

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:24-cr-66-KKM-NHA

MIRTZA OCANA

**GOVERNMENT'S SENTENCING MEMORANDUM**

The United States of America, by Roger B. Handberg, United States Attorney for the Middle District of Florida, files this sentencing memorandum in accordance with the Court's Order (Doc. 46).

The United States seeks a sentence of imprisonment of eleven months and a fine of \$32,000. This sentence of imprisonment represents a middle-of-the-guidelines sentence to account for the breadth of Ocana's criminal conduct. And the recommended fine would represent twice what Ocana conservatively made from smuggling bulk cash into the United States.

**BACKGROUND**

A. Factual Background

This case involves a long-running bulk cash smuggling scheme. Under that scheme, Ocana would fly from her home in Tampa to the Republic of Cuba. When she arrived in Cuba, she would obtain bulk cash from an unknown source, conceal that cash, and then fly back to the United States. She would pass through United States Customs without declaring that cash to hide it from authorities.

Ocana's involvement in this scheme began in June 2023. She smuggled bulk cash two to three times a month and received \$1,000 to \$2,500 as payment for her services.

Ocana's smuggling stopped when agents stopped Ocana on her return to the United States from Cuba. When she arrived, agents asked Ocana if she had any cash over \$10,000 to declare. She said she did not. Agents took Ocana to secondary inspection and again asked if she had anything to declare. She again said that she did not. But when agents searched Ocana's luggage, they found about \$31,000 of U.S. currency concealed. Instead of telling agents that she was smuggling this cash, she told agents that this cash came from the sale of a house in Cuba.

Ocana quickly reversed course and agreed to be interviewed by agents. She told these agents the scope of her smuggling endeavors—how long she had done it, how frequently she took trips, how much she made, and how she knew smuggling bulk cash was illegal. Agents later checked flight records. These records corroborated that Ocana in fact took over 40 flights from Tampa to Cuba in the months before being discovered.

As the interview concluded, agents asked Ocana if she had any additional currency on her. As before, Ocana told agents that she had no more cash to declare. Agents conducted a standard pat down. That pat down found over \$71,000 concealed in Ocana's clothing—or more than twice what agents found in Ocana's luggage.

B. Procedural Background

Agents arrested Ocana and she appeared in court on a federal complaint on February 5, 2024. The United States then indicted Ocana on one count of conspiracy to commit bulk cash smuggling and one count of bulk cash smuggling on February 15, 2024. Ocana pled guilty on August 12, 2024 to both counts without a plea agreement.

**THE PRESENTENCE INVESTIGATION REPORT**

The presentence investigation report (“PSR”) accurately reflects a total offense level of 11, a criminal history category of I, and an advisory guidelines range of eight to 14 months. The United States does not have any objections to the PSR.

**SENTENCING RECOMMENDATION**

The United States seeks a term of imprisonment of eleven months and a fine of \$32,000. The recommended imprisonment term takes into account the breadth of Ocana’s criminal conduct to arrive at a middle-of-the-guidelines sentence. The recommended fine represents two times a conservative estimate of Ocana’s profit from this conspiracy.

**A. An Eleven-Month Term of Imprisonment is Appropriate.**

Several § 3553(a) factors support a sentence of imprisonment of eleven months. This sentence would reflect the nature and circumstances of the offense and Ocana’s characteristics and would provide adequate deterrence and reflect the seriousness of the offense.

*Nature and Circumstances of the Offense.* The admitted-to conduct here involved a sizable conspiracy to smuggle bulk cash into the United States. Bulk cash smuggling is a serious offense; it represents a step in criminal organizations to move large amounts of untraceable cash into the United States. *See United States v. Jose*, 499 F.3d 105, 110 (1st Cir. 2007) (noting Congress’s concern for bulk cash smuggling). This crime is no simple paperwork crime. *Id.* at 110 (observing that members of Congress believed that “bulk cash smuggling is an inherently more serious than simply failing to file a Customs report”). And bulk cash smuggling is a crime that often relates to other criminal conduct and “is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.” *United States v. Mora*, 644 F. App’x 316, 317 (5th Cir. 2016).

The nature of this offense also strikes in favor of a term of imprisonment. Ocana travelled from the United States to Cuba (at least) 16 times, each time to smuggle cash back into the United States. Each time, Ocana did not declare the cash as required by law. Instead, she concealed the money. That concealment continued until federal agents searched her. And Ocana was not smuggling small amounts of cash just over the \$10,000 threshold. When discovered, she had over \$100,000 arranged in a sophisticated manner to conceal from authorities.

*History & Characteristics of the Defendant.* Ocana’s history shows a willingness to perform criminal conduct for personal gain. Here, the admitted-to facts show that she joined in a criminal enterprise that smuggled bulk cash to the United States. Once she entered into that conspiracy in June 2023, she made bulk cash smuggling a

regular part of her life. Two to three times a month, she would board a flight from the United States to Cuba, receive bulk cash, and sneak that cash back into the United States. PSR ¶ 11. Each time she made this trip, she received between \$1,000 and \$2,500. This willingness—for no other reason than personal gain and with full knowledge that the conduct was illegal—strikes towards a sentence of imprisonment. *See United States v. Spatafora*, No. 10-CR-474, 2011 WL 2433730, at \*3 (S.D.N.Y. June 14, 2011) (noting the defendant’s “disturbing pattern of deliberate illegal acts done for personal gain . . . with continued, flagrant disregard for the law” when sentencing in a drug and gambling case).

