

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

DOCKET NO. 8:24-CR-66-KKM-NHA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIRTZA OCANA,

Defendant,

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**DEFENDANT MIRTZA OCANA'S RESPONSE
TO THE PRESENTENCE INVESTIGATION REPORT**

The defendant, Mirtza Ocana, by and through his undersigned counsel, submits this Response to the Presentence Investigation Report, in which she seeks to demonstrate to this Court that she should be sentenced to a non-custodial sentence of probation with a special condition of home detention. Ms. Ocana is an appropriate candidate for this type of sentencing, and in support thereof states as follows:

I. INTRODUCTION:

On August 12, 2024, Mirtza Ocana plead guilty to one count of conspiracy to commit bulk cash smuggling, in violation of 18 U.S.C. § 371, and one count of bulk cash smuggling, in violation of 31 U.S.C. § 5332. PSR ¶ 5. Ms. Ocana's guilty plea did not come pursuant to a Plea Agreement, but her remarkable desire to be accountable for her actions. Her change in plea

came just six (6) months after her arrest on February 5, 2024, where she voluntarily disclosed her involvement in the conspiracy beyond what was discovered by Customs Agents in their search of her.

Ms. Ocana is a 39-year-old devoted wife and mother of three, including two dependent minor children. PSR ¶ 37, 41-42. Born in Cuba, she has been a United States resident since 2009. PSR ¶ 43. Ms. Ocana's has no extended family here in the United States. Her parents reside in Cuba. PSR ¶ 37. Her sister is in Spain. PSR ¶ 38. Her in-laws are deceased. The responsibility of raising three children rests solely on Mirtza and her husband.

Ms. Ocana has reliably held gainful employment since moving to the United States. This was disrupted by a workplace accident that resulted in the need for the surgical repair of her knee. Despite the surgery, she never recovered her pre-accident abilities. She has trouble standing for extended periods which is a staunch demand of her career in restaurant work. Ms. Ocana has no criminal history or negative contact with law enforcement. See PSR ¶ 30-36. By all accounts, she lived an exemplary life prior to her arrest. Since her arrest, she has complied with all conditions of release. PSR ¶ 7.

With no objections to the PSR, the parties agree that the PSR accurately portrays Ms. Ocana's history before and after arrest. Ms. Ocana is entitled to a zero-point offender reduction under §4C1.1(a), acceptance of responsibility reduction under §3E1.1(a), and timely assistance in her own prosecution reduction under §3E1.1(b). PSR ¶ 25-27. The PSR correctly finds her to be at total offense level 11, criminal history Category I, which falls under Zone B of the Sentencing Guidelines. PSR ¶ 28, 66. This Response will present sentencing factors, pursuant

to 18 USC § 3553, to support Ms. Ocana’s position that she is an appropriate candidate for a probationary sentence. Such a sentence would serve the purposes of 18 U.S.C. § 3553(a) and represent a “sufficient, but not greater than necessary” punishment for Mirtza Ocana.

II. DEFENDANT’S SENTENCING UNDER THE GUIDELINES

A. Calculating the Offense Level

Applicable Guideline	Explanation	Offense Level
§2S1.3(a)(2)	Violation of 31 U.S.C. § 5332	6
§2B1.1(b)(1)(E)	Value of funds involved	+8
§2S1.3(b)(1)(B)	When scheme qualifies as Bulk Cash Smuggling	+2
§4C1.1(a)	Zero-Point Offender Reduction	-2
§3E1.1(a)	Acceptance of Responsibility Reduction	-2
§3E1.1(b)	Assistance in Her Own Prosecution by Timely Notice of Plea Reduction	-1

TOTAL OFFENSE LEVEL = 11

This calculation is consistent with the Presentence Investigation Report. PSR ¶ 19-28.

B. Ms. Ocana’s Sentencing Range

As indicated in the PSI, Ms. Ocana has no criminal record, which leads to a Criminal History Category I. PSI ¶ 37. Based upon a Level 11 offense, and a Category I criminal history, Ms. Ocana falls within Zone B of the Sentencing Table, with the applicable sentencing range of 8 to 14 months.

Notably, Ms. Ocana sentencing range falls within Zone B of the Sentencing Table.

Pursuant to USSG § 5C1.1(c), this Zone B placement alone empowers the Court to impose a sentence of probation. However, in cases like this one, the Court is more than empowered, it is encouraged to impose a non-custodial sentence.

