

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
NORTHERN DISTRICT

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3	UNITED STATES OF AMERICA,	)	
4		)	
5	Plaintiff,	)	
6	vs.	)	
7		)	CRIMINAL NO.: CCB-20-0127
8	VICTOR RIVERA,	)	(Via Zoom)
9		)	
10	Defendant.	)	
11		)	
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Transcript of Proceedings  
Before the Honorable Catherine C. Blake  
Tuesday, January 26th, 2021  
Baltimore, Maryland

For the Plaintiff:

Leo J. Wise, AUSA

For the Defendant:

Stephen Mercer, Esquire

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## P R O C E E D I N G S

1  
2 THE COURT: Good afternoon.

3 And I'll start by asking the government to call the  
4 case.

5 MR. WISE: Thank you, Your Honor. Leo Wise for the  
6 United States. And the case is United States of America  
7 versus Victor Rivera, criminal number 20-127-CCB.

8 THE COURT: Thank you.

9 And defense counsel?

10 MR. MERCER: Good afternoon, Your Honor. Steve  
11 Mercer, counsel for Mr. Victor Rivera, who is present with me  
12 in my office.

13 THE COURT: Thank you.

14 And, Mr. Rivera, you can see and hear me; is that  
15 correct?

16 THE DEFENDANT: Yes, I -- yes, I do.

17 THE COURT: All right. And someone needs to be on  
18 mute when they're typing. Or something like that.

19 Okay. Let me start with the preliminary that -- I  
20 guess two things. I'm not sure if we have taken care of a due  
21 process order in this case. Probably not. And then there is  
22 the consent issue. So let me start with both of those.

23 First of all, we're proceeding by video conference.  
24 This is permitted under the Cares Act because of the current  
25 Corona Virus pandemic, so long as the defendant consents. And

1 so long as the Court makes a finding, which I'm prepared to  
2 do, that the proceeding to be held today cannot be further  
3 delayed without serious harm to the interests of justice.

4 This matter has been pending for some time.

5 Mr. Rivera has reached an agreement with the  
6 government. He's prepared to move forward. That's in his  
7 interest as well as the public interest. And it would not be  
8 possible for public health safety reasons to do this in person  
9 in the courtroom for some substantial period of time, so I do  
10 believe the requirements of the Cares Act are satisfied.

11 But, Mr. Mercer, would you agree with that?

12 MR. MERCER: Yes, Your Honor. And after consulting  
13 with Mr. Rivera, he does wish to proceed.

14 THE COURT: All right.

15 Is that correct, Mr. Rivera, you do consent to  
16 proceed by video conference today?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Thank you.

19 The other matter, as counsel are probably aware,  
20 there's a recent change to Rule 5 of the criminal rules, which  
21 a -- requires me or any judge at the first time that both the  
22 government and defense are present in a court proceeding,  
23 requires me to advise the government of its obligations under  
24 *Brady*, both orally and in writing.

25 So as required by Rule 5, the United States is

1 ordered to produce all exculpatory evidence to the defendant  
2 pursuant to *Brady versus Maryland* and its progeny. Not doing  
3 so in a timely manner may result in sanctions, including  
4 exclusion of evidence, adverse jury instructions, dismissal of  
5 charges, contempt proceedings, vacating a conviction, or  
6 disciplinary action against the prosecution.

7 To be clear, this is not a new obligation. It's  
8 something I'm sure the government is well aware of. But for  
9 the record, Mr. Wise, has the government complied with its  
10 *Brady* obligations to date in this case?

11 MR. WISE: We have, Your Honor.

12 THE COURT: All right. Thank you.

13 All right. Then we'll move forward. We are here  
14 for sentencing for Mr. Rivera. He's pled guilty to a charge  
15 of making a false statement to federal agent. As counsel  
16 know, I need to start with the presentence report and the  
17 calculation of the advisory guideline range in this case. So  
18 let me just start with the presentence report itself.

