

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-721-Cr-LENARD (s)(s)
Magistrate Judge Garber

UNITED STATES OF AMERICA,

v.

JOHN DOE No. 3, a/k/a
Ruben Campa,
Defendant

**GOVERNMENT’S MEMORANDUM
IN AID OF RESENTENCING RUBEN CAMPA**

Defendant Ruben Campa¹ faces resentencing on Counts 7 and 8 of the indictment, which counts charge the defendant with fraud and misuse of documents, in violation of Title 18, United States Code, Section 1546(a) (Count 7), and with possession with intent to use five or more fraudulent identification documents, in violation of Title 18, United States Code, Section 1028(a)(3) (Count 8). *See United States v. Campa, et al*, 529 F.3d 980, 1013-1014, (11th Cir. 2008), *cert. denied*, 129 S.Ct. 2790 (2009). These are sentencing-guidelines counts, as to which Campa successfully appealed his sentence. Campa also was convicted and sentenced for non-guideline counts – Counts 1, 16 and 17 – which sentences he did not appeal, and which are not subject to resentencing.²

¹ The defendant used the name “Ruben Campa” while operating in the United States, and this is the name by which he is known in the Bureau of Prison system and in the Eleventh Circuit Court of Appeals opinions. He was indicted as “John Doe No. 3, a/k/a Ruben Campa” and through counsel has identified his true name as Fernando Gonzalez Llort. For convenience and consistency with Bureau of Prison and court records, he will be referred to in this memorandum as “Campa.”

² The non-guideline counts were for conspiracy to act as an agent of a foreign country without notification to the Attorney General as required by law, in violation of Title 18, United States Code, Section 951, and to defraud the United States, all in violation of Title 18, United States Code, Section 371 (Count 1); aiding and abetting another [co-defendant Antonio Guerrero] to act as an
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Upon remand from the Eleventh Circuit for resentencing, the court's Probation Office prepared a (second) addendum to defendant Campa's PreSentence Report ("PSR"), computing the advisory sentencing guidelines for Counts 7 and 8. The Second Addendum to the PSR computed the Total Offense Level to be 20.³ This total offense level, and the defendant's criminal history category

²(...continued)

agent of a foreign country without notification to the Attorney General as required by law, in violation of Title 18, United States Code, Section 951 (Count 16); and himself [Campa] acting as an agent of a foreign country without notification to the Attorney General as required by law, in violation of Title 18, United States Code, Section 951 (Count 17).

Campa was sentenced to 60 months incarceration on Count 1, and to 120 months on each of Counts 16 and 17, to run concurrently with each other, and consecutively to Count 1, for a total sentence on the non-guideline counts of 180 months incarceration. *See* Docket Entry ("DE") 1439 (judgment order). On the sentencing-guideline counts for which he faces resentencing, Campa was sentenced to 48 months on Count 7, to run consecutively with Count 1, and to 36 months on Count 8, to run concurrently. The 120-month concurrent sentences on Counts 16 and 17 were to run consecutively not only with Count 1, but also with Count 7, for a total original sentence on all the counts of 228 months incarceration. *Id.*

³ Base Offense Level 11; plus Special Offense Characteristics three-level increase for offense involving at least six but not more than 24 documents, and four-level increase for defendant knowing the documents would be used to facilitate the commission of a felony; plus Adjustment for Obstruction of Justice warranting two-level increase for defendant attempting to obstruct justice by asserting his false identity of Ruben Campa, post-arrest, to the Magistrate Judge in court proceedings.

The Second Addendum to the PSR makes no adjustment for Role in the Offense, either upward or downward. At the original sentencing, the United States sought, and Campa objected to, a three-level increase for role, as a manager-supervisor with regard to Counts 7 and 8, the sentencing-guideline offenses. The Court of Appeals sustained Campa's objection, and appeal, in this regard, and remanded for resentencing on Counts 7 and 8, due to inappropriate consideration of management of *assets* in weighing the role enhancement, rather than management of *people*, the correct criterion. While there is some evidence, *see* Government Exhibit DAV-108, that Campa reported to the Directorate of Intelligence that he supervised a network agent ("V.5.1A," also known as "Luis") in doing countersurveillance when "Allan" (John Doe No. 2, a/k/a Luis Medina III) returned to Fort Lauderdale from the identity-harvesting mission known as Operation Texaco, FBI surveillance of that event reflects that "Luis" did not in fact participate as reported. Thus the United States does not seek a manager/supervisor role-enhancement for Campa in the context of the identity-fraud sentencing-guideline counts 7 and 8. (Of course, there is extensive and overwhelming

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– I – yield an advisory guideline imprisonment range of 33 to 41 months. No objections to the Second Addendum to the PSR and its computation have been filed. There is no sentencing agreement between Campa and the government.

