

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

FABIO PORFIRIO LOBO,  
a/k/a “Fabio Porfirio Lobo Lobo,”  
a/k/a “Fabio Lobo,”

Defendant.

15 Cr. 174 (LGS)

**THE GOVERNMENT’S PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW RELATING TO  
DEFENDANT FABIO PORFIRIO LOBO**

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15 Cr. 174 (LGS)

The Government respectfully submits the following proposed findings of fact and conclusions of law relating to the *Fatico* hearing conducted in connection with the sentencing of Fabio Porfirio Lobo (the “defendant” or “Lobo”) on March 6 and March 16, 2017.

The Government established by a preponderance of the evidence at the hearing, through witness testimony and corroborating recordings and photographs, that the defendant joined the *Cachiros* drug-trafficking organization following the election of his father as President of Honduras in late 2009. While enriching himself and others, the defendant protected and supported the *Cachiros* by acting as a conduit to Honduran officials capable of preventing interference with the drug-trafficking operations of the *Cachiros*. Between five and eight times, the *Cachiros* provided the defendant with advance notice of incoming drug loads so that he would be available in the event of any interference with the shipments. The defendant also facilitated *Cachiros* money laundering by supporting their front companies, including through the issuance of government contracts to *INRIMAR* in exchange for kickbacks.

In 2012, fueled by greed and a sense of entitlement arising out of his family’s status, the defendant escalated his criminal activities by participating even more directly in the violent

drug trafficking that ravaged his country. He proposed to the *Cachiros* receiving cocaine-laden aircraft at locations in the Olancho Department, he facilitated cocaine shipments through Puerto Cortes, and he personally helped escort two loads of drugs with an aggregate quantity of approximately 1.4 metric tons of cocaine. The defendant also continued to use his political access to protect and assist drug traffickers by helping Carlos Lobo try to recover seized assets in exchange for \$100,000, and providing the *Cachiros* with a list of assets being targeted by Honduran authorities in exchange for at least \$50,000.

In late 2013 and 2014, based on assistance from the leaders of the *Cachiros*—now convicted criminals facing mandatory minimum sentences of life imprisonment plus 30 years, absent relief pursuant to 18 U.S.C. § 3553(e)—the Drug Enforcement Administration (“DEA”) obtained evidence that corroborates in all pertinent respects the deeply troubling scope of the defendant’s conduct. Recordings and electronic communications demonstrate the close relationships and assistance that the *Cachiros* obtained from the defendant, politicians at the highest levels of the Honduran government, military officials, and police. As part of the DEA’s investigation, the defendant was caught red-handed as he took an even more central role in the *Cachiros*: coordinating a purported three-ton cocaine shipment on behalf of confidential sources pretending to be workers for the leader of the Sinaloa Cartel, accompanying the sources to several planning meetings in Honduras, introducing the sources to co-conspirators, and making numerous statements along the way regarding his longstanding relationship with the *Cachiros*. In 2015, the defendant confirmed his affiliation and relationship of trust with the *Cachiros* by traveling to Haiti expecting to pick up millions of dollars in drug proceeds based on communications from one of the organization’s incarcerated leaders. He was instead arrested, and is now pending sentencing

before the Court after pleading guilty.

Based on this conduct, the Government respectfully submits that the applicable Guidelines range is life imprisonment, that the defendant should be required to forfeit \$13.11 million, and that the Court should impose a fine. The Government will submit further briefing regarding the application of the Section 3553(a) factors to this prolonged and egregious course of conduct pursuant to the schedule set by the Court following the hearing.

### **PROPOSED FINDINGS OF FACT**

The Government respectfully submits that the following facts were established at the hearing by a preponderance of the evidence:

#### **I. The *Cachiros* Drug-Trafficking Organization**

1. The “*Cachiros*” was a prolific and violent criminal syndicate in Honduras responsible for receiving large loads of cocaine sent to Honduras from South America via air and maritime routes, and transporting the cocaine within Honduras on behalf of Mexican drug-traffickers who imported substantially all of the cocaine at issue into the United States. (Mar. 6, 2017 Hearing Tr. (“Mar. 6 Tr.”) 12:1-13:15); *see also* Sept. 6, 2016 Presentence Investigation Report (“PSR”) ¶ 9).<sup>1</sup>

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<sup>1</sup> Paragraphs 8, 9, 11, and 23 through 29 of the PSR are not disputed for purposes of sentencing. (Mar. 6 Tr. 2:18-3:5).

2. Between approximately 2009 and approximately December 2013:

a. Devis Leonel Rivera Maradiaga (“CW-2”) and Javier Eriberto Rivera Maradiaga (“CW-3”) were the leaders of the *Cachiros* (Mar. 6 Tr. 12:1-9);<sup>2</sup>

b. The *Cachiros* distributed over approximately 20 metric tons of cocaine that was destined for the United States (Mar. 6 Tr. 13:5-10; *see also* Mar. 16, 2017 Tr. (“Mar. 16 Tr.”) 34:5-11 (defense counsel asking CW-2 if his estimate “sound[ed] low”)); and

c. CW-2 caused approximately 63 murders and approximately 10 attempted murders (DX 3 at 8-11).<sup>3</sup>

3. The *Cachiros* engaged in this extensive criminal conduct and operated with impunity—based in part on support and protection from the defendant, Honduran politicians, military officials, and law enforcement personnel—notwithstanding “various treaties,” the “South-South Cooperation Pact of Nations,” “Operation Hammer,” or the establishment of the “Director of National Investigation and Intelligence” and *Los Tigres* in Honduras. (Mar. 6 Tr. 13:21-16:5; Mar. 16 Tr. 42:11-44:17).

4. The defendant became “a member of the *Cachiros*” in approximately 2010, when he agreed to manage security and part of the logistics operations for CW-2 during a meeting that included, as described in more detail below, President Porfirio Lobo Sosa, a/k/a “Pepe” (“Lobo

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<sup>2</sup> For ease of reference, the Government has used in this submission the same pseudonyms for individuals who assisted the investigation—“CW-2,” “CS-1,” “CS-2,” and “CS-3”—that are used in the PSR.

<sup>3</sup> Between 2003 and 2013, CW-2 caused a total of 78 murders and 15 attempted murders. (Mar. 6 Tr. 11:14-25; *see also* DX 3).

Sosa”), a now-deceased Honduran politician named Juan Gomez, a Honduran congressman named Oscar Najera, and CW-2. (Mar. 16 Tr. 57:12-58:6; *see also* Mar. 6 Tr. 27:25-30:10).

## **II. The Defendant and President Lobo Sosa Agree to Support and Protect the *Cachiros* in Exchange for Bribes**

### **A. The First Bribe to President Lobo Sosa**

5. In approximately 2009, CW-2 grew concerned about law enforcement scrutiny in Honduras that was being led at that time by Oscar Alvarez and General Julian Arístides González, as well as the possibility that he and CW-3 could be extradited to the United States to face prosecution for their crimes. (Mar. 6 Tr. 17:4-19:12, 22:4-6).<sup>4</sup>

6. Based in part on those concerns, CW-2 worked with other drug traffickers and members of the *Policía Nacional de Honduras* (“Honduran National Police”) to assassinate General Arístides, and to seek protection from Alvarez and others by paying bribes—using drug proceeds—to Lobo Sosa while he was campaigning for the Honduran presidency. (Mar. 6 Tr. 16:1-19, 18:1-19:8).

7. The first bribe by the *Cachiros* to Lobo Sosa occurred in approximately 2009 and consisted of between \$250,000 and \$300,000. (Mar. 6 Tr. 16:8-19).

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<sup>4</sup> At the time, General Arístides was in charge of the *Dirección de Lucha Contra el Narcotráfico*, an anti-narcotics authority in Honduras. *See* Dan Alder, *Honduras Ex-Police Command Implicated in Drug Czar’s Murder* (Apr. 5, 2016), <http://www.insightcrime.org/news-analysis/honduras-ex-police-command-implicated-in-drug-czar-murder> (last accessed Mar. 30, 2017). Alvarez was a vocal critic of corruption in Honduras and served as Honduran Security Minister under President Lobo Sosa, until being “unexpectedly removed” from the position in September 2011. Marguerite Cawley, *Extradition, Maras and Police: Ex Honduras Minister Looks at the Future* (Jan. 20, 2014), <http://www.insightcrime.org/news-analysis/extradition-maras-and-police-ex-honduras-minister-looks-at-the-future> (Mar. 30, 2017).

8. CW-3 used his father and Juan Gomez to send the cash to Lobo Sosa's brother, "Moncho" Lobo, who gave the bribe to Lobo Sosa. (Mar. 6 Tr. 17:3-13; *see also* GX 9 at 2:28-3:7 (defendant and CW-2 discussing 89-year-old "Mister Moncho")).

9. Lobo Sosa later acknowledged receipt of the bribe during a meeting at Lobo Sosa's home in Tegucigalpa. (Mar. 6 Tr. 21:6-16).

**B. The Second Bribe to President Lobo Sosa**

10. The first meeting between members of the *Cachiros* and Lobo Sosa took place in approximately 2009, and it was attended by Lobo Sosa, Juan Gomez, CW-2, and CW-3. (Mar. 6 Tr. 21:2-3; Mar. 16 Tr. 41:6-14).

11. During the meeting, CW-3 asked Lobo Sosa for protection from Alvarez and assistance in avoiding extradition to the United States, and also discussed with Lobo Sosa the Honduran government issuing contracts to a *Cachiros*-affiliated front company in exchange for kickbacks. (Mar. 6 Tr. 21:17-22:1).

12. At the end of the meeting, Juan Gomez handed Lobo Sosa a package of 500-Lempira bills stacked between approximately eight and 12 inches high. (Mar. 6 Tr. 22:14-21).<sup>5</sup>

13. Later that day, CW-2, CW-3, and Juan Gomez provided Lobo Sosa's security detail with a further bribe comprised of between approximately \$200,000 and \$250,000 in drug proceeds. (Mar. 6 Tr. 23:12-24:2).

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<sup>5</sup> CW-2 was unable to estimate the value of the stack of Lempira. (Mar. 6 Tr. 23:6-9).

**C. The Defendant's Introduction to CW-2 in Trujillo**

14. Lobo Sosa was elected President of Honduras in approximately November 2009, and he took office in approximately January 2010. (PSR ¶ 11).

15. Following the election, in 2010, a cousin of the defendant named Jorge Lobo introduced the defendant to CW-2. (Mar. 6 Tr. 24:3-7, 24:20-25:1).

16. Prior to making the introduction, Jorge Lobo explained to CW-2 that the defendant was willing to facilitate the award of Honduran government contracts “since his dad had won the election,” which CW-2 believed could be used as a mechanism to launder drug money. (Mar. 6 Tr. 25:2-10).<sup>6</sup>

17. Approximately one week later, Jorge Lobo introduced the defendant to CW-2 near Trujillo, Colon. (Mar. 6 Tr. 25:11-17).

18. During the meeting, the defendant told CW-2 that he could provide Honduran government contracts, issued by *Despachos de Obras públicas Transporte y Vivienda* (“SOPTRAVP”), *Empresa Nacional de Energía Eléctrica* (“ENEE”), and *Fundo Vial*, in exchange for kickbacks of between 10% and 20% of the value of the contracts. (Mar. 6 Tr. 26:1-13).

19. CW-2 told the defendant that he was willing to pay up to approximately \$1 million in kickbacks in exchange for the contracts. (Mar. 6 Tr. 26:14-19).

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<sup>6</sup> Specifically, by using drug proceeds to create and capitalize a front company, and to pay kickbacks, CW-2 and CW-3 received seemingly legitimate funds from the Honduran government.

**D. The Defendant and President Lobo Sosa Meet with CW-2 in Tegucigalpa**

20. Following the meeting in Trujillo, CW-2 met with the defendant, President Lobo Sosa, Juan Gomez, and Oscar Najera at President Lobo Sosa's house in Tegucigalpa. (Mar. 6 Tr. 26:20-24, 27:25-28:3).

21. During the meeting, in the presence of the defendant, President Lobo Sosa advised CW-2: (i) to establish a company that could contract with the Honduran government; (ii) that "during his four-year term nobody would get extradited"; and (iii) "that if anything were to happen that [CW-2 and CW-3] should talk to Juan Gomez, that Juan Gomez in turn would talk to the defendant, and then the defendant would get in touch with General Pacheco Tinoco" ("General Pacheco"). (Mar. 6 Tr. 28:11-29:14; *see also* Mar. 16 Tr. 40:23-41:5, 43:3-5 ("[P]resident Porfirio Lobo Sosa had promised us that as long as he was president, none of us would be extradited and no Honduran would leave the country.")).

22. President Lobo Sosa "set up his son as a middleman who would be able to protect" and "help" CW-2, CW-3, and the *Cachiros*. (Mar. 16 Tr. 44:23-25; *see also* Mar. 16 Tr. 38:19-20 ("The defendant's commitment, sir, was to provide security for me [*i.e.*, CW-2] and for my brother [*i.e.*, CW-3], sir.")).

23. Consistent with that role, the defendant placed a brief call during the meeting to General Pacheco to set up an in-person meeting. (Mar. 6 Tr. 29:17-30:10).

24. Pursuant to the undertakings of the defendant and President Lobo Sosa, "[n]obody was extradited during President Lobo's administration" and "nothing" that belonged to CW-2 and CW-3 was seized until late 2013 after financial sanctions were imposed on the *Cachiros* in the United

States. (Mar. 16 Tr. 44:8-25; *see also* Mar. 16 Tr. 45:4-6 (“[W]hat I am sure about is while the president was in the office, nothing happened to our organization, we were left alone.”)).

### **III. The Defendant Facilitates Money Laundering by the *Cachiros* in Exchange for Bribes**

25. At the suggestion of the defendant and President Lobo Sosa, CW-2 used drug proceeds to establish a money-laundering front company to contract with the Honduran government, which was named *Inmobiliaria Rivera Maradiaga SA de CV* (“*INRIMAR*”). (Mar. 6 Tr. 30:11-31:13; Mar. 16 Tr. 24:3-21, 28:22-25 (“What I told the president and the defendant, when he offered us the government contracts, was that the companies we were going to set up then we were going to set up because we needed them, my brother [*i.e.*, [CW-3]] and I [*i.e.*, CW-2], to launder money.”)).