Even more pointed, Ms. Ocana was given a Zero-Point Offender offense level reduction in the uncontested Presentence Investigation Report. Section 5C1.1 of the Sentencing Guidelines contain Application Notes specific to the Zero-Point Offender Reduction that Ms. Ocana received. Those application notes state in part:

10. Zero-Point Offenders.—

(A) Zero-Point Offenders in Zones A and B of the Sentencing Table.—If the defendant received an adjustment under §4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. See 28 U.S.C. § 994(j).

As the recipient of a Zone B guideline range and a Zero-Point Offender Reduction, a non-custodial sentence is the most appropriate sentence for Mirtza Ocana. Below, this Response will discuss the sentencing factors under 18 U.S.C. § 3553, to support Ms. Ocana’s request to be sentenced to a term of probation with home detention substituted for imprisonment as a condition of probation.

III. FACTORS UNDER 18 USC § 3553:

After “consult[ing] and correctly determin[ing] the sentencing range prescribed by the Sentencing Guidelines...[t]he court must then impose a reasonable sentence in light of the factors enumerated in 18 U.S.C. §3553(a).” *U.S. v. McBride*, 511 F. 3d 1293 (11th Cir. 2007);

see also Gall v. United States, 552 U.S. 38 (2007).

There are seven § 3553(a) factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes of sentencing. The applicable factors are set forth and discussed below.

A. Nature and Circumstances of the Offense:

1. Offense Conduct

Ms. Ocana's conduct in this case involves bringing cash into the United States from abroad without declaring it. Ms. Ocana voluntarily self-reported to Customs Agents that she was being paid between \$1,000 and \$2,500 for her involvement. On the day of her arrest, Ms. Ocana was carrying \$102,709. Accordingly, Ms. Ocana was profiting somewhere between 1% and 2% of the illicit gains from the conspiracy. This is not a windfall. It tends to show that Ms. Ocana is not the criminal mastermind behind this conspiracy.

2. Acceptance of Responsibility

Ms. Ocana has exhibited an extraordinary acceptance of responsibility. Ms. Ocana was stopped by Customs Agents coming off a flight from Cuba and a search of her belongings revealed undeclared cash. PSR ¶ 8-10. When confronted, she was immediately accountable. She showed no resistance. She did not request a lawyer. She waived her Miranda rights. PSR ¶ 11. She then voluntarily disclosed the full extent of her involvement in the conspiracy over the course of a year, far beyond the evidence that the Customs Agents had discovered against her. PSR ¶ 11. This includes Ms. Ocana voluntarily producing additional hidden money that the Customs Agents did not find in their search. PSR ¶ 12.

After being charged, Ms. Ocana immediately approached the government to initiate plea negotiations. When Ms. Ocana learned that the government would not offer her a plea agreement, Ms. Ocana did not hesitate to enter a guilty plea without a negotiated plea agreement. See PSR ¶ 6. Ms. Ocana has never wavered from her complete and absolute acceptance of responsibility. This conduct reflects her sincere remorse.

B. History and Characteristics of the Defendant

a. Ms. Ocana has no criminal history.

Ms. Ocana has been a resident of the United States since 2009, and a citizen since 2020. She has no criminal history and no negative interactions with law enforcement prior to her arrest in this case.

b. Ms. Ocana is an irreplaceable caregiver to her minor children.

While family ties and responsibilities may not be a basis for downward departure unless there are extraordinary circumstances, family ties and responsibilities are still a relevant consideration when fashioning a sentencing within the guidelines. Ms. Ocana is a married mother of three girls, two being minor dependents. Ms. Ocana's family have written family impact statements to illustrate the importance of Ms. Ocana in their daily lives. It is clear from the letters that Ms. Ocana is extremely involved and essential to the day-to-day functioning of her families lives.

The negative impact that parental incarceration has on children is very well-documented. A recent article by the National Institute of Justice, *Hidden Consequences: The*

Impact of Incarceration on Dependent Children (2017)¹, analyzes and summarizes the findings of a plethora of studies. The results are that children of incarcerated patients tend to experience greater “psychological strain, antisocial behavior, suspension or expulsion from school, economic hardship, and criminal activity.” It is noted that when the parent-child bond is strong, the interruption in the relationship is greater. Thus, for the children of mothers like Ms. Ocana, who have always lived with and been the primary caregiver for their children, the risk of negative outcomes is even greater.

