating the purported transfer of these funds, it was the agents that gave the Defendant personal identification of Luque and a tax document. The Defendant did not create any false financial statements, tax returns, and bank statements with regard to this purported transaction.

With regard to the offshore bank accounts and shell corporations, it should be noted that "Madison Asset, LLC" was a Cayman Islands corporation associated with the financial advisory

company for which Co-Defendant Chatburn worked. It should further be noted that the funds that were transferred to the Defendant's account came from that company's bank account with the exception of one wire transfer from a bank in the United Arab Emirates related to a business entity that the Defendant was not connected to in any way. The Defendant was not involved with "Madison Asset" or its bank account, other than as a recipient of wire transfers from that account.

Further, with regard to the bank account purportedly held by "J.A. Holdings and Associates" to which Luque had directed the Defendant to make some of the transfers, this company was evidently Luque's company in which the Defendant had no proprietary interest or involvement whatsoever.

Concerning the language that, "Neither an aggravating nor a mitigating role adjustment is recommended as to Larrea," the Defendant affirmatively asserts that he should receive a two (2) level downward mitigating role adjustment for his minor role in the overall offense conduct. This objection will be discussed in-detail below in the objection to paragraph 58 of the PSI.

However at this point in these objections, it should be preliminarily noted that the Defendant did not understand the complete scope and structure of the money laundering activities of Luque and Chatburn, or the scope and structure of the corruption and bribery operation; he had no part in planning or organizing the criminal activity; he did not exercise or influence the exercise of any decision-making authority; his role was narrowly limited, and he did not stand to profit to a degree commensurate with the scope of the crime. Instead, he was simply paid to perform certain tasks as a conduit through which certain funds were wire transferred to accounts at the direction of Chatburn and/or Luque. Further, the Defendant did not have knowledge of or contacts at the various bank accounts controlled by Chatburn and/or

Luque. The totality of these circumstances demonstrate that the Defendant was substantially less culpable than most other participants in the criminal activity and should receive a two (2) level downward mitigating role adjustment for his minor role.

6. **Objection to Paragraph 56: "Sophisticated Laundering"**

The Defendant objects to paragraph 56 of the PSI insofar as it states, "As subsection (b)(2)(B) applies, and (B) the offense involved sophisticated laundering, the offense level is increased two levels, §2S1.1(b)(3)."

It is respectfully submitted that the Defendant's money laundering offense conduct was not sophisticated in any respect and the two (2) level sophisticated laundering enhancement should not be applied in this instance.

Importantly, Application Note 5 pertaining to U.S.S.G. §2S1.1(b)(3) provides in-part:

> (A) Sophisticated Laundering under Subsection (b)(3).—For purposes of subsection (b)(3), "sophisticated laundering" means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. §1956 offense.
>
> Sophisticated laundering typically involves the use of – (i) fictitious entities; (ii) shell corporations; (iii) two or more levels (i.e., layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or (iv) offshore financial accounts.

First, as to the complexity or intricacy of the Defendant's offense conduct, it is submitted that the Defendant's conduct was not at all complex, nor was it intricate.

It is very important not to confuse the complexity or intricacy of the crime from whence the funds were derived with the complexity of solely the money laundering activity. In *United States v.* Cabrera, 635 Fed.Appx. 801 (11th Cir. 2015), the Court stated, "The sophisticated laundering enhancement in §2S1.1(b)(3), by contrast, covers the harm from laundering the proceeds of the fraud. *See* U.S.S.G. §2S1.1, cmt. 5(A). This enhancement addresses the

sophistication of the money laundering Cabrera undertook with Obando's help, not the scheme from which the funds were derived."

With regard to the wire transfers, Co-Defendant Chatburn would wire transfer funds into the Defendant's personal checking account held in his, the Defendant's, own true name, and then within a week the Defendant would simply wire transfer those funds to Luque's company's account at Wells Fargo Bank as directed by Luque and/or Chatburn. On other occasions, Luque would direct the Defendant to send funds to Luque's mother, Amanda Flores.