26. *SOPTRAVI*, *ENEE*, and *Fundo Vial* subsequently issued contracts to *INRIMAR* in exchange for kickbacks paid to the defendant and others worth a total of approximately \$300,000. (Mar. 6 Tr. 31:14-32:7; *see also* Mar. 16 Tr. 27:7-9 (“Our companies continued to be in operation from 2009 to 2013 with the support of President Porfirio [Lobo Sosa].”)).

27. Months after CW-2’s meeting in Tegucigalpa with the defendant and President Lobo Sosa, the defendant proposed to CW-2 a scheme in which the Honduran government would re-issue to *INRIMAR* contracts that had been awarded previously to other companies, in exchange for additional kickbacks; CW-2 declined the offer. (Mar. 6 Tr. 32:8-33-7).

28. CW-3 used drug proceeds to established at least three additional front companies: *Palma Del Bajo Aguan SA* (“*PALBASA*”), *Ganaderos Agricultores Del Norte S De RL De CV* (“*Ganaderos*”), and *Minera Mi Esperanza SA*. (Mar. 6 Tr. 34:1-18; *see also* DX 2).

29. The defendant and President Lobo Sosa facilitated the use of *PALBASA* as a money-laundering front for the *Cachiros* by helping CW-3 in his efforts to obtain extraction equipment

for African palm oil as well as foreign investors. (Mar. 6 Tr. 34:21-35:4; *see also* GX 8 at 27:7-9 (defendant asking CW-2 if CW-3 (“the brother”) had already liquidated remaining *PALBASA* assets (“sell everything from *la Palma*”) because “somebody is interested”)).

30. The defendant and President Lobo Sosa facilitated the use of *Minera Mi Esperanza SA* as a money-laundering front for the *Cachiros* by helping CW-3 in his efforts to obtain necessary permits from the Honduran government to operate the mine. (Mar. 6 Tr. 35:5-7; *see also* GX 23 (photograph of CW-3 at meeting with defendant and President Lobo Sosa); GX 24 (photograph of CW-3 at meeting with defendant)).

#### **IV. The Defendant Participates in the Distribution of Hundreds of Kilograms of Cocaine**

31. President Lobo Sosa “assigned” the defendant to act as the “security person for the *Cachiros*.” (Mar. 16 Tr. 58:2-3).

32. Based on that role, between approximately five and eight times during the period from 2010 to 2013, CW-2 provided the defendant with advance notice of an incoming cocaine shipment so that the defendant would be available to intervene if the *Cachiros* “ever had any problems during our trip with the truck filled with drugs or any problems with the guys of the organization, because they were armed.” (Mar. 6 Tr. 68:4-19).

##### **A. Drug-Trafficking Negotiations Relating to the Airport in Aguacate**

33. During a meeting in Catacamas, Olancho,<sup>7</sup> in approximately 2012, the defendant told CW-2 that President Lobo Sosa was not “helping [the defendant] out” with money because the

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<sup>7</sup> Prior to his arrest, the defendant resided in the Olancho Department. (PSR ¶¶ 61, 78 (describing the defendant’s “farm” in Olancho); GX 10 at 10:27-33 (defendant describing meeting with Lobo Sosa in Olancho during a May 11, 2015 consensually recorded call)).

President thought CW-2 and CW-3 were “helping” the defendant by “inviting him to join in on drug shipments.” (Mar. 6 Tr. 37:17-38:10).

34. In the same meeting, the defendant proposed making arrangements to receive cocaine-laden aircraft at an airport in Aguacate, which is near San Esteban in the Olancho Department. (Mar. 6 Tr. 38:11-39:2).

35. The defendant agreed to speak to “the commander who was assigned to the airport to see whether [the defendant and CW-2] could work there.” (Mar. 6 Tr. 39:3-9).

36. Subsequently, the defendant reported to CW-2 that they could not use the Aguacate airport for drug trafficking because of increased law enforcement scrutiny due to previous drug-trafficking activities involving congressman Fredy Renán Nájera Montoya (“Nájera Montoya”) and Carlos Zelaya, the brother of former Honduran President Manuel Zelaya. (Mar. 6 Tr. 39:10-24).<sup>8</sup>

#### **B. Drug-Trafficking Negotiations Relating to a Second Airstrip in Olancho**

37. In approximately 2012, following the defendant’s communications regarding the airport in Aguacate, the defendant met with CW-2 and others in Tegucigalpa to discuss using a clandestine airstrip in Olancho to receive cocaine-laden aircraft. (Mar. 6 Tr. 39:25-40:18).

38. The defendant, CW-2, and a relative of the defendant traveled by helicopter to inspect the airstrip, which was made of “dirt in the middle of an open field.” (Mar. 6 Tr. 40:9-23).

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<sup>8</sup> “On June 28, 2009, the Honduran military detained President Manuel Zelaya and flew him to exile in Costa Rica . . . .” Peter J. Meyer, Congressional Research Service, *Honduran Political Crisis, June 2009-January 2010*, at 1 (Feb. 1, 2010), <https://fas.org/sgp/crs/row/R41064.pdf> (last accessed Mar. 30, 2017). Roberto Micheletti acted as President until Lobo Sosa was elected in November 2009 and took office in January 2010, *id.* (See PSR ¶ 11).

39. After discussing the airstrip with a drug pilot named Andres, CW-2 informed the defendant that they could not use it because it was too inaccessible as a result of the surrounding mountainous terrain. (Mar. 6 Tr. 41:8-21).

**C. The 400-Kilogram Cocaine Load Received at an Airstrip in Cortes**

40. Also in approximately 2012, following the defendant's unsuccessful efforts to set up a mechanism for receiving drug loads in Olancho, the defendant assisted CW-2 in receiving between approximately 400 and 410 kilograms of cocaine sent by Colombian drug traffickers from Apure, Venezuela to an airstrip in the Cortes Department of Honduras. (Mar. 6 Tr. 41:22-42:10, 55:7-13; Mar. 16 Tr. 34:12-20, 35:9-14, 37:22-23).

41. After CW-2 told the defendant that "we're going to transport some drugs," the defendant traveled to San Pedro Sula and then Puerto Cortes, a city that includes a major commercial port on the western Atlantic coast of Honduras. (Mar. 6 Tr. 42:18-43:11; Mar. 16 Tr. 35:5-8, 36:11-37:12).

42. CW-2 picked the defendant up in Puerto Cortes and drove him to a house in Chachaguala, Cortes. (Mar. 6. Tr. 43:12-20).

43. During the trip to Chachaguala, the defendant indicated that:

a. "[H]e wanted to go to the land[ing] strip that was going to receive the plane; that he wanted to feel the adrenaline what you experience when you receive a plane loaded with drugs" (Mar. 6 Tr. 43:23-44:2); and

b. "[H]e had spoken with the chief of police there at the Cortes Department; that if there was any problem that could come up from the airstrip to the CA-5 [highway] he would talk to this person and would stop any police operation" (Mar. 6 Tr. 44:11-15; Mar. 16 Tr. 37:7-12

(“That’s when we [*i.e.*, the defendant and CW-2] went to the house of Chachaguala to coordinate while we were waiting for the plane to land on the air strip, sir, because he [*i.e.*, the defendant] had already placed phone calls of which he had informed me with the commander that was in charge there at Cortés, sir, in the area before the plane was going to land.”).

44. The cocaine was flown from Apure to the landing strip in Cortes, and CW-2 and the defendant met the truck carrying the drugs near Choloma, Cortes. (Mar. 6 Tr. 42:6-8, 44:16-45:16).

45. The defendant and CW-2 escorted the truck with the cocaine south to San Pedro Sula, together in a separate vehicle, so the defendant “could talk to the police so that if there was any problems he would be able to resolve it.” (Mar. 6 Tr. 45:2-46:2).

46. The defendant stayed in San Pedro Sula while the cocaine was transported west to La Entrada, Copan. (Mar. 6 Tr. 46:6-13).

47. CW-2’s compensation came in the form of an interest in approximately 20% of the 400 kilograms, and he made between approximately \$800,000 and \$1 million in connection with the cocaine shipment. (Mar. 6 Tr. 46:14-19).

48. For the defendant’s role in the cocaine shipment, CW-2 gave him between \$20,000 and \$30,000, a Mitsubishi Lancer, and an AR-15 rifle with a telescopic scope and laser sight, and CW-2 also paid between \$20,000 and \$25,000 to Juan Ramon Matta, a/k/a “Moncho Matta,” to add armor to a Toyota Land Cruiser owned by the defendant. (Mar. 6. Tr. 46:20-47:16).<sup>9</sup>

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<sup>9</sup> In December 2014, the defendant requested assistance from CW-2 in retrieving the Mitsubishi Lancer after it was seized by the Honduran authorities. (GX 8 at 27:23-28:11).

**D. Drug-Trafficking Activities at Puerto Cortes**

49. In approximately 2012 or 2013, the defendant assisted a maritime drug-trafficking venture involving congressman Nájera Montoya, a *SOPTRAVI* official named Miguel Pastor, a high-ranking member of Mexico's Sinaloa Cartel, a Honduran drug trafficker, and others. (*See* PSR ¶ 13).<sup>10</sup>

50. The defendant first met in San Pedro Sula with Nájera Montoya and two other individuals whom the defendant understood to be drug traffickers. During the meeting, Nájera Montoya explained the proposed venture to the defendant and Pastor, who was at the time a leading minister at *SOPTRAVI*, which played a role in Honduran customs operations at Puerto Cortes. (*See* PSR ¶ 14).

51. The defendant subsequently participated in another meeting in San Pedro Sula, which was attended by Nájera Montoya, Pastor, another Honduran customs official, and at least one additional Mexican drug trafficker. The group further discussed the proposed venture, including the receipt of cocaine at Puerto Cortes and importation of at least some of the drugs into the United States via Mexico. At the end of the discussion, the Mexican drug traffickers gave Nájera Montoya a large quantity of U.S. \$100 bills, which Nájera Montoya provided to the defendant and Pastor. The defendant made at least approximately \$50,000 for participating in these meetings. (*See* PSR ¶ 15).

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<sup>10</sup> The proposed findings of fact in paragraphs 49 through 51 are not disputed by the defendant. (Mar. 6 Tr. 2:22-3:5). On March 17, 2017, the Government asked the Probation Office to amend paragraphs 13 through 15 of the PSR to include only the information set forth in paragraphs 49 through 51 above.

**E. The 1,000-Kilogram Cocaine Load Received at an Airstrip in Colon**

52. In approximately the fall of 2013, the defendant assisted CW-2 with the transportation of between approximately 1,000 and 1,050 kilograms of cocaine from Tocoa, Colon to La Entrada, Copan. (Mar. 6 Tr. 57:20-58:1).

53. When CW-2 called the defendant about a “drug job” that was “larger than the first one”—referring to the 400-kilogram cocaine shipment received in Cortes, *see* paragraphs 40-48, *supra*—the defendant traveled from Catacamas to Tegucigalpa “to pick up the rest of his security detail,” and then to Tocoa. (Mar. 6 Tr. 58:2-59:13).

54. The defendant traveled to Tocoa with three Toyota Prado Sports Utility Vehicles (the “SUVs”), all of which had sirens. (Mar. 6. Tr. 59:14-25).

55. When the defendant arrived in Tocoa, CW-2 told the defendant that he was expecting a cocaine-laden aircraft departing from Venezuela to arrive at a private airport in Farralones, Colon, which is east of Tocoa. (Mar. 6 Tr. 60:4-61:5).

56. The drug shipment was nearly seized, but CW-2 and others avoided the interdiction based on assistance from a Honduran military official known as “Fortin,” who provided Honduran radar information. (Mar. 6. Tr. 61:17-62:13).

57. CW-2 notified the defendant when the truck with the cocaine arrived in the vicinity of Tocoa. (Mar. 6 Tr. 62:24-63:3).

58. CW-2 then went to the defendant’s hotel and got in one of the SUVs, which was occupied by the defendant, an armed driver wearing a Honduran military uniform known as Captain Mendoza (or “*El Chelito*”), and another passenger in civilian clothes named Jose Alfredo Carias. (Mar. 6 Tr. 63:7-25; *see also* Mar. 6 Tr. 77:21-79:3, 87:21-88:7; GX 1 at 9:17 (“*el*

*chelito*”); GX 1 at 9:21 (“The Carias guy.”); GX 6 at 3:27 (“José Alfredo Carias”); GX 11 at 3:23-25 (“What’s Mendoza’s rank Comando” // “Captain”).

59. There was an AR-15 rifle in the center console of the SUV in which the defendant and CW-2 rode, and CW-2 was also armed with a pistol. (Mar. 6 Tr. 63:21-25, 64:3-4).

60. The remaining two SUVs were also driven by men wearing Honduran military uniforms. (Mar. 6 Tr. 64:5-15).

61. The defendant, CW-2, and the other two SUVs escorted the truck with the cocaine—using sirens—from Tocoa to La Ceiba, then to San Pedro Sula, and then to La Entrada. (Mar. 6 Tr. 64:16-65:5).

62. The defendant and CW-2 stopped at a police checkpoint during the trip, and the defendant “talk[ed] with the police officers” while the “drug truck went by.” (Mar. 6 Tr. 65:6-17).

63. At La Entrada, the defendant waited at a restaurant while CW-2 met at a nearby ranch with a Honduran drug trafficker named Digna Valle-Valle. (Mar. 6 Tr. 66:1-10).<sup>11</sup>

64. After CW-2’s meeting with Valle-Valle, he paid the defendant \$50,000. (Mar. 6 Tr. 67:5-6).

65. On the way back to San Pedro Sula, the defendant complained to CW-2 about the payment and asked for “a little bit more” because the defendant had to “give more money to the boss,” *i.e.*, General Pacheco. (Mar. 6 Tr. 67:13-24).

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<sup>11</sup> In February 2015, Digna Valle-Valle pleaded guilty in the Southern District of Florida to a violation of Title 21, United States Code, Section 963, and she was subsequently sentenced to a 135-month term of imprisonment. *See United States v. Valle-Valle*, No. 13 Cr. 20897 (S.D. Fla.).