19 Mr. Wise, from the point of view of the government,  
20 any additions, corrections or modifications?

21 MR. WISE: No, Your Honor. Thank you.

22 THE COURT: Thank you.

23 Mr. Mercer, I know you have read the presentence  
24 report. For the record, has your client had the chance to  
25 review it and discuss it with you?

1 MR. MERCER: Yes, he has, Your Honor.

2 THE COURT: All right. And do you have any  
3 additions, corrections or modifications?

4 MR. MERCER: No, Your Honor.

5 THE COURT: All right. Thank you.

6 I've indicated the offense in the case, false  
7 statement to the FBI. The advisory guideline range, which is  
8 of course just one factor I have to consider, starts at a 6.  
9 There is an increase of two for abuse of a position of trust,  
10 but a decrease of two for timely acceptance of responsibility.  
11 So that's an offense level of 6. Mr. Rivera's Criminal  
12 History Category is a I. So I believe the advisory guideline  
13 range would be from zero to six months.

14 Are we in agreement that that is the -- the  
15 guideline range, Mr. Wise?

16 MR. WISE: Yes, Your Honor.

17 THE COURT: And, Mr. Mercer?

18 MR. MERCER: Yes, Your Honor.

19 THE COURT: All right. Now, of course, as I said,  
20 the guideline range is just one factor. I should mention that  
21 in addition to reviewing the presentence report, I have  
22 received sentencing memos from both sides, which I've  
23 reviewed, of course. Thank you. So I'm generally aware of  
24 everyone's position in this case. But of course, I'm happy to  
25 hear specifically what anyone would like to say in regard to

1 the sentence recommendation in this case.

2 And I'll start with the government, Mr. Wise.

3 MR. WISE: Thank you, Your Honor.

4 Victor Rivera almost got away. When FBI agents  
5 approached him in November of 2019, the statute of limitations  
6 had long since run on the drug crime he participated in almost  
7 ten years earlier. And all Victor Rivera had to do was tell  
8 them the truth, or, because this was a purely voluntary  
9 interview, just tell them he didn't want to talk. But Victor  
10 Rivera chose -- and it was his choice -- to do neither. And  
11 instead, he lied to the FBI agent that conducted that  
12 interview over and over again, as that remarkable  
13 transcript -- because the incident was recorded -- makes  
14 clear.

15 I count about 18 separate lies in the course of that  
16 interview that went from the general to the specific. Not a  
17 single exculpatory no, not a passing reference, not a question  
18 that could have been misunderstood. He was asked again and  
19 again and again whether he knew anything about drugs being  
20 taken from that search scene or them being sold, whether he  
21 participated in that.

22 And it really did. It went from the broadest of  
23 terms down to all the facts that were known at that point,  
24 about whether the drugs had been in a backpack and whether  
25 they had been sold to a source. And again and again and again

1 he said no. And that's why he's before the Court today.

2 The unusual feature of this case is that, as I  
3 indicated in our -- in our filing, typically, it's the  
4 government that argues the Sentencing Guidelines generally  
5 capture the factors that 3553(a) talk about, and therefore a  
6 guidelines sentence is sufficient, but not greater than  
7 necessary, to meet the ends of sentencing. And usually, it's  
8 defense counsel that argues they don't.

9 Here it's the inverse. Here we have a guideline  
10 range of zero to six months for a crime that is far more  
11 serious than that, because what Mr. Rivera lied about matters.  
12 And what he lied about was his involvement in the sale of  
13 three kilograms of cocaine, which is really a significant  
14 quantity of cocaine. It's the largest single incidence of a  
15 drug theft we uncovered in this investigation.

16 The closest second is the two kilograms of cocaine  
17 that Your Honor heard about at the trial in this case, that  
18 Wayne Jenkins and Donald Stepp -- that Wayne Jenkins stole at  
19 a search site and then Donald Stepp sold on his behalf.  
20 This -- this is -- this is a third larger than that, and Mr.  
21 Rivera played a critical role.

