

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-CR-00721-JAL

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS MEDINA,

Defendant.

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DEFENDANT'S MEMORANDUM IN AID OF SENTENCING

COMES NOW Defendant Luis Medina/ Ramon Labaniño, by counsel, and submits the following memorandum in aid of sentencing, scheduled for Tuesday, December 8, 2009, at 1:30 P.M.. The parties have entered into and filed an agreement which, in essence, agrees to a thirty year sentence as an end to this litigation. This memorandum is filed to update the biographical information presented to the Court in the original presentence report. It also contains a conclusion which presents to the Court reasons which Ramon Labaniño believes make a thirty year sentence, that is a sentence within the applicable guideline range, but at the bottom edge of that range, quite long enough to satisfy all of the purposes for sentencing.

**I. Biographical update:**

Ramon Labanino is a 46 year old native of Havana, Cuba. He first came to the United States at the age of 28, he was arrested and incarcerated for the instant offense at the age of 35 and, if this Court accepts the re-sentencing agreement reached by the parties in this case, he will be 60 years old before he is released from a federal penitentiary and returned to his family in Havana.

Ramon's parents enjoyed a wonderful marriage and raised Ramon and his younger siblings, Laidés, Holmes and Jorge, under the most modest of economic circumstances. The family lived in a very small one bedroom apartment which had a bath and a kitchen that doubled as the living and dining area. With little room, Ramon shared his parents' bed and, beginning in 1966, his sister, Laidés, joined them in that tiny bedroom. By 1970, about the time Ramon turned seven years old, his mother was pregnant with Holmes and the family was fortunate to find a larger apartment. However, the family's finances were as poor as ever. Ramon's father worked both as a gardener and a security guard, but even with Cuba's food ration books, food was always in short supply and the children rarely had new clothes. However, Ramon had a happy childhood provided by wonderful parents who were always supportive and encouraged close family relationships. Today, all of the family's support and encouragement are directed toward Ramon.

The family's new apartment had two bedrooms, a bath and a kitchen with a separate living area. Ramon now shared a bedroom with Laides and Holmes, and his youngest brother, Jorge, joined them in 1972. Despite those living conditions, Ramon began to excel at school, especially in math and science, at an early age.

Ramon graduated from Manolito Aguiar, a public high school in Havana, at the age of 18. His grades earned him a place at the University of Havana, where he studied economics. It was there that Ramon met another economics major, Ilia Cardoso, while they were both in their sophomore year. They married in 1983 (they were both only 20 years old), and continued to attend the university together while they lived with Ilia's parents. In 1986, Ramon and Ilia each received a master's degree in economics and, the following year, Aili, was born. Unfortunately, it was also in that year that Ramon and his first wife divorced.

Paragraph 94 of Ramon's Presentence Investigation Report, which was last revised on January 3, 2002, states that "Aili Labanino-Cardoso, age 14, resides with her mother and is attending the eighth grade." Aili was not quite 10 years old when Ramon was first arrested. Today, she is in her third year at the University of Havana, studying computer science, and she hopes to become an engineer in another two years. She celebrated her 22<sup>nd</sup> birthday last week, on November 30<sup>th</sup>.

Ramon returned to the home of his parents and siblings, that same two-

bedroom apartment, following his divorce. However, he continued to be an important part of his daughter's life and they spent a great deal of time together.

In 1989, Ramon met Elizabeth Palmeiro at a bus stop in Havana. Ramon invited her for an Italian ice, they fell in love, and were married the following year, on June 2, 1990. Paragraph 95 of Ramon's 2002 Presentence Investigation Report states that "his wife, who is now 36 years old, is an English translator. Their older daughter, Laura Labanino-Palmeiro, age six, is in the second grade. Their younger daughter, Lizibeth Labanino-Pameiro, age four, attends preschool." Today, Elizabeth still works as an English translator; however, she is 44 years old and it has been difficult balancing a career, the responsibilities of a single mom, and doing what she can for a husband incarcerated in the United States. Laura is now 17 years old and will complete high school in June 2010. Lizibeth is now 12 years old and is in the seventh grade.

Ramon first came to the United States in 1992. The Presentence Investigation Report discusses his life in the United States until his arrest on September 12, 1998. He returned to Havana frequently during those years to be with his parents, his siblings, his wife and his children. A few months before his arrest, his mother died of lung cancer at the age of 60. She had been sick for some time and she was a great loss to her family.

