

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

vs.

YANKEL ROSENTHAL COELLO,

Defendant.

S6 13 Cr. 413 (JGK)

SENTENCING MEMORANDUM ON BEHALF OF YANKEL ROSENTHAL
[REDACTED PUBLIC VERSION]

Samidh Guha
Jim Ligtenberg
Nassim Ameli
JONES DAY
250 Vesey Street
New York, NY 10281-1047
(212) 326-3721

Brian Sun
Christopher R.J. Pace
JONES DAY
555 S. Flower Street
Los Angeles, CA 90071
(213) 243-2858

Counsel for Yankel Rosenthal

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROCEDURAL POSTURE	5
I. Yankel’s Arrest and Detention.....	5
A. The USAO’s Actions in Response to Yankel’s Arrest	6
B. OFAC’s Actions in Response to Yankel’s Arrest.....	7
C. The Honduran Government’s Actions in Response to Yankel’s Arrest	8
D. Transportation to the Southern District of New York	9
II. Immediate Harm Suffered By Yankel and His Family as a Result of His Arrest	10
III. Yankel’s Limited Criminal Conduct and Guilty Plea.....	13
A. The Attempted Doral Transaction	14
B. The Plea Agreement Between Yankel and the Government	16
IV. The Government’s Inaccurate Post-Plea August 29, 2017 Press Release	18
V. Sentencing of Yankel’s Co-Defendants.....	19
ANALYSIS.....	20
I. The Application of the Sentencing Guidelines to the Attempted Doral Transaction	21
II. U.S.S.G. § 2X1.1(b)(1) Applies and Yankel’s Offense Level Should Be Reduced by Three Levels to Reflect that the Attempted Doral Transaction Was Never Consummated	22
III. The Sentencing Guidelines Range as Applied to the Actual Conduct of the Attempted Doral Transaction Is Not Reasonable and the Court Should Instead Apply the § 3553 Considerations to Fashion an Appropriate Sentence	24
IV. Yankel Rosenthal’s Personal History and Characteristics.....	25
A. Early Years (1968-1989).....	25
B. Career And Accomplishments	27
C. Volunteer and Philanthropic Engagements.....	32
D. Personal and Family Life	37
V. The Nature and Circumstances of the Attempted Doral Transaction	42
VI. The Need to Afford Adequate Deterrence to Criminal Conduct	44
VII. The Need to Protect the Public from Further Crimes of the Defendant	45
VIII. The Need to Provide Just Punishment and Consider the Types of Sentences Available	45
CONCLUSION.....	46

TABLE OF AUTHORITIES

	Page
CASES	
<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	21, 24
<i>Kimbrough v. United States</i> , 552 U.S. 85 (2007).....	24, 25
<i>Rita v. United States</i> , 551 U.S. 338 (2007).....	24
<i>United States v. Adelson</i> , 441 F. Supp. 2d 506 (S.D.N.Y. 2006).....	43
<i>United States v. Amato</i> , 46 F.3d 1255 (2d Cir. 1995).....	24
<i>United States v. Booker</i> , 543 U.S. 220 (2005).....	24
<i>United States v. Emmenegger</i> , 329 F. Supp. 2d 416 (S.D.N.Y. 2004).....	43
<i>United States v. Mueffelman</i> , 400 F. Supp. 2d 368 (D. Mass. 2005).....	43
<i>United States v. Skowronski</i> , 968 F.2d 242 (2d Cir. 1992).....	24
STATUTES	
18 U.S.C. § 1956.....	17
18 U.S.C. § 1957.....	17, 18, 21, 23
18 U.S.C. § 3553.....	<i>passim</i>

INTRODUCTION

On behalf of defendant Yankel Rosenthal Coello (“Yankel Rosenthal” or “Yankel”), we respectfully submit this memorandum in anticipation of his sentencing scheduled for January 19, 2018. On August 29, 2017, Yankel pled guilty to one count of attempt to engage in a monetary transaction in criminally derived property of a value greater than \$10,000. For the reasons described in more detail below and those outlined in the sealed submission accompanying this filing, we respectfully request that Your Honor impose a sentence of time served. We believe that such a sentence would be consistent with the factors contained in 18 U.S.C. § 3553 and would sufficiently serve the interests of justice.

We do not make this request lightly. Yankel recognizes that he was wrong to have engaged in the conduct to which he pled guilty. However, proportionality matters. Yankel stands before the Court prepared to be sentenced for his plea of guilty to a single attempt to engage in a monetary transaction in criminally derived property, which transaction was abandoned by all involved soon after it was initiated. As per Yankel’s allocution, which was blessed in advance by the government, Yankel consciously avoided knowledge of the source of the proceeds in question and had no direct engagement with the individuals purportedly providing the tainted proceeds. And there is no dispute that the transaction never happened. While Yankel recognizes that this is a violation of United States law and therefore by definition serious misconduct, it must be understood for sentencing purposes in the broader context of this prosecution.

This context is directly relevant to Your Honor’s consideration of an appropriate sentence for two primary reasons. First, the permanent consequences already imposed upon Yankel—in terms of the financial devastation and impact on innocent family members, his restrictions on liberty over the course of this prosecution, and his reputation—were a direct product of the

government's sweeping allegations, not Yankel's narrower guilty plea. The conduct for which Yankel has pled guilty and must be sentenced is a far cry from the broad money laundering and political bribery scheme spanning eleven years, which was alleged with great public fanfare by the government at the initiation of this prosecution. As described in more detail below, the Department of Justice and the Department of Treasury issued dueling press releases upon Yankel's arrest, each publicly condemning conduct, the lion's share of which the government declined to prosecute three years later. Yankel was designated by the Office of Foreign Asset Control ("OFAC") as a Specially Designated Narcotics Trafficker ("SDNT"), a public-branding bearing little if any resemblance to the conduct admitted to in his plea. Moreover, the Honduran government, apparently in concert at some level with U.S. government agencies, embarked on an unprincipled raiding of Yankel's family assets in Honduras. As the lead United States Drug Enforcement agent foretold at the time of Yankel's arrest: "The Rosenthal Empire [would] cease to exist as of [Yankel's arrest]" and, "[a]ll of [Yankel's] family's properties [would be] seized. Everything is going away." The government largely achieved this goal long before actually prosecuting (and subsequently abandoning large swaths of) its allegations. These consequences, all imposed while Yankel enjoyed the presumption of innocence afforded all criminal defendants, far outstrip the consequences that a defendant would normally face for the type of plea that Yankel ultimately entered.

Compounding the public shaming of Yankel for conduct not proven, the government inexplicably issued at the time of his guilty plea an expansive press release fraught with errors suggesting that Yankel had pled guilty to conduct which he did not and implicating him for conduct for which the government immunized him. Whatever the reason may have been for the government's post-plea press release, the reality is that Yankel and his family will live the

remainder of their lives with the public shame resulting from the inaccurate press release, rather than the fair public judgment arising out of his actual plea.

We know of no instance where a defendant having pled guilty to similar conduct has been subjected to pre-sentence sanctions similar to those already suffered by Yankel and that will persist independent of Your Honor's sentence. Again, proportionality matters. Yankel (and his family) have already been subjected to sanctions greatly in excess of what would normally be suffered by a defendant entering the type of plea present here.

Second, this is precisely the type of case where the United States Sentencing Guidelines yield a range—even granting the three-point downward adjustment applicable to an attempt such as this, which the government inexplicably opposes—that is discordant with the actual conduct in question. The Guidelines range is driven primarily by U.S.S.G. § 2B1.1, which would penalize Yankel for proceeds that were never actually advanced at any time as part of the ephemeral attempted purchase of real estate. Yet the Guidelines range as currently calculated by Probation actually *exceeds* the applicable Guidelines range for Yankel's co-defendants, who pled guilty to negotiating directly with known narcotics traffickers and effectuating transactions over multiple years involving millions of dollars of actual narcotics proceeds. This simply cannot be. Instead, this is precisely the type of case where the Court, after recognizing the applicable Guidelines range as it must, should consider the appropriate sentence for Yankel under the factors set forth in 18 U.S.C. § 3553 without placing much, if any, weight on the determined Guidelines range.

When measured against the plea that he entered, Yankel has already suffered harm prior to sentencing alone that justifies, in our view, a sentence of time served. Yankel's personal background and characteristics further support this result. The inevitable public perception

going forward of Yankel as a “specially designated narcotics trafficker”—which would be lent credence unfortunately with a sentence of incarceration—is completely at odds with the description of Yankel, attested to by the numerous letters from friends and family. While unquestionably born into a life of privilege by dint of his family’s generational accomplishments in Honduras, Yankel made his mark primarily through his advancement of the family businesses, his public service in the Honduran government, and his leadership of the beloved Honduran soccer team CD Marathón. With privilege comes responsibility, and Yankel used his and his family’s resources for the public good on many meaningful occasions. Beyond this, however, what resonates from the letters submitted on Yankel’s behalf—in English, Spanish and braille; by family members, parents of Marathón youth soccer players and many others; involving emotional, physical, and financial support—are Yankel’s poignant and quiet acts of kindness that but for this sentencing likely would have remained out of the public eye.

These submissions lead to the inescapable conclusion that Yankel has contributed much to society and has the promise to do so again in the future. While the prior avenues of contribution to Honduras and its youth may no longer be available to Yankel as a result of this prosecution, Yankel is determined to move forward to the next chapter of his life and utilize his industriousness and generosity to find new ways to, in two words, “do good.” (In a letter attached as Exhibit A, Yankel shares with the Court his goals for the future.)