22 The facts, as we understand them, is that this was  
23 an opportunistic theft and sale; that these drugs found their  
24 way into a van that he and -- and two others were in, and that  
25 when faced with the choice about what to do with them, instead

1 of turning them in, which might have harmed the case or been  
2 embarrassing or been a black eye for them professionally, they  
3 decided to sell them. And they decided to sell them to Mr.  
4 Rivera's confidential source.

5 So he wasn't a peripheral participant. He wasn't  
6 someone that just went along for the ride. He was someone who  
7 had a means to dispose of the drugs and to essentially take  
8 them from one drug dealer and transfer them to another back  
9 out onto the streets. And Mr. Rivera only accepted  
10 responsibility for that conduct.

11 And in the motion filed by defense counsel, his  
12 acceptance is obviously stressed, but -- but he only accepted  
13 responsibility when he was caught. You know, he didn't come  
14 forward back in 2009 when they found the drugs. That's what  
15 should have happened. We know that. Far worse, they actually  
16 decided to sell them and split the profits.

17 He didn't come forward on March the 1st of 2017,  
18 when the members of the Gun Trace Task Force were arrested.  
19 The FBI actually set up a tip line that was included in the  
20 public communications around that -- those arrests out of the  
21 hope that police officers like Mr. Rivera would come forward,  
22 whether anonymously or with immunity or other protections, and  
23 reveal wrongdoing that had gone on.

24 And I have to say the results of that are so  
25 disappointing, because that effort, that outreach effort



1 didn't produce a single case. And instead, it was the dogged  
2 persistence and determination of the FBI and the U.S.

3 Attorney's Office that has resulted in these -- we're now at  
4 14 charges after the original seven, 14 convictions after the  
5 original seven.

6 And more specifically, among those follow-on  
7 investigations, when Sergeant Gladstone was prosecuted and  
8 indicted publicly in May of 2019, and Mr. Rivera knew that he  
9 had been involved in this incident with him, he didn't come  
10 forward then either.

11 And it was only when he was approached in November  
12 of 2019, and in what I can only guess was a view that he could  
13 avoid adverse employment consequences or some other adverse  
14 consequence, he agreed to this voluntary interview and then  
15 lied in response to every question he was asked about this  
16 incident.

17 So that's -- those are the facts. And he's admitted  
18 to those in his plea agreement. It was only when brought to  
19 that -- brought to the point where he was confronted with what  
20 he did, that he accepted responsibility for it.

21 Now, as his counsel points out, he has provided --  
22 in their filing, he has provided information to the Gun Trace  
23 Task Force Commission that was set up by the Maryland General  
24 Assembly and to the internal investigation that's being  
25 conducted by the Baltimore Police Department.

1 I suggested to the counsel for the GTTF Commission  
2 and to the lawyer leading the internal investigation, that  
3 both of those entities reach out to Mr. Rivera's counsel to  
4 inquire whether he would be willing to talk to them. And --  
5 and he did, and he deserves some credit for that.

6 But I have to say that -- that he and the other  
7 officers like him created the conditions that necessitated  
8 these extraordinary and expensive efforts. And so it's sort  
9 of like, you know, an arsonist that helps the fire department  
10 put out a fire they set. And it's not clear that anything  
11 will come of this. That's the other thing, of course.

12 There's -- there's recommendations, but as has unfortunately  
13 been seen in other police departments and in other contexts,  
14 whether legislation or internal changes follow is an open  
15 question.

16 So while having been caught -- I think it is  
17 laudable that he did, in fact, provide information -- I think  
18 that it's appropriate to value that in a way that I think the  
19 recommendation we've made does. And I want to be clear about  
20 that. The 24 months we are recommending takes into account  
21 that he -- that he did that, and I would have recommended a  
22 higher sentence if he had not.

