

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 BRUCE H. SEARBY (SBN 183267)
 4 Assistant United States Attorney
 Public Corruption & Civil Rights Section
 5 JONATHAN E. LOPEZ (SBN 210513)
 Senior Trial Attorney, Fraud Section
 6 United States Department of Justice
 1300 United States Courthouse
 7 312 North Spring Street
 Los Angeles, California 90012
 8 Telephone: (213) 894-5423
 Facsimile: (213) 894-6436
 9 bruce.searby@usdoj.gov

10 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
 14)
 Plaintiff,) GOVERNMENT'S MEMORANDUM IN
 15) RESPONSE TO DEFENDANTS'
 v.) SUPPLEMENTAL SENTENCING
 16) INFORMATION FILED ON AUGUST 10,
 GERALD GREEN and) 2010
 17 PATRICIA GREEN,)
) Sent. Date: August 12, 2010
 18 Defendants.) Sent. Time: 9:30 a.m.
)
 19)
)
 20)

21 Plaintiff United States of America, through its counsel of
 22 record, the United States Attorney's Office for the Central
 23 District of California, and the Fraud Section, United States
 24 Department of Justice, Criminal Division, hereby files the

25 ///

26 ///

27 ///

28

1 MEMORANDUM IN RESPONSE TO DEFENDANTS' SENTENCING INFORMATION

2 I.

3 INTRODUCTION

4 In a supplemental sentencing brief filed on August 10, 2010
5 ("Def. 8/10/10 Br."), defendants GERALD GREEN and PATRICIA GREEN
6 make two last attempts to persuade the Court to disregard the
7 significant prison sentences that have been imposed in recent
8 years, months, and weeks for violations of the anti-bribery
9 provisions of the Foreign Corrupt Practices Act ("FCPA").

10 First, defendants attempt to improperly cast doubt on the
11 relevancy of the recent sentencing of FCPA defendant Juan Diaz in
12 United States v. Diaz, 09-CR- 20346 (S.D. Fla. 2010); claiming
13 incorrect guidelines were used, his sentence is solely a place-
14 holder, and that it somehow illustrates disparate treatment among
15 FCPA cases. These arguments are factually incorrect and
16 constitute yet another attempt to shift the Court's focus away
17 from defendants' conduct, the posture of their case, and where it
18 fits in within the contours of the FCPA sentencing landscape.

19 Second, defendants once gain compare apples to oranges by
20 looking to government resolutions (including of civil claims) of
21 FCPA-related investigations involving corporate defendants.
22 Defendants' arguments have no place in an analysis under 18
23 U.S.C. § 3553(a)(6) to avoid unwarranted sentencing disparities.

24 The Court should reject defendants' arguments and, as the
25 government has previously argued, the should sentence each
26 defendant tomorrow to 10 years in prison.

1 II.

2 DISCUSSION

3 A. DEFENDANTS DISCUSSION OF THE DIAZ CASE IS FACTUALLY
4 INCOMPLETE AND INACCURATE

5 In their most recent filing, defendants attempt to cast the
6 Diaz sentence as an example of disparate treatment in the FCPA
7 landscape, and claim that the 57 months sentence he received is
8 simply a "place-holder, a fictional sentence" not to be relied
9 upon by the Court. (Def. 8/10/10 Br., at 4). Defendants'
10 arguments are not only factually incomplete, they are also
11 factually incorrect. The Diaz case is well within the FCPA
12 sentencing landscape outlined for the Court in the government's
13 Sentencing Memorandum Re: Three Most Instructive FCPA cases,
14 filed May 6, 2010 (Docket Entry 346, the "Gov FCPA Landscape
15 Memorandum").

16 Defendants' analysis of the Diaz case ignores its
17 significance of three essential points, namely, that Diaz:

- 18 1. Promptly accepted responsibility for his actions
19 (indeed, defendant Diaz agreed to waive indictment and
proceed by information);
- 20 2. Promptly plead guilty after the filing of the charging
21 document and gave a full account of his misconduct; and
- 22 3. Is cooperating with the government.