Yankel and his family have paid dearly and disproportionately for the misconduct to which he has pled and taken responsibility. The consequences of the errors made by Yankel, as acknowledged in his plea, and by the United States and Honduran governments in their pursuit of prosecution and asset seizures should not be extended any further by incarcerating Yankel. We respectfully request that the Court impose a sentence of time served for Yankel and allow him to

start putting back together the pieces of his life and his family's lives that have been torn asunder and to move forward as a productive member of society. Alternatively, we respectfully request that the Court consider the sentencing proposal outlined by The Aleph Institute, which would require Yankel to serve three years of probation, spend 1,000 hours mentoring at-risk youth, spend an additional 1,000 hours engaging in community service to help those suffering from substance abuse, and submit to weekly monitoring and mentoring by clerical leaders in connection with the Institute.¹

PROCEDURAL POSTURE

The law enforcement actions taken against Yankel and his family, beginning at the time of his arrest over three years ago, have been far broader in scope than is the norm in this District and have come from multiple sources. Based largely upon allegations against Yankel that the government has since abandoned, the United States Attorney's Office for the Southern District of New York ("USAO"), OFAC, and the Honduran government worked, separately and collectively, to punish Yankel and his family. As a result, Yankel has already been subjected to an array of sanctions, many of which are irreversible, that stretch far beyond what a typical defendant would have absorbed at the time of sentencing. A review of this prosecution tells an unfortunate story of government overreach—well-intentioned though it may have been—and its consequences, with which Yankel will be forced to live for the remainder of his life.

I. Yankel's Arrest and Detention

Yankel was arrested at the Miami International Airport on October 6, 2015 while entering the United States to visit his children. Immediately upon being taken into custody, Yankel waived his Fifth Amendment privileges and spoke freely with agents from the United States

¹ See Letter of Rabbi Yossi Bryski. The attached Appendix contains the letters submitted on Yankel's behalf; the letters are labeled "App. 1" through "App. 48." Rabbi Bryski's letter appears at App. 2.

Drug Enforcement Administration (“DEA”) while still at the airport. Yankel agreed to do so prior to consulting with legal counsel or being arraigned on the charges contained in the then-operative indictment. During the interview, which was recorded, Yankel denied involvement in narcotics trafficking. He also politely but firmly questioned the accuracy of the allegations regarding narcotics trafficking proffered by the DEA agent and identified points of confusion in the agent’s assumptions. Yankel did so calmly despite aggressive and often profane questioning from the lead DEA agent.² After this voluntary interview, Yankel was presented on October 7, 2015 in the Southern District of Florida and detained.

A. The USAO’s Actions in Response to Yankel’s Arrest

The USAO immediately issued a press release to coincide with Yankel’s presentment. The press release, dated October 7, 2015, described Yankel as being charged “in connection with a multi-year scheme to launder the proceeds of narcotics trafficking offenses and foreign bribery offenses through accounts located in the United States.”³ Echoing the unsealed indictment, the press release stated that “the defendants conspired with others from 2004 through September 2015 to commit money laundering offenses . . . involving the proceeds of (i) narcotics offenses and (ii) offenses against a foreign nation involving bribery of public officials and the misappropriation, theft, or embezzlement of public funds.”⁴ It advised the public that Yankel

² A transcript of Yankel’s post-arrest statement (“Tr.”) is attached for Your Honor’s convenience as Exhibit B. At numerous points during the interview, the DEA agent, seemingly dissatisfied with Yankel’s denials of involvement in narcotics trafficking, outlined dire consequences for Yankel. Tr. at 13 (“I’m just telling you honestly. You have massive legal problems. You’re going to jail.”); Tr. at 23 (“Mr. Rosenthal: If I’m here, why would I bullshit you? DEA Agent: Because your family has so much fucking money that you guys don’t ever think anything is going to touch you . . . [i]t’s touching you. It’s hitting you right in the fucking head right now and it’s not going to stop.”); Tr. at 24-25 (“Listen. I’m not your priest. I’m not your fucking mama. I’m just a guy that’s doing my job.”)

³ USAO Press Release dated October 7, 2015 (attached as Exhibit C).

⁴ *Id.*

had been designated as a SDNT pursuant to the Foreign Narcotics Kingpin Designation Act and praised the coordinated efforts of other government agencies including OFAC.

The USAO press release did state that “[t]he charges contained in the Indictment are merely accusations and the defendants are presumed innocent unless and until proven guilty,”⁵ which was repeated throughout the press release. It also noted fairly that, “the entirety of the text of the Indictment and the description of the Indictment set forth below constitute only allegations, and every fact described should be treated as an allegation.”⁶

B. OFAC’s Actions in Response to Yankel’s Arrest

The OFAC press release, also dated October 7, 2015, struck a more strident tone. That government press release announced the designation of Yankel (and others) as “Specially Designated Narcotics Traffickers pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) for playing a significant role in international narcotics trafficking.”⁷ OFAC emphasized that, pursuant to this designation, virtually all of Yankel’s assets were “frozen, and U.S. persons are generally prohibited from engaging in transactions with them.”⁸ OFAC elected not to include any disclaimers regarding the unproven allegations underlying the indictment, instead stating:

“This action targets the three Rosenthal family members and their properties for their money laundering and drug trafficking activities,” said Adam J. Szubin, Acting Under Secretary for Terrorism and Financial Intelligence. “This step underscores that the U.S. government is fully committed to protecting the U.S. financial system *from criminals like the Rosenthals.*”⁹

⁵ *Id.*

⁶ *Id.*

⁷ OFAC press release dated October 7, 2015 (attached as Exhibit D).

⁸ *Id.*

⁹ *Id.* (emphasis added).

The OFAC press release also noted that “[t]his action was conducted in close coordination with the DEA, Homeland Security Investigations, Customs and Border Protection’s National Targeting Center, and the U.S. Attorney Offices for the Southern District of New York and the Southern District of Florida.”¹⁰

C. The Honduran Government’s Actions in Response to Yankel’s Arrest

The Honduran government also responded to the unsealing of the USAO charges against Yankel, but not simply by issuing a press release. Beginning simultaneously with Yankel’s arrest on October 6, 2015 and continuing over the course of several weeks, various law enforcement arms of the Honduran government seized a range of properties owned either by Yankel or his family members. The Honduran *Oficina Administradora de Bienes Incautados* (“OABI”) further seized financial accounts held by Yankel and his family members. OABI made no effort to trace either the property or the funds seized to the charges brought by the USAO. The Honduran government’s actions paralyzed Yankel’s family, destroyed generational businesses, and created financial turmoil that persists to this day and will continue to exist long after Yankel’s sentencing hearing.

While the USAO has denied any involvement with the Honduran government’s actions, comments made by the DEA agent at the time of Yankel’s arrest reveal that the United States government was aware of how the Honduran government would respond to the USAO charges. The DEA agent who interviewed Yankel in Miami “predicted” the very seizures that occurred, telling Yankel pointedly that, “[t]he Rosenthal Empire ceases to exist as of today.” Tr. at 11. The DEA Agent also directly advised Yankel that, “[a]ll of your family’s properties are going to start being seized. Everything is going away.” Tr. at 23. The USAO and the other American

¹⁰ *Id.*

governmental agencies would have had no authority to effectuate the seizures against Yankel and his family members in Honduras at the time of his arrest, so the DEA agent's comments were necessarily directed towards expected Honduran government actions.

D. Transportation to the Southern District of New York

After his presentment in the Southern District of Florida, Yankel was transported by the United States Marshals to this District for his initial appearance before Your Honor. Yankel was arraigned and remanded on consent without prejudice to a subsequent bail application. For the first two weeks following his arrival in the District, the Bureau of Prisons detained Yankel in the Specialized Housing Unit (the "SHU") at the Metropolitan Correctional Center. During his time in the SHU, Yankel was subjected to solitary confinement for 23 hours per day, permitted to bathe only once per week, and permitted visits only from his legal counsel.

Shortly after Yankel's arrest, counsel began negotiating with the government regarding a potential bail package that would allow for Yankel's release pending adjudication of the charges lodged against him. The parties ultimately reached agreement on a bail package, which was presented to and accepted by Your Honor on November 13, 2015. Pursuant to the parties' agreement, Your Honor ordered that Yankel could be released on a \$5 million personal recognizance bond, co-signed by seven financially responsible people and secured with property in Florida. Yankel was subjected to home detention in an apartment in New York with the Firstenbergs, who are elderly family friends. Yankel was also required, beyond the traditional pre-trial travel conditions, to obtain deferred action status from the Department of Homeland Security ("DHS") to allow him to reside in the United States pending trial, which added to his period of incarceration. Sixty-five days after his arrest, Yankel received deferred action status from DHS on December 10, 2015, at which time he was released from detention (having previously satisfied the other bail conditions).

II. Immediate Harm Suffered By Yankel and His Family as a Result of His Arrest

The actions of the USAO, OFAC, and the Honduran government combined to have an immediate, devastating, and lasting impact on Yankel and his family. Yankel's inclusion on the OFAC SDN list paralyzed him financially. While Yankel needed sophisticated legal counsel to represent his interests on all three fronts (the criminal charges, the OFAC restrictions, and the Honduran government's efforts), his assets and those of his family were frozen. Yankel and his counsel sought licenses from OFAC to permit his retention of counsel, which was granted only after significant litigation before Your Honor.¹¹ Even after the grant of licenses for legal services and maintenance, numerous financial institutions with which Yankel had previously dealt suspended his accounts and continued to maintain his assets under freeze based on the allegations trumpeted in the USAO and OFAC press releases. Addressing these suspensions severely circumscribed Yankel's life and added sizeable costs (legal and otherwise).

The impact on Yankel's family was equally crushing. Despite no allegations of any sort against them, Yankel's aging parents, ex-wife, siblings, and young children were all tainted by the OFAC restraints and the allegations amplified by the government's press releases. The consequences of the government's actions have taken several forms.

First, the government cancelled Yankel's family members' United States visas. This has had a dramatic impact on the lives of Yankel's family. Yankel and his ex-wife Marcia have three children together, and the two have long cooperated closely to ensure that the children are loved and supported. At the time of Yankel's arrest, Marcia lived in Honduras while their daughter Sofia was an undergraduate student at Florida International University ("FIU") and

¹¹ Your Honor may recall that the delays in the OFAC licensing process forced Yani and Yankel Rosenthal to file a motion to dismiss dated May 20, 2016, citing to the restraint on effective assistance of counsel that resulted. This briefing, while adding to defendants' legal expenses, forced OFAC—after prompting from the USAO—to expedite the licenses in lieu of responding to the motion. *See* Letters from OFAC to Jones Day (May 27, 2016) (attached as Exhibit E).

their son Edwin Jr. was a high school student in Texas [REDACTED]. [REDACTED]. Marcia held a U.S. tourist visa, and Sofia and [REDACTED] held U.S. student visas.¹² After Yankel's arrest, however, Marcia's tourist visa was abruptly and without notice cancelled, which Marcia learned about while at the airport in San Pedro Sula, Honduras en route to visit her children.