In summary, the funds would go into the Defendant's bank account at Citibank and then go out of Defendant's Citibank account to either Luque's company account in the name of J.A. Holdings and Associates at Wells Fargo Bank, or to Luque's mother's account. This aspect of the Defendant's offense conduct certainly was not complex, nor was it intricate.

Next, regarding the false financial statements, tax returns, and bank statements, it was the agents who gave the Defendant personal identification of Luque and a tax document. This transaction never occurred (the 2 million dollar transfer that Chatburn purportedly planned).

Regarding the Defendant's preparation of a false promissory note and payment receipts pertaining to Luque's tax problem, this occurred before the Defendant had reason to know that Luque was involved with corruption and bribery in the Country of Ecuador.

To now address the various factors that are mentioned in the Application Note:

(i) Fictitious Entities and (ii) Shell Corporations

"Madison Asset, LLC" was a Cayman Islands corporation associated with the financial advisory company for which Co-Defendant Chatburn worked. All of the funds, with the exception of one wire transfer, were wire transferred by Chatburn from an account in the name of this company. The Defendant did not create this company, nor did he have any involvement whatsoever with this company.

"J.A. Holdings and Associates" was a company evidently owned by Luque, that Luque had directed the Defendant to wire transfer funds to at its Wells Fargo Bank account. The Defendant did not create this company, nor did he have any involvement whatsoever with this company.

"Novatio International Trading" was the remitter in one wire transfer from the United Arab Emirates into Defendant's bank account at Citibank. The Defendant did not create this company, nor did he have any involvement whatsoever with this company.

(iii) Two or more levels (i.e., layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate.

The funds would go into the Defendant's bank account at Citibank and then go out of Defendant's Citibank account to either Luque's company account in the name of J.A. Holdings and Associates at Wells Fargo Bank, or to Luque's relatives' account.

To put this process in very rudimentary terms, one may say that the funds were parked in the Defendant's parking space at Citibank, and then the funds pulled out and ended up at Luque's parking space at Wells Fargo Bank. There was nothing at all in this process that made the funds appear to be legitimate, or appear to be illegitimate. Essentially, this process could be said to be "appearance neutral."

(iv) Offshore Financial Accounts

Although it is true that "Madison Asset, LLC" was a Cayman Islands corporation presumably with a Cayman Islands bank account, the Defendant did not create that company nor did he have any control whatsoever over that company. Further, the Defendant had no say as to where the funds were being wired from that were deposited in his account at Citibank.

The other off-shore account was the one wire transfer from "Novatio International Trading" at Abu Dhabi Islamic Bank in the United Arab Emerites. Again, the Defendant did not

create that company nor did he have any control whatsoever over that company. Again, the Defendant had no say as to where the funds were being wired from that were deposited in his account at Citibank at the direction of Chatburn and/or Luque.

Therefore, based on the foregoing the Defendant should not receive a two (2) level increase for sophisticated laundering pursuant to U.S.S.G. §2S1.1(b)(3).

7. **Objection to Paragraph 58: "Adjustment for Role in the Offense"**

The Defendant objects to paragraph 58 of the PSI insofar as it states "None" with regard to an adjustment for the Defendant's role in the offense.

The Defendant affirmatively asserts that he should receive a two (2) level downward mitigating role adjustment for his minor role in the offense conduct pursuant to U.S.S.G. §3B1.2(b).

It is clear that in this case the Defendant's role was substantially limited to receiving wire transfers of funds into his account at Citibank, and the wire transfer of those funds within one week to another account at the direction of Co-Defendant Chatburn and/or Luque. The Defendant had no knowledge of the details, scope, or structure of Luque's corruption and bribery activities in Ecuador, and it was not until the early part of 2017 *via* "WhatsApp" that he had reason to know of Luque's prior corrupt activities after having received the funds. Further, there is no evidence that the Defendant knew how or where the funds went after he wire transferred them to the account to which he was directed by Luque and/or Chatburn.

