



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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August 22, 2011

**By Electronic Transmission**

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**Re: United States v. Hector Fabio Ospino-Rosero, a/k/a "Juancho,"  
S1 09 Cr. 723 (LAK)**

Dear Mr. Nkrumah:

**This document is not a plea agreement.** Rather, pursuant to the suggestion of the Court in United States v. Pimentel, 932 F.2d 1029, 1034 (2d Cir. 1991), this letter sets forth the current position of the United States Attorney's Office for the Southern District of New York (the "Office") regarding the application of the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") to defendant Hector Fabio Ospino-Rosero, a/k/a "Juancho," (the "defendant") in this case.

The Indictment charges the defendant in two counts. Count One charges the defendant with conspiring to distribute and possess with intent to distribute one kilogram and more of mixtures and substances containing a detectable amount of heroin and five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A). Count Two charges the defendant with conspiring to import into the United States one kilogram and more of mixtures and substances containing a detectable amount of heroin and five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Sections 963, 960(a)(1) and 960(b)(1)(A) and (B). Counts One and Two each carry a maximum sentence of life imprisonment; a mandatory minimum sentence of 10 years' imprisonment; a maximum fine of \$4,000,000 or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than the defendant; a maximum of a life term of supervised release with a minimum of five years' supervised release; and a mandatory \$100 special assessment. The total maximum term of imprisonment on Counts One

and Two is life, with a mandatory minimum term of 10 years.<sup>1</sup>

The Government currently believes that the Guidelines apply to the crime charged in the Indictment as follows:

**A. Offense Level**

1. The Guidelines provisions in effect as of November 1, 2010, apply to the conduct charged in the Indictment.
2. Pursuant to U.S.S.G. § 3D1.2, Counts One and Two are grouped together.
3. The offense level applicable to both counts is calculated as follows:
  - a. U.S.S.G. § 2D1.1 applies to the narcotics offenses charged in Counts One and Two.
  - b. Pursuant to U.S.S.G. §§ 2D1.1(a)(5) and (c)(1), the base offense level is 38 because the offense involves more than 150 kilograms of cocaine and more than 30 kilograms of heroin.<sup>2</sup>
4. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave

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<sup>1</sup> The United States has made assurances to the Government of Colombia, from where the defendant was extradited, that it will not seek a term of life imprisonment.

<sup>2</sup> Pursuant to U.S.S.G. § 2D1.1, Application Note 10(B), where two different substances are charged, a combined offense level is calculated using the drug equivalency chart at Application Note 10(E). Pursuant to the drug equivalency chart, the relevant quantities of cocaine and heroin are converted to their marijuana equivalents and combined. Here, the offense involves an amount of cocaine equivalent to at least 30,000 kilograms of marijuana and an amount of heroin also equivalent to at least 30,000 kilograms of marijuana. Therefore, the combined offense level is that corresponding to at least 60,000 kilograms of marijuana, which is Level 38.

timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 35.

**B. Criminal History Category**

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history, which places him in Criminal History Category I.

**C. Sentencing Range**

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 168 to 210 months, with a mandatory minimum term of 120 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 35, the applicable fine range is \$20,000 to \$4,000,000.

The foregoing Guidelines calculation is based on facts and information currently known to the Office. Nothing in this letter limits the right of this Office (1) to change its position at any time as to the appropriate Guidelines calculation in this case, even if that change is based, in whole or in part, on information that was in the Government's possession as of the date of this letter; and/or (2) to present to the Court or the United States Probation Office, either orally or in writing, any and all facts and arguments relevant to sentencing that are available to the Office at the time of sentencing. Nor does anything in this letter limit the right of this Office to seek a departure under or variance from the Guidelines, or to take a position on any departure or variance that may be suggested by the Court, the United States Probation Office, or the defendant.

This letter does not and cannot bind either the Court or the United States Probation Office, either as to questions of fact or as to determinations of the correct application of the Guidelines in this case. Instead, the sentence to be imposed upon the defendant will be determined solely by the Court. This Office cannot and does not make any promise or representation as to what sentence the defendant will receive.

The information now available to this Office (including representations by the defendant as to his citizenship) indicates that in addition to the criminal penalties set forth above, the defendant's guilty plea and conviction make it very likely that the defendant's deportation from the United States is presumptively mandatory. At a minimum, the defendant's guilty plea and

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conviction carry a risk of deportation or other adverse immigration consequences. The defendant is entitled to and should seek advice from his/her counsel on this issue.

Very truly yours,

PREET BHARARA  
United States Attorney

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