When asked, the USAO denied any ability to assist in addressing Marcia's visa cancellation and the potential cancellations of the student visas for Sofia and [REDACTED]. Efforts to gather information from DHS were equally fruitless. As a result of the visa issue, Marcia suffered needless separation from her children. Sofia did not return to Honduras for almost two years for fear of not being permitted back into the United States, at the cost of being separated from her mother and ending a serious romantic relationship with her then-boyfriend. To make matters worse, when Sofia finally returned to Honduras late this summer when Yankel's plea was imminent and the core government allegations largely abandoned, her student visa was nonetheless cancelled. She protested the cancellation but was advised by the Honduran embassy that the visa was revoked because of the (since abandoned) drug trafficking allegations against Yankel. As a result, Sofia was forced to miss her fall senior semester at FIU and instead had to complete her undergraduate education abroad. For [REDACTED], the consequences are more straight-forward—he has not been able to see his mother since the time of Yankel's arrest.¹³

[REDACTED]

[REDACTED]

[REDACTED]. For Yankel,

¹² Yankel's oldest son, Yankel II (or Yankelito), is a United States citizen.

¹³ The reach of these immigration consequences extended beyond Yankel's immediate family. Without reason or explanation after Yankel's arrest, his niece Rachel Ramos Rosenthal Normas was informed by DHS that her naturalized United States citizenship was being revoked.

watching his family members suffer through both the uncertainty and the actual immigration consequences has been heart-wrenching and added significantly to the pain that he has suffered from these charges.

Second, the Honduran government seized property and tangible items owned by Yankel's extended family—not Yankel—that were unrelated to any of the government's allegations. Few, if any, of these assets have been returned despite the family's significant legal efforts in Honduras to correct these errors. Simultaneously, many of the family businesses that have operated for years were affected. As but one example, Yankel's family was forced to sell at a steep discount their sugar factory Chumbagua in order to pay legal fees and living expenses for the family. In addition to the financial cost, many of these businesses and assets had been accumulated across generations, so the seizures had a meaningful psychological impact as well.

It remains unclear to this day as to what standards, if any, were applied to the seizures. Again by way of example, the Honduran government seized Marcia's family house in Honduras. Similarly, his family members were denied banking privileges in Honduras, severely compromising their ability to conduct day-to-day activities. This too has caused understandable strain on Yankel, given his role as one of the key people in the family responsible for managing the well-being of his elderly, retired parents, his children, and other family members as well as the family businesses. While the psychological impact and legal expenses are no doubt a foreseeable consequence for any individual charged criminally, Yankel suffered beyond the normal dislocation of being a criminal defendant given the proactive actions taken by OFAC and the Honduran government and the extensive press campaigns at the time of his arrest undertaken by the USAO and OFAC.

Third, Yankel's liberty was constrained from, at a minimum, the time of his arrest until his bail conditions were relaxed to permit him to relocate to Florida and reside with his daughter. As described above, Yankel was incarcerated, including in the SHU, for a period of sixty-five days. Even following his release on bail, Yankel was subject to home detention in New York City with the very narrow exception of legal and religious visits for a lengthy period of time. He resided with the Firstenbergs, whose generosity in opening their home to Yankel will never be forgotten by Yankel, but his ability to spend time with his family, including his children, was greatly circumscribed during this period.

III. Yankel's Limited Criminal Conduct and Guilty Plea

While dealing with the ramifications of his arrest personally and for his family, Yankel also worked in earnest to understand the government's allegations against him. The indictment unsealed against Yankel was legally sufficient but bare-bones in nature, largely reiterating the relevant statutory provisions. At the request of counsel, the government identified certain conduct that it believed was at the core of the allegations. With this information in hand, Yankel analyzed the government's accusations for accuracy and context.

Many of the government's assumptions and allegations were simply incorrect. One particular exchange during Yankel's post-arrest interrogation by the DEA agent demonstrates the government's misguided assumptions in investigating Yankel:

DEA Agent: What about the cocaine loads you guys brought up together from Panama?

Mr. Rosenthal: Hey –

DEA Agent: Come on. If we're going to have a conversation, let's just be honest.

Mr. Rosenthal: Okay.

DEA Agent: I thought we were going to be friends.

Mr. Rosenthal: I don't know if we're going to be friends but I can be honest with you. I have never, ever and yes you can record and you can write, seen one gram of cocaine. I have never done, not cocaine, not marijuana, nothing. I have Chipito – I just know him as Chipito as the kid he is. Never in my life have I done any business regarding cocaine trafficking nor trafficking whatsoever.

Tr. at 7-8. As Your Honor may be aware, the government has never since advanced any allegations that Yankel had direct involvement with narcotics trafficking. The government has similarly abandoned its incorrect assumption that Yankel had direct responsibility at Banco Continental, which was the foundation of Yankel's SDNT designation. As the government now realizes (but should have realized earlier), Banco Continental was operated by a different branch of the Rosenthal family. Yankel had no role, operational or otherwise, with the bank.

In the late spring/summer of 2017, Yankel sought to take responsibility for the narrow, though serious, conduct which he believed violated the law. Consistent with his post-arrest statement, Yankel again emphasized that he had no direct involvement with narcotics trafficking and that he was not directly involved with narcotics traffickers for the purpose of supporting their illegal trade. In relatively short order, the government, consistent with its obligation to “charge and pursue the most serious, readily provable offense,”¹⁴ focused on securing from Yankel a plea to his role in an attempted real estate purchase in Doral, Florida in 2013 (the “Attempted Doral Transaction”).

A. The Attempted Doral Transaction

In or around the spring of 2013, a Honduran lawyer known to Yankel approached him with a business proposition. The lawyer stated that he had a client who was interested in making a cash investment in Miami real estate. The lawyer asked Yankel to facilitate by identifying an

¹⁴ See Memorandum of Attorney General Sessions, dated May 10, 2017 (attached as Exhibit F).

appropriate transaction and, as needed, helping to arrange for financing. Yankel anticipated that he would receive a commission of approximately \$50,000 if a deal was consummated.

Although Yankel did not know at the time the identity of the prospective purchaser, the lawyer who approached Yankel intimated through use of a Spanish colloquial phrase that the funds were the proceeds of illegal activity. Yankel suspected that they may have been narcotics proceeds because he knew that the lawyer represented some narcotics traffickers among his clientele. Admittedly, Yankel consciously avoided asking further questions about the origin of the funds.

Yankel contacted Omar Morales, a friend and one-time business partner, who was in the real estate business in the Miami area. Morales identified a block of 12 residential properties in Doral, Florida as a potential investment target. Yankel understood that the prospective buyer would need to secure additional financing from a U.S. bank to complete the purchase of the Doral properties and conveyed that information to Morales. On April 11, 2013, Morales sent Yankel a real estate contract under which Yankel's company, Shelimar Real Estate Holdings, would be used to purchase the Doral properties.

Just as quickly as the proposed transaction was initiated, so too did it fall apart. Within a month or so, as far as Yankel understood from Morales, the owner of the Doral properties withdrew his interest in selling the properties. No contract or even memorandum of understanding was ever executed. The parties never engaged in negotiations over the potential transaction. No official inspection or appraisal of the property ever occurred, and the requisite bank financing was never procured. Ownership of the properties was never transferred and no funds were ever exchanged.

By May 2014, efforts to pursue the transaction ceased. Yankel did not attempt to locate another property for the prospective buyer to purchase. No efforts were made by Yankel or anyone else on the buyer's behalf to obtain funding from a U.S. bank. No funds were ever exchanged, nor were any contracts or other paperwork signed between Yankel and the prospective buyer. Yankel did not receive a commission from the buyer. At no time did Yankel meet or speak with the prospective purchaser. In fact, Yankel only learned of the identity of the prospective purchaser on or about October 24, 2017 while reading the Draft Pre-Sentence Report in connection with his sentencing (assuming that information is in fact accurate).

B. The Plea Agreement Between Yankel and the Government

In weighing the proposed plea, Yankel determined that a resolution of this criminal case would allow him to take responsibility for his lapse in judgment regarding the Attempted Doral Transaction. Yankel's role in the Attempted Doral Transaction was undoubtedly a serious error, driven by financial opportunism on Yankel's part rather than a desire to launder funds. Whatever his motivations may have been, Yankel was wrong and he recognizes that reality. A plea permitted Yankel to focus more intently on dealing with his error's grave impact on his family's lives, finances, and future, and to preserve resources to support them going forward. To these ends, Yankel believed that a plea to the attempted Doral Transaction would be appropriate and just.

Yankel's consent to plead to the Attempted Doral Transaction was based on the parties' mutual agreement as to the facts supporting the plea. There was a delay in finalizing the plea based upon Yankel's desire to arrive at a "global settlement" with OFAC that would result in his eventual de-listing as a SDNT (which was unwarranted from its inception). An agreement was reached with OFAC late in the summer of 2017, and was incorporated into the government's plea agreement dated August 25, 2017. The plea agreement focuses exclusively on the

Attempted Doral Transaction. Yankel insisted upon and received broad immunity as a part of the plea agreement, which states that, “the defendant will not be further prosecuted criminally by this Office . . . for conspiring to engage, attempting to engage, and engaging in money laundering offenses, in violation of Title 18, United States Code, Sections 1956 and 1957, between approximately 2004 and approximately September 2015.”¹⁵ This immunity provision was important to Yankel to bring closure to the incorrect accusations encompassed by the government’s indictment.

Having reached agreement with the government on the narrow plea for Yankel, counsel contacted the government to gauge what, if any, press release or other public statements it planned to issue. Specifically, we expressed our hope that the government would demonstrate restraint in light of the narrow conduct to which Yankel was pleading, the harms experienced by his family in Honduras as a result of the initial charges, and the potential safety issues given the high-profile nature of the government’s since-abandoned allegations. While the government declined to preview its press strategy, it advised counsel that “[w]e understand your position and concerns, are taking them into consideration, and are going to handle that aspect of the case pursuant to the same standards and guidelines that are applied to these types of issues in every case.”¹⁶

Yankel pled guilty on August 29, 2017 before the Honorable Valerie E. Caproni to an information that described Yankel’s role in the Attempted Doral Transaction. Prior to the plea, counsel provided his proposed allocution relating to the Attempted Doral Transaction to the government, which voiced no objection. During the plea colloquy itself, the government asked the Court to inquire further to confirm Mr. Rosenthal’s conscious avoidance of the source of the

¹⁵ See Plea Agreement (attached as Exhibit G).