## V. The Defendant Accepts a \$100,000 Bribe from Carlos Lobo

66. In approximately 2012, the defendant asked CW-2 if he “had other friends who were drug traffickers” so that the defendant could “help them” as he had “helped” CW-2, and “do the same sort of operation he had done with [CW-2].” (Mar. 6 Tr. 55:21-56:2).

67. Based on that request, CW-2 spoke to Honduran drug trafficker Carlos Arnaldo Lobo, a/k/a “Negro Lobo” (“Carlos Lobo”), who agreed to meet with “the son of the president,” *i.e.*, the defendant. (Mar. 6 Tr. 56:3-11).<sup>12</sup>

68. CW-2 subsequently introduced the defendant to Carlos Lobo at Carlos Lobo’s house in San Pedro Sula, but CW-2 did not participate in the meeting. (Mar. 6 Tr. 56:12-23).

69. Carlos Lobo later told CW-2 that he paid the defendant \$100,000 in exchange for help from the defendant “with some properties that had been seized” and an introduction by the defendant to a “secretary” of former Honduran official Oscar Alvarez, *see* paragraph 5 and note 4, *supra*. (Mar. 6 Tr. 57:4-8; *see also* Mar. 16 Tr. 46:23-25).

70. The defendant later confirmed to CW-2 that his meeting with Carlos Lobo “went well,” and that “[w]e are going to see if we can help him out with some property that had been seized.” (Mar. 6 Tr. 57:17-19).

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<sup>12</sup> After President Lobo Sosa left office, Carlos Lobo became the first Honduran national extradited to the United States based on a drug-trafficking charge. *See International Narcotics Trafficker Extradited from Honduras to United States Sentenced* (Dec. 9, 2014), <https://www.justice.gov/usao-sdfl/pr/international-narcotics-trafficker-extradited-honduras-united-states-sentenced> (last accessed Mar. 30, 2017). Carlos Lobo subsequently pleaded guilty in the Southern District of Florida to a violation of Title 21, United States Code, Section 963, and was sentenced to a 240-month term of imprisonment. *See United States v. Lobo*, No. 11 Cr. 20358 (S.D. Fla.)

## **VI. The Defendant Obstructs Seizures of *Cachiros* Assets in Exchange for a Bribe**

71. In May 2013, the United States Department of the Treasury, Office of Foreign Assets Control (“OFAC”) imposed financial sanctions on CW-2 and CW-3 by designating the *Cachiros* pursuant to the Foreign Narcotics Kingpin Act. (See Mar. 6 Tr. 68:20-69:1).<sup>13</sup>

72. In September 2013, OFAC imposed additional sanctions against the *Cachiros* by designating seven individuals, including CW-2 and CW-3, as well as their front companies, *INRIMAR*, *PALBASA*, *Ganaderos*, *Minera Mi Esperanza SA*, and the *Joya Grande Zoo*. (Mar. 6 Tr. 69:2-3; see also DX 2).

73. In light of OFAC’s sanctions, CW-2 became concerned about the potential that the Honduran *Oficina Administradora de Bienes Incautados* (“*OABI*”) would try to seize *Cachiros* assets, and he called the defendant to set up a meeting at a hotel in Tegucigalpa. (Mar. 6 Tr. 69:4-18; see also Mar. 16 Tr. 7:18-8:9).

74. During the meeting in Tegucigalpa, CW-2 described his concerns about *OABI* to the defendant and congressman Oscar Najera. (Mar. 6 Tr. 69:19-70:2).

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<sup>13</sup> See OFAC, *Specially Designated Nationals Update* (May 31, 2013), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130531.aspx> (last accessed Mar. 30, 2017).

75. Najera responded that:

a. They should speak to an *OABI* official named Humberto Palacios Moya (Mar. 6 Tr. 70:3-7); and

b. Najera was “going to talk to the president [*i.e.*, President Lobo Sosa] and ask him the reason for the seizures and to ask him to help them [*i.e.*, CW-2 and CW-3] with gaining back the properties that had been seized” (Mar. 6 Tr. 70:10-14).

76. In the same meeting, the defendant called Palacios Moya, and then told CW-2 that he was going to Palacios Moya’s house. (Mar. 6 Tr. 70:15-71:3).

77. The defendant returned to the hotel approximately two hours later with a list of the assets and properties that *OABI* planned to seize from the *Cachiros*, which he provided to CW-2 in exchange for between \$50,000 and \$70,000. (Mar. 6 Tr. 71:4-22).

78. After the defendant provided the list from *OABI*, he advised CW-2 to remove documents and computers from the *Cachiros* front companies, and that an *OABI* official named Cesar would “help” CW-2 continue to access the zoo following the *OABI* seizures. (Mar. 6 Tr. 72:4-19).<sup>14</sup>

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<sup>14</sup> “Cesar” appears to have been a reference to an *OABI* official named Cesar Salgado. See La Prensa, *Dictan auto de prisión a César Salgado, exdirector de Oabi en SPS* (May 17, 2016), <http://www.laprensa.hn/honduras/960825-410/dictan-auto-de-primi%C3%B3n-a-c%C3%A9sar-salgado-exdirector-de-oabi-en-sps> (last accessed Mar. 30, 2017).

## **VII. The Defendant Agrees to Facilitate Security for a Multi-Ton Cocaine Shipment Purportedly Destined for the Leader of the Sinaloa Cartel**

### **A. Fall 2013: CW-2's Recorded Bribe to the Defendant**

79. Juan Orlando Hernandez was elected President of Honduras in approximately November 2013, and he took office in approximately January 2014. (PSR ¶ 11).

80. Following the *OABI* seizures, CW-2 started to make recordings of meetings with the defendant and others in anticipation of attempting to cooperate with the DEA. (Mar. 6 Tr. 73:9-19).

81. In one such instance, CW-2 met with the defendant in San Pedro Sula to discuss *OABI*'s seizures and the prior "promise" by the defendant and President Lobo Sosa to protect CW-2, CW-3, and other members of the *Cachiros* from Honduran law enforcement authorities and extradition to the United States. (Mar. 6 Tr. 74:5-21).

82. During the meeting, CW-2 provided the defendant with a blue plastic bag containing a "bribe" of between \$10,000 and \$30,000. (Mar. 6 Tr. 75:6-12, 75:19-21).

### **B. December 14, 2013: The Defendant Agrees to Participate in a Multi-Ton Cocaine Shipment**

83. CW-2 began to assist the DEA in December 2013, including by recording meetings with investigative targets such as the defendant at the direction of the DEA. (Mar. 6 Tr. 75:22-76:1; Mar. 16 Tr. 9:14-25).

84. On December 14, 2013, at the direction of the DEA, CW-2 met with the defendant in San Pedro Sula and asked for security and logistical support in connection with the transportation of approximately 2,500 kilograms of cocaine ("animals") to be sent from Colombia to the Atlantic

coast in eastern Honduras via a maritime route. (GX 1 at 4:13-21; GX 1-A (still image from recording); *see also* Mar. 6 Tr. 77:10-20).

85. CW-2 also told the defendant that the cocaine was destined for “El Chapo”—the former leader of the Sinaloa Cartel and one of the most notorious drug traffickers on earth<sup>15</sup>—and that “[s]ome of Chapo’s people” were in Honduras to assess the *Cachiros* drug-trafficking operations. (GX 1 at 5:17-21, 8:9).

86. During the conversation, CW-2 indicated that he planned to keep “working” with cocaine shipments because *OABI* “took all of [his] properties,” and the defendant responded that “there’s no other option.” (GX 1 at 4:9-11).

87. CW-2 explained to the defendant that the drugs would be sent by a Colombian to the vicinity of Limon, Colon, then transported southwest to Tocoa, where CW-2 and the defendant would assume responsibility for the transportation of the drugs further west. (GX 1 at 5:13, 8:1-13).

88. CW-2 proposed that he and the defendant “ride ahead” of the cocaine transport vehicle, “[j]ust like the previous times,” in case they needed to address any attempted interdictions of the drugs. (GX 1 at 5:13).

89. The defendant proposed to use the “same” security team of “[a]bout 4” men in two vehicles, including Captain Mendoza (“*el chelito*”) and Carias—the driver and passenger used by

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<sup>15</sup> *See* Mem. of Law in Support of Pretrial Detention at 2, *United States v. Guzman Loera*, No. 09 Cr. 466 (E.D.N.Y. Jan. 20, 2017) (dkt. no. 17) (characterizing Chapo as “the principal leader of the Mexico-based international drug trafficking organization known as the Sinaloa Cartel, which is the world’s largest and most prolific drug trafficking organization”).

the defendant in connection with the fall 2013 cocaine load that arrived in Colon, *see* paragraphs 58-61, *supra*—as well as “[a]nother guy that’s around from the . . . cops.” (GX 1 at 8:17-10:5; *see also* Mar. 6 Tr. 78:9-23).

90. The defendant agreed to accept a financial stake in approximately 200 kilograms of the cocaine, which would be worth approximately \$1.6 million. (GX 1 at 5:1-6:1, 7:9-17, 8:5).

**C. March 8, 2014: The Defendant Meets with CS-1 and CW-2 to Discuss the Multi-Ton Cocaine Shipment**

91. On March 8, 2014, CW-2 introduced the defendant to a confidential source acting at the direction of the DEA (“CS-1”) during a meeting at a hotel in San Pedro Sula. (GX 2; GX 2-A (still image from recording); *see also* Mar. 6 Tr. 79:13-80:8).

92. CW-2 introduced CS-1 as a “friend of Chapo” who came to Honduras to discuss the “pending” cocaine transaction. (GX 2 at 4:25-5:7).

93. CS-1 told the defendant that he was “sent to take a look” so that the drug load would “turn out right and for everyone to be happy.” (GX 2 at 5:21-25).

94. The defendant agreed with CS-1 that “[p]roblems can arise at any time” and “people need to have responsibilities for . . . what they accept and that’s all,” and confirmed that he expected to be compensated with the equivalent of “200” kilograms of cocaine. (GX 2 at 6:9-27).

**D. May 17, 2014: The Defendant Meets with the Sources and CW-2 to Discuss the Multi-Ton Cocaine Shipment**

95. On May 17, 2014, CW-2 introduced the defendant to two additional DEA confidential sources (“CS-2” and “CS-3,” collectively the “Sources”) in San Pedro Sula. (GX 3; GX 3-A (still image from the recording); Mar. 6 Tr. 80:9-81:2).

96. During the meeting, CW-2 explained to the defendant that CS-2 was the “owner of the merchandise,” *i.e.*, the pending multi-ton cocaine load. (GX 3 at 2:15).

97. CS-2 told the defendant that they now planned to ship 3,000 kilograms of cocaine, and the defendant indicated that he expected to be compensated with 10% of the load—300 kilograms rather than 200. (GX 3 at 4:1, 5:9-13, 7:13).

98. The defendant confirmed that he had previously assisted CW-2 with drug loads (“We have done it”) while the defendant’s “dad” was “president” of Honduras, and responded “[u]h, huh” when CW-2 explained that the defendant had participated in “[e]verything, everything. Almost 60 percent.” (GX 3 at 9:1-13).

99. After CW-2 described having “helped” President Lobo Sosa “with a bit of money” during his “campaign,” the defendant responded that he had developed a relationship of “[t]rust at a 100 percent” with CW-2 and that “[w]orking with trust is the best.” (GX 3 at 13:7-14:5).

100. CS-2 asked the defendant to describe the “kind of support” he would provide and inquired if the assistance would include “help from the military”; the defendant responded that his support would include “[e]verything.” (GX 3 at 5:15-25).

101. CS-2 also engaged in the following exchange with the defendant:

CS-2	. . . I just want you to explain to me what your support would consist of, with what people. With the whole military group, would that be the full support?
Defendant	Yes.
CS-2	Everything that is part of that is by land?
Defendant	Everything [U/I].

(GX 3 at 6:11-17).

102. The defendant later clarified that he would be supported by “current” Honduran military officials who “remain[ed] as friends” after Lobo Sosa finished his term as President:

CS-2	And if you have all the military support, then there’s nothing more secure than that.
Defendant	Well, yes.
CS-2	You know what I mean?
Defendant	Yes.
CS-2	. . . Do you have it on the outside or is it from, from the, from the former Generals or, or fro, from, from, from friends? Or are they Federals or who is it with?
Defendant	Current.
CS-2	With the current ones.
Defendant	Yes.
CS-2	Okay.
Defendant	[U/I] once the, the man comes out, of his office, as they say . . . They remain as friends.

(GX 3 at 15:4-22).

103. The defendant explained that, in addition to military connections, he would also provide “logistics” support—*i.e.*, participate in the transportation of the drug load—and answered “[y]es” when asked if his associates would “bring it by land all the way.” (GX 3 at 8:5-27).

104. CS-2 asked “how many people do you have,” and the defendant responded “[w]hatever we need.” (GX 3 at 21:1-3).

#### **E. May 18, 2014: The Defendant Meets with the Sources to Discuss the Multi-Ton Cocaine Shipment**

105. On May 18, 2014, the defendant met with the Sources at a hotel in San Pedro Sula. (GX 4; GX 4-A (still image from recording)).

106. CS-2 told the defendant that CW-2 would help receive the drug load in “international waters,” that the defendant and others would be responsible for transporting the cocaine from eastern Honduras (“there”) to San Pedro Sula (“here”), and that CS-2 would

distribute the cocaine (“work”) in “California, Chicago, in Miami, along the whole East Coast” and in “New York.” (GX 4 at 5:25-27, 14:9-13).

107. CS-2 reiterated his request that the defendant introduce him to a “general.” (GX 4 at 3:1-5, 6:1, 7:5).

108. The defendant and CS-2 also agreed that they would “avoid as much as possible any communication over the telephones” in an effort to prevent interceptions that would implicate the defendant or his “military people” in the crime. (GX 4 at 2:12-16).

109. On May 22, 2014, the defendant wrote to CW-2 that he was “[w]aiting on instructions” regarding the cocaine load, and that he might be able to use Captain Mendoza—whom the defendant indicated he trusted—to set up a meeting between the Sources and General Pacheco. (GX 11 at 2:9, 3:1-7, 3:23-25, 3:33-35).