23 In terms of another item in the memo- -- in the  
24 defense memorandum, the first I learned of the \$20,000 payment  
25 he made was in that sentencing memorandum. And I would say

1 that many victims of crimes go without restitution, as Your  
2 Honor knows, particularly in financial fraud cases.  
3 Restitution is often -- is ordered, mandatorily offered or  
4 ordered, but frequently, there are little or no -- there's  
5 little or no compensation for victims. I would have welcomed  
6 the opportunity to discuss whether there were avenues to  
7 retribute victims of crime.

8 But putting that aside, I will say that I -- I do  
9 have very real equity concerns about crediting payments to an  
10 unaffiliated third party to reduce this defendant's sentence.  
11 And what -- what that does is it enables defendants of means,  
12 which he obviously has enough means do that, to reduce a term  
13 of incarceration, but defendants who lack such financial means  
14 cannot. And that -- that raises, as I said, significant  
15 equity concerns from a -- in the context of our criminal  
16 justice system.

17 In terms of unwanted sentencing disparities, as I  
18 mentioned, 14 officers have been convicted in this  
19 investigation and not a single one has received probation as  
20 this defendant requests. If he had been charged with the drug  
21 offense that these charges would have captured had he been  
22 discovered earlier, he would have faced a five-year mandatory  
23 minimum sentence. The nearest defendant in terms of conduct,  
24 as I pointed out in my -- in my memorandum, was Carmine  
25 Vignola, who also committed -- it wasn't lying to law

1 enforcement, it was a perjury offense from testifying in front  
2 of the grand jury, and he received an 18-month sentence.

3 I think in light of the fact that drugs were  
4 involved and the quantities that were involved here, that the  
5 24 months we have recommended is appropriate. I had made a  
6 recommendation that was longer than 18 months in the case of  
7 Vignola, and I think the recommendation I'm making here is --  
8 is consistent with that.

9 For all those reasons, Your Honor, we believe 24  
10 months of incarceration is sufficient, but not greater than  
11 necessary, to meet the goals of sentencing.

12 Thank you.

13 THE COURT: Let me give you a chance to address one  
14 question, Mr. Wise. You've alluded to it in regard to the  
15 guidelines and that the guidelines are lower, as it happens in  
16 terms of a false statement to a federal agent, than I believe  
17 they were in Mr. Vignola's case, which involved the lying  
18 under oath to a grand jury seeking an indictment.

19 Just abstractly, between those two offenses, do you  
20 see any reason to weigh them differently? Obviously, the  
21 guidelines do. And this is separate from your argument about  
22 what did the lie concern, but there might be some who would  
23 say that the grand jury offense is a degree more serious than  
24 the federal agent.

25 MR. WISE: So I'm -- I'm a little -- I'm puzzled by

1 the difference, because I think that in practice, the way  
2 federal investigations are conducted, is individuals are  
3 interviewed by the FBI and then put in front of the grand  
4 jury. But the value of the information is equal -- I would  
5 equalize the two.

6 We almost never put someone in the grand jury that  
7 we haven't interviewed first. That's precisely why we then  
8 decide to put them in front of the grand jury and how  
9 investigations actually advance.

10 I think in many respects, the FBI interviews are  
11 more important, because we only put a fraction of witnesses  
12 that we interview in the grand jury. Then often it's -- if a  
13 witness is recalcitrant or we're concerned that they might --  
14 you know, it raises -- we try to lock them in. We're afraid  
15 that they might change their testimony later.

16 So putting aside the subject matter, I think -- I  
17 think, from my experience, lying to the FBI while we're  
18 redesigning guidelines should be just as serious for those  
19 practical reasons.

20 THE COURT: Okay. Thank you, Mr. Wise.

21 Mr. Mercer.

22 MR. MERCER: Thank you, Your Honor. I agree with  
23 the government in this respect, that there is a code of  
24 silence, a blue code of silence. And it is that blue code of  
25 silence that enables a culture of corruption. And it's a very

1 powerful code, as Mr. Rivera's actions show.

2 But my comments to the Court now are directed at, I  
3 hope, impressing upon the Court that Mr. Rivera's a changed  
4 man, and that the actions he is taking to break that code of  
5 silence, which are not of insignificant risk to him, should be  
6 recognized. And that that is the primary factor we rely upon  
7 in asking the Court to impose a guidelines sentence.