¹⁶ See Email from Emil Bove dated August 23, 2017 (attached as Exhibit H).

proceeds for the attempt to satisfy 18 U.S.C. § 1957's knowledge element, which the Court did to the government's satisfaction.

IV. The Government's Inaccurate Post-Plea August 29, 2017 Press Release

Immediately following Yankel's plea, on the evening of August 29, 2017, the government issued a three-page press release entitled "Former Honduran Cabinet Official Pleads Guilty in Manhattan Federal Court to Money Laundering Charge" (the "August 29th Press Release").¹⁷ The August 29th Press Release, as is typical, prominently featured a statement from the Acting United States Attorney. However, the statement was in this instance demonstrably incorrect. It stated:

Acting U.S. Attorney Joon H. Kim said: "*As they admitted in Manhattan federal court, Yankel Rosenthal and Andres Acosta sought to assist Honduran drug traffickers in laundering the proceeds of their crimes. Rosenthal tried to conceal drug-tainted money through the purchase of U.S. real estate, political contributions in Honduras, and even investment in a professional soccer team. Acosta worked with other members of the Rosenthal family to assist the Cachiros, a notoriously brutal Honduran drug trafficking organization. Despite their attempts to launder these ill-gotten gains, with these pleas Rosenthal and Acosta face significant time in prison.*"¹⁸

Contrary to this language, Yankel's plea and the plea agreement into which he entered with the government make clear that Yankel never admitted in Manhattan federal court to "try[ing] to conceal drug-tainted money through . . . political contributions in Honduras, and even investment in a professional soccer team."¹⁹ There can be no serious debate as to this error in the government's press release.

The government compounded this error with the remainder of its press release by including a broad array of unproven allegations involving claims of public corruption and

¹⁷ See USAO Press Release dated August 29, 2017 (attached as Exhibit I).

¹⁸ *Id.* (emphases added).

¹⁹ The government has represented to us only that the press release was vetted at the highest levels of the office. We have no reason to believe that the errors in the statement were intentional.

actively conspiring with narcotics traffickers. The government did so without identifying these statements against Mr. Rosenthal as merely allegations, as is the typical practice with respect to government press releases and other public statements.²⁰ The government also neglected to mention that it had granted Yankel broad immunity for much of the conduct of which it now publicly complained.

Moreover, the government included in the press statement accusations that have never been backed by evidence or otherwise tested for reliability in any judicial proceeding. When asked about its expansive press release afterwards, the government pointed to its FRE 404(b) filing dated August 18, 2017 (the “August 18th 404(b) Filing”) as providing, to its mind, a fair basis for repeating the allegations, albeit without identifying them as being only allegations.²¹ When asked further whether the Office maintained written guidelines concerning the issuance of press releases, the AUSAs admitted that they did not know, repeating only that the press release had been approved “at the highest levels of the office.” The government failed to respond to further inquiries.

V. Sentencing of Yankel’s Co-Defendants

In the indictment unsealed at the time of Yankel’s arrest on October 6, 2015, Yankel was charged in a single count with co-defendants Jaime Rosenthal Hidalgo, Yani Rosenthal Hidalgo, and Andres Acosta. Although the four individuals were all charged under the same count initially, Yani Rosenthal Hidalgo and Andres Acosta on one hand and Yankel on the other hand ultimately pled guilty to separate and unrelated conduct. Yani and Acosta pled to participation in

²⁰ The government did take care to state in the press release that, “[t]he descriptions set forth below of conduct by co-defendant Jaime Rolando Rosenthal Oliva constitute only allegations, and every fact described should be treated as an allegation with respect to Rosenthal Oliva,” reflecting that it was well aware of its obligations regarding unproven charges.

²¹ The language of the August 18th 404(b) Filing largely mirrors the language of the August 29th Press Release.

multiple transactions over five years with an entity controlled by the Rivera family, who are known to be narcotics traffickers, in which narcotics proceeds were involved. Yani and Acosta admitted knowing of the Rivera family's narcotics trafficking and negotiating with them directly. These transactions over the five-year time period were all completed and resulted in the actual transfer of millions of dollars. Yankel had no role in these or any other transactions with the Rivera family.

In connection with the sentencing of Yani Rosenthal, the government advised the Court on or about December 8, 2017 that, with respect to its bribery allegations, it "has no evidence of an explicit *quid pro quo*."²² This was the first admission by the government since the charges were unsealed on October 6, 2015 that it did not have any evidence of a *quid pro quo* with respect to its bribery accusations. It is a striking concession by the government given that it has reiterated forcefully its accusations that Yankel was involved in political bribery throughout this prosecution, including in the August 29th Press Release and in the government's submission to the Probation Office in connection with Yankel's Pre-Sentence Report.

ANALYSIS

The events that took place over the course of this prosecution have had and will continue to have a profound impact on Yankel and his family and are relevant to the sentence to be imposed by the Court. Because of the government's October 7th press releases, combined with the serious errors in the government's August 29th Press Release, Yankel will live with the stigma of having pled guilty to conduct to which he never in fact pled guilty. As a result, the public to which the government's statements were aimed has been left with the incorrect impression that these extraneous allegations were in fact proven when they were not. Simply

²² Govt. Sentencing Submission at 9 (attached as Exhibit J).

typing Yankel's name into the Google search engine immediately yields articles referring to the government's abandoned allegations. This too is a stigma that Yankel will have to live with and that will unfairly broaden the stain on his reputation. Paired with the financial tsunami that resulted from Yankel's SDNT designation by OFAC and the Honduran government's extra-legal seizures, it is fair to say that Yankel has already been punished far in excess of the punishment that would normally accompany a similar plea for other defendants.

I. The Application of the Sentencing Guidelines to the Attempted Doral Transaction

As part of his plea agreement dated August 25, 2017, Yankel and the government have partially stipulated to the applicable Sentencing Guidelines calculations. Specifically, the parties agree that the conduct in question is governed by U.S.S.G. § 2S1.1(a)(2), as modified by § 2B1.1(b)(1) to reflect the intended proceeds that would have been involved had the Attempted Doral Transaction taken place. The parties further agree that U.S.S.G. § 2S1.1(b)(1) applies to Yankel's conscious avoidance of the fact that the proceeds were likely the product of narcotics offenses and that U.S.S.G. § 2S1.1(b)(2)(A) applies because Yankel pled guilty under 18 U.S.C. § 1957. The parties agreed to take different positions at sentencing with respect to the application (or not) of U.S.S.G. § 2X1.1(b)(1), which in appropriate circumstances allows for a three-point decrease to the offense level total for unconsummated attempts.

As the Court is well aware, it must begin all sentencing proceedings by correctly calculating the applicable Guidelines range. *Gall v. United States*, 552 U.S. 38, 49 (2007). To that end, we include first our argument as to the applicability of U.S.S.G. § 2X1.1(b)(1) to the calculation of Yankel's Guidelines range. We thereafter respectfully argue that the correct calculation of the applicable Guidelines range still greatly overstates the seriousness of the Attempted Doral Transaction which, taken along with the other § 3553 factors, warrants a sentence of time served.

II. U.S.S.G. § 2X1.1(b)(1) Applies and Yankel's Offense Level Should Be Reduced by Three Levels to Reflect that the Attempted Doral Transaction Was Never Consummated

Because Yankel only attempted to engage in a monetary transaction in criminally derived property, he is entitled to a three-level reduction in his offense level under U.S.S.G. § 2X1.1(b)(1). Accordingly, his applicable Guidelines range is 46 to 57 months, rather than 63 to 78 months. *See* PSR at 4.

Under § 2X1.1(b)(1), a defendant's offense level is decreased by three levels in the case of "an attempt . . . unless [1] the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or [2] the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control." Here, Yankel's conduct qualifies as "an attempt" under any definition of that term. Yankel pled guilty to *attempting* to engage in a monetary transaction in criminally derived property, and no such transaction ever occurred. And neither of § 2X1.1(b)(1)'s exceptions apply, as there were multiple uncompleted acts that were "necessary for successful completion of the substantive offense," and Yankel was not "about to complete all such acts but for apprehension or interruption by some similar event." The information to which Yankel pled, which was drafted exclusively by the government, itself explicitly describes the conduct as an "attempt."²³

As discussed above, Yankel was approached to assist in facilitating a real estate transaction in the Miami area, in part by utilizing his access to the U.S. credit market to help the buyer finance the purchase. But that proposed transaction never got off the ground, and efforts to pursue the transaction ceased shortly after they began. The funds intended to be "laundered"

²³ Superseding Information (Aug. 29, 2017) (Docket No. 238).

were never transferred. Yankel never received a commission. In fact, no funds were ever exchanged by any of the participants. Yankel and the prospective buyer did not agree to any contracts setting out the terms of an agreement. The property at the heart of the transaction never changed hands, and the owner of the property never agreed to any contract to sell it.

Nor did Yankel or the prospective buyer engage in active negotiations with the seller. No official inspection or appraisal of the property ever occurred. There was never any agreement as to the additional financing that would have been necessary to advance the transaction between the parties. And Yankel made no efforts to obtain funding from a U.S. bank. In short, the vast majority of steps necessary to complete the potential transaction were never commenced because the transaction was abandoned so early in the process. Because (1) Yankel merely attempted to engage in a transaction in criminally derived property, (2) multiple acts “necessary for successful completion of the substantive offense” were uncompleted, and (3) Yankel was not “about to complete” all of those acts “but for apprehension or interruption,” U.S.S.G. § 2X1.1(b)(1) requires a three-level reduction in Yankel’s offense level.

