

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES

v.

**HERNAN GIRALDO SERNA,
Defendant.**

*
*
*
*
*
*

Criminal No. 04-114 (RJW)

MOTION FOR DOWNWARD DEPARTURE

The United States respectfully moves for a downward departure from the advisory guideline range, pursuant to Section 5K1.1 of the United States Sentencing Guidelines. The sentencing hearing is set for March 3, 2017.

Introduction

The defendant was a high level leader of the Colombian paramilitary group known as the AUC, the *Autodefensas Unidas de Colombia* (or, the United Self Defense Forces of Colombia). Armed men loyal to the defendant made it possible for the defendant to control a significant portion of the Sierra Madre mountains in northern Colombia. The defendant taxed the cultivation, manufacture, and distribution of cocaine in that area of northern Colombia controlled by him and his armed group, and the taxes he collected from the cocaine trade financed the armed soldiers loyal to him. The defendant used proceeds from the sale of cocaine in the United States to fund, at least in part, his militia group.

The parties agreed, and the presentence report concluded, that the defendant's advisory guideline range is 324 months to 405 months. The defendant provided substantial assistance in the prosecution of another person, and pursuant to Section 5K1.1, the government moves for a downward departure and recommends a sentence of 240 months. (This motion is not predicated

on Title 18, United States Code, Section 3553(e).)

The defendant should receive credit for confinement served since December 13, 2006. Accordingly, should the court accept this recommendation of credit for time served since 2006, the defendant will be credited for service of 10 years, 3 months confinement.

Plea and factual basis

Defendant plead guilty on January 29, 2009 to conspiracy to distribute cocaine, knowing or intending it would be imported into the United States. Defendant stipulated in the statement of facts submitted in support of his plea, that by the mid 1990's, he lead an armed militia group in the northern part of Colombia. This group merged with the AUC by 2002. Throughout his time leading this armed group, the defendant collected taxes from those involved in the drug trade, and in return, he and his armed group protected the drug traffickers from left wing paramilitary groups and other criminal gangs. He acknowledged he was accountable for more than 1,500 kilograms of cocaine.

The defendant also stipulated that the above facts were a minimum statement of facts intended to demonstrate a sufficient basis for his plea.

The AUC: A Brief History

The FARC is an armed left-wing militia group, formed in the 1960's, whose goal was to overthrow the Colombian government. Eventually, the FARC came to dominate the drug trade in Colombia, in part to finance their military campaigns. By the 1990's, the FARC controlled significant parts of Colombia and dealt violently with anyone who opposed them or refused to pay the taxes demanded by the FARC, including big businessmen such as farmers and cattle ranchers. By the 1990's, to combat the FARC, these business interests began to form their own armed militias, and it was these militias which eventually became the AUC.

In about 1997, brothers Carlos and Vicente Castano combined their para-military forces with para-military forces led by Salvatore Mancuso, to form what became known as the AUC. Carlos Castaño was the primary leader of the AUC, with Vicente Castaño and Mancuso serving the next most significant leadership roles under Carlos Castaño. From 1997 through the end of 2002, the military forces led by the Castaños and Mancuso grew significantly more large and more powerful, and by 2002, the defendant's militia group had joined the AUC. The AUC took control from the FARC (and the Colombian government) of most of the northern part of Colombia, including the key drug trafficking areas along the north coast. The AUC taxed drug trafficking to raise money for their military activities, and eventually the leaders of the AUC themselves became drug traffickers.

As the AUC grew, its military forces were divided into "bloques" or fronts. Much like an army division might be divided into six fighting brigades of 5,000 each, the AUC (similar to a division) divided its forces into bloques (similar to brigades). Each bloque operated in and controlled a designated area of north Colombia. Carlos Castaño and his key lieutenants had overall general control of the bloques, but subordinate commanders exercised more direct control over the bloques. The bloque commanders included, among others, Rodrigo Tovar Pupo (alias "Jorge 40," and previously sentenced by this Court), Hernan Giraldo Serna, Miguel Mejia Munera, and others. These bloque commanders reported drug trafficking activity to Castano, including the collection of drug taxes, and Castano and his lieutenants resolved conflicts between the bloques. For example, when Tovar-Pupo moved to take by force the territory of fellow commander Giraldo Serna, it was Mancuso who resolved the armed conflict between Tovar Pupo's bloque and Giraldo Serna's bloque, effectively awarding control of Giraldo Serna's territory and part of its drug riches to Tovar Pupo. The settlement negotiated between the

defendant and Tovar Pupo stipulated that Tovar Pupo would control the territory formerly controlled by the defendant, but that the defendant would continue to share in the drug taxes. To ensure that the defendant was satisfied by the collection and accounting of the drug taxes, the defendant's nephew, Nodier Giraldo Giraldo, effectively served as the tax collector, though under the supervision of Tovar Pupo.

Both Castaño brothers were murdered in Colombia before they could be extradited to the United States, so the highest ranking members of the AUC extradited to the United States included Manucso, Tovar Pupo, Giraldo Serna, and Mejia Munera.

Assistance

The defendant began cooperating with the United States several months after he was extradited to the United States in May 2008. He was interviewed more than 15 times by prosecutors and agents. No prosecutions came out of the information provided by the defendant, but his information was of value, in that the defendant confirmed information already known to the government.