### **VIII. The Defendant Meets with Honduran Military and Police Officials to Coordinate Security for the Multi-Ton Cocaine Shipment**

#### **A. Early June 2014: The Defendant Introduces the Sources to Colonel Amaya and a Member of the Honduran National Police from La Lima**

110. The Sources returned to Honduras in early June 2014. (Mar. 6 Tr. 81:10-11).

111. At a hotel in San Pedro Sula, the defendant introduced the Sources to Colonel Mario Amaya, a/k/a “El Tigre” (“Colonel Amaya”), who was a member of the Honduran Armed Forces, as well as a member of the Honduran National Police in charge of the city of La Lima, Cortes (east of San Pedro Sula). (Mar. 6 Tr. 81:3-82:5; *see also* GX 8 at 29:29-30:17 (defendant communicating with CW-2 about Colonel Amaya’s health)).

112. When CW-2 arrived toward the end of the meeting, the defendant indicated that they planned “to travel to Tocoa, Colon” and “that Colonel Amaya was going to introduce more police officers to [the Sources].” (Mar. 6 Tr. 81:20-82:10).

**B. Early June 2014: The Defendant Offers a Bribe to General Pacheco**

113. Around the same time as the defendant’s meeting with Colonel Amaya and the officer from La Lima, the defendant met with CW-2 at a body shop in San Pedro Sula. (Mar. 6 Tr. 83:23-25).<sup>16</sup>

114. During a conversation about the pending cocaine load, CW-2 proposed using a white Hummer as a bribe to one of the Honduran National Police so “they can work and we can trust them.” (Mar. 6 Tr. 84:3-12).

115. In response, the defendant proposed to offer the Hummer to General Pacheco, and indicated that he would call General Pacheco. (Mar. 6 Tr. 84:13-18; Mar. 16 Tr. 51:4-8).

116. After placing a brief call, the defendant told CW-2 that he sent a photograph of the Hummer to General Pacheco, and that he was “waiting” to introduce the Sources to General Pacheco in Tegucigalpa. (Mar. 6 Tr. 84:19-22).

**C. Late-June 2014: The Defendant Meets with Additional Honduran National Police**

117. The Sources returned to Honduras in late-June 2014, and they participated in a recorded meeting in Tegucigalpa with the defendant and the six former members of the Honduran

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<sup>16</sup> In roughly the same period, and at the same body shop, the Sources were introduced to other members of the Honduran National Police during a meeting not attended by the defendant. (Mar. 6 Tr. 82:11-83:7).

National Police charged in Superseding Indictment S1 15 Cr. 174 (LGS) (the “Honduran National Police Defendants”). (GX 5; GX 5-A (still images from the recording); Mar. 6 Tr. 84:23-85:22).

118. The defendant acted as CW-2’s “representative” during the meeting with the Honduran National Police Defendants and the Sources, and was asked by CW-2 to make sure that “everything went fine regarding the maps [of Honduras] with the police.” (Mar. 6 Tr. 85:10-15).

119. During the meeting, the Sources explained that the cocaine shipment was “heading to New York,” and that they faced time pressure to “cross to the United States.” (GX 5 at 30:1-19).

120. CS-2 said that he wanted a “controlled route . . . to the fullest,” and that he expected to have “separate” support from the Honduran “intelligence side”—referring to the defendant’s efforts, including the anticipated introduction to the “Intelligence General,” *i.e.*, General Pacheco. (GX 5 at 7:2-6, 8:7-11; *see also* GX 5 at 29:19 (CS-2 explaining that “it’s all on what the intelligence man tells me. The general from here will support us by receiving [U/I]”).

121. The Honduran National Police Defendants placed a map of Honduras on the table at the meeting and described to the defendant and the Sources the Honduran law enforcement presence along potential routes for the cocaine between Limon, Colon and La Entrada, Copan. (*E.g.*, GX 5 at 5:21, 9:1-33).<sup>17</sup>

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<sup>17</sup> For example, one of the Honduran National Police Defendants assured the defendant and the Sources that, in the vicinity of El Progreso (east of San Pedro Sula), there were two members of the “Preventive” police—*i.e.*, the *Policía Nacional Preventiva*—“on a bike, 2 in patrol, the max 3. But from 12:00 midnight, to 6:00 in the morning there’s no one.” (GX 5 at 22:27-23:4).

122. In exchange for their assistance, the Honduran National Police Defendants requested new phones for communications, vehicles to use, a pool of \$200,000 for bribes to other officials, and bribes of \$100,000 per person for themselves (“[I]ndependently from the 200[,000 dollars]. . . . [a]nd the cars”). (GX 5 at 16:19, 18:19-19:3, 28:1-17, 36:21-35, 45:10-12).

**D. Late-June 2014: The Defendant Introduces CS-2 to General Pacheco**

123. Around the time of the meeting between the defendant, the Honduran National Police Defendants, and the Sources, the defendant introduced CS-2 to General Pacheco in another recorded meeting. (GX 6; GX 6-A (still images from the meeting)).

124. Carias—the passenger who rode with the defendant and CW-2 while escorting the fall 2013 cocaine load that arrived in Colon, and who was discussed at the defendant’s December 14, 2013 meeting with CW-2, *see* paragraphs 58-61, 89, *supra*—picked the defendant and CS-2 up, and the defendant directed him to take them “to Tinoco’s.” (GX 6 at 7:17; *see also* GX 1 at 9:21; Mar. 6 Tr. 78:9-23).

125. After they arrived, one of General Pacheco’s aides greeted the defendant (“Mr. Fabio”), and the defendant explained to CS-2 that “[s]he already knows me.” (GX 6 at 17:11-27).

126. When General Pacheco entered the office, the defendant introduced CS-2 as a “friend.” (GX 6 at 19:19).

127. CS-2 then explained to General Pacheco that he and the defendant wanted to know if General Pacheco “would be able to cooperate,” by providing “authorization” and “consent,” for CS-2 and the defendant to “come here with merchandise, with drugs.” (GX 6 at 19:25-20:1).

128. The defendant assured General Pacheco that “it’s not much” cocaine, but General Pacheco walked out of the room abruptly. (GX 6 at 20:3-11).

129. In approximately July 2014, the defendant spoke with General Pacheco again about the Sources, but later informed CW-2 that General Pacheco “got mad,” “[w]on’t put up with that shit,” and “‘‘thought that [the meeting] was something else.’’” (GX 8 at 4:25-6:9).

**E. June 26, 2014: The Defendant Meets Again with Colonel Amaya**

130. On June 26, 2014, the defendant met again with Colonel Amaya to discuss the cocaine shipment, and the meeting was also attended by the Sources and an associate of the *Cachiros* named Jose Antonio Funez Lisser (“Funez”). (GX 7; GX 7-A (still images from the meeting)).

131. CS-2 confirmed that the three-ton shipment—“[t]hree big ones”—would be arriving “[b]y water,” that he had “the police taken care of,” and that he also wanted to obtain assistance from the Honduran military (“the green ones”). (GX 7 at 10:29-33, 12:11-35; *see also* GX 7 at 24:23 (CS-2 asking about “Marines”)).

132. Funez indicated that he could help receive the load, that “[e]verything is safe,” and that he only worked with “trustworthy people.” (GX 7 at 10:11, 10:23, 11:11; *see also* GX 7 at 15:4 (“We’ll pick up . . . the whole route is clean.”)).

133. Funez expressed concern to the defendant and the Sources about involving Honduran officials in the cocaine shipment because he considered the levels of “corruption” to be tantamount to “treason.” (GX 7 at 20:11-21:1).

134. CS-2 indicated that Funez was “hired” for the “logistics” associated with receiving the maritime cocaine shipment, but “not . . . in the area of security” because Funez did not have the type of military connections that the defendant had touted. (GX 7 at 19:9, 20:1).

**F. July – December 2014: Further Communications Between the Defendant and CW-2**

135. Between July and September 2014, the defendant repeatedly expressed interest in completing the cocaine shipment and receiving payment from CS-2. (*E.g.*, GX 8 at 2:25 (“Let’s start to work”); *id.* at 7:23 (“We need \$”); *id.* at 9:11 (“When is the paper coming?”); *id.* at 21:13-15 (“Yes man, and your friend [CS-2] . . . [w]hat happened to him[?]”).

136. In August 2014, the defendant and CW-2 exchanged communications relating to the following:

a. The defendant informed CW-2 that he had urged Lobo Sosa (“the boss” // “*al Jefe*”) and Honduran President Juan Orlando Hernandez (“JO”) to “support” CW-2 and CW-3 because the Honduran government had “already taken enough from them” and CW-2 and CW-3 were “good people” (GX 8 at 9:25-10:27);

b. CW-2 requested a meeting with Lobo Sosa and Juan Gomez, but the defendant suggested it would be better to include congressman Oscar Najera in the meeting rather than Gomez because, *inter alia*, Najera “was here with us Tuesday” (GX 8 at 12:1-15);

c. The defendant and CW-2 communicated about the narcotics-related arrest of Arnaldo Urbina Soto, who had been the mayor of Yoro (the capital of the Yoro Department), and the defendant agreed that Tony Hernandez (the brother of President Hernandez) was “working with the Valles” (GX 8 at 15:1-27; *see also* Mar. 16 Tr. 54:15-56:5); and<sup>18</sup>

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<sup>18</sup> Marguerite Cawley, *Honduras Mayor Accused of Leading Murderous Drug Running Gang* (July 29, 2014), <http://www.insightcrime.org/news-briefs/honduras-mayor-accused-of-leading-murderous-drug-running-gang> (last accessed Mar. 30, 2017); *see also* OFAC, *Treasury Targets Honduran Drug Trafficking Organization and Its Network* (Aug. 20, 2014) (“The *Los Valles* drug trafficking organization is one of the most prolific Central American narcotics trafficking

d. The defendant asked CW-2 to purchase from him—or, alternatively, issue a loan secured by—a “house” that the defendant owned in the Las Lomas area of Tegucigalpa (GX 8 at 19:5-13; *see also* GX 8 at 22:9-22:25, 24:1-15).

137. In September 2014, the defendant wrote to CW-2 that Lobo Sosa “sends you his greetings.” (GX 8 at 25:25; *see also* Mar. 6 Tr. 87:3-8).

#### **IX. The Defendant Is Arrested After Traveling to Haiti to Collect Millions of Dollars in Drug Proceeds**

138. In approximately early 2015, CW-2 surrendered voluntarily in the United States. (Mar. 6 Tr. 10:24-11:2).

139. The defendant was aware that CW-2 was incarcerated, and made arrangements so that “CW-2 could reach Lobo from prison” by phone. (PSR ¶ 24; *see also* GX 9 at 4:25 (CW-2 telling defendant that “talking about it [*i.e.*, the drug shipment] here [*i.e.*, in prison] is very f very rough, man, it complicates things”); GX 9 at 5:1 (CW-2 inviting defendant to “come here . . . so we can talk in person”)).

140. On March 17, 2015, CW-2 called the defendant and told him that he would call again in a few days from a location that was more secure than the prison facility (“In a more calm setting”). (PSR ¶ 24).

141. On April 5, 2015, the defendant used an email account subscribed in a false name to write to CW-2 in prison. (PSR ¶ 25).

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organizations.”), <https://www.treasury.gov/press-center/press-releases/Pages/jl2611.aspx> (last accessed Mar. 30, 2017).

142. During an April 7, 2015 consensually recorded call between CW-2 and the defendant:

a. The defendant said that he was calling from a “safe number” and that the three-ton drug transaction involving the Sources had been successfully completed (PSR ¶ 26; *see also* GX 9 at 2:6, 4:9);

b. The defendant described the news as a “blessing,” and confirmed that he was to receive a stake in 300 kilograms from the shipment worth a total of approximately \$2.7 million (PSR ¶ 26; *see also* GX 9 at 4:19, 7:1-27);

c. The defendant agreed to meet with the Sources to pick up the shares of the proceeds of the shipment that were owed to the defendant and CW-2 (PSR ¶ 26); and

d. The defendant told CW-2 that he spoke with President Hernandez about CW-2 and CW-3 “the other day,” and objected during the conversation to President Hernandez’s assertion that CW-2 and CW-3 were “bad” by insisting that they were instead “humble” (GX 9 at 16:15-17:11).

143. During a May 11, 2015 consensually recorded call between CW-2 and the defendant:

a. The defendant indicated that he was “always standing at the foot of the flag, just waiting here . . . like a falcon,” and “excited . . . [l]ike a country bride” to pick up the drug money (GX 10 at 2:18-22, 5:23, 8:9);

b. CW-2 told the defendant that CS-2 would be prepared to deliver the cash the following week at a location outside of Honduras (PSR ¶ 27; *see also* GX 10 at 3:5-17);

c. The defendant told CW-2: “[Y]ou’ve been good to me, . . . and the appreciation I’ve always had for you . . . Look, I’d do anything for you. I’ll go to the moon and back for you” (GX 10 at 8:1); and

d. The defendant offered to sell CW-2 an “apartment” in the Portal del Bosque area of Tegucigalpa (GX 10 at 7:3-15).

144. Around the time of the May 11, 2015 call between the defendant and CW-2, the defendant agreed to meet CS-2 in Haiti on May 20, 2015. (PSR ¶ 28).

145. On May 20, 2015, the defendant traveled to Port-au-Prince, Haiti, and was arrested by Haitian authorities. (PSR ¶ 29).

146. The defendant was subsequently expelled by Haitian officials, taken into custody by the DEA, and transported to the Southern District of New York. (PSR ¶ 29).

#### **LEGAL STANDARD**

“The district court need only find disputed facts relevant to sentencing determinations by a preponderance of the evidence.” *United States v. Nunez*, 547 F. App’x 65, 66 (2d Cir. 2013) (summary order) (citing *United States v. Garcia*, 413 F.3d 201, 220 n.15 (2d Cir. 2005)); accord *United States v. Cordoba-Murgas*, 233 F.3d 704, 708 (2d Cir. 2000). Moreover, the Federal Rules of Evidence do not apply. *E.g.*, Fed. R. Evid. 1101(d)(3). “For example, courts are not bound by rules governing hearsay, so long as the basis for the court’s determination has indicia of reliability and is not otherwise contrary to a defendant’s due process rights.” *United States v. Gilleo*, No. 15 Cr. 346 (KBF), 2016 WL 1090614, at \*4 (S.D.N.Y. Mar. 18, 2016).