Following his arrest in this case, Ramon spent the first 17 months of his incarceration at the Federal Detention Center in the Segregated Housing Unit (SHU), given the nature of the criminal charges and the political environment of South Florida at the time. He received no letters, no phone calls and no visits from his family in Cuba. Several motions were filed on behalf of the “Cuban Five” to have them released to general population and it was finally decided by prison authorities that Ramon and his co-defendants would be safe in general population. However, subsequent to the jury’s verdict on June 9, 2001, Ramon and his co-defendants were returned to the SHU for another 44 days. Ramon was then sentenced by this Court on December 13, 2001, and he arrived at the United States Penitentiary (USP) in Beaumont, Texas on February 12, 2002.

USP Beaumont is a high security penitentiary located 4 miles south of Beaumont, 35 miles from the Gulf of Mexico and 100 miles east of Houston. Since its opening in 1997, USP Beaumont has become infamous for housing some of the system’s most dangerous offenders and has been repeatedly plagued by gang violence and the presence of drugs. When Ramon first arrived there, he was a first time offender beginning a Life sentence. And he already learned that the sentencing provisions of 18 USC § 4205 had long been repealed and that Life, meant Life. For six years, until his transfer to USP McCreary, Kentucky in May 2008, Ramon shared

a 7 by 10 foot cell and personally witnessed the drugs and violence all around him. And for six years, Ramon was subjected to a “two hour watch,” normally reserved for inmates found to be the greatest security risk, which required he check in with a correctional officer every two hours whenever he was not confined to his cell. (BOP records clearly indicate Ramon has been nothing short of a model prisoner with no disciplinary actions.) He also endured the almost common occurrence of lockdowns, which could last for months at a time, and the last minute decision not to evacuate the penitentiary as Hurricane Rita came ashore as a Category III storm in September 2005.<sup>1</sup>

Ramon arrived at USP McCreary, Kentucky on May 20, 2008. This high security penitentiary is located 88 miles north of Knoxville, Tennessee, 125 miles south of Lexington, Kentucky and 208 miles south of Cincinnati, Ohio. Like USP Beaumont, this penitentiary is not easy to travel to, especially if you are traveling from Havana, Cuba.

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<sup>1</sup> Counsel has spoken to Mr. Labaniño about conditions at USP Boumont in the aftermath of Hurricane Rita. The warden was directed to evacuate the facility but he did not. Hurricane Rita took out power and water. There was no food. Without electricity, there was no air movement. Moisture from human sweat and breath covered the walls and ceilings. Growth of mold was rampant. There was a health crisis. Inmates died. There was considerable prisoner litigation recorded on PACER which includes inmate declarations describing conditions in the facility. Mr. Labaniño did not join in this litigation.

As harsh and as intimidating conditions at high security federal penitentiaries are, visiting hours are generous and family visits are always encouraged by prison officials. “The Bureau of Prisons encourages visiting by family, friends and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members or others in the community” (see BOP P.S. 5267.07). The visiting policy at USP Beaumont, effective October 9, 2008 (see BMX 5267.08A), allows visits Thursday through Monday and federal holidays, 8:30 AM until 3 PM. An inmate receives 8 points a month and 1 point equals a weekday visit and 2 points equals a weekend visit. An inmate may also have up to five adults visiting him at any one time. As to USP McCreary, effective March 4, 2004 (see MCR 5267.07), visits are limited to weekends and federal holidays, 8:30 AM until 3 PM, and limited to 3 adults at any given time.

Federal inmates with family and friends in the United States or those with diplomatic relations with the United States may take advantage of the BOP’s generous visitation policies. However, Ramon’s family remains in Havana, they are of very modest means, and they must first obtain a visa to travel to the United States to see him. The difficulties related to obtaining these visas have only, at most, allowed him to see his father, his wife and his three daughters, once a year. (There were no visits from September 1998 until December 2001.) He has not seen his brothers or his sister

since 1998 and he has yet to meet his only nephew.