The government has indicated in negotiating the plea agreement that it will argue that U.S.S.G. § 2X1.1(c)(1) precludes application of U.S.S.G. § 2X1.1(b)(1) here. This argument ignores the Guidelines’ clear text. Section 2X1.1(c)(1) provides that “[w]hen an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.” Here, § 2X1.1(c)(1) does not apply because an attempt to engage in a transaction in criminally derived property is not “expressly covered by” U.S.S.G. § 2S1.1, the relevant “guideline section” for violations of 18 U.S.C. § 1957. Indeed, § 2S1.1 does not even mention attempts. Because § 2X1.1(c)(1) does not apply here, it does not prevent Yankel from

receiving a three-level reduction under § 2X1.1(b)(1).²⁴ And given that Yankel only *attempted* to engage in a monetary transaction in criminally derived property, he is entitled to a three-level reduction in his offense level under U.S.S.G. § 2X1.1(b)(1), and the applicable Guidelines range is 46 to 57 months, rather than 63 to 78 months.

III. The Sentencing Guidelines Range as Applied to the Actual Conduct of the Attempted Doral Transaction Is Not Reasonable and the Court Should Instead Apply the § 3553 Considerations to Fashion an Appropriate Sentence

It is well-established that while the Guidelines provide “the starting point,” *Gall*, 552 U.S. at 49, they are advisory, *United States v. Booker*, 543 U.S. 220, 245 (2005), and merely “serve as one factor among several courts must consider in determining an appropriate sentence,” *Kimbrough v. United States*, 552 U.S. 85, 90 (2007). Rather than simply impose a sentence within the Guidelines range, the Court must consider the range of factors listed in 18 U.S.C. § 3553 and determine the sentence that is “‘sufficient, but not greater than necessary,’ to accomplish the goals of sentencing.” *Id.* at 101 (quoting 18 U.S.C. § 3553). Indeed, the Court may not even “presume that the Guidelines range is reasonable,” but “must make an individualized assessment based on the facts presented.” *Gall*, 552 U.S. at 50. The sentencing court has wide latitude to impose a sentence below the Guidelines range where, “perhaps because (as the Guidelines themselves foresee)” a case under consideration “falls outside the ‘heartland’ to which the Commission intends individual Guidelines to apply, perhaps because the Guidelines sentence itself fails properly to reflect § 3553(a) considerations, or perhaps because the case warrants a different sentence regardless.” *Rita v. United States*, 551 U.S. 338, 351 (2007).

²⁴ The government has also indicated that it intends to rely on *United States v. Skowronski*, 968 F.2d 242 (2d Cir. 1992) to support its contention. However, the *Skowronski* opinion has since been abrogated in relevant part. See *United States v. Amato*, 46 F.3d 1255, 1261-62 (2d Cir. 1995).

Where the “Guidelines sentence itself fails properly to reflect § 3553(a) considerations,” the Court is permitted to reject the reasonableness of the Guidelines altogether. In *Kimbrough*, for instance, the Court recognized that “‘courts may vary [from Guidelines ranges] based solely on policy considerations, including disagreements with the Guidelines.’” 552 U.S. at 101-02 (citations omitted).

Under § 3553(a)(2), the Court must consider (1) “the history and characteristics of the defendant”; (2) “the nature and circumstances of the offense”; (3) the need “to afford adequate deterrence to criminal conduct”; (4) the need “to protect the public from further crimes of the defendant”; and (5) the need to “provide just punishment for the offense,” including by considering “the kinds of sentences available.” Here, all five factors support a sentence of imprisonment far below the suggested Guidelines range.

IV. Yankel Rosenthal’s Personal History and Characteristics

A. Early Years (1968-1989)

Yankel Antonio Rosenthal Coello was born in 1968, the youngest of four, in San Pedro Sula, Honduras. His parents, Edwin Rosenthal and Norma Coello, come from well-known and respected families in Honduras. The Coellos are devout Roman Catholics that are known for their charitable deeds in Honduras and abroad.²⁵ The Rosentals are Jewish and deeply observant, with the family having escaped persecution in Europe to settle in Honduras. Yankel’s maternal great grandfather, Augusto Coello Estevez, was a writer, a Deputy in the Honduran National Congress, and the composer of the National Anthem of Honduras. Yankel’s paternal grandfather, Yankel Rosenthal (“Yankel Senior”), was the founder of Compania Azucera Chumbagua and the Continental Group, the companies at the origin of the successful familial

²⁵ Letter of Eric Firstenberg (App. 16).

business enterprise. As such, from his two families, “Yankel was instilled with a strong work ethic and encouraged to lead his life with passion and purpose.”²⁶

Yankel grew up immersed in the Jewish faith, and was taught the traditional values of Judaism, in particular “to honor and obey his parents,” “the importance of brotherhood,” “to be a humble servant to God,” and that “he would be held accountable for his actions.”²⁷ He was also taught the importance of service to others and of showing compassion towards the less fortunate.²⁸ Yankel attended the International School of San Pedro Sula, where he was very involved in sports and social activities. Aurelio Pozzo, a former Board member of the school, writes that Yankel “always had a very good conduct” at school, and that his involvement in school activities “helped him develop good manners[,] enabling him to relate with and get along with people.”²⁹ According to one of his classmates, Yankel was “a good friend” who would “stand[] up for the weaker kids, showing a high sense of righteousness and justice.”³⁰ While in high school, Yankel met Marcia Cordoba, who would become his wife of 25 years and the mother of his three children. After dating for several years, Yankel and Marcia married in 1988, one year after Yankel had moved to the United States to attend college, and their first child, Yankel II (or Yankelito), was born in the United States shortly after. After attending college for two years in the United States, Yankel decided to return to Honduras in 1989 to start working and provide for his family. It is from that time that he started getting involved in the family business, where he would spend the next 25 years.

²⁶ *Id.*

²⁷ Letter of Edwin Rosenthal (App. 31).

²⁸ *Id.*

²⁹ Letter of Aurelio Alfonso Pozzo Tarrus (App. 30).

³⁰ Letter of Alberto Carlos Downing Cano (App. 13).

B. Career And Accomplishments

1. Chumbagua (1989-2015)

Raised with the pride of his familial heritage and the core values that “hard work was expected of him” and that nothing would be given to him freely,³¹ Yankel was determined to follow in the footsteps of his father and grandfather to grow the family business. Soon after his return from the United States, Yankel started working at Chumbagua, the family sugar company over which his father presided. Yankel was first put in charge of the citrus department, for which he had received training in Israel the year before. For 25 years, Yankel moved up the ranks of the company, holding various managerial positions and ultimately serving as the CEO from 2005 until his arrest in 2015.

Chumbagua was founded in 1948 by Yankel’s grandfather and 8 other business partners, and cropped its first harvest in 1950. In the late 1970s, Edwin Rosenthal (Yankel’s father) negotiated for the Rosenthal family to become the majority shareholder. Unlike his brother, Jaime Rosenthal Oliva, Edwin did not make any investments in the Continental Group and only focused on growing the sugar mill and distribution businesses. As such, neither Edwin nor any of his children, including Yankel, were ever involved in the Continental Group businesses.

Soon after starting as a manager at Chumbagua, Yankel took measures to modernize and diversify the company. Under his management, Chumbagua augmented the number of sugar millers and grinders to increase the volume of extraction per day, installed continuous centrifuges for better sugar juice evaporation, imported modern agricultural practices such as mechanical fertilization to increase the harvest yield per acre, and even hired advisers from Australia and Colombia to advise on agricultural techniques that would benefit the harvesting of

³¹ Letter of Edwin Rosenthal (App. 31).

the crop. Additionally, in the early 2000s, following an economic crisis that severely damaged the Honduran agricultural sector, Chumbagua decided to diversify its production by cultivating and processing citrus fruits. The company became the main provider of juices for Dole in Honduras and exported 30% of its production worldwide. The success of this new line of business allowed the company to buy an additional 5,000 acres of land, which led to the hiring of additional farmers. By 2015, Chumbagua's sugar production had quadrupled since 1989, and the company employed over 2,000 employees.

The values of compassion and generosity instilled by Yankel's parents in his youth were reflected in his relationships with his workers. According to family friends, Yankel "always showed great interest in the well-being of his worker[s]."³² In 1998, when Hurricane Mitch hit the country, Chumbagua helped employees rebuild their homes and provided medical help to those that were injured.³³ Yankel's personal assistant, Brenda Yisell Espinoza, states that she witnessed firsthand his "nobility" during her 11 years at Chumbagua. When Yankel's employees asked him for economic help, whether it be for scholarships, medication, visa applications, or even housing, Brenda recounts that his answer "w[as] always positive."³⁴ Brenda describes how she personally benefited from his help:

I was fortunate to be able to share all kinds of situations in which his kindness knew no bounds. Personally, I received all kinds of help. When I was studying law at college, he allowed me to take time to go to class. I graduated, got married, and became a mother . . . and, above all, I am grateful for the opportunity he gave me to take care of my family and continue to work. He changed the time I got off of work, so I could be with my kids after school. . . . [O]nly those of us who have been his employees and directly benefited from his generosity can attest to his good heart.³⁵

³² Letter of Ari Weizenblut (App. 47); Letter of Mauricio Weizenblut (App. 48).

³³ Letter of Ari Weizenblut (App. 47); Letter of Mauricio Weizenblut (App. 48).

³⁴ Letter of Brenda Yisell Espinoza (App. 15).

³⁵ *Id.*

Yankel also showed appreciation to his employees and acknowledged their hard work. Alejandra Cordoba, his niece, warmly remembers the “humbling moments” when her uncle walked through the fields during the sugar Zafra (harvest), personally thanking every worker “for their hard work and dedication,” and telling them that “if it were not for them, none of this would be possible.”³⁶

Under Yankel’s leadership, Chumbagua also became a source of financial and social support for the local community. Beyond the direct needs of his employees, Yankel spent substantial time meeting with local representatives seeking support for their communities. Board members of the local municipalities would come to him for advice on childcare policies or the improvement of the communities’ living conditions, to ask for infrastructural needs such as electricity poles, or even for help in providing supplies for the surrounding schools and hospitals. Every year, on Children’s Day (“Día del Niño”), Chumbagua would distribute hundreds of piñatas to the schools of Santa Barbara, so that the children could receive presents on their special day. When heavy rains hit the region, Chumbagua would take it upon itself, with the volunteer help of its engineers and at its own expense, to maintain and repair the unpaved roads. Yankel would often go beyond budget to meet the needs of the community, but he considered it as his duty—he was always confident that, just as Chumbagua would be the community’s helping hand, a higher helping hand would be there to provide enough finances that Chumbagua could spend for those in need.