The Defendant did not participate in the planning and organizing of the money laundering operation, nor did he have any part in the decision-making process, nor did he finance the venture or hold a claim to the funds other than his fee for the services in this matter.

Clearly, the Defendant was less culpable than the persons who lead, organized, managed, or supervised the money laundering activity such as Co-Defendant Frank Roberto Chatburn Ripalda; Ramiro Andres Luque-Flores (Luque), a defendant in a criminal proceeding in the Southern District of New York, and Arturo Escobar Dominguez (Escobar), who has been charged in 18-20108-Cr-Altonaga. It should be noted that the Defendant does not know the individual referred to as Arturo Escobar Dominguez (Escobar).

At the start and as acknowledged in the PSI, the entirety of the Defendant's criminal conduct in this case was at the direction of Co-Defendant Chatburn and/or Luque.

The Eleventh Circuit recently reaffirmed that "'the district court must assess all of the facts probative of the defendant's role in [his] relevant conduct in evaluating the defendant's role in the offense.' " *United States v. Monzo*, ___ F.3d ___, 2017 WL 1289934, at *2 & n.1 (11th Cir. Apr. 7, 2017) (quoting *United States v. De Varon*, 175 F.3d 930, 943 (11th Cir. 1999) (en banc)).

When the Defendant's culpability in the case-at-bar is compared to that of the other participants (named as well as unnamed), and that comparison is undertaken with the guidance of applicable guidelines commentary/application notes, it is clear that the Defendant qualifies for a two-level minor-role adjustment.

For example, the commentary states:

> A defendant who is accountable under [U.S.S.G. § 1B1.3] (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline.

Next, the commentary at U.S.S.G. §3B1.2, comment. (n.3(C)(i)-(v), lists five factors to be considered in determining whether a defendant should receive a mitigating role adjustment:

(i) the degree to which the defendant understood the scope and structure of the

> criminal activity;
>
> (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
>
> (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
>
> (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts; [and]
>
> (v) the degree to which the defendant stood to benefit from the criminal activity.

The commentary also directs that "a defendant who *does not have a proprietary interest in the criminal activity* and *who is simply being paid to perform certain tasks* should be considered for an adjustment under this guideline." (Emphasis supplied.) U.S.S.G. § 3B1.2, comment. (n.3(C)).

Each of these factors weigh heavily in favor of granting the Defendant's request for a mitigating role adjustment. Surely, the Defendant did not understand the complete scope and structure of the money laundering activities of Luque and Chatburn, or the scope and structure of the corruption and bribery operation; he had no part in planning or organizing the criminal activity; he did not exercise or influence the exercise of any decision-making authority; his role was narrowly limited, and he did not stand to profit to a degree commensurate with the scope of the crime. Instead, he was simply paid to perform certain tasks as a conduit through which certain funds were wire transferred to accounts at the direction of Chatburn and/or Luque. Further, the Defendant did not have knowledge of or contacts at the various bank accounts controlled by Chatburn and/or Luque.

The totality of these circumstances demonstrate that the Defendant was substantially less culpable than most other participants in the criminal activity.

In the event it is argued that the Defendant played an *essential role* in the money laundering activity, the Eleventh Circuit has recently addressed this situation in *United States v. Colorado*, 2017 WL 5712790 (11th Cir. 2017), where the Court found reversible error and remanded the case for a re-sentencing hearing.

The Court in the *Colorado* case stated, "Moreover, the single factor the district court relied upon—that co-conspirators in a drug trafficking enterprise are all essential to the execution of the offense—cannot, under the guidelines, be determinative of whether to give a minor role reduction. *See* U.S.S.G. § 3B1.2, cmt. n.3(C) ("The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative."). This misapplication of law, especially when paired with the district court's failure to consider the totality of the circumstances, constitutes clear error. *See Rodriguez De Varon*, 175 F.3d at 945."