The defendant provided assistance in the prosecution of *United States v. Rodrigo Tovar-Pupo* (DDC, 04-114, RBW). The defendant was interviewed numerous times by prosecutors and agents preparing for trial in Tovar Pupo's case. The defendant agreed to testify, and was prepared to testify, though he was never called upon to testify. As the Court is aware, Tovar Pupo plead guilty, then sought to withdraw his guilty plea, then agreed to withdraw his motion to withdraw, then changed his mind again and sought to withdraw his plea. This process took more than five years to resolve, and the defendant remained prepared to testify throughout that entire period. Notably, the government disclosed the defendant's name as a potential witness against Tovar Pupo. To the defendant's credit, he was steadfast in agreeing to testify against Tovar

Pupo had Tovar Pupo gone to trial, and the defendant was one of several important witnesses who would have been called to testify at the trial of Tovar Pupo.

In addition to the assistance provided above, the defendant cooperated, both before he came to the United States and over the years he has been in the United States, with Colombian authorities in the Justice and Peace program, which was established to reconcile the nation of Colombia and the members of the AUC. The defendant demobilized in Colombia in February 2006, and thereafter began cooperating with the Justice and Peace program. He continued to cooperate with Justice and Peace investigators and prosecutors, via video teleconference, after he was extradited to the United States. Since 2006, the defendant has submitted to many interviews with Colombian authorities in the Justice and Peace program, and has forfeited assets to the Justice and Peace program.

As part of the assistance provided in the Justice and Peace Program, the defendant contributed to the prosecution of others who collaborated with his armed group. These others included political figures, businessmen, and military officials. Based on information provided to Colombian prosecutors by the defendant and other witnesses, some of these targets were convicted of crimes in Colombia. Further, as required by the Justice and Peace program, the defendant accepted responsibility for criminal acts, some imputed to him and some actually committed by him, which included homicides, sexual violence, forced disappearances, illicit recruitment of minors, and the unlawful occupation of land. According to prosecutors in the Justice and Peace program, the defendant was convicted in Colombia of complicity in a massacre in a joint operation with other para-military commanders, as well as the death of the man whose wife and daughters have been declared to be victims in this case under United States law.

Codefendant sentences and other AUC linked defendants

Other significant AUC commanders have been sentenced recently in this district to sentences from 170 months to 198 months.

As noted above, Salvatore Mancuso was one of three key AUC leaders who oversaw commanders at the defendant's level. At Mancuso's sentencing in 2015, the government recommended that Mancuso be sentenced to 263 months. The District Court sentenced Mancuso to 190 months. Mancuso cooperated extensively for ten years, Mancuso's assistance was much greater than the defendant's assistance, and the court departed downward based on Mancuso's extraordinary assistance.

Tovar Pupo was sentenced in 2015 to 198 months. Tovar Pupo did not cooperate, the government did not file a motion for downward departure, and the government requested a 360 months sentence. A third AUC commander was sentenced in this district in 2015. The government recommended a sentence of 226 months, but the district court sentenced this commander to 170 months. These defendants – Mancuso, Tovar Pupo, and the third commander - were all AUC commanders who led sizeable illegal armed groups that controlled strategic areas of northern Colombia, and therefore controlled the drug trafficking activity in that area, from coca farming to lab production to transportation and distribution. Like the defendant, they were each held responsible for distributing thousands of kilograms of cocaine.

Similarly, the following AUC commanders also commanded a sizeable armed group which controlled territory and taxed drug trafficking activity in their territory, and then themselves became drug traffickers: Jimenez Naranjo and Cuco Vanoy Murillo. Another relevant example would include Diego Murillo Bejarno (alias "Don Berna"), who was a key leader in the AUC but did not command an armed group. Murillo Bejarno was a powerful "inspector general"

for the high level AUC leadership, and exercised significant influence over the drug trafficking activity of the AUC. These three defendant were convicted and sentenced in other districts to 293 to 396 months.

Jimenez Naranjo was the commander of the Bloque Central Bolivar, commanding an estimated 7,000 armed combatants. He was sentenced on May 9, 2011, to 396 months confinement after guilty pleas to drug trafficking, engaging in drug trafficking with the intent to provide something of value to a terrorist organization, and to violating the maritime statute by transporting cocaine using maritime vessels subject to the jurisdiction of the United States (Case Number 07-20794, SDFL). Vanoy Murillo pleaded guilty to drug trafficking and on October 15, 2008, was sentenced to 293 months confinement (Case Number 99-06153, SDFL). He was the commander of the Bloque Mineros which operated in Antioquia and Cordoba. On April 22, 2009, Murillo Bejarno was sentenced to 375 months confinement and a \$4 million fine for drug trafficking (Case Number 03-01188, SDNY). His plea agreement included a stipulated sentencing guidelines range of 324 months to 405 months. The government did not file motions for downward departure for Jimenez Naranjo, Cuco Vanoy, or Murillo Bejarno.

CONCLUSION

In this case is a defendant who was a major cocaine trafficker, and who for a time would have been considered a significant player in one of the world's largest and most powerful drug trafficking organizations. He has cooperated with the United States and has provided the assistance described herein. The sentence recommended by the government is consistent with the government's recommendations for the other AUC leaders whose roles closely approximate the role of the defendant, and takes into account the different levels of assistance.

For the reasons set out above, the government recommends that the District Court sentence the defendant to 240 months confinement.

Respectfully submitted,

_____/s/_____
Paul W. Laymon
Trial Attorney
Narcotic and Dangerous Drug Section
Washington, DC 20350
202-330-1400
paul.laymon@usdoj.gov

CERTIFICATE OF SERVICE

I certify that a copy of this motion was sent via e-mail to defense counsel on February 28, 2017.

_____/s/_____
Paul W. Laymon