2. *Congress (1998-2002)*

Yankel believed in the power of the free market and free enterprise as vectors of economic and social development. Moreover, by virtue of his profession in the agricultural

³⁶ Letter of Alejandra Cordoba (App. 10).

sector and his regular interactions with farmers, field workers, and local mayors in Santa Barbara, Yankel became aware of the workers' and people's needs in the region. This led him to develop an interest in participating in some form of civic engagement, "with the notion and determination to make a difference in a Country that had been very good to us" and with the intent to "give back to the community."³⁷ Local mayors and municipality board members who had benefited from his help and advice saw a natural leader in Yankel and encouraged him to represent the region in Congress. Yankel ran for Congress in 1997 and was elected in 1998 as the representative of Santa Barbara and as President of the Sugar and Coffee Committee.

As a legislator, Yankel strove to achieve much-needed reforms to the agricultural sector and to secure funding and resources for the Santa Barbara region. During his time in Congress, Yankel was able to obtain, amongst other things, funding to develop better infrastructure for Santa Barbara, access to technology and modern equipment for farmers, and better benefits for coffee producers. He also drafted and successfully passed a bill that allowed shoe makers to have access to prime materials free from duty tax in order to render their businesses more competitive, benefiting directly the shoe makers in the Santa Barbara region. Yankel was also responsible for mediating disputes between coffee producers and unions, as well as organizing negotiation sessions between sugar cane growers and sugar mills. At the end of his four-year term, Yankel decided not to run for a second term.

3. *Minister of Investment Promotion (2013-15)*

In 2012, the Head of Congress Juan Orlando Hernandez ("Hernandez") was running for President against Ricardo Alvarez, and he approached Yankel to help fundraise for his campaign. Yankel and Hernandez initially met while they were young congressmen in 1998, and developed

³⁷ Letter of Norma Johanna Rosenthal (App. 34).

a cordial relationship since then. When Hernandez announced his intent to run for president, Yankel believed that Hernandez was a better candidate than Alvarez and became one of the main supporters of Hernandez's campaign. Yankel's support did not become public until the summer of 2013, after which time Yankel began accompanying Hernandez on his campaign trips.

When Hernandez won the election in November 2013, Hernandez appointed Yankel to serve as the Minister of Investment Promotion. Yankel hoped to draw from his experience in business to meet with high-level executives from prominent multinational companies who had an interest in investing in Honduras and thereby bring much-needed foreign direct investment into Honduras. But despite Yankel's best efforts, the Hernandez Administration was not able to prioritize the interest in the proposals made by the potential investors given the other challenges facing the country. To Yankel's regret, no investment plans were finalized during his time in office.³⁸

4. *Yankel's Businesses (1997-2015)*

In parallel to his position at Chumbagua, Yankel created and managed businesses in the real estate, infrastructure, and agricultural sectors. In 1997, Yankel, along with four business partners—William Hall, Plutarco Molina, Juan Carlos Sabillon and Edwin Rosenthal—started a real estate development company named Invalle, which specializes in buying land in the San Pedro Sula area and selling parcels to individuals on which to build their homes. Invalle became

³⁸ The government, in its August 29th Press Release and its submissions to the Probation Department, made reference to a videotaped meeting between Yankel and several known Honduran narcotics traffickers. While the providence of the recording is unknown to Yankel, he does recall the meeting given its *sui generis* nature for Yankel. On November 7, 2013, Hector Emilio Fernandez contacted Yankel alleging that he wanted to meet and discuss a loan he had made to Yankel's business partner, Milton Gatlin. Unbeknownst to Yankel, the meeting was a ruse to instead allow narcotics traffickers affiliated with Fernandez to ask Yankel's assistance in lobbying President Hernandez for protection in connection with their narcotics trafficking activities. In the meeting, which lasted approximately 30 minutes, Yankel asserted that he could not facilitate a meeting with President Hernandez because President Hernandez would not support their narcotics trafficking and instead was closely aligned with the United States government. Yankel recalls being surprised, trapped, and scared during the meeting, especially given his unwillingness to satisfy the request to meet with President Hernandez.

a successful venture, in part due to the quality of the amenities it was offering.³⁹ Yankel was responsible for negotiating the purchase price with the land owners, and his sales team would be responsible for selling the individual lots. In 2011, Yankel started Urbana, a similar real estate development company with Milton Gatlin and Luis Matta. The same year, Yankel, along with William Hall and Plutarco Molina, entered into a public-private partnership with the city of San Pedro Sula called Siglo 21 to develop urban infrastructure projects.

C. Volunteer and Philanthropic Engagements

Yankel recognizes that many of his good deeds involving his family resources and businesses should be expected of those like Yankel who were born into privilege. It is Yankel's smaller acts of direct and personal kindness that reflect even more significantly on both his true character and his near-certainty of doing good for others going forward.

1. Soccer

From an early age, Yankel has been passionate about soccer, which is unquestionably Honduras' most popular sport. By becoming the director of C.D. Marathón in 2003, Yankel reinvigorated the San Pedro Sula team, earning it international recognition and making it a symbol of national pride for Hondurans.

Yankel has been playing soccer for as long as he can remember. His father Edwin and his uncle Jaime Rosenthal became managers of C.D. Marathón in the early 1960s. Yankel soon became the team mascot and would play every day after school. It was only natural for him after his return to Honduras in 1989 to become involved on the board of the team. The Marathón stadium was open to children of all ages. Unlike the private soccer clubs in the wealthy areas of the city, Marathón was accessible to children of all social strata. It offered a cheap membership

³⁹ See Article from La Prensa on Ciudad Maya, one of Invalle's housing projects (attached as Exhibit K).

of \$2 dollars a month that would cover the children’s drinks and towels, and integration into the youth, 1st Division, and 2nd Division teams. CD Marathón soon became known as the “people’s team”—its players were mostly children from poor areas of the city who would train every day after school and play other teams on the weekend. One can only appreciate the value of these underprivileged children finding purpose and drive through sport when understanding the context in which they live: early on, children in the most populated areas of Honduras are subject to the constant threat of gang membership and violence. As explained by some of Yankel’s friends, joining a soccer team like CD Marathón is an opportunity for these children to distance themselves from a life of crime: “Thanks to sports, Yankel . . . became known as a patron, protecting children and adolescents in the practice of soccer, equipping them with implements to play without complexes and making them happy.”⁴⁰

Soccer is not a lucrative activity in Honduras, but Yankel was not directing the team for the money—in fact, CD Marathón was entirely supported by Yankel’s family, which would spend between \$200,000 to 500,000 a year on the team. The team was nonetheless also sponsored by local companies such as Salva Vida, Coca-Cola Honduras, CISA, and Banco Azteca. Starting in 2007, Yankel invested \$2 million of his personal money into the construction of the team’s stadium. Overall, Yankel invested more than \$5 million into the club’s development.

Yankel is remembered by his peers as a “very good” president of the team.⁴¹ Under his leadership, CD Marathón experienced many successes: the team (1) won six championships in the 2000s, an unprecedented record; (2) was selected for the CONCACAF Champions League for the first time; and (3) was named one of the top 100 soccer teams worldwide in 2007. But

⁴⁰ Letter of Alberto Chedrani Castaneda (App. 5).

⁴¹ Letter of Aurelio Pozzo (App. 30).

beyond these accomplishments, Yankel was known as “a generous person among the club’s fans, team players and the city in general.”⁴² Yankel considered the players on his team as his own children, and just like a father towards his children, took immense pride in seeing some of his “kids,” such as Emil Martinez or Mario René Berríos, become nationally or internationally renowned players. Mauricio Gustavo Suazo, the team physical therapist whose daughter [REDACTED] wrote his letter to express “how human Mr. Yankel Rosenthal is.”⁴³ Berríos, who recently retired as captain of CD Marathón, also attests to Yankel’s humane leadership, stating that Yankel “treated me with the dignity a player deserves, and he did the same with the rest of my teammates.”⁴⁴ Berrios attests that in his 18-year playing career, no club director he met or interacted with compared to Yankel in terms of warm-heartedness and compassion.⁴⁵ The beneficial social impact and the pride CD Marathón has been for the country made Yankel “an inspiration for the young Hondurans.”⁴⁶

2. *Philanthropic Work and Charitable Giving*

As the letters supporting this submission demonstrate, Yankel is fundamentally a generous man with a long record of giving to others, whether it be individual donations to his friends, family, or employees, or charitable giving to organizations.

Through his companies, Yankel regularly donated money to non-profit organizations with noble causes. Every year, Invalle would donate substantial amounts to the Casa Alianza, a non-profit organization that offers shelter and assistance to over 80,000 homeless children both

⁴² Letter of Jose Luis Lopez Trejo (App. 19).

⁴³ Letter of Mauricio Gustavo Suazo (App. 44)

⁴⁴ Letter of Mario Rene Berrios (App. 1).

⁴⁵ *Id.*

⁴⁶ Letter of Cristina Paz (App. 28).

in Honduras and the United States. Yankel also actively supported the volunteer and non-profit foundation FUNHCAE led by his ex-wife Marcia—a foundation providing therapy and neurological reeducation to over 700 children suffering from various brain injuries and autism. Chumbagua donated over \$100,000 a year to FUNHCAE, and Yankel’s dedication was “a fundamental pillar” for carrying out the organization’s activities.⁴⁷

As a board member of APAH (the Honduran sugar producers association) and CISA (a related entity), Yankel was also responsible for the creation in 2005 of FUNAZUCAR, a foundation that develops programs to deliver incentives to sugarcane workers and assist the communities where the sugar mills are located. The foundation implemented literacy programs for young people and adults, trainings to micro enterprises, health care, school meals, educational materials, and other type of donations. FUNAZUCAR also installed computers and solar panels in schools and funded infrastructure repairs to classrooms. Additionally, all the sugar mills, including Chumbagua, provided independent producers with harvesting equipment, maintained local roadways, and funded teacher salaries for schools in the areas where sugar mill producers lived. APAH’s initiative and the FUNAZUCAR also contributed to combatting child labor by including in producers’ contracts the prohibition of hiring children and by placing signs in buses and public areas about this prohibition.