The United States respectfully recommends that defendant Campa be sentenced within the advisory guidelines range – 33 to 41 months – on Counts 7 and 8, and that his sentence on Counts 7 and 8 run consecutively to his 180-month sentence on Counts 1, 16 and 17.

Application of Statutory Sentencing Factors

A guidelines sentence is reasonable and appropriate for Counts 7 and 8, and fulfills the statutory goals of sentencing as reflected in Title 18, United States Code Section 3553(a)'s sentencing factors.

Statutory goals of sentencing: Nature and circumstances of the offense, 18 U.S.C. Section 3553(a)(1)

The nature and circumstances of these identity-fraud offenses, *see* 18 U.S.C. Section 3553(a)(1), are that the elaborate, detailed and sophisticated use and exploitation of false identities, backed by counterfeit documentation, was critical to the mission of the Cuban Directorate of Intelligence (“DI”) in achieving, and supervising on-site, the long-term covert penetration of United States military installations, governmental bodies, and private political activity. While the DI utilized true-identity U.S. citizens (such as co-defendants Rene Gonzalez, Antonio Guerrero and Joseph Santos) as agents to implement penetrations and south Florida operational activity, these lower-level agents were kept compartmentalized, and were controlled by detailed and close supervision from on-site representatives of the DI: the senior “illegal officers” such as Campa and co-defendants Gerardo Hernandez and Luis Medina, Cuban nationals. These illegal officers, including Campa, were Cuban

³(...continued)

evidence that Campa, an illegal officer of Cuba’s Directorate of Intelligence, served as a manager-supervisor in the context of the non-guidelines counts, and of the general spying conspiracy.)

nationals who came to the United States using deeply-backstopped false identities⁴ that portrayed them as non-Cuban Hispanic persons, with a detailed “legend”⁵ comprising a notional biography, and with elaborate false documentation based on birth records of genuine United States citizens, with Hispanic names, who died in infancy.

In addition to the defendant’s primary false identity as “Ruben Campa,” supposedly a U.S. citizen of Mexican descent with extensive false biographical data, *see* Government Exhibit DAV-118:7-9 (Campa biographical legend), the defendant also had a “reserve” false identity, as “Osvaldo Reina,” to be used for escape purposes should “Ruben Campa” become a compromised persona. *See* Government Exhibit DAV-118:12-14 (Osvaldo Reina biographical legend); DE 1491:3726, 3762-3763 (Hoyt testimony about Campa escape identity as Osvaldo Reina). Because escape identities were intended to be used for short-term emergency purposes, they were not as fully developed as the dead-infant false identities illegal officers would live under in the United States for years, *id.*, and the DI employed the identities of actual, living adult United States citizens for this purpose, making counterfeit documentation based on materials submitted, ultimately to the Cuban Interests Section, by unwitting United States citizens seeking to travel to Cuba. Thus, the actual Osvaldo Reina

⁴ Indeed, it is the essence of an illegal officer that he or she is a representative of a foreign intelligence service who enters the United States illegally, using false identity, *see* DE 1491:3711-3713 (testimony of Cuban-intelligence expert Hoyt). Legal intelligence officers, by contrast, enter the U.S. legally, for instance with diplomatic credentials to Cuba’s Mission to the United Nations or the Cuban Interests Section in Washington, D.C., but may nonetheless perform clandestine intelligence functions (DE1491:3711-13, 3720-22). The distinction between legal and illegal intelligence officers references how they enter the U.S. (DE1461:3723, DE 1492:3860) and not necessarily the legality of their work; it is a term of art. *See, e.g.*, Government Exhibit DAV125A:16 (co-defendant Medina reports to the DI that “IT IS OUR STRONG DESIRE, OUR SUPREME EFFORT TO CARRY OUT OUR MISSION WITH THE BEST QUALITY POSSIBLE, AND WE ARE FIGHTING TO ARRIVE TO BE, SOME DAY, WORTHY OF CALLING OURSELVES “ILLEGAL OFFICERS”, AS YOU WELL STATED IN YOUR LETTER.”)