***Reflection of Seriousness of the Offense & Deterrence.*** For a sentence to reflect the seriousness of the offense, it must take into account all relevant conduct. *United States v. Smith*, 853 F. App’x 382, 387 n.5 (11th Cir. 2021) (rejecting argument that district court erred by considering co-conspirator’s conduct in a drug conspiracy case). Here, Ocana’s conduct involves months of bulk cash smuggling. This was not an isolated incident or a one-time frolic into criminal conduct. The only difference between Ocana’s early-February smuggling trip and the earlier trips is that she was caught. Thus, this factor strikes in favor of a sentence of imprisonment because to reflect the seriousness of the offense, the Court should consider the reality that Ocana smuggled far more into the United States than what she was found with in February 2024. Put another way, because the advisory guideline range here is based on the amount of money involved, and because Ocana was an effective smuggler who was not caught earlier, the advisory guidelines range underrepresents the gravity of the offense.

Ocana argues that a probationary sentence is appropriate. She points to her zero-point offender status and her “extraordinary acceptance of responsibility,” Doc. 54 at 5. On the first point, Ocana qualifies as a zero-point offender, but a probationary sentence remains inappropriate here. As discussed above, Ocana was not a one-off participant in this scheme. Instead, she regularly smuggled cash into the United States over a period of months. Her ability to smuggle without detection allowed her to carry on criminal activity for months. While she does get credit for being a zero-point offender, a probationary sentence for a long-running course of conduct would strike against the goals of sentencing.

On the second point, Ocana’s conduct does not demonstrate that she was “immediately accountable.” Doc. 54 at 5. Instead, she persisted in trying to conceal the cash that she was smuggling up until the last possible minute. After interviewing her, and after finding approximately 30% of the cash that Ocana was smuggling, agents asked Ocana if she had any additional cash on her to declare. Again, she stated that she did not. Agents then searched Ocana. That search revealed more than double the currency that agents found in Ocana’s luggage. Ocana made a material misrepresentation to these agents within minutes of being discovered by law enforcement. In any event, Ocana’s acceptance of responsibility is already incorporated into the sentencing calculation. It reduced her advisory guidelines range from 15-21 months to 8-14 months by reducing her total offense level by three.

**B. A Fine of \$32,000 Would Account for Ocana’s Pecuniary Gain from Her Bulk Cash Smuggling and Would Deter Ocana.**

In addition to a term of imprisonment, the Court should levy a fine of \$32,000. This amount is based on a conservative view of the amount that Ocana made from smuggling bulk cash. She told law enforcement that she made between \$1,000 and \$2,500 per smuggling trip, that she began smuggling cash in June 2023, and that she made two to three trips per month. Assuming that she began smuggling in June, stopped in January (before the trip where she was discovered)<sup>1</sup>, and only took two trips per month, she made about sixteen trips. And again assuming that she was always paid at the low end of her admitted pay range, she made a total of \$16,000. A fine of \$32,000—or “twice the gross gain” from Ocana’s conduct, 18 U.S.C. § 3571(d), as conservatively estimated—is appropriate here.<sup>2</sup>

This fine is appropriate for two reasons beyond the § 3553(a) factors discussed above. First, it would further deter Ocana from re-engaging in bulk cash smuggling after this case ends. It would reinforce that there is no pecuniary gain to obtain from bulk cash smuggling. Second, this fine is “necessary to deprive the defendant of illegally obtained gains from the offense.” 18 U.S.C. § 3572(a)(5). Without a fine,

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<sup>1</sup> The Government did not include the final, February 2024 trip in its calculation here because all money smuggled on that trip was seized and forfeited. *See* Doc. 56. Ocana received no proceeds from this trip because she was caught.

<sup>2</sup> A fine of \$32,000 is within the advisory guideline range for this offense. *See* PSR ¶ 78.

Ocana would have a windfall from her criminal activity in the form of her payments received from co-conspirators.

Any difficulty in paying back restitution can be mitigated by requiring repayment of the fine over a period of time. 18 U.S.C. § 3572(d)(1) permits the Court to “provide[] for payments in installments.” With installation payments, Ocana could repay this fine—and sacrifice her ill gotten gains—over a series of months or years. Crafting the repayment of a fine in this manner would ensure that the fine would impose a limited burden on Ocana, 18 U.S.C. § 3572(a)(2), and would take into account Ocana’s income and earning capacity, 18 U.S.C. § 3572(a)(1).

### **CONCLUSION**

For the foregoing reasons, the United States requests that the Court impose a sentence of imprisonment of 11 months and a fine of \$32,000.

Respectfully submitted,

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By: /s/ Michael J. Buchanan

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

*/s/ Michael J. Buchanan*

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