But the donations that truly shed light on Yankel’s humanity and depth of character are less the big charitable checks than the small, personalized contributions he made through the course of his career to his family, his friends, and his employees. Every single letter supporting this submission attests to his generosity and to his “biggest trait” of “always wanting to help

⁴⁷ Letter of Marcia Cordoba (App. 11).

everyone from the smallest favor to those that really impact your life,”⁴⁸ without expecting anything in return.⁴⁹ Helping and giving to others was an integral part of his daily life, both at work and amongst his family. As his oldest sister Norma Johanna describes it, “I often find myself hearing stories of something he did for someone without telling anyone else of his good deed.”⁵⁰

Yankel believes deeply in the transformative power of education. He granted several scholarships to children of his employees to complete their high school education,⁵¹ a basic right to which many do not have access in Honduras. One of those children, Cristina Paz, writes that receiving Yankel’s contributions towards her education “was additional motivation for me, to make an effort to get good grades, to make him and my family proud, and to make him certain that his help was not being wasted.”⁵² A letter submitted in braille by a fifteen-year old visually-impaired girl explains how the opportunity to receive an education despite her condition allowed her to “have a free life without barriers.”⁵³ Yankel also provided full scholarships to two of his cousins, Osman Antonio Coello Pineda and Maria Margarita Coello Pineda, which allowed both of them to complete medical school in Costa Rica and practice as doctors in Honduras.⁵⁴

Yankel further provided financial and emotional support to those suffering from various medical conditions. In 2005, Yankel helped Jacobo Carias, a family friend, combat a mortal disease by paying for his medication. For the past eight years, Yankel has also covered treatment

⁴⁸ Letter of Yankel Rosenthal II (Yankelito) (App. 37).

⁴⁹ Letter of Jose Luis Lopez Trejo (App. 19); Letter of Javier Onan Guzman (App. 24).

⁵⁰ Letter of Norma Johanna Rosenthal (App. 34).

⁵¹ Letter of Mauricio Gustavo Suazo (App. 44); Letter of Mauricio Lara (App. 17); Letter of Cristina Alejandra Paz Gil (App. 28).

⁵² Letter of Cristina Alejandra Paz Gil (App. 28).

⁵³ Letter of [REDACTED] (App. 26).

⁵⁴ Letter of Osman Antonio Coello Pineda (App. 9); Letter of Aurelio Alfonso Pozzo Tarrins (App. 30).

costs, medication, medical exams, and transportation of his friend’s son, Johan Javier Guzman, who suffers from lymphoblastic leukemia.⁵⁵ Finally, when Yankel’s security guard and driver Sergio Machado Romero was diagnosed with appendicitis, Yankel volunteered—unprompted—to pay for all his medical bills and did so.⁵⁶

Simply put, Yankel cares about the well-being of others. The letters submitted provide many more examples of his generosity, and all agree to the fact that Yankel is “a man with a heart of gold”⁵⁷ whose good deeds could “fill testimonial books [by] people to whom, at some point, the engineer Yankel extended his hand for any need, without asking anything in return, as is his way of *being*.”⁵⁸

D. Personal and Family Life

Throughout his life, Yankel has been dedicated to his family and his faith. At 19 years old, Yankel married his high school sweetheart, Marcia Cordoba, with whom he had three children—Yankelito, age 29, Norma Sofia, age 23, and [REDACTED]. Yankel “unconditionally”⁵⁹ loves his children, who describe him in their letters as a dedicated and caring father who has always been very present in their lives.⁶⁰ His children consider him as their role model and their “hero,” who has taught them “since early age, how to be a leader . . . and to always care for others”⁶¹ and whose “immense selflessness and capacity of making [them] feel

⁵⁵ Letter of Johan Javier Guzman (App. 24).

⁵⁶ Letter of Sergio Machado Romero (App. 20).

⁵⁷ Letter of Alejandra Cordoba (App. 10); *see also* Letter of Mauricio Gustavo Suazo (App. 44).

⁵⁸ Letter of Sergio Machado Romero (App. 20).

⁵⁹ Letter of Norma Sofia Rosenthal (App. 35).

⁶⁰ *Id.*; Letter of Edwin Alberto Rosenthal (App. 32); Letter of Yankel Rosenthal II (Yankelito) (App. 37).

⁶¹ Letter of Norma Sofia Rosenthal (App. 35); Letter of Edwin Alberto Rosenthal (App. 32); Letter of Cristina Sabroso (App. 39).

loved made [them] strong, safe and united.”⁶² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Because Marcia’s visa was revoked after Yankel’s arrest, Edwin has been separated from his mother for the past two years. Despite this forced separation and Yankel’s legal proceedings, Yankel has made all efforts to be supportive of his son. Cristina Sabroso, who Yankel met during the pendency of these charges, witnessed how, despite his current limitations, “Yankel has taken both roles since [2015],” and that she has “never se[en] a more dedicated father.”⁶³ Yankel’s daughter, Norma Sofia, who was a student at FIU in Miami until last year, has been unable to continue her studies at FIU because her student visa was revoked when she went to visit her mother in Honduras, and as a result has not seen her father for over a year. Nonetheless, Yankel has studiously stayed in close contact with Norma Sofia through telephone calls, WhatsApp, and other means to support her emotionally.⁶⁴

Yankel is very close with his three siblings, their children, and his own cousins. Norma Johanna Rosenthal Coello, 53, is the mother of four children and also worked at Chumbagua until its forced sale in 2015; Karen Rosenthal Coello, 52, has two children and is a stay at home mother; and Edwin Rosenthal Coello, 50, is the father of four children and was a real estate manager and involved in the family businesses until 2015. Amongst his nephews and nieces, Yankel is seen as a cherished uncle, due to his kindness and tenderness towards them.⁶⁵ His niece Rebecca was truly touched by the fact that Yankel attended her graduation from NYU despite the fact that he was going through a difficult divorce.⁶⁶ More importantly, Rebecca

⁶² Letter of Norma Sofia Rosenthal (App. 35).

⁶³ Letter of Cristina Sabroso (App. 39).

⁶⁴ Letter of Norma Sofia Rosenthal (App. 35).

⁶⁵ Letter of Rebecca Rosenthal (App. 36).

⁶⁶ *Id.*

recalls that when she was in 4th grade and her father, Edwin Rosenthal, had a severe car accident, Yankel took it upon himself to act as her and her siblings' "temporary dad."⁶⁷ During the 9 months that Edwin was in the hospital, Yankel would call Rebecca and her siblings daily, bring them to stay at his own house, and be "a shoulder to cry on and a beacon of hope in a terrible situation."⁶⁸ Yankel showed the same affection and kind-heartedness towards his cousins.⁶⁹ Cousin Norma Plum describes how he took the time to travel to California to meet her new husband to make sure he was respectful towards her, and "[a]s we said goodbye, he shook my husband's hand and asked him to take good care of me."⁷⁰

Yankel was also a father figure for other children when they needed parental support and could not receive it from their own families. Besides his own children, Yankel was a father to Alejandra Cordoba, the daughter of Marcia Cordoba's brother, and her sister after they lost their father at an early age.⁷¹ According to Alejandra, Yankel treated her like his own daughter: he taught Alejandra how to ride a bike, lectured her senior year prom date about respecting women, and "gave the words at [her] wedding toast," as a father would.⁷² He also taught her "the meaning [of] hard work, thriving an[d] excelling at what you do, and the significance of giving back to those in need."⁷³ Yankelito also explains how his father "adopted" two of his friends in Miami by allowing them to stay at their house, helping one to save rent money for over a year,

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Letter of Norma Plum (App. 29); Letter of Maria Margarita Coello Pineda (App. 8); Letter of Osman Antonio Coello Pineda (App. 9).

⁷⁰ Letter of Norma Plum (App. 29).

⁷¹ Letter of Alejandra Cordoba (App. 10).

⁷² *Id.*

⁷³ *Id.*

and providing support to the other after his father passed away.⁷⁴ Witnessing his father’s “big heart” and acts of selflessness towards other children, Yankelito concludes that he “only wish[es] everyone [to have] a father like [his],” and “hope[s] to be the man he is one day.”⁷⁵ It is for his generosity, kindness, and unconditional support towards his family that Yankel is considered the “backbone” of the family, and the “glue that holds it all together.”⁷⁶

Beyond his generosity, it is Yankel’s courage that led him to offer a helping hand and support to family members and friends. Yankel would not hesitate to “risk his life”⁷⁷ for the sake of his family and friends. Eric Firstenberg, a close family friend of more than 45 years, describes how Yankel protected his family against armed home invaders, and how he rescued his friend Juan Carlos Sabillon whose car had rolled down an embankment by “pulling his . . . friend away from the wreckage” and keeping him “immobilized in the back of a pick-up truck on the one hour ride to the nearest hospital.”⁷⁸ In his letter, Mr. Sabillon remembers how, throughout the ride to the hospital, Yankel prayed with him, even though he did not know Christian prayers, to make sure Mr. Sabillon would not fall unconscious.⁷⁹ In another more tragic episode, Yankel tried to help Edwin Palacios, the brother of one of his soccer players who had been kidnapped by the M.S.-13 gang, by paying half of the \$200,000 requested ransom, and did not hesitate to criticize publicly the acts of the M.S.-13 as monstrous. Despite all the efforts, Edwin was

⁷⁴ Letter of Yankel Rosenthal II (Yankelito) (App. 37).

⁷⁵ *Id.*

⁷⁶ Letter of Alejandra Cordoba (App. 10).

⁷⁷ Letter of Eric Firstenberg (App. 16).

⁷⁸ *Id.*

⁷⁹ Letter of Juan Carlos Sabillon Davila (App. 38).

nonetheless brutally killed after the ransom was paid.⁸⁰ For Mr. Firstenberg, “in any crisis situation, the first person I would hope to have next to me is Yankel.”⁸¹

Another very important part of Yankel’s life is his faith. Yankel was very active in the Jewish community of San Pedro Sula, “assisting with his children to each one of our religious and recreational activities, and financially contributing to the support of the Hebrew Temple Maguen David.”⁸² Letters describe him as an “outstanding”⁸³ member of the community, of “exemplary character,” and a “role model for everyone,” “especially [for] the youngest members.”⁸⁴ Betzabe Stayerman, a Torah instructor at the Temple, holds a dear memory of a young Norma Sofia reciting fluidly the emblematic Jewish Shema prayer on the day Betzabe intended to teach it to the children—it was the prayer her father had been reciting with her every night at bedtime.⁸⁵ For Yankel, a sincere practice of the Jewish faith also meant showing a profound respect for the faith of others. Growing up with a Jewish father and a Catholic mother, Yankel was immersed in an environment of tolerance and acceptance, which allowed him to be understanding and share in with his employees’ beliefs. Yankel’s personal assistant, Brenda Yisell Espinoza, describes how at Christmas time, a period of the year the mostly-Christian employees of Chumbagua were looking forward to, Yankel would, “despite the fact that he does not celebrate Christmas since he is Jewish, [. . .] always ask[] us what we wanted to receive as a

⁸⁰ Letter of Jerry Palacios (App. 25).