⁵ “The legend is the false background that you give, the life you are supposed to be leading in the terms of an illegal intelligence officer. He will come here under false identity. The legend is the identity he is supposed to assume and all the background of that identity. That is the legend for that illegal officer,” DE 1491:372 (Hoyt testimony).

testified at the trial, and identified his true passport, and examined the false passport, using his true data, that was made by the DI's documents section for the defendant and that bore a photograph not of Reina but of defendant Campa, as well as similarly false driver's licence and Social Security card identification. *See* DE 1519:6218-6244 (Reina testimony), Government Exhibits 7 (false Reina/Campa passport), 8-7 (false Reina/Campa driver's license), 8-8 (false Social Security card). Campa's possession of these false and counterfeit identification documents comprised part of the evidence proving Counts 7 and 8.

The defendant had yet a third false identity, as purported U.S. citizen "James Hernandez," designated by the DI as his "intermediate legend." *See* Government Exhibit DAV-118:10-12 (DI instruction to defendant as to Hernandez intermediate legend, with notional biographical legend). As explained by intelligence-expert Hoyt, an intermediate identity would be used by an illegal officer traveling between countries, so as to obscure and break any record trail of his travel between the spying country and the spied-upon country. *See* DE 1491:3725-3726.

The defendant evinced complete understanding and endorsement of the special importance of successfully using false identities to achieve fraudulent entry into the United States, and acted assiduously to improve the DI's knowledge, skill and success rate in injecting false-identity travelers into the United States. Following his July, 1998, journey from Cuba, through Mexico using an intermediate identity, and into the United States and south Florida specifically, using the "Ruben Campa" identity, the defendant wrote an excruciatingly detailed report for the DI's "Saul" of all phases of his travel, including the identification documents he had to produce; the practices and degree of scrutiny of the customs and immigration officers he deceived en route; and the handling of his customs declaration form. *See* Government Exhibit DAV-119:4-12. He even made a copy of the customs declaration form, which was found in his apartment the day of his arrest. *See* Government Exhibit SAV-38. Plainly, Campa fully appreciated the value and significance to the DI of being able to insinuate persons into the United States under false identities, and made it part of his mission to help the foreign intelligence agency refine its knowledge and skill in that regard.

Following the defendant's previous false-identity entry into south Florida, in 1997, the DI sent him "congratulations" for successfully carrying out his travel plan and connecting with fellow illegal-officer and co-defendant Gerardo Hernandez; "THIS MEANS THAT WE ALREADY WON HALF OF THE BATTLE," the DI commended Campa. *See* Defense Exhibit R24:1.

Besides successfully navigating his own use of false identities, defendant Campa also assisted in a larger identity-fraud operational project of the DI, known as "Operation Texaco." Operation Texaco was Defendant John Doe No. 2, a/k/a Luis Medina III's out-of-town assignment during the summer months of 1998, when he traveled to California to compile government, library, newspaper and other records of births and deaths of United States citizens, many with Hispanic surnames. The point of the assignment was plainly to research and cull material for future false U.S.-citizen identities.⁶ Campa played an ancillary, but important, role with regard to Operation Texaco.

⁶ Evidence concerning Operation Texaco included Government Exhibits DAV- 116:7, 8 (Medina to carry out Texaco operation in other states); DAV-120 (Medina budgetary report for Texaco expenses including travel to California); and, especially, the fruits of the out-of-town assignment, seized in the September 12, 1998 search at 1776 Polk Street, Hollywood, where Defendant and John Doe No. 2, a/k/a Luis Medina III, were residing. *See* Government Exhibits SAV-9 (comp) and SAV-10. SAV-9 (comp), recovered from the dresser there, DE 1479:2099 - 2101, is a packet of 32 certified copies of death certificates for approximately 23 people, issued by various California counties in August and September 1998, and accompanied by the business card of the County Clerk - Recorder for Sutter County, California. The death certificates were for persons who died, between 1969 and 1984, at ages ranging from three months to 21 years, with half being in the infancy to toddler range. SAV-9, DE 1482:2421 (testimony of analyzing FBI agent). The certificates were for youngsters who had been born in states other than California, *see* SAV-9, thus making an audit trail between their birth documentation and their deaths more obscure and unlikely to surface. Government Exhibit SAV-10, recovered from the same dresser drawer, DE 1479:2099 - 2101, was a packet of photocopied death notices, with handwritten numbers that correlated obituaries to the similarly numbered death certificates. SAV-10 also included computer-printed data concerning the names on the death certificates and other names reflecting deaths in California of youngsters born in other states; charts also part of SAV-10 had more detailed information and hand notations, including of the ages the deceased would be as of summer 1998. Also seized in the search of 1776 Polk Street was Government Exhibit SAV-43, sheets from a binder found in an overhead compartment, DE 1479:2104. The sheets had hand notes concerning various state libraries and vital records offices, and other genealogical sources such as the Family History Library in the Church of Jesus Christ and Latter Day Saints. *See* DE1482:2421 ff.

