

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

**FILED**

SEP 15 2015

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

LUIS ANTHONY RIVERA,

*Defendant.*

PATRICK KEANEY  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

Case No. 83-00096-01-CR - FHS  
83-00138-02-CR

**GOVERNMENT'S RESPONSE TO DEFENDANT'S RIVERA'S  
MOTION TO VACATE COUNT SEVEN IN  
CASE NO. 83-00096-01-CR**

COMES NOW the United States of America, by and through Mark F. Green, United States Attorney for the Eastern District of Oklahoma, and Douglas A. Horn, Assistant United States Attorney, and responds to Defendant Rivera's "*Holloway*" Request.

**FACTS OF THE CASE**

On July 27, 1983, Luis Rivera and 6 co-defendants were involved in a conspiracy to possess with intent to distribute and to distribute cocaine. Rivera was the only defendant charged in Count Seven of the original indictment (83-00096-01-CR) under 21 U.S.C. 848 (Continuing Criminal Enterprise). On November 10, 1983, a second indictment (83-00138-02-CR) was returned on Rivera and a second co-conspirator. On January 17, 1985, Rivera was arrested in Grand Junction, Colorado. On March 25, 1985, a jury found Rivera guilty of all counts in both indictments including Count Seven the CCE (21 U.S.C. § 848). The Presentence Report, prepared in May 16, 1985 by Chief U. S. Probation Officer John Bowden, reveals that Rivera

was the key figure in a cocaine smuggling operation that used private airplanes to transport 464 pounds of cocaine<sup>1</sup> from Columbia, South America to Talihina, Oklahoma.

On May 16, 1985, United States District Judge Frank H. Seay sentenced Rivera in Case 83-00096-01-CR to 15 years each on Counts 1, 2, 3, and 4 to run consecutively; 5 years each on Counts 5 and 6 to run consecutively and life on Count Seven (CCE).<sup>2</sup> Judge Seay sentenced Rivera in Case 83-00138-02-CR to 15 years each on Counts 1, 2, 3, and 4 to run consecutively and 5 years each on Counts 5 and 6 to run consecutively. On August 11, 1993, the Tenth Circuit Court of Appeals vacated Rivera's convictions on Counts 1 and 3 of both indictments but upheld the life sentence in Count Seven.

### **RIVERA SINCE INCARCERATION**

Luis Rivera has been in the custody of the Bureau of Prisons (BOP) for almost 30 years. During this time he has not had a single disciplinary action. Courts and prosecutors frequently use past criminal history and actions to recommend or impose sentences on defendants. If past behavior is the guide in this case, Rivera's exemplary behavior over 30 years in BOP provides a very favorable outlook on his success if released from prison.<sup>3</sup>

### **POSITION OF UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF OKLAHOMA**

The United States Attorney's Office for the Eastern District of Oklahoma supports Rivera's motion and recommends that the Court grant the relief requested. The United States Attorney's Office, which is an extension of the Department of Justice, should and has reflected

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<sup>1</sup> Under the advisory 2015 United States Sentencing Guidelines, 464 pounds of cocaine would be a level 36 (188 – 235 months). With acceptance of responsibility 464 pounds of cocaine would be a level 33 (135 – 168 months).

<sup>2</sup> The charge of CCE (18 USC 848) has not been used in the Eastern District of Oklahoma since 1992 in the case of U.S. v. Hutching/Molina/Sanchez and McCullah.

<sup>3</sup> It should be highlighted that Rivera's feat of not having a single disciplinary action in 30 years was accomplished in an environment that has many rules and regulations under the supervision of a system that does not hesitate to issue discipline.

on drug sentencing policies both past and present. In 1985, the guidelines were mandatory. Under the present law, courts have much more discretion when considering a sentence. The guidelines themselves would suggest a shorter prison term if this crime was committed today. The Defendant has served approximately 30 years. This sentence certainly meets the standard for disparity of sentence set forth in 18 U.S.C. § 3553.

Such action is not without precedence. Counsel for the Defendant has made the Government aware of *United States v. Holloway*, 68 F. Supp. 3d 310 (2014). In *Holloway*, United States District Judge for Eastern District of New York John Gleeson was critical of “injustices in our criminal justice system” (Id. 313). In 1995, Holloway was offered a plea agreement of 9 years. Holloway declined the plea offer and went to jury trial. Holloway was found guilty of carjacking and 3 counts of 18 U.S.C. § 924(c). As a result of the mandatory consecutive sentencing provision in the statute, Holloway was sentenced to 57 years and 7 months. In 2012, Holloway filed a motion to reopen a previously denied § 2255 proceeding. Judge Gleeson urged “the United States Attorney<sup>4</sup> to consider exercising her discretion to agree to an order vacating two of more of Holloway’s 18 U.S.C. § 924(c) convictions.” (Id. at 314) The United States Attorney’s Office for the Eastern District of New York (USAO/EDNY) originally objected to the court’s request. Eventually, the USAO/EDNY withdrew their objection, thereby allowing the Court to dismiss two of the 924(c) convictions that added 50 years to Holloway’s sentence.

Judge Gleeson stated:

This is a significant case, and not just for Francois Holloway. It demonstrates the difference between a Department of Prosecutions and a Department of *Justice*. It shows

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<sup>4</sup> The United States Attorney for the Eastern District of New York in 2012 was Loretta Lynch.

how the Department of Justice, as the government's representative in every federal criminal case, has the power to walk into courtrooms and ask judges to remedy injustices.

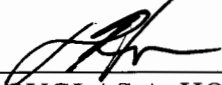
(Id. 316.)

**CONCLUSION**

The United States Attorney's Office for the Eastern District of Oklahoma has no objection to the requested sentencing relief. Due diligence has been done to confirm the statements and affirmations by Rivera concerning his conduct in prison. Rivera has already served 30 years for his role in transporting illegal drugs. Based upon his exceptional conduct in prison and the time served, the United States Attorney's Office feels that Rivera's 30 years of incarceration is sufficient punishment for the crime committed.

Respectfully submitted,

MARK F. GREEN  
United States Attorney



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**CERTIFICATE OF FILING IN SERVICE**

I hereby certify that on this 15th day of September, 2015, I conventionally filed with the Court the foregoing documents. Based on the records currently on file, I sent file stamped copies via U.S. mail to the following attorneys:

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