The issue of parent-child attachment bond has been a focal point of recent research. A study from the University of California, *Effects of Parental Incarceration on Young Children* (2002)², provided the following information about the effects on child development when the parent-child attachment bond is interrupted by incarceration:

Even if a child-parent attachment bond has already developed . . . the disruption associated with parental incarceration will likely adversely affect the quality of the child’s attachment to their parent (see Thompson, 1998, for a general discussion of the effects of separation on attachment in non-incarcerated samples). Even less drastic changes such as job loss, divorce, or residential re-location have been found to adversely affect the quality of the infant or toddler child-parent attachment quality (Thompson, Lamb, & Estes, 1982; Vaughn et al., 1979). Insecure attachments -- a consequence of adverse shifts in life circumstances -- in turn, have been linked to a variety of child outcomes, including poorer peer relationships and diminished cognitive abilities (Sroufe, 1988). In light of the results of this research on separation and attachment, it is not surprising that when their parents are incarcerated, young children (ages 2 - 6 years) have been observed to suffer a variety of adverse

¹ <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>

² <https://www.urban.org/sites/default/files/publication/60691/410627-Effects-of-Parental-Incarceration-on-Young-Children.PDF>

outcomes that are consistent with the research on the effects of insecure attachments (Johnson, 1995). In fact, according to one estimate (Baunach, 1985), 70% of young children with incarcerated mothers had emotional or psychological problems. Children exhibit internalizing problems, such as anxiety, withdrawal, hypervigilance, depression, shame and guilt (Bloom & Steinhart, 1993; Dressler et al., 1992). They exhibit somatic problems such as eating disorders. And, perhaps most clearly, young children exhibit externalizing behaviors such as anger, aggression, and hostility toward caregivers and siblings (Fishman, 1983; Gaudin, 1984; Johnston, 1995; Jose-Kampfner, 1995; Sack et al. , 1976).

With the female prison population growing, there is an area of research that narrowly focuses on the consequences specific to maternal incarceration. One such study from Indiana University, *Effects of Maternal Incarceration on Child Health (2023)*³, has identified numerous risk factors that increase specifically with maternal incarceration. A majority of issues that arise from maternal incarceration are the direct result of the child being displaced from the home and relocated to live with a relative or foster care. This is an issue for Ms. Ocana's family. In his family impact statement, Ms. Ocana's husband suggests that he will need to find alternate living arrangements for their minor children if Ms. Ocana is incarcerated. Under such circumstances, Ms. Ocana's children are high risk for suffering negative outcomes from her incarceration.

This study identifies the main consequences of maternal incarceration as being negative healthcare outcomes, negative educational outcomes, and increased behavioral and mental health issues. Children of incarcerated parents tend to have a reduction in healthcare, including fewer primary doctor and dental visits, which significantly affects health outcomes. For school-aged children, like Ms. Ocana's daughters, there is also a marked increase in cognitive delays

³ <https://policyinstitute.iu.edu/doc/maternal-incarceration-brief-2023.pdf>

and increase in number of school days missed. The long-term effects of this include school failure and school drop outs. Lastly, the study identified increased behavioral issues and mental health issues. A key takeaway relevant to Ms. Ocana's case is the finding that "young children—those ages 2.5 to 7.5—whose mothers were incarcerated experienced insecure relationships with caregivers, an issue linked to depression and anxiety disorders in adults."

Finally, a study out of the Illinois State University, *Collateral Impact of Maternal Incarceration: Burdens Placed on Child Caregivers* (2016)⁴, highlighted an often overlooked risk factor for the negative outcomes child experience. This study identifies "the high frequency of kinship caregiver designation, which due to its informal nature has often left caregivers with little means for assistance vital to providing the highest quality care." The relatives who take on childcare roles are often unprepared and inexperienced in the basic routines and needs of children, and struggle to integrate the children's routines into their own. This risk factor is especially relevant here, because the only familial options to take on Ms. Ocana's caregiving role for her minor children are her 21-year-old daughter or her parents who live in Cuba. The available caregivers for Ms. Ocana's children if she were incarcerated are inexperienced and live in unsuitable environment. This means Ms. Ocana's children would be very high risk for the negative effects that were addressed above.