**PROPOSED CONCLUSIONS OF LAW**

The Government respectfully submits that the following conclusions of law regarding the defendant's relevant conduct, the applicable Guidelines range, asset forfeiture, and the appropriateness of a fine are supported by a preponderance of the evidence offered at the hearing:

**I. The Defendant's Relevant Conduct Commenced Following his Agreement with President Lobo Sosa and CW-2 to Provide Security and Logistical Support for the *Cachiros***

Pursuant to U.S.S.G. § 1B1.3, the defendant's relevant conduct includes all of his activities with and on behalf of drug traffickers following his 2010 agreement with President Lobo Sosa and CW-2 to support and protect drug-trafficking and money-laundering activities in Honduras.

**A. Applicable Law**

Under the Guidelines, the base offense level, specific offense characteristics, and any adjustments are to be calculated based on, among other things:

(1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

[1](B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were--

(i) within the scope of the jointly undertaken criminal activity,

(ii) in furtherance of that criminal activity, and

(iii) reasonably foreseeable in connection with that criminal activity;

that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.

(2) solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction . . . .

U.S.S.G. § 1B1.3(a).

Under U.S.S.G. § 1B1.3(a)(1)(B), “[a] district court may sentence a defendant based on the reasonably foreseeable acts and omissions of his co-conspirators that were taken in relation to a conspiracy.” *United States v. Getto*, 729 F.3d 221, 234 (2d Cir. 2013). Before applying the Guidelines based on the conduct of co-conspirators, the court must make “two particularized findings”: “(1) that the scope of the activity to which the defendant agreed was sufficiently broad to include the relevant, co-conspirator conduct in question; and (2) that the relevant conduct on the part of the co-conspirator was foreseeable to the defendant.” *Id.* (internal quotation marks and alterations omitted).

Pursuant to U.S.S.G. § 1B1.3(a)(2), “[w]ith respect to offenses involving aggregate harms, such as drug offenses, relevant conduct consists of all acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction.” *United States v. Chavin*, 613 F. App’x 80, 81 (2d Cir. 2015) (summary order) (quoting *United States v. Pellegrini*, 929 F.2d 55, 56 (2d Cir. 1991)).

For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*.

[ . . . ]

Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors that are appropriate to the determination of whether offenses

are sufficiently connected or related to each other to be considered as part of the same course of conduct include the degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses. When one of the above factors is absent, a stronger presence of at least one of the other factors is required.

U.S.S.G. § 1B1.3 cmt. n.5(B)(i)-(ii) (emphases added).

## **B. Discussion**

### **1. The Scope of the Defendant's Relevant Conduct**

The defendant's relevant conduct—for purposes of applying the Guidelines and imposing sentence—includes: (i) the defendant's 2010 agreement with President Lobo Sosa, CW-2, and others to support and protect the *Cachiros* drug-trafficking and money-laundering activities, *see* U.S.S.G. § 1B1.3(a)(1)(A); (ii) the defendant's activities pursuant to that agreement, including his advance notice of between five and eight *Cachiros* cocaine loads so that he would be available if needed to prevent interference with the shipments, his exploration of two potential drug-trafficking airstrips in the Olancho Department, the 1.4 tons of cocaine in aggregate that the defendant helped escort personally during two separate shipments, his facilitation of money laundering using Honduran government contracts, and the three additional tons of cocaine that the defendant agreed to help transport prior to his arrest, *see id.* §§ 1B1.3(a)(1)(A), 1B1.3(a)(3); (iii) the extensive and reasonably foreseeably criminal activities undertaken by CW-2, CW-3, and the *Cachiros* pursuant to the agreement with the defendant and President Lobo Sosa, *see id.* § 1B1.3(a)(1)(B); (iv) the defendant's assistance to Carlos Lobo in exchange for a \$100,000 bribe, *see id.* § 1B1.3(a)(2); and (v) the defendant's cocaine-trafficking activities at Puerto Cortes during the same timeframe with Fredy Renan Nájera Montoya, Miguel Pastor, and Sinaloa Cartel personnel in exchange for a \$50,000 bribe, *see id.*

The “scope of the jointly undertaken criminal activity,” *id.* § 1B1.3(a)(1)(B)(i), was set during the defendant’s 2010 meeting with President Lobo Sosa, Juan Gomez, Oscar Najera, and CW-2. At that meeting, the defendant agreed to act as a conduit between the *Cachiros*, President Lobo Sosa, and other Honduran officials in order to: (i) protect the drug-trafficking activities of the *Cachiros*; (ii) help CW-2 and CW-3 avoid extradition to the United States; and (iii) facilitate money laundering by the *Cachiros* through the issuance of government contracts (Mar. 6 Tr. 27:21-30:10). *See* U.S.S.G. § 1B1.3(a)(1)(B)(i); U.S.S.G. § 1B1.3 cmt. n.3(B) (“[T]he court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others.”); *cf. In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d 93, 113 (2d Cir. 2008) (“A defendant’s knowing and willing participation in a conspiracy may be inferred from . . . [his] presence at critical stages of the conspiracy that could not be explained by happenstance, or a lack of surprise when discussing the conspiracy with others.” (internal quotation marks omitted)).<sup>19</sup> The *Cachiros* initially obtained this agreement by bribing Lobo Sosa:

Q. You testified that you had given the president some money, correct?

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<sup>19</sup> Even if the defendant had never participated directly in, or agreed to participate directly in, a *Cachiros* cocaine shipment, evidence of security or general logistical support to drug traffickers in exchange for payments has been found sufficient to sustain narcotics-conspiracy convictions. *E.g., United States v. Adams*, 316 F. App’x 60, 64 (2d Cir. 2009) (summary order) (finding trial evidence sufficient where defendant “agreed to assist [drug-trafficker] with proposed narcotics shipments and sought a fee for his role in the importation”); *see also United States v. LaFontante* 417 F. App’x 854, 857 (11th Cir. 2011) (summary order) (finding trial evidence sufficient where “co-defendants all gave or accepted bribes to ensure the safe passage of cocaine through international borders”); *United States v. Robles*, 193 F.3d 519, 1999 WL 707902, at \*6 (5th Cir. 1999) (unpublished decision) (finding evidence sufficient where defendant “knew enough about [the drug-trafficking organization’s] activities to know they would want police protection” and therefore “knew the nature and purpose of the . . . conspiracy” and “tried to find out whether [a co-conspirator] was under investigation”).

A. Yes, sir.

Q. And, generally, by giving that money to the president, you had cut a deal with the president, correct?

A. Yes, sir.

Q. And, part of that deal was leave us alone?

A. Part of that deal, sir, well, we brought up the subject of extradition, the subject of security for the *Cachiros*, the subject of Oscar Alvarez, and the contracts he was going to give us, to our companies, so we could launder money.

(Mar. 16 Tr. 40:20-41:5). Bribes and kickbacks paid directly to the defendant followed shortly thereafter, and the defendant later expressed frustration to CW-2 that Lobo Sosa believed the *Cachiros* were paying the defendant even more than they actually were. (Mar. 6 Tr. 38:3-7). In exchange for these payments, as CW-2 explained: “The president and *his son* [*i.e., the defendant*] agreed to support us in *anything we did*.” (Mar. 16 Tr. 28:21-22 (emphases added)).

Following that meeting, CW-2 considered the defendant to be a member of the *Cachiros*. (Mar. 16 Tr. 57:18-58:6). The *Cachiros* then distributed huge quantities of cocaine with impunity between 2010 and 2013 pursuant to, and in furtherance of, the agreement between, the defendant, President Lobo Sosa, CW-2, and others. *See* U.S.S.G. § 1B1.3(a)(1)(B)(ii). The nature and extent of these activities by the *Cachiros* were reasonably foreseeable to the defendant, who is an attorney (PSR ¶ 68), because the agreement involved high-level Honduran officials and substantial sums of money paid as bribes and kickbacks. *See* U.S.S.G. § 1B1.3(a)(1)(B)(iii).<sup>20</sup>

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<sup>20</sup> While it was foreseeable to the defendant that weapons would be possessed in furtherance of these drug-trafficking activities, the Government is not taking the position that the extensive violence perpetrated by CW-2 and CW-3 was within the scope of the defendant’s agreement or reasonably foreseeable to him. (*But see* GX 9 at 17:5-11 (defendant responding “[t]hat’s right” to

The defendant was also aware of the scope and sophistication of the *Cachiros* organization because he directly facilitated their money laundering by providing assistance to their front companies, including *INRIMAR*, *PALBASA*, and *Minera Mi Esperanza SA*. (E.g., Mar. 6 Tr. 30:22-33:10, 34:1-37:3; *see also* GX 23; GX 24). Thus, the nature of the steps taken by the *Cachiros* to project the appearance of legitimacy and mitigate risks associated with their ongoing criminal activities made it reasonably foreseeable to the defendant that CW-2 and CW-3 intended to continue—and in fact were—engaging in extensive criminal conduct pursuant to the promises and support that they secured from the defendant, President Lobo Sosa, and other Honduran officials.

The defendant's relevant conduct also includes his support of Carlos Lobo and his cocaine-trafficking activities at Puerto Cortes because these actions would be grouped pursuant to U.S.S.G. § 3D1.2(d) had the defendant been convicted of multiple drug-trafficking counts based on this conduct. *See* U.S.S.G. § 1B1.3(a)(2). In 2012 and 2013, while the defendant was a member of the *Cachiros*: (i) he agreed to assist Carlos Lobo after soliciting the introduction from CW-2 (Mar. 6 Tr. 56:12-57:19); and (ii) he facilitated additional politically connected cocaine trafficking at Puerto Cortes involving Nájera Montoya (a congressman), Pastor (a *SOPTRAVI* official), and Sinaloa Cartel personnel who were importing the cocaine into the United States (PSR ¶¶ 13-15). *See United States v. Adams*, 303 F. App'x 926, 927 (2d Cir. 2008) (summary order) (“[T]o the extent [defendant] submits that disparities in time and participants between the charged and uncharged trafficking precluded a same-course-of-conduct finding, we reject the argument as

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CW-2's comment that “[y]ou know we were bad but . . . with our enemies but beyond that, no man”).

without merit.”); *United States v. Burnett*, 968 F.2d 278, 280 (2d Cir. 1992) (“The ‘same course of conduct’ concept . . . looks to whether the defendant repeats the same type of criminal activity over time. It does not require that acts be ‘connected together’ by common participants or by an overall scheme. It focuses instead on whether defendant has engaged in an identifiable ‘behavior pattern’ of specified criminal activity.” (quoting *United States v. Perdomo*, 927 F.2d 111, 115 (2d Cir. 1991))). Just as the defendant later tried to help CW-2 avoid seizures by *OABI* in exchange for a bribe, he agreed to help “with some properties that had been seized from . . . Mr. Carlos Lobo” in exchange for \$100,000. (Mar. 6 Tr. 57:5-6). And facilitating official protection for drug loads at Puerto Cortes, in exchange for cash, is similar to the protections that the defendant helped provide to the *Cachiros*. Therefore, these activities are part of the defendant’s relevant conduct under U.S.S.G. § 1B1.3(a)(2).

## **2. The Government Met Its Burden at the Hearing**

The Government established the full scope of the defendant’s agreement and relevant conduct by a preponderance of the evidence at the hearing through the testimony of CW-2 and other corroborating evidence. See *United States v. Rawls*, 523 F. App’x 772, 777 (2d Cir. 2013) (summary order) (affirming district court’s decision to credit cooperating witness testimony at sentencing, including hearsay, where testimony was “adequately corroborated by phone calls”). First, CW-2 faced powerful incentives to testify truthfully at the hearing. When he surrendered in the United States, he was charged with a single count of participating in a cocaine-importation conspiracy, in violation of Title 21, United States Code, Section 963, with a mandatory minimum

sentence of 10 years.<sup>21</sup> Around that time, the DEA helped bring several of CW-2's relatives to the United States based on safety concerns arising from CW-2's assistance to the United States. (Mar. 16 Tr. 53:21-54:9). In April 2016, CW-2 pleaded guilty to a five-count Superseding Information that included charges based almost exclusively on his voluntary disclosures during the cooperation process, and he now faces a mandatory minimum sentence of life imprisonment plus a mandatory 30-year consecutive term. (See DX 3; DX 4; Mar. 6 Tr. 88:11-13; Mar. 16 Tr. 21:9-10). He also agreed to forfeit the proceeds of his crimes in an amount to be determined at sentencing. (DX 3 at 3; Mar. 16 Tr. 32:10-22). CW-2 explained at the hearing that one of his principal obligations under his cooperation agreement is to "[t]ell the truth," and that the Government will only file a "5k1 letter" at his sentencing if he does so (Mar. 6 Tr. 88:14-89:1; Mar. 16 Tr. 23:13-17). See e.g., *United States v. Carr*, 424 F.3d 213, 228 (2d Cir. 2005) ("The agreements did, after all, require that the witnesses 'tell the truth' to benefit from them."); *United States v. Basciano*, No. 03 Cr. 929, 2008 WL 794945, at \*5 (E.D.N.Y. Mar. 24, 2008) (finding it "indisputably true" that cooperation agreements provide cooperating witnesses with "motivations to tell the truth"). Thus, security concerns and the severe mandatory minimum sentence CW-2 now faces provided strong motivations for him to testify truthfully at the hearing.

Second, CW-2's testimony regarding the defendant's involvement in large-scale drug-trafficking activities with other Honduran officials in exchange for bribes is corroborated by the defendant's undisputed participation in such activities—based on independent evidence separate from CW-2—with Nájera Montoya, Pastor, and others at Puerto Cortes. (PSR ¶¶ 13-15).

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<sup>21</sup> (See Indictment, *United States v. Rivera Maradiaga*, No. 13 Cr. 413 (JGK) (dkt. no. 196)).

Third, photographs depicting the defendant and/or President Lobo Sosa smiling with and embracing CW-3—one of the most prolific and violent drug traffickers in Honduras—provide a visual depiction of the corrupt relationship described by CW-2. (GX 23; GX 24). Along the same lines, the evidence at the hearing included a photograph of the defendant lounging in front of a bag of cash provided by CW-2. (GX 11-A; *see also* Mar. 6 Tr. 74:5-75:12).