23 Defendants have done none of these things, yet they are
24 asking for probation. On the other hand, in the Diaz case,
25 despite doing all of these things, Diaz currently has a sentence
26 of close to 5 years. This sentence, which does not reflect

1 credit Diaz may ultimately receive for cooperation, is well
2 within the range of other individual FCPA sentences in the
3 category of "Plea, No Cooperation", as pointed out in the Gov
4 FCPA Landscape Memorandum at 7-11. For example, in United States
5 v. Jumet, 09-CR-397 (E.D. Va. 2009), the defendant received 87
6 months imprisonment, in United States v. Shu Quan Sheng, 08-CR-
7 194 (E.D. Va. 2008), the defendant received 51 months
8 imprisonment, and in United States v. Warwick, 09-CR-449 (E.D.
9 Va. 2009), the defendant received 51 months imprisonment. The
10 Diaz case is a prime example of how the FCPA sentencing landscape
11 has developed defined contours, with defendant Diaz, falling in
12 the mid to lower range of those contours for having promptly
13 accepted responsibility for his actions.

14 While defendant Diaz may get a further reduction in sentence
15 due to cooperation, as previously discussed in Gov FCPA Landscape
16 Memorandum at 11-13, those defendants who plea and cooperate
17 typically get lighter sentences than those who plea and do not
18 cooperate. This entirely consistent with the well-accepted and
19 well-reasoned principle that there would be considerably less
20 cooperation -- and thus more crime -- if those who assist
21 prosecutors could not receive lower sentences compared to those
22 who fight to the last. U.S. v. Bartlett, 567 F.3d 901, 907 (7th
23 Cir. 2009) (disparity was justified by material differences in
24 offenders' conduct and acceptance of responsibility). Defendant
25 Diaz's sentence is only a "place-holder" to the extent that it
26 will be his sentence if he does not continue to cooperate with
27

1 the government and to possibly justify a lighter sentence in the
2 future.

3 In light of the sentences other defendants have received
4 after accepting responsibility for less egregious conduct,
5 defendants' request for probation flies in the face of any
6 semblance of similarity in sentencing.

7 Moreover, defendants' claim that the government neglected to
8 use the sentencing guideline for public corruption applicable to
9 the FCPA (U.S.S.G. § 2C1.1) in its calculation of defendant
10 Diaz's total offense level is plain wrong. While the offense
11 level was calculated through the application of the money
12 laundering guideline (U.S.S.G. § 2S1.1), defendants chose to
13 ignore the fact that in order to calculate a money laundering
14 offense level under that section, one first calculates the base
15 level for the underlying offense -- that is, the offense level
16 for the FCPA violations under § 2C1.1. Therefore, the
17 defendant's conduct for his FCPA violations has been properly
18 taken into account and is reflected in his total offense level.
19 Contrary to defendants' suggestion, the Diaz sentence is a proper
20 and appropriate data point for the Court to consider --
21 especially given that defendants here were likewise charged with
22 (and convicted of) money laundering.

23 ///

24 ///

25 ///

26

27

28

1 B. THIS COURT SHOULD NOT COMPARE THIS CASE TO DISPOSITIONS
2 AGAINST CORPORATE DEFENDANTS OR ENGAGE IN SPECULATION AS TO
3 INDIVIDUALS NOT CHARGED OR SENTENCED

4 In arguing for non-custodial sentences in this case,
5 defendants GERALD GREEN and PATRICIA GREEN once again point to
6 pre-trial settlements in cases brought under the FCPA against
7 corporate entities. (Def. 8/10/10 Br., at 5-8). Aside from the
8 patent incomparability of civil settlements by the Securities and
9 Exchange Commission, defendants' arguments are also misplaced
10 under controlling criminal sentencing law. Defendants'
11 discussion of apples and oranges has no place in a proper
12 statutory analysis to avoid unwarranted sentencing disparities.

13 The penalties section of the FCPA's anti-bribery provisions
14 sets forth criminal penalties as follows:

15 (1) (A) Any domestic concern that is not a
16 natural person and that violates subsection
17 (a) or (i) of this section shall be fined not
18 more than \$2,000,000.

19 * * *

20 (2) (A) Any natural person that is an officer,
21 director, employee, or agent of a domestic
22 concern, or stockholder acting on behalf of
23 such domestic concern, who willfully violates
24 subsection (a) or (i) of this section shall
25 be fined not more than \$100,000 or imprisoned
26 not more than 5 years, or both.

27 15 U.S.C. § 78dd-2(g).

28 Defendants cannot reasonably compare sentences imposed on
business entities that may only be fined for violations of the
FCPA's anti-bribery provisions, to sentences imposed on natural
persons who may be fined and imprisoned for willful violations.