Ramon's wife discovered that it can take a year to obtain visas for her and Ramon's children to come to the United States to see him. Once they obtain visas, they must travel to the United States within 6 months and the visit may not exceed 30 days. To visit Ramon in Beaumont, it was necessary to fly, first from Havana to either Panama or Mexico, and then to Houston, Texas, where she then had a drive of 100 miles. To get to USP McCreary, she first flies from Havana to either Panama or Mexico, then to New York, then to Louisville, Kentucky, and, finally, there is a long drive. Ramon's wife made these trips annually (except there were no visits from June 2006 until October 2008, due to diplomatic problems) with her two daughters and, at times, with Ramon's oldest daughter, Aili. And there were times that once she finally arrived at the penitentiary, she could not see Ramon because of the many lockdowns.

Ramon's youngest daughter, Lizibeth, saw her father for the first time at USP Beaumont when she was five years old. Ramon's father has also traveled to see Ramon and these visits have also averaged less than once a year. However, he is now 72 years old and no longer makes the trip alone. Ramon's father, his brothers and his sister, all continue to live in that same two bedroom apartment in Havana.

BOP policy statement 5803.07 was revised on March 16, 1998 to provide for the preparation of inmate progress reports every three years. Ramon's progress reports



show that despite the harsh and, often times, dangerous conditions of his incarceration, despite being so far from his loved ones and seeing them no more than once year, and despite that Ramon has had to consider every day since 2001, that it was likely he would die in prison some day, Ramon has remained a model prisoner.

Ramon has taken advantage of all of the educational opportunities afforded him. Over the years, he has completed an English proficiency course and his GED. He has also involved himself in creative writing, VT Excell Access, budget/finance, crochet, typing and leather craft programs.

## II. Factors supporting a sentence at the low end of the guideline range:

Ramon is well aware that in fashioning a sentence which is “sufficient, but not greater than necessary,” this Court must consider the nature and circumstances of the offense, 18 USC § 3553(a)(1). To that end, consistent with the Circuit Court’s findings and the revised guideline calculations offered by the probation officer and agreed to by the parties, no top secret information was actually gathered or transmitted. However, the total offense level 42 is both substantial and correctly applied. In his agreement with the United States, Ramon has accepted a sentencing guideline range of 360 months to Life. It is an incredibly harsh sentence for a 46 year old man with three daughters. According to the United States Sentencing Commission’s Sourcebook of Federal Sentencing Statistics (Sourcebook) FYE 2008, of 67,894 cases

(there were actually 76,478 cases that year, but some lacked complete sentencing information), 99.5 % of all federal defendants sentenced in 2008 fell below total offense level 42 (see Table 21 of Sourcebook).

Subsequent to *Booker*, however, this Court must also consider the history and characteristics of the defendant, 18 USC § 3553(a)(1). To that end, Ramon asks this Court to consider his own history, before and since September 1998. He asks this Court to consider the positive adjustment he has made, both at Beaumont and McCreary, under the harshest of conditions, and the isolation he continues to endure with only annual visits from his loved ones.

From Ramon's wife, Elizabeth, she wants this Court to know that Ramon is still a loving husband and father and he remains a vital part of his family through his letters, his poems and his phone calls. He is always teaching his girls how to conduct themselves and he is very much informed of their lives, although he is confined so far away. However, his physical presence will always be missed.

Finally, pursuant to AO 245B, the Statement of Reasons form district court judges complete to report their findings as to the specific sentences imposed, Ramon Labanino respectfully asks this Court to consider Part IV, B, and impose a sentence within and at the low end of the advisory guideline range, as agreed to by the parties in this case. Such a sentence fully considers not only the nature and circumstances of

the offense, the history and characteristics of the defendant, but also the additional sentencing factors of 18 USC § 3553. Should this Court impose a sentence of 360 months incarceration, Ramon Labanino will remain incarcerated until March of 2024, when at the age of 60, he will return to his family in Cuba. By then, Aili will be 36 years old, Laura will be 31 and Lizibeth will be 26. Surely, such a sentence is “sufficient.”

Respectfully submitted,

S William M. Norris  
William M. Norris, P.A.  
8870 SW 62<sup>nd</sup> Terrace  
Miami, FL 33173-1616  
Telephone 305-279-9311  
Facsimile 305-279-9026  
Florida Bar No. 309990  
Attorney for Ramon Labaniño

#### Certificate of Service

I hereby certify that this notice was filed electronically on December 3, 2009, and served on all on counsel of record by that means.

S William M. Norris

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William M. Norris