To incarcerate Ms. Ocana would be greater than necessary punishment, because it exposes her minor children to potentially lifelong devastating consequences. Ms. Ocana is the mother and primary caregiver to two young daughters, ages 6 and 17. In Ms. Ocana's husband's

⁴ <https://ir.library.illinoisstate.edu/etd/487/>

letter to the Court, he expressed that he is not in a position to act as both the sole financial provider and the sole childcare provider at the same time. As such, it is likely that one or both of Ms. Ocana's daughters would be displaced from the home and relocated to live with a relative. These two factors – the children's loss of their primary caregiver, their strongest parental bond, and the children's loss of their home environment – are two of the highest risks of the children experiencing negative outcomes in their education and healthcare, as well as behavioral, emotional, and psychological problems.

Imposing a sentence that substitutes home detention for incarceration allows Ms. Ocana to maintain her role as an essential caregiver for her children, which allows the children to remain in their familial home, continue in the same school, and alleviates the financial burden of childcare for school aged children with a working parent. Ms. Ocana is not asking this Court to impose a downward departure below her guideline range based upon her family responsibilities. Instead, Ms. Ocana is asking this court to consider this factor and impose a sentence at the bottom of the guidelines.

C. Need for the Sentence Imposed

1. Ms. Ocana is low risk for recidivism.

A key purpose of sentencing is to protect the public. This is directly affected by the offenders risk of recidivism. The Sentencing Commission has commissioned two relevant reports on this topic, *Recidivism Among Federal Offenders: A Comprehensive Overview* (2016) and *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* (2017). Both reports set forth statistical analysis of the risk factors that make a person more or

less likely to re-offend. These studies showed that 1) women are less likely to recidivate than men; 2) non-violent offenders are less likely to recidivate than violent offenders; 3) first time offenders are less likely to recidivate than repeat offenders; 4) those who were employed are less likely to recidivate than those who weren't; 5) married persons are less likely to recidivate than a person that has never been married; 6) non-drug users are less likely to recidivate than drug users; and 7) older individuals are less likely to re-offend than those in their 20's and 30's. All of these factors apply to Ms. Ocana and demonstrate that she is low-risk for re-offending. Ms. Ocana is a 39-year-old, married, female, non-violent offender, with zero criminal history, and zero contact with the criminal justice system. Ms. Ocana, while currently unemployed, has a history of reliable employment. She has no history of substance abuse and the drug test administered by pretrial services was negative. *See* PSI ¶ 51, 52.

Moreover, "Criminal History" and "Dependence upon Criminal Activity for a Livelihood," highly relevant to the concept of recidivism, are enumerated "specific offender characteristics" which a court should take into account when determining the proper sentence. *See* USSG § 5H1.8, 5H1.9. As previously noted, Ms. Ocana has no criminal record. PSI ¶ 30-36. In addition, Ms. Ocana does not rely upon criminal activity as a livelihood. Ms. Ocana's husband has been the sole provider for the family since her arrest in February 2024. The husband's income has adequately sustained the family's lifestyle for over nine months. Assuming Ms. Ocana remains in the home to provide their childcare services, her husband's job is secure and he can continue to provide a comfortable lifestyle. Accordingly, Ms. Ocana is unmotivated to return to any criminal activity. She is exceptionally low-risk for recidivism, and

poses no threat to the public.

D. Need for Restitution to Victims

The Presentence Investigation Report notes there is no identifiable victim of the conduct charged in this case. PSR ¶ 14.

IV. CONCLUSION

“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study of the human failings that sometimes mitigate . . . the crime and the punishment to ensue.” *Koon v. U.S.*, 518 U.S. 81, 113 (1996). This is one of those unique cases that merits a non-custodial sentence. A term of probation would still reflect the seriousness of the offense, promote respect for the law, and provide just punishment for Ms. Ocana. It would still afford more than adequate deterrence to any future criminal conduct and protect the public as well. Upon consideration of Ms. Ocana’s guideline range of 8 to 14 months, the policy statement that a non-custodial sentence is generally appropriate for a Zero-Point Offender, and the unique facts of this case and of Ms. Ocana’s personal history, this Court should substitute incarceration with home detention. Moreover, considering all sentencing factors, it is Ms. Ocana’s position that a sentence at the bottom of the guidelines fulfills the goals of 18 U.S.C. § 3553.

WHEREFORE, the Defendant, Mirtza Ocana, respectfully requests that this Honorable Court sentence her to a term of probation of one year, with a special condition that she serve 8 months in home detention.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on November 7, 2024, to the Middle District Clerk of the Court by using the CM/ECF system, and served via email to Michael Buchanan [Michael.Buchanan2@usdoj.gov].

By: /s/ Juan C. Mercado
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