Defendant Campa's support for Operation Texaco was twofold: He was sent to south Florida in the summer of 1998 to cover Medina's responsibilities while Medina was traveling for Operation Texaco, *see, e.g.*, Government Exhibit DAV- 116:7, 8; and also Campa was Medina's conduit and point of contact for money, communications and other DI support to make Operation Texaco feasible.⁷ *See, e.g.*, DAV-103 (Campa reports that "I DELIVERED TO ALLAN TWO THOUSAND RPT TWO THOUSAND DOLLARS FOR OPERATION TEXACO").

Finally, as to the nature and circumstances of the identity-fraud offense conduct, the evidence showed that the defendant was entrusted with false identity documentation in addition to his own. *See* Government Exhibit DA-116:9, giving defendant Medina instruction as to turning over responsibilities to this Defendant, whose code names included "Camilo": "THE RESERVE DOCUMENTATION SHOULD BE LEFT WITH 'CAMILO' AND PICKED UP ON YOUR RETURN." Consistent with DA-116's instruction, defendant Medina's escape (that is, "reserve") false-identity documentation, in the name of Edwin Martinez, was found during a search concealed in the one-room apartment at 1776 Polk Street, Hollywood, which he and this Defendant shared at the time of their arrest, September 12, 1998.

Statutory goals of sentencing: Seriousness of the offense, 18 U.S.C. Section 3553(a)(2)(A)

The seriousness of the identity-fraud offense is reflected in the Directorate of Intelligence's deep commitment to the use of sophisticated false-identity techniques, document-counterfeiting and illegal entries into the United States to carry out covertly the agenda of a foreign country. The DI's document-counterfeiting ability was rated to be very high. *See* DE1526:7016 (government forensic-

⁷ *See, e.g.*, Government Exhibit SAV-28 (comp)(contents of Campa's wallet, including business card with hand notation on back "Silver Sand Motel", and a telephone and room number; Medina stayed at the Silver Sand Motel while carrying out Operation Texaco in California, *see* Government Exhibit DAV-120:1); Government Exhibit SAV-11 (Silver Sand business card found in dresser at 1776 Polk Street search); documents reflecting Defendant's communications with defendant John Doe No. 2, a/k/a Luis Medina III, concerning theft of computer from hotel room in Oakland and John Doe No. 2, a/k/a Luis Medina III's travel back to south Florida, Government Exhibits DAV-105, 106, 107, 108.

document expert testimony that defendant's "Reina" fake passport, as well as co-defendant Medina's fake escape-identity passport, were among the highest quality counterfeits the expert ever had come across, to the point that they caused his agency to issue an alert to ports of U.S. entry). This high quality corresponds to an equally high threat to the United States, against whom the false-identities were targeted. The seriousness of the offense also is reflected in sentencing-guidelines offense-characteristics. USSG 2L2.1(b)(3), which applies here, provides for a four-level increase due to the defendant knowing that the false-identity documents would be, and were, used to facilitate the commission of felony offenses. The facilitated offenses – the defendant's own violations of 18 U.S.C. Section 951; his co-defendants' violations of that and other statutes, including three co-defendants' conspiracy to commit espionage – were serious ones, implicating the sovereignty and national security of the United States.⁸