Fourth, there is no tension between CW-2's testimony about the scope of the conspiracy and any anti-narcotics initiatives by the Honduran government during President Lobo Sosa's term. At the hearing, there was no evidence offered of such initiatives, much less evidence that initiatives were driven by Lobo Sosa; there were only questions from defense counsel. (Mar. 16 Tr. 42:11-45:6). Even assuming such efforts occurred, however, taking steps to target *other* drug traffickers is entirely consistent with the 2010 promise of the defendant and Lobo Sosa to protect the *Cachiros*. So too is the promulgation of a so-called "extradition policy" without causing the government to actually extradite Honduran citizens based on drug-trafficking charges. (Mar. 16 Tr. 45:7-10).<sup>22</sup> Similarly, whereas Carlos Lobo faced asset seizures by Honduran authorities prior to meeting with the defendant in 2012, CW-2 and CW-3 were not subject to seizures by *OABI* until after the *Cachiros* were targeted publicly by United States authorities at

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<sup>22</sup> Defense counsel suggested during the hearing that members of the Valle-Valle family were extradited (Mar. 16 Tr. 47:1-2), but that did not occur until approximately December 2014 (after Lobo Sosa left office). *See Honduran Nationals Charged with Drug Trafficking Arrived in South Florida after being Extradited* (Dec. 18, 2014), <https://www.justice.gov/usao-sdfl/pr/honduran-nationals-charged-drug-trafficking-arrived-south-florida-after-being> (last accessed Mar. 30, 2017). Similarly, the Honduran Supreme Court did not authorize the extradition of Carlos Lobo until approximately May 2014 (also after Lobo Sosa left office). *See* Jen Psaki, Dep't of State, *Extradition of Carlos Lobo* (May 9, 2014), <https://2009-2017.state.gov/r/pa/prs/ps/2014/05/225844.htm> (last accessed Mar. 30, 2017).

OFAC. (Mar. 16 Tr. 26:9-12, 44:18-25, 46:23-25). The defendant also remained true to his corrupt deal with CW-2 in 2013 as *OABI* appeared prepared to proceed against the *Cachiros* by helping CW-2 obtain a list of the planned seizures, and thereafter by participating in the planning of the three-ton cocaine shipment notwithstanding the by-that-time public focus of law enforcement on the *Cachiros* in both the United States and Honduras.

Finally, the defendant's recorded statements and electronic communications corroborate CW-2's testimony and confirm his close criminal bond with CW-2—another one of the most prolific and violent drug traffickers in Honduras. For example, the defendant communicated with CW-2 about President Lobo Sosa, General Pacheco, Colonel Amaya, Captain Mendoza, Carias, Juan Gomez, Oscar Najera, Pastor, President Hernandez, and Tony Hernandez (the President's brother).<sup>23</sup> While discussing the multi-ton cocaine shipment with CW-2 in December 2013, the defendant responded, “[o]h, good,” when CW-2 proposed that they “ride ahead” of the cocaine “just like the previous times” so that they could prevent law enforcement interference. (GX 1 at 5:13-15). The defendant also referred back to his participation in the 1,000-

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<sup>23</sup> (*E.g.*, GX 8 at 4:25-27 (“Tionoco . . . [w]on’t put up with that shit”); GX 8 at 10:11-13 (“I told the boss . . . [w]ith JO [*i.e.*, President Hernandez]”); GX 8 at 12:3 (“Not to Juan [Gomez]”); GX 8 at 12:13 (“Oscar Najera”); GX 8 at 12:17 (“Are you referring to Juan Gomez”); GX 8 at 15:15-17 (defendant responding “[y]es” to assertion by CW-2 that “his brother, Toni Hernandez, is working with the Valles”); GX 8 at 16:1 (“It looks like he is going to be eternal in that position JOH [*i.e.*, President Hernandez]”); GX 8 at 26:25 (“Comander, the General [*i.e.*, Lobo Sosa] sends you his greetings”); GX 8 at 29:29-30:1 (“They say that Colonel Amaya . . . [i]s in the hospital”); GX 9 at 10:21-23 (defendant responding “[t]hat’s right” to assertion by CW-2 that President Hernandez (“Juan Orlando”) was “slipping away from you all, like he’s flipping on you all there”); GX 10 at 12:7-13 (defendant describing interaction between Lobo Sosa and Miguel Pastor and indicating that he wanted to speak to Pastor “to find out what the situation was [U/I], you,” *i.e.* CW-2); GX 11:3 (“Mendoza is there,, he just got in with him [*i.e.*, General Pacheco]”)).

kilogram shipment by indicating that he would use “the same” security team, including Captain Mendoza (“*el chelito*”) and Jose Alfredo Carias (“[t]he Carias guy”). (GX 1 at 9:5, 17, 21). Consistent with that plan, Carias later drove the defendant and CS-2 to the meeting with General Pacheco. (GX 6 at 3:27, 7:5-19).

CW-2’s testimony regarding the involvement of General Pacheco and the defendant’s relationship with him is further corroborated by the defendant’s introduction of CS-2 to Pacheco. (GX 6; GX 6-A). In that meeting, the defendant told Pacheco that CS-2—a purported Mexican drug trafficker—was a “friend,” and prompted CS-2 to tell Pacheco that he was an associate of “[t]he friend,” *i.e.*, CW-2. (GX 6 at 19:15-19). The defendant also assured Pacheco that the three tons at issue was “not much” after CS-2 indicated that they wanted to “come here with merchandise, with drugs. (GX 6 at 20:1, 9). The fact that Pacheco did not have either the defendant or CS-2 arrested after CS-2 explicitly proposed a drug shipment in Pacheco’s government office is, by itself, corroborative of CW-2’s testimony regarding support of the *Cachiros* by the defendant and Pacheco.<sup>24</sup>

In the May 17, 2014 meeting with the Sources, the defendant responded “[w]e have done it” when asked by CS-2 if the defendant had previously worked on drug shipments with CW-

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<sup>24</sup> Especially in light of the unintelligible parts of the recording during the meeting between the defendant, General Pacheco, and CS-2, Pacheco’s response to CS-2’s proposal was ambiguous. (GX 6 at 20:1-25). In any event, General Pacheco’s exit from the meeting is in no way mitigating for purposes of the defendant’s sentencing. The defendant confidently brought a man he believed was a drug trafficker into a Honduran government office, and tried to persuade a Honduran official to support a drug transaction. Viewed in isolation, that conduct is troubling. Viewed in the context of CW-2’s testimony, the defendant’s introduction of CS-2 to General Pacheco is corroborative of their overall course of criminal dealings dating back to at least 2010.

2. (GX 3 at 9:1-3). Nor did the defendant object when CW-2 told CS-2 in his presence that the *Cachiros* “helped [Lobo Sosa] with a bit of money” during his “campaign.” (GX 3 at 13:7-21). During the same exchange, CW-2 indicated that he had worked on drug shipments “directly with him,” *i.e.*, the defendant, and the defendant responded that there was “[t]rust at a 100 percent.” (GX 3 at 13:23, 29). Again corroborating CW-2’s testimony that the defendant acted as a conduit between the *Cachiros* and Honduran officials for purposes of obtaining support and protection, the defendant also explained during the meeting that he had connections to “current” Honduran military officials who had “remain[ed] as friends” even after Lobo Sosa left office. (GX 3 at 15:12-22).

The evidence also reflects numerous professions by the defendant of profound trust in, and allegiance to, CW-2.<sup>25</sup> Moreover, rather than expressing hesitation about participating in a three-ton drug load belonging to now-detained Mexican kingpin, Chapo, the defendant jumped at the chance and repeatedly urged CW-2 to commence the shipment so that they could get paid.<sup>26</sup> Even after CW-2 was incarcerated, the defendant exclaimed that he was “waiting . . . like a falcon” and “excited . . . [l]ike a country bride” to pick up his share of the proceeds from the three-ton

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<sup>25</sup> (*E.g.*, GX 3 at 14:5 (“Working with trust is the best.”); GX 8 at 17:15 (“Friendship is more important above all.”); GX 8 at 18:29 (“As you know my usual affection for you.”); GX 8 at 24:15 (“I only trust you.”); GX 9 at 5:3 (“Look, friends are friends through thick and thin.”); GX 9 at 15:15 (“I’m always going to be loyal. [U/I] Comando”); GX 10 at 8:1 (“[Y]ou’ve been good to me, . . . and the appreciation I’ve always had for you . . . Look, I’d do anything for you. I’ll go to the moon and back for you.”); GX 10 at 12:1 (“[T]he most important thing is friendship.”)).

<sup>26</sup> (*E.g.*, GX 11 at 2:9 (“Waiting on instructions”); GX 8 at 3:3 (“We have already waited for days Comando”); GX 8 at 7:13, 23 (“Will he send the papers” // “We need \$”); GX 8 at 9:11 (“When is the paper coming”); GX 8 at 14:21 (“Any news????”); GX 8 at 21:13-15 (“Yes man, and your friend . . . What happened to him?”)).

cocaine shipment. (GX 10 at 2:18-22, 8:9). The defendant was so confident in his corrupt relationship with CW-2 that he spoke openly about a huge cocaine shipment with a man who was in jail in the United States facing life imprisonment. Therefore, in light of CW-2's incentives and the corroborating evidence, the Court should credit his testimony for purposes of the hearing.

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In sum, the testimony of CW-2 and other evidence at the hearing supports a finding by a preponderance of the evidence—*i.e.*, it is more likely than not—that:

- the defendant joined the charged conspiracy by approximately 2010, when he agreed to provide security and logistical support for the drug-trafficking and money-laundering activities of CW-2 and the *Cachiros* at a meeting that also involved President Lobo Sosa, Juan Gomez, and Oscar Najera;
- the defendant subsequently made good on that promise, in exchange for numerous cash payments, by participating in and supporting the drug-trafficking and money-laundering activities of the *Cachiros* from approximately 2010 until his arrest;
- the defendant engaged in similar courses of conduct, in exchange for additional bribes, with Carlos Lobo and, separately, Nájera Montoya, Palacios Moya, and members of the Sinaloa Cartel transporting cocaine through Puerto Cortes; and
- all of the foregoing activities—including reasonably foreseeable activities by others on behalf of the *Cachiros* in furtherance of the agreement arising out of the defendant's 2010 meeting—are part of the defendant's relevant conduct pursuant to U.S.S.G. § 1B1.3.

## **II. The Guidelines Recommend a Sentence of Life Imprisonment**

### **A. The Offense Involved More than 450 Kilograms of Cocaine**

Pursuant to U.S.S.G. §§ 2D1.1(a)(5) and 2D1.1(c)(1), because the defendant's offense involved more than 450 kilograms of cocaine, the base offense level is 38.

## 1. Applicable Law

A “defendant is accountable not only for all the narcotics with which he was directly involved, but also, in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of narcotics that were within the scope of the criminal activity that he jointly undertook.” *United States v. Chavez*, 549 F.3d 119, 136 (2d Cir. 2008) (internal quotation marks omitted). “Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance” based on the preponderance of the evidence. U.S.S.G. § 2D1.1 cmt. n.5; *United States v. Rawls*, 523 F. App’x at 777.

## 2. Discussion

The defendant’s offense involved an enormous amount of cocaine. He participated directly in—by helping to escort personally—a 400-kilogram shipment and a 1,000-kilogram shipment (Mar. 6 Tr. 42:9-10, 58:1). *See* U.S.S.G. § 1B1.3(a)(1)(A); *see also, e.g., United States v. Garcia*, 476 F. App’x 936, 938 (2d Cir. 2012) (summary order) (“[T]he quantity of drugs attributed to a defendant need not be foreseeable to him when he personally participates, in a direct way, in a jointly undertaken drug transaction.” (internal quotation marks omitted)).<sup>27</sup> Because Section 2D1.1 expressly applies to conspiracies, the defendant is also responsible for the 3,000 kilograms of cocaine that he agreed with the Honduran National Police Defendants and others to

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<sup>27</sup> *Accord* U.S.S.G. § 1B1.3 cmt. n.4(A)(i) (“This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.”).

help distribute prior to his arrest (*e.g.*, GX 3 at 4:1, 6:11-13). *See* U.S.S.G. § 1B1.3(a)(1)(A); *id.* § 1B1.3(a)(3) (noting that relevant conduct includes “all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and *all harm that was the object* of such acts and omissions” (emphasis added)). For example, having previously demanded a financial stake in 10% of the shipment (GX 3 at 6:11-13, 7:11-13), the defendant confirmed his understanding that the object of the agreement was to import 3,000 kilograms of cocaine when he told CW-2 in April 2015 that his share was “300” kilograms (GX 9 at 7:1, 25).

The defendant is also responsible for the approximately 20 tons of cocaine that the *Cachiros* distributed between 2010 and 2013 (Mar. 6 Tr. 13:9-10). *See* U.S.S.G. § 1B1.3(a)(1)(B).<sup>28</sup> “The defendant need not have actual knowledge of the exact quantity of narcotics involved in the entire conspiracy; rather, it is sufficient if he could reasonably have foreseen the quantity involved.” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006). As explained above, the scale of these drug-trafficking activities was within the scope of the defendant’s agreement with President Lobo Sosa, CW-2, and others, and this drug trafficking was conducted with protections from the defendant and other Honduran officials in furtherance of that agreement. The total quantity of cocaine distributed by the *Cachiros* after the defendant joined the conspiracy was also foreseeable to him in light of the sophisticated political protections he helped provide, the size of two loads in which he participated directly, and the fact that CW-2 notified the defendant of between five and eight additional cocaine shipments. (Mar. 6 Tr. 68:4-

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<sup>28</sup> CW-2’s 20-ton estimate includes the 400-kilogram and 1,000-kilogram loads in which the defendant participated directly.

19). Accordingly, pursuant to U.S.S.G. §§ 2D1.1(a)(5) and 2D1.1(c)(1) , the base offense level is 38.

## **B. A Dangerous Weapon Was Possessed During the Offense**

Pursuant to U.S.S.G. § 2D1.1(b)(1), two levels should be added because a dangerous weapon was possessed during the offense.