⁸¹ Letter of Eric Firstenberg (App. 16).

⁸² Letter of Betzabe Gomez de Stayerman (App. 41).

⁸³ *Id.*

⁸⁴ Letter of Andy Mena (App. 22).

⁸⁵ Letter of Betsabe Gomez de Stayerman (App. 41).

gift.”⁸⁶ As such, Yankel’s “great religious commitment”⁸⁷ manifested itself within and without the walls of the Temple.

“It is impossible . . . to think of Yankel and not smile.”⁸⁸ Beyond his family circle, many friends, employees, and acquaintances attest to Yankel’s popularity and the positive reputation he holds amongst his fellow countrymen. Employees describe him as a “noble” and “charismatic” individual, whose involvement with the CD Marathón soccer team made him “very popular in our city.”⁸⁹ Friends and acquaintances consider him to be “a role model and inspiration for the young Hondurans,”⁹⁰ a “mainstay of our society,”⁹¹ and, according to a deputy of the National Congress, “an irreplaceable person in [the Honduran] community”⁹² whose absence is deeply felt.

V. The Nature and Circumstances of the Attempted Doral Transaction

Yankel will rely on the description of the Attempted Doral Transaction provided above. The gulf is massive between the eleven-year-long money laundering and political bribery conspiracy described by the government in the initial indictment on the one hand, and the Attempted Doral Transaction to which Yankel pled on the other hand. While Yankel does not seek to diminish the seriousness of his offense, it is certainly a far cry from the government’s initial allegations that served as the impetus for the harm visited upon Yankel and his family.

Two aspects in particular of the Attempted Doral Transaction support leniency for sentencing. First, there can be no dispute that the attempted transaction was not pursued

⁸⁶ Letter of Brenda Yisell Espinoza (App. 15).

⁸⁷ Letter of Andy Mena (App. 22).

⁸⁸ Letter of Eric Firstenberg (App. 16).

⁸⁹ Letter of Telma Carolina Castro Amaya (App. 4).

⁹⁰ Letter of Cristina Alejandra Paz Gil (App. 28).

⁹¹ Letter of Mario Rene Berrios Castillo (App. 1).

⁹² Letter of Alberto Chedrani Castaneda (App. 5).

vigorously by Yankel. He unquestionably facilitated the initiation of the transaction. However, the proposed deal fell apart quickly and was not pursued by the seller, the buyer or, most importantly, Yankel. Second, while Yankel's conscious avoidance of the would-be purchaser's identity and the true source of the would-be proceeds warrants condemnation (and is sufficient for his guilty plea), it is a far cry from sustained and carefully considered direct efforts to assist narcotics traffickers in furtherance of their wrongdoing.

The fact that the Sentencing Guidelines in this case overstate Yankel's actual offense conduct is underscored when comparing the Guidelines application to Yankel's conduct against that of his co-defendants Yani Rosenthal and Andres Acosta.⁹³ Although Yankel's plea took responsibility for a single attempted transaction where he had no direct communication with the narcotics traffickers identified by the government, his Guidelines range, as currently calculated by Probation, is actually higher than the Guidelines ranges for Yani and Andres.⁹⁴ This despite

⁹³ Yankel wishes only the best for Yani and Andres (who he did not know) and their families. He points to the disparity in the Guidelines range with all due respect for their circumstances.

⁹⁴ Yankel's Guidelines range is driven primarily by U.S.S.G. § 2B1.1, which increased Yankel's offense level by 14 levels based on the value of the funds that would have been involved in the attempted transaction, had the transaction been completed. See PSR at 3, 9 (adding 14 levels because the relevant amount was between \$550,000 and \$1.5 million). As many judges have recognized, § 2B1.1's loss table can be an extremely poor proxy for culpability. See, e.g., *United States v. Adelson*, 441 F. Supp. 2d 506, 506 (S.D.N.Y. 2006) ("This is one of those cases in which calculations under [§ 2B1.1 of] the Sentencing Guidelines lead to a result so patently unreasonable as to require the Court to place greater emphasis on other sentencing factors to derive a sentence that comports with federal law."); *id.* at 509 ("What drove the Government's calculation in this case, more than any other single factor, was the inordinate emphasis that the Sentencing Guidelines place . . . on the amount of actual or intended loss. As many have noted, the Sentencing Guidelines, because of their arithmetic approach and also in an effort to appear 'objective,' tend to place great weight on putatively measurable quantities, such as . . . the amount of financial loss . . . , without, however, explaining why it is appropriate to accord such huge weight to such factors."); *id.* at 512 (criticizing "the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense"); *United States v. Mueffelman*, 400 F. Supp. 2d 368, 373 (D. Mass. 2005) ("Loss may well be a kind of accident, depending on the fortuities of law enforcement or even the market, as much as the defendant's culpability."); *id.* at 379 ("[T]he amount of the loss is not an appropriate proxy for [defendant's] culpability or a one-to-one measure of what his sentence ought to be."); *United States v. Emmenegger*, 329 F. Supp. 2d 416, 427 (S.D.N.Y. 2004) ("The Guidelines place undue weight on the amount of loss," which can be "a relatively weak indicator of the moral seriousness of the offense or the need for deterrence."); Jillian Hewitt, *Fifty Shades of Gray: Sentencing Trends in Major White-Collar Cases*, 125 Yale L.J. 1018, 1060 (2016) ("The lengthy sentences produced under the Guidelines are rarely actually imposed, at least in S.D.N.Y. . . . These results suggest that many judges believe the loss table is an ineffective tool for measuring white-collar defendants' culpability because it frequently and vastly overstates the seriousness of the

the fact that Yani and Andres pled guilty to a multi-year money laundering effort in which they dealt directly with the Rivera family, the narcotics traffickers identified by the government. It cannot be the case that a single, attempted transaction in which the defendant never knew the identity of the ultimate wrongdoer warrants greater punishment than a multi-year set of transactions negotiated directly between other defendants and the ultimate wrongdoer that were actually completed and resulted in the actual transfer of millions of dollars of illicit proceeds.

VI. The Need to Afford Adequate Deterrence to Criminal Conduct

The consequences suffered by Yankel and his family—both reputational and financial—comprehensively provide both specific and general deterrence for future criminal conduct. In addition to the harms described above, it bears note that the prosecution of Yankel from the initial allegations to the plea was widely followed in his home country of Honduras and beyond. Yankel is acutely aware of the draconian consequences that resulted from his terrible lapse in judgment in participating in the Attempted Doral Transaction. As Yankel noted in his statement to Probation for his Pre-Sentence Report, he intends to avoid even any perception of involvement or social relationships with wrongdoers, especially narcotics traffickers.⁹⁵ In addition, the prosecution of Yankel and the misimpression left by the errors in the OFAC and USAO press releases ensure that a deterrent effect beyond Yankel's actual plea may be achieved.

offense.”). Here, given that Yankel was only to receive a commission of approximately \$50,000 for his efforts, which he never completed, § 2B1.1's 14-level increase in his offense level greatly overstates the seriousness of his conduct.

⁹⁵ It has been an unfortunate reality in Honduras that many known narcotics-traffickers also have legitimate businesses and standing in Honduran society and intermingle with legitimate Honduran citizens, including the business community. This case has brought home to Yankel the need for he and others similarly-situated in the political and business communities to reject these associations going forward.

VII. The Need to Protect the Public from Further Crimes of the Defendant

Yankel will not engage in any further crimes. If anything, sentencing Yankel to time served will allow him to resume some of the good works for the benefit of the public that are described above and in the accompanying letters.

VIII. The Need to Provide Just Punishment and Consider the Types of Sentences Available

We respectfully submit that a sentence of time served—in light of the conduct to which Yankel pled measured against the sanctions already suffered—would provide just punishment. As part of the Court’s exercise in considering the types of sentences available, it bears note that Yankel, by dint of his immigration status, would not be eligible for certain types or features of a sentence that may otherwise be available to him. As examples, Yankel would not be eligible to serve any portion of a custodial sentence in a federal camp, but instead would be required to be housed in a higher security facility. Yankel would not be eligible for certain Bureau of Prisons programs that would otherwise benefit him. Yankel would also not be eligible to be released to a halfway house as the end of any custodial sentence approached.

It is our understanding that Yankel may be able to serve a sentence that imposed community service as a component, consistent with his current immigration deferred action status. In lieu of any custodial sentence that the Court may be considering, we respectfully request that the Court consider imposing The Aleph Institute’s sentencing proposal, which would require Yankel (before he is ultimately deported) to serve three years of probation, spend 1,000 hours mentoring at-risk youth, spend an additional 1,000 hours engaging in community service to help those suffering from substance abuse, and submit to weekly monitoring and mentoring by clerical leaders in connection with the Institute. As the letter from Rabbi Bryski explains, such a

sentence is fully consistent with the goals of § 3553 and would allow Yankel to pay back his debt to society in a tangible and meaningful way.⁹⁶

CONCLUSION

For the reasons stated above, we respectfully submit that a sentence of time served would serve the interests of judgment. It is time to bring this unfortunate chapter of Yankel's life and this prosecution to a close and allow Yankel to begin to rebuild and regain a platform to "do good" for his family and others.

Dated: January 5, 2018

Respectfully submitted,

By: /s/ Samidh Guha

Samidh Guha
Jim Ligtenberg
Nassim Ameli
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Telephone: (212) 326-3721

Brian Sun
Christopher R.J. Pace
JONES DAY
555 S. Flower Street
Los Angeles, CA 90071
Telephone: (213) 243-2858

Counsel for Yankel Rosenthal

⁹⁶ See Letter of Rabbi Yossi Bryski (App. 2).