⁸ Defendant Campa was fully engaged in the effort to penetrate United States military installations. His assignment to cover absent defendant Medina's south Florida duties included Campa's oversight for and handling of projects designated "AEROPUERTO" (co-defendant Antonio Guerrero [Lorient]'s penetration of Boca Chica Naval Air Station in Key West) and "SOUTHCOM" (the DI's effort – designated a top priority, *see* Government Exhibit DS-102:8 – to penetrate the United States Southern Command), *see* Government Exhibit DAV-109. The DI instructed Campa to "DEEPEN THE STUDY OF SOUTHCOM AND ITS PERSONNEL," *id.* at 3, and to have Lorient both find out information about Southcom and "CONSOLIDATE AND INCREASE" his relationships at the Boca Chica Naval Air Station, "AS WELL AS TO SEARCH FOR OTHERS WITH GREATER INTELLIGENCE POSSIBILITIES," *id.* at 4. Defendant Campa sought to carry out his tasks, with zeal. *See, e.g.*, Government Exhibit DAV-102, in which he reports on his initial meetings with Lorient, *id.* at 15-20, and with Joseph and Amarylis Santos (code-names "Mario" and "Julia"), DI agents tasked with penetrating Southern Command, *id.* at 29-33. Campa reported, *id.* at 32-33, that "I EXPLAINED TO THEM THE IMPORTANCE AND PRIORITY OF THIS OPERATION; . . . I EMPHASIZED TO THEM NOT TO OVERLOOK ANY SIGN OR INFORMATION NO MATTER HOW SIMPLE OR UNIMPORTANT IT MAY SEEM . . . I TRIED TO STIMULATE THEM AND EXPLAINED THE IMPORTANCE OF PROVIDING ANY NEW DETAIL NO MATTER HOW INSIGNIFICANT IT MIGHT SEEM."

Campa was not present in Miami during the communications relating to efforts to probe "top secret" facilities like Boca Chica Naval Air Station Building A1125, and he was not charged with conspiracy to commit espionage, but it is beyond question that his mission, knowledge and actions on behalf of a foreign power encompassed efforts to penetrate the United States military.

Other statutory goals of sentencing

_____ Other statutory factors to be considered in imposing a sentence also argue for a significant penalty, and the reasonableness of a guidelines sentence, here. The “history and characteristics” of the defendant, *see* 18 U.S.C. Section 3553(a)(1), are of an individual who is educated, intelligent, and implacably dedicated, as a career, to the conduct that resulted in his conviction. As he told the court’s Probation Officer, “I am not repentant for what I did.” *See* PSR, ¶ 58, page 35. The offense calls for incarceration both as punishment, *see* 18 U.S.C. Section 3553(a)(2)(A), and deterrent, *see* 18 U.S.C. Section 3553(a)(2)(B), where the conduct is a concerted effort deliberately contrived, and now widely celebrated, by a foreign government. With such incentives to the commission of crime, it is important that the United States impose effective counterincentives, including a significant term of incarceration. And, of course, the applicable advisory sentencing guideline is itself a statutorily recognized factor to be considered in imposing a sentence, *see* 18 U.S.C. Section 3553(a)(4).

Accordingly, the United States respectfully submits that the advisory sentencing guidelines range – 33 to 41 months – is reasonable, and that a sentence within that range should be imposed for Counts 7 and 8.

Consecutive sentencing

The United States also respectfully submits that the court correctly and appropriately⁹ exercised its discretion at the original sentencing to provide that the period of incarceration for the guidelines offenses, Counts 7 and 8, run consecutively to the period of incarceration for the non-guidelines offenses, Counts 1, 16 and 17. *See* footnote 2, *supra*. The United States respectfully recommends that the court’s new sentence for Counts 7 and 8 run consecutively to the 180-month

⁹ In rejecting a co-defendant’s objection to consecutive sentencing, the Court of Appeals found that this court acted correctly and within its discretion; that it properly considered 18 U.S.C. Section 3553’s sentencing factors and the defendant’s claims for mitigation; and that the resulting consecutive sentence was not greater than necessary to further the statutory purposes of sentencing. *See United States v. Campa, et al, supra*, 529 F.3d at 1011-1012. Defendant Campa did not appeal the consecutive nature of his sentence.

sentence of incarceration for Counts 1, 16 and 17. Consecutive sentencing is called for by the distinctly serious nature and harms of the guidelines and non-guidelines offenses; by the need for an overall sentence that serves the above-referenced sentencing goals of deterrence and punishment; and to achieve equity vis-a-vis other sentences, such as the 180-month sentence of co-defendant Rene Gonzalez, who was an operational agent and not an overseeing illegal officer like defendant Campa.

Conclusion

WHEREFORE the United States respectfully recommends that the Court sentence the defendant to a sentence within the advisory guidelines range of 33 - 41 months on Counts 7 and 8, to run consecutively to the 180 months previously imposed on Counts 1, 16 and 17. The United States respectfully submits that the defendant also should be sentenced to a period and conditions of supervised release as set forth in the original sentence, and to \$100 special assessment on each of Counts 7 and 8, with credit for similar sums already paid pursuant to the court's original sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Caroline Heck Miller
CAROLINE HECK MILLER
ASSISTANT UNITED STATES ATTORNEY