### **1. Applicable Law**

“The enhancement for weapon possession in [U.S.S.G. § 2D1.1(b)(1)] reflects the increased danger of violence when drug traffickers possess weapons. The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense.” U.S.S.G. § 2D1.1 cmt. n.11(A). “[T]he requirements for imposing a gun possession enhancement are not especially difficult to meet.” *United States v. Crawford-Bey*, 401 F. App’x 624, 626-27 (2d Cir. 2010) (summary order).

### **2. Discussion**

Numerous “dangerous weapon[s]” were possessed during the offense. U.S.S.G. § 2D1.1(b)(1). Pursuant to U.S.S.G. § 1B1.3(a)(1)(A), the defendant is responsible for the AR-15 rifle stored openly in the SUV that he and CW-2 rode in while escorting 1,000 kilograms of cocaine, as well as the pistol possessed by Captain Mendoza during that trip, because the defendant caused Mendoza and his security detail to be present to help escort the shipment (Mar. 6 Tr. 63:21-25). *See* U.S.S.G. § 1B1.3(a)(1)(A) (relevant conduct includes “all acts and omissions . . . willfully caused by the defendant”). The modified AR-15 rifle that CW-2 gave to the defendant as part of the payment for his assistance with the 400-kilogram shipment also warrants application of the enhancement (Mar. 6 Tr. 46:20-47:13). *Cf. Smith v. United States*, 508 U.S. 223, 240 (1993) (“We

therefore see no reason why Congress would have intended courts and juries applying § 924(c)(1) to draw a fine metaphysical distinction between a gun's role in a drug offense as a weapon and its role as an item of barter; it creates a grave possibility of violence and death in either capacity.”). Finally, pursuant to U.S.S.G. § 1B1.3(a)(1)(B), the defendant should be held responsible for weapons possessed by other members of the *Cachiros* for security purposes during their drug-trafficking activities between 2010 and 2013. (See Mar. 6 Tr. 13:20 (CW-2 testifying that members of the *Cachiros* used “AK47s, AR15 rifles, RPG7s, and grenade launchers” during their drug-trafficking activities)). It was foreseeable to the defendant that such weapons would be used to protect the large loads of cocaine at issue because firearms are recognized “tools of the trade,” *e.g.*, *United States v. Mitchell*, 328 F.3d 77, 83 (2d Cir. 2003), and in light of the violent conditions in Honduras and the defendant's knowledge of the involvement of military personnel and police in the crime. Thus, the two-level enhancement pursuant to U.S.S.G. § 2D1.1(b)(1) should be applied.

### **C. The Defendant Bribed and Attempted to Bribe Law Enforcement Officials**

Pursuant to U.S.S.G. § 2D1.1(b)(11), two levels should be added because the defendant bribed, and attempted to bribe, one or more law enforcement officials to facilitate the commission of the offense.

When CW-2 paid the defendant approximately \$50,000 for his assistance with the 1,000-kilogram cocaine shipment, the defendant indicated that he had to “give *more* money” to General Pacheco—a comment that evinces both a previous bribe and an intent to pay another. (Mar. 6 Tr. 67:4-24 (emphasis added)). In addition to the cash, the defendant attempted to bribe General Pacheco by offering him a Hummer in order to induce him to support the three-ton cocaine shipment. (Mar. 6 Tr. 84:3-22). The defendant caused an attempted bribe to the Honduran

National Police Defendants by participating in the June 25, 2014 meeting where they agreed to accept \$100,000 per person to provide security for the drug shipment. (GX 5 at 45:10-12). In light of the bribe-heavy manner in which the defendant, CW-2, CW-3, and others operated during the crime, it is also more likely than not that the defendant paid bribes to: (i) the “chief” of the Honduran National Police in the Cortes Department, in connection with the 400-kilogram cocaine shipment (Mar. 6 Tr. 44:7-15); (ii) Captain Mendoza, Carias, and the military personnel in the two additional SUVs who helped the defendant and CW-2 escort the 1,000-kilogram cocaine shipment (Mar. 6 Tr. 59:18-25, 64:9-20); and (iii) Colonel Amaya (who participated in two meetings with the defendant and CS-2) and the members of the Honduran National Police responsible for the city of La Lima, in connection with the planned three-ton load (Mar. 6 Tr. 82:2-14).

Lastly, the enhancement should be applied based on the bribes paid to law enforcement personnel by CW-2 between 2010 and 2013 (*see* Mar. 6 Tr. 13:21-14:17). U.S.S.G. § 1B1.3(a)(1)(B). The payment of such bribes was within the scope of the defendant’s agreement to support the *Cachiros* as they transported thousands of kilograms of cocaine through Honduras, the bribes were in furtherance of drug-trafficking activities by the *Cachiros* pursuant to the agreement with the defendant, President Lobo Sosa, and others, and the bribes were reasonably foreseeable to the defendant in light of the payments that he received directly from CW-2 and made to others. Therefore, two additional levels should be added pursuant to U.S.S.G. § 2D1.1(b)(11).

#### **D. A Three-Level Aggravating Role Adjustment Is Appropriate**

Pursuant to U.S.S.G. § 3B1.1(b), three levels should be added because the defendant was a manager or supervisor in criminal activity that involved five or more participants and was also extensive.

##### **1. Applicable Law**

“Section 3B1.1(b) of the Guidelines requires a three-step increase in offense level if ‘the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive . . . .’” *United States v. Blount*, 291 F.3d 201, 217 (2d Cir. 2002) (quoting U.S.S.G. § 3B1.1(b)). “A defendant may properly be considered a manager or supervisor if he exercised some degree of control over others involved in the commission of the offense . . . or played a significant role in the decision to recruit or to supervise lower-level participants.” *United States v. Burgos*, 324 F.3d 88, 92 (2d Cir. 2003) (internal quotation marks and alterations omitted). “A ‘participant’ is a person who is criminally responsible for the commission of the offense, but need not have been convicted.” U.S.S.G. § 3B1.1 cmt. n.1. “It is enough for the defendant to manage or supervise a single other participant, so long as the criminal activity involved five or more participants.” *Norville v. United States*, 151 F. Supp. 3d 329, 337 (S.D.N.Y. 2015) (citing *United States v. Payne*, 63 F.3d 1200, 1212 (2d Cir. 1995)).

##### **2. Discussion**

In assessing whether an individual qualifies as a “participant,” the question is whether his involvement was “knowing.” *United States v. Paccione*, 202 F.3d 622, 624 (2d Cir.

2000). As such, the defendant’s offense (including relevant conduct)<sup>29</sup> involved “five or more participants” for purposes of U.S.S.G. § 3B1.1(b), such as:

- The defendant, *United States v. Norman*, 776 F.3d 67, 82 (2d Cir. 2015) (“The defendant himself is to be counted as one of the participants.”);
- President Lobo Sosa, who agreed to use the office of the President and related authority to assist and protect the *Cachiros* drug-trafficking and money-laundering activities in exchange for bribes (*e.g.*, Mar. 6 Tr. 15:24-16:7);<sup>30</sup>
- Juan Gomez and Adan Funes, Honduran politicians who facilitated protection for the *Cachiros* and acted as intermediaries with other Honduran officials in exchange for bribes (Mar. 6 Tr. 14:20-15:2);
- Oscar Najera and Midence Oqueli Martinez, Honduran congressmen from the Colon Department who helped support and protect the *Cachiros* in exchange for bribes (Mar. 6 Tr. 14:20-15:2; *see also* Mar. 6 Tr. 69:19-72:3 (describing bribe to be divided among the defendant, Oscar Najera, and Palacios Moya);
- Fredy Renán Nájera Montoya (a Honduran congressman), Miguel Pastor (a *SOPTRAVI* official), an unnamed Honduran customs official, and a Mexican drug-trafficker working for the Sinaloa Cartel, who all agreed to participate in the cocaine-trafficking scheme at Puerto Cortes that involved the payment of bribes (PSR ¶¶ 13-15);
- Humberto Palacios Moya, an *OABI* official who helped provide the defendant and CW-2 with advance notice of planned seizures, thereby facilitating the secretion of drug-derived assets by the *Cachiros* (Mar. 6 Tr. 69:10-72:3);
- “Fortin,” a Honduran military official who provided an associate of CW-2 with intelligence from Honduran radar in order to avoid interdiction of the 1,000-kilogram load of cocaine (Mar. 6 Tr. 61:17-62:13);

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<sup>29</sup> In applying Section 3B1.1, “[t]he district court’s inquiry is not limited to defendant’s role in the count of conviction; rather, the court may take all ‘relevant conduct’ into account.” *United States v. Brinkworth*, 68 F.3d 633, 641 (2d Cir. 1995).

<sup>30</sup> (*See also* Mar. 6. Tr. 38:5-7 (“The defendant started out by telling me that his dad Pepe Lobo wasn’t helping him out because he said that my brother Javier Rivera and I were helping him.”)).

- General Pacheco, who was tasked by President Lobo Sosa and the defendant to help provide protection and support to the *Cachiros*, paid by the defendant following the transportation of 1,000 kilograms of cocaine through Honduras, offered another bribe by the defendant in connection with the planned three-ton cocaine shipment, and ultimately introduced by the defendant to CS-2 (Mar. 6 Tr. 29:10-30:10, 67:16-24, 84:13-22);
- Colonel Amaya, who participated in two meetings with the defendant and the Sources relating to planning for the three-ton cocaine shipment (Mar. 6 Tr. 81:8-82:10; GX 7);
- Members of the defendant's security detail, including Captain Mendoza (a/k/a "*El Chelito*"), Carias, and the military personnel who operated the two additional SUVs in connection with the escort of the 1,000-kilogram cocaine load (Mar. 6 Tr. 58:19-59:23, 63:1-64:15);
- Members of the Honduran National Police, including a "chief" in the Cortes Department, the "head" of the city of La Lima, and the seven defendants charged in Superseding Indictments S1 15 Cr. 174 (LGS) and S2 15 Cr. 174 (LGS) (Mar. 6 Tr. 44:7-15, 82:2-10); and
- Numerous other drug traffickers, including CW-2 (prior to beginning cooperation in December 2013), CW-3 (prior to beginning cooperation in December 2013), Esvin Esclanate, "Pollo," "Cachaco," Ton and Chinda Montes (a/k/a Chinda Ramos), "Andres" (a Venezuelan drug pilot), Carlos Lobo, Digna Valle-Valle, Ramon Matta (a/k/a "Moncho"), Jose Antonio Funez Lisser, and "Ninrod Eliel Sierra Caraballo" (GX 7, Mar. 6 Tr. 41:2-7, 44:16-45:12, 47:14-48:5, 55:17-57:19, 60:12-24, 61:19-24, 66:6-25; Mar. 16 Tr. 29:3-20).

As the foregoing list illustrates, the offense was also "otherwise extensive." U.S.S.G. § 3B1.1(b); *see also United States v. Paccione*, 202 F.3d at 624 ("[I]n assessing whether a criminal activity is 'otherwise extensive,' unknowing participants in the scheme may be included as well."). The *Cachiros* relied on support from politicians, law enforcement, and military personnel to perpetrate a massive and sophisticated drug-trafficking crime.

The defendant's management status in the *Cachiros* is reflected by his close relationship with one of the leaders of the organization. *See United States v. Farah*, 991 F.2d 1065, 1066 (2d Cir. 1993) (affirming management enhancement where defendant was the "right

hand man” of the leader of the organization, “performed a variety of functions,” and was trusted with “critical assignments”). The defendant’s discretionary control over some *Cachiros* operations was particularly apparent in the realm of political affairs and official functions, where the defendant coordinated assistance for the *Cachiros* from government officials (such as Palacios Moya), military personnel (such as General Pacheco and Colonel Amaya), and the Honduran National Police (such as the “chief” from the Cortes Department and the “head” of La Lima). *See United States v. Hertular*, 562 F.3d 433, 449 (2d Cir. 2009) (affirming management enhancement where “[a]mple trial evidence supported the district court’s conclusion that [defendant] had greater responsibility over the organization’s drug operations than an average member of the conspiracy” and defendant “dealt with the various corrupt high-ranking officials in the Belize government who were integral to the conspiracy’s operations”). For example, CW-2 provided the defendant with advance notice of cocaine loads between five and eight times on the understanding that the defendant would be able to use his official connections in Honduras to “resolve” any problems during the shipments. (Mar. 6 Tr. 68:7-19).

The defendant was also trusted enough as a member of the *Cachiros* to speak to the Honduran “commander” assigned to Aguacate, on behalf of CW-2, to try to arrange drug-trafficking operations at the airport. (Mar. 6 Tr. 38:11-39:24). When that option proved infeasible, the defendant proposed using another clandestine airstrip in the Olancho Department. (Mar. 6 Tr. 39:25-41:21). Relatedly, the defendant helped coordinate the money-laundering scheme involving *INRIMAR* and contracts from the Honduran government. He proposed the arrangement when he first met CW-2, confirmed the plan in a meeting with President Lobo Sosa and CW-2, and later proposed expanding the scheme to fraudulently cause the government to re-issue previously paid

contracts to the *Cachiros*. (Mar. 6 Tr. 24:20-26:19, 28:11-21, 32:8-33:10). The defendant's status within the organization was demonstrated by the fact that he stepped in to escort the Sources to meetings—such as with Colonel Amaya and General Pacheco—when CW-2 receded from the negotiations (at the direction of the DEA). In exchange for that further-elevated role, the defendant expected to be paid based on a percentage of the drug load rather than the fixed-fee bribes he had been paid previously (see GX 3 at 7:13). See *United States v. Estrada*, 116 F. App'x 325, 326 (2d Cir. 2004) (summary order) (management enhancement applies where defendant “shared in a percentage of the profits from these [drug-trafficking] operations”). And the defendant continued to act as a lobbyist of sorts, on behalf of CW-2 and CW-3, to Lobo Sosa and President Hernandez well into 2014. (E.g., GX 8 at 10:11-13, 26:25; GX 10 at 12:7-13).