Recently, in *United States v. Betancourt*, 706 Fed.Appx. 539 (11th Cir. 2017), the court recounted the intent of this guidelines section and the manner in which the mitigating role adjustment should be applied. The court stated that, "The purpose of this section of the guidelines is to "provide a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity." Id. § 3B1.2, comment. (n.3(A)) … In determining whether a role adjustment is applicable, the district court: (1) must compare the defendant's role against the relevant conduct for which he was held accountable, and (2) may also measure the defendant's role against the other discernable participants in that relevant conduct. *United States v. De Varon*, 175 F.3d 930, 945 (11th Cir. 1999) (en banc).

In *United States v. Barona-Bravo*, 685 Fed.Appx. 761 (11th Cir. 2017), the court vacated all of the defendants' sentences and remanded the case for resentencing. The court stated that,

"After the district court makes the requisite findings about the relevant conduct of each defendant individually, the district court in the first instance should then *make explicit fact findings on the defendants' minor role*, if any, and any other sentencing arguments made by the government or the defendants." (Emphasis supplied.)

It is respectfully submitted that this Court would be hard-pressed in making findings of fact with regard to the relevant conduct of each defendant individually and arrive at any other conclusion than that Defendant Jose Larrea was in-fact a minor participant in the offense conduct.

Application Note 3(C) under U.S.S.G. §3B1.2, entitled "Fact-Based Determination," provides,

(C) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, is based on *the totality of the circumstances* and involves a determination that is *heavily dependent upon the facts of the particular case*. (Emphasis supplied)

As can be seen from the above, the Defendant's participation in the scheme was essentially very limited to serving as a conduit of funds to Luque from Chatburn. The Defendant followed the orders and directions of those two individuals and received little personal gain relative to the amount of funds involved in the overall money laundering scheme.

Therefore, the Defendant should receive a two (2) level downward mitigating role adjustment for his minor role in the offense conduct pursuant to U.S.S.G. §3B1.2(b).

8. **Objection to Paragraph 60: "Adjusted Offense Level"**

The Defendant objects to Paragraph 60 of the PSI with regard to the assertion that the *adjusted offense level* should be 26.

Specifically, when the two (2) level sophisticated laundering increase pursuant to U.S.S.G. §2S1.1(b)(3) is removed and a two (2) level downward minor role adjustment is applied, the result would be an *adjusted offense level* of 22, rather than 26.

9. **Objection to Paragraph 64: "Total Offense Level"**

The Defendant objects to Paragraph 64 of the PSI with regard to the assertion that the *total offense level* should be 23.

Specifically, when the two (2) level sophisticated laundering increase pursuant to U.S.S.G. §2S1.1(b)(3) is removed, and a two (2) level downward minor role adjustment is applied, and three (3) levels are deducted for acceptance of responsibility pursuant to U.S.S.G. §3E1.1(a) and (b), the result would be a *total offense level* of 19, rather than 23.

10. **Objection to Paragraph 79 and 80: "Substance Abuse"**

The Defendant objects to paragraphs 79 and 80 of the PSI insofar as it minimizes the severity of the Defendant's alcohol and substance abuse problems. In this regard, the Defendant respectfully asserts that he would benefit greatly from a structured alcohol and substance abuse program while he is incarcerated.

11. **Objection to Paragraph 95: "Sent. Options - Guideline Provisions"**

The Defendant objects to Paragraph 95 of the PSI inasmuch as it reads, "Based upon a total offense level of 23 and a criminal history category of I, the guideline imprisonment range is 46 to 57 months."

It is submitted that the appropriate advisory guidelines sentence range should read as follows: Based on a total offense level of 19 and a criminal history category of I, the *advisory guideline imprisonment range* is **30 to 37 months**, before the application of any applicable downward departures and/or variances that this Honorable Court may deem appropriate.

WHEREFORE, the Defendant, **JOSE LARREA**, respectfully prays that this Honorable Court sustain the within objections to the Presentence Investigation Report and direct the United States Probation Office to amend the Presentence Investigation Report as requested herein.

Respectfully submitted,

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/s/ Ana M. Davide_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

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United States District Court, Southern District of Florida

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