At a minimum, the defendant managed the members of his security detail who he brought to Tocoa, Colon during the fall of 2013 to help escort the 1,000-kilogram load of cocaine: Captain Mendoza, Carias, and the military personnel driving the other two SUVs. *United States v. Burgos*, 324 F.3d at 92 (stating that for participant to be subject to aggravating-role adjustment, “[i]t is enough to manage or supervise a single other participant”).<sup>31</sup> The defendant's management role, and the drivers' status as knowing “participants,” is further illustrated by the fact that the defendant drove from Catacamas to Tegucigalpa to gather some of them to assist in escorting the cocaine load before the defendant met with CW-2 in Tocoa. See *United States v. Sealed Vehicle*

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<sup>31</sup> The leadership status of CW-2 and CW-3 in the *Cachiros* does not preclude a finding that the defendant acted as a manager or supervisor. See *United States v. Hertular*, 562 F.3d at 449 (“The fact that other persons may play still larger roles in the criminal activity does not preclude a defendant from qualifying for a § 3B1.1(b) enhancement.”).

*No. 1*, 440 F. App'x 22, 24 (2d Cir. 2011) (summary order) (affirming management enhancement where defendant “directed [co-conspirator] to perform other duties that aided the conspiracy”); *United States v. Leonard*, 37 F.3d 32, 38 (2d Cir. 1994) (management enhancement applies where defendant was “responsible for organizing others for the purpose of carrying out the crime”). The drivers of the SUVs used their sirens during that escort without any plausible purpose other than assisting with the safe passage of the drug shipment, but it was the defendant—not CW-2 or members of the security detail—who spoke to law enforcement while the truck with the cocaine passed through a police checkpoint. (Mar. 6 Tr. 65:2-17). Also probative of the defendant’s supervisory control over members of his security detail, as well as their knowing participation in the offense, is the fact that he proposed to use the “same” men (including Carias) in connection with the three-ton cocaine load (GX 1 at 9:5, 21), and that Carias later drove the defendant and CS-2 to the meeting with General Pacheco (GX 6 at 3:27, 7:5-19). Accordingly, a three-level enhancement should be applied pursuant to U.S.S.G. § 3B1.1(b).

**E. The Defendant Was Directly Involved in the Importation of Cocaine**

Pursuant to U.S.S.G. § 2D1.1(b)(15)(C), two levels should be added because an aggravating-role adjustment is appropriate (as explained above), and the defendant was “directly involved in the importation” of cocaine. The defendant operated in that capacity in connection with the 400-kilogram and 1,000-kilogram shipments that he escorted with CW-2 because he played an integral role in the transportation of the U.S.-bound drugs. *See United States v. Perez-Oliveros*, 479 F.3d 779, 784 (11th Cir. 2007) (“[I]mportation ‘is a continuous crime that is not complete until the controlled substance reaches its final destination point.’” (quoting *United States v. Corbin*, 734 F.2d 643, 652 (11th Cir. 1984))); *United States v. MacDougall*, 790 F.2d 1135,

1151 (4th Cir. 1986) (“Those who unload a vessel carrying the imported contraband are an *essential component* of furthering the conspiracy to import.” (emphasis added)).<sup>32</sup> CW-2 testified that the cocaine distributed by the *Cachiros* was sent to the United States, and although there is no knowledge requirement, the defendant was aware of this feature of these two shipments based on simple geography, CW-2’s expressed concerns about extradition to the United States, and the defendant’s undisputed knowledge that the cocaine moving through Puerto Cortes was also destined for the United States. (Mar. 6 Tr. 13:5-15, 22:2-6; PSR ¶¶ 13-15). The enhancement is also applicable because the defendant knew that the planned destination of the three-ton cocaine load was the United States, and an additional instance of importation was therefore a “harm that was the object” of the defendant’s actions (GX 4 at 5:25-27, 14:9; GX 5 at 30:1-19). U.S.S.G. § 1B1.3(a)(3).

The defendant—having pleaded guilty to participating in a conspiracy to import cocaine into the United States—need not have escorted the cocaine over the United States border in order for this enhancement to apply. In *United States v. Suarez*, for example, the court applied the enhancement where the defendant led a South American drug-trafficking organization responsible for “manufacturing cocaine in laboratories,” “transporting cocaine to air strips, loading airplanes with cocaine, receiving money from airplanes on return trips,” and “receiving money from trucks . . . and financiers.” 2014 WL 1998234, at \*3 (S.D.N.Y. May 15, 2014), *aff’d* 615 F.

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<sup>32</sup> For similar reasons, although the 43-level cap on the Guidelines renders the point academic, the defendant was also involved in the importation of a controlled substance using “an aircraft other than a regularly scheduled commercial air carrier” in connection with the 400-kilogram and 1,000-kilogram loads, both of which arrived in Honduras via private aircraft. *See* U.S.S.G. § 2D1.1(b)(3).

App'x 5 and 791 F.3d 363 (2d Cir. 2015) (describing defendant as operator of a “large-scale drug trafficking organization out of Colombia and Venezuela”); *see also United States v. Ortiz-Lopez*, No. 11 Cr. 48, 2017 WL 397582, at \*1 (M.D. Fla. Jan. 30, 2017) (enhancement applied based on “two maritime drug interdictions in international waters”). As in *Suarez* and *Ortiz-Lopez*, the defendant participated directly in the actual and planned transportation of cocaine as one part of the continuous process of importation that commences at the manufacturing stage in South America. Accordingly, the two-level enhancement pursuant to U.S.S.G. § 2D1.1(b)(15)(D) should be applied.

\* \* \*

Pending review of the defendant's post-hearing submissions, the Government reserves the right to oppose a three-level reduction at sentencing pursuant to U.S.S.G. § 3E1.1. *See* U.S.S.G. § 3E1.1 cmt. n.1(A) (“[A] defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility.”). Nevertheless, based on the foregoing, the evidence at the hearing established by a preponderance of the evidence that the total offense level is capped at 43. Accordingly, based on Criminal History Category I, the applicable Guidelines range is life imprisonment. (PSR ¶ 83). Relying on the relatively limited information in the PSR, as compared to the scope of the record at the hearing, the Probation Office recommended a sentence of 300 months imprisonment. (PSR at 18).

### **III. Forfeiture In the Amount of \$13.11 Million is Appropriate**

The defendant was provided with sufficient notice of, and subsequently admitted to, the Government's forfeiture allegation. He should therefore be ordered to forfeit the proceeds

of his crime. For the reasons set forth below, \$13.11 million is a conservative, reasonable estimate of the proceeds of the drug-trafficking conspiracy.<sup>33</sup>

#### **A. Applicable Law**

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,” *United States v. 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).

“The Government bears the burden of proving the amount of proceeds by a preponderance of the evidence.” *United States v. Basciano*, 649 F. App’x 42, 43 (2d Cir. 2016) (summary order). Because forfeiture liability is joint and several, defendants are to be held responsible “for the proceeds of the entire conspiracy.” *United States v. Sanchez*, 419 F. App’x 27, 33 (2d Cir. 2011) (unpublished decision) (citing *United States v. Benevento*, 836 F.2d 129, 130 (2d Cir. 1988)). “[I]n a narcotics case, the government may sustain its burden by ‘proving the quantity of [narcotics] dealt . . . multiplied by the price it could have commanded.’” *Id.* (quoting *Roberts*, 660 F.3d at 167).

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<sup>33</sup> A proposed order of forfeiture is attached as Exhibit A.

## B. Discussion

The defendant agreed during his guilty plea to forfeit the proceeds of his crime based on the forfeiture allegation in the Indictment. (May 16, 2016 Tr. 22:12-22). The Government adduced sufficient evidence at the hearing to support an order of forfeiture in the amount of \$13.11 million based on the following:

<u>Event</u>	<u>Est. Value</u>	<u>Source</u>
CW-2 Bribe to Defendant and Others for government contracts	\$300,000	Mar. 6 Tr. 31:20-32:7
Nájera Montoya Bribe to Defendant	\$50,000	PSR ¶ 15
Carlos Lobo Bribe to Defendant	\$100,000	Mar. 6 Tr. 57:2-8
CW-2 Bribe to Defendant and <i>OABI</i>	\$50,000	Mar. 6 Tr. 71:19-22
CW-2 Bribe to Defendant	\$10,000	Mar. 6 Tr. 75:6-12; GX 11-A
400-Kilogram Cocaine Load	\$3,600,000	Mar. 6 Tr. 42:9-10; GX 9 at 7:25
1,000-Kilogram Cocaine Load	\$9,000,000	Mar. 6 Tr. 57:20-58:1; GX 9 at 7:25

These conservative estimates are based on the minimum dollar values associated with the bribes described by CW-2 at the hearing, and a \$9,000-per kilogram price for the cocaine in the two shipments that the defendant personally helped escort. The \$9,000 figure is based on the defendant's April 2015 conversation with CW-2 regarding the defendant's anticipated *personal profits* (rather than total proceeds) from the purported three-ton cocaine load (GX 9 at 7:25)—as opposed to their December 2013 discussion of a \$13,000 per-kilogram price prior to subtracting expenses (GX 1 at 6:1, 7:9), or the significantly greater price commanded by the cocaine once it reached the United States, *see, e.g., Roberts*, 660 F.3d at 167 (describing expert testimony

regarding wholesale per-kilogram price of \$24,000 in the United States).<sup>34</sup> Moreover, the Government's estimate does not seek to quantify the proceeds of the more than 20 tons of cocaine distributed by the *Cachiros* with protection from the defendant between 2010 and 2013, or even the approximately five or eight loads that the defendant received advance notice of so that he would be alert in case of a problem. (Mar. 6 Tr. 13:5-9, 68:7-19). The Government's estimate is also conservative in that it does not include additional figures relating to CW-2's testimony that he paid the defendant "a bribe almost every time I met with him." (Mar. 6 Tr. 75:19-21). Accordingly, the Court should order forfeiture in the amount of \$13.11 million as a reasonable estimate of the proceeds of the offense.

#### **IV. The Court Should Impose a Fine**

Because the defendant has not established that he is unable to pay a fine, the Court should impose one at the time of sentencing.

##### **A. Applicable Law**

The Sentencing 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)).

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<sup>34</sup> The estimate of a \$9,000 per-kilogram price, yielding estimated proceeds of \$3.6 million for the 400-kilogram cocaine shipment, is also conservative in comparison to CW-2's testimony that he was paid with approximately 20% of the shipment, which was equivalent to between \$800,000 and \$1 million. (Mar. 6 Tr. 46:14-19; Mar. 16 Tr. 33:9-19).

## B. Discussion

At offense level 43, the Guidelines recommend a fine within the range of \$50,000 and \$500,000. The defendant reported to the Probation Office that at the time of his arrest he was earning approximately \$3,500 per month (equivalent to approximately \$42,000 per year) as an “attorney and notary” at an entity bearing his last name. (PSR ¶ 74). The defendant said that his assets are limited to bank accounts with a total balance of approximately \$2,800, two Toyota “van[s]” worth a total of approximately \$70,000, and a “farm” worth approximately \$50,000. (PSR ¶ 78). He also indicated that he “has resided in multiple residences” in Tegucigalpa and Juticalpa, Olancho. (PSR ¶ 61).

The Court is “surely not required to accept uncritically a representation” by the defendant that he lacks the ability to pay a fine. *United States v. Marquez*, 941 F.2d 60, 66 (2d Cir. 1991). The record at the hearing suggests otherwise. The defendant is represented by retained counsel, and appears to own at least a portion of a mining concession in Honduras, *i.e.*, an asset with current value as well as a potential source of future income. *E.g.*, *United States v. McAllister*, 640 F. App’x 122, 123-24 (2d Cir. 2016) (summary order) (reasoning that “earning ability upon completion of . . . sentence” supports imposition of fine (citing cases)). On May 17, 2014, the defendant described to CS-2 his involvement in a “[m]ining project” involving “tons” of iron oxide, “17 million dollars,” and foreign investment from “the Chinese.” (GX 3 at 10:36-12:29; *see also* GX 8 at 20:13 (defendant indicating that CS-2 “wanted to invest in the mine, to see what happens”)).

The defendant also appears to have understated to the Probation Office his ownership and control of properties in Honduras. In August 2014, he asked CW-2 to give him a

loan of \$320,000 secured by “a house” in the “Las Lomas” area of Tegucigalpa. (GX 8 at 19:5-11). In September 2014, the defendant reminded CW-2, “[d]on’t forget to find me a buyer for the house” in “Las Lomas” willing to pay “320”; he added, “I have the \$,” and that he was receiving rental income from the house in the amount of “1200.” (GX 8 at 22:9-23:3). The defendant also indicated that he was “almost finished with the [mining] project,” “[a]bout to get the license,” and would repay CW-2 “when the thing from the Chinese happens.” (GX 8 at 24:1-13; *see also* GX 8 at 26:23 (“How should we do it, Comander. . . do some document?? For the house.”)). In December 2014, the defendant indicated that he owned a “Ford,” but was looking to obtain a “double cabin” Toyota from CW-2 based on a “lease . . . with an option to buy.” (GX 8 at 28:17-29:1). In May 2015, just days prior to his arrest, the defendant told CW-2 that he was “selling the apartment” in the Portal del Bosque area of Tegucigalpa—which he owned in the name of his wife—for between \$150,000 and \$180,000. (GX 10 at 7:3-15). Finally, the Government established at the hearing that the defendant supplemented his legitimate income with significant payments in furtherance of his crime. *See United States v. Black*, --- F. App’x ----, No. 15 2942-cr, 2017 WL 391901, at \*3 (2d Cir. Jan. 27, 2017) (summary order) (“Faced with the absence of any concrete financial information, the district court reasonably based its analysis on the fact that [defendant’s] criminal enterprise laundered over \$2.5 million.”). Accordingly, the record suggests that the defendant is in fact capable of paying a fine, and the Court should impose one in connection with sentencing.

**CONCLUSION**

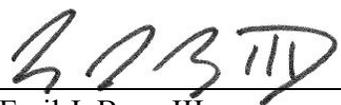
For the foregoing reasons, the Government respectfully submits that the Court should: (i) credit the testimony of CW-2, as corroborated by other evidence at the hearing; (ii) calculate an applicable Guidelines range of life imprisonment; (iii) enter the enclosed preliminary order of forfeiture in the amount of \$13.11 million; and (iv) in the absence of further evidence from the defendant, impose a fine at sentencing.

The Government will file an additional submission regarding the application of the statutory sentencing factors, 18 U.S.C. § 3553(a), pursuant to the schedule set by the Court following the hearing.

Dated: New York, New York  
March 30, 2017

Respectfully submitted,

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\_\_\_\_\_  
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