8 Just briefly, before I begin my other comments, I  
9 just want to respond to the notion of the contribution to the  
10 nonprofit. We did not link that to any aspect of plea  
11 bargaining or plea negotiation. That was purely an altruistic  
12 move by Mr. Rivera, with I think a genuine aim of restorative  
13 justice. I mean, he had -- has been living with this guilt on  
14 his conscience for a very long time. And it was completely  
15 irreconcilable with who he believes he is. And this was  
16 really an act of giving back in some way. He was not trying  
17 to earn anything through that.

18 We do bring it to the Court's attention. I, as his  
19 counsel, bring it to the Court's attention, because I think it  
20 is part of the context. But our focus, primarily, is on the  
21 code of silence and Mr. Rivera's actions to address that,  
22 because if -- if there is hope moving forward, it is going to  
23 have to involve breaking down that blue wall of silence.

24 Now, I am requesting a guidelines sentence and that  
25 any period of imprisonment be served through home detention.

1 Alternatively, I'm asking that the Court defer Mr. Rivera's  
2 voluntary surrender date until the pandemic is under control  
3 in BOP, and he has been vaccinated for COVID-19.

4 I provided the necessary medical records to the  
5 Court under seal. If there's any questions, I'll be happy to  
6 address that, but I don't think I need to speak to that  
7 further as we're all well aware of the circumstances in BOP.

8 Now, the -- today the Court must fashion a  
9 reasonable sentence that balances the history and  
10 characteristics of Mr. Rivera with the nature and  
11 circumstances of the offense and the need for general  
12 deterrence.

13 We recognize that the Court will assess the false  
14 statement enhanced by the fact that Mr. Rivera was a sworn  
15 police officer and that there was abuse of trust.

16 We also recognize, too, that the Court will likely  
17 consider the subject matter of the false statement. That is  
18 reasonable.

19 The government asked for 24 months as the just  
20 punishment necessary to deter such future misconduct and to  
21 promote respect for the law. Here we part ways with the  
22 government to be sure a sentence of imprisonment may work to  
23 promote respect for the law. However, the opposite is true if  
24 the law is viewed merely as a means to dispense a punishment  
25 without taking into full account the circumstances involved in

1 sentencing.

2 Now, of course in this case, the relevant  
3 circumstances include Mr. Rivera's history and  
4 characteristics, his acceptance of responsibility for his  
5 conduct, and his strong desire to make amends for his offense.  
6 And we maintain that when those factors are balanced against  
7 the factors identified by the government, there is a clear  
8 message for the Court to send through Mr. Rivera's sentence,  
9 albeit not what the government requests.

10 Before I tell Mr. Rivera's story and explain why a  
11 sentence within the guidelines is sufficient but not greater  
12 than necessary, I want to emphasize these points. First,  
13 Mr. Rivera fully accepts responsibility for violating his  
14 fundamental duty to serve the community. To that end, he  
15 offers a genuine apology to the citizens of Baltimore, his  
16 family, his fellow officers, the Court, and the government.

17 Second, Mr. Rivera recognizes that he was motivated  
18 by personal gain and a desperate, misguided desire to shield  
19 his family and fellow officers from his own failures.

20 Third, in an effort to make amends, Mr. Rivera has  
21 voluntarily submitted to in-depth interviews by counsel for  
22 Maryland's Commission to Restore Trust in Policing and counsel  
23 heading up the Baltimore City Police Department's  
24 investigation and root-cause analysis of corruption.

25 Now I want to spend some time and tell you a little



1 more about Mr. Rivera's story and his background and  
2 characteristics. He's 49 years old. He was born in the Bronx  
3 and raised in Suffolk County, Long Island. His parents are  
4 Victor Rivera and Candida Rivera. His father's from Puerto  
5 Rico. He has two sisters and a brother. It's a very  
6 close-knit family. His parents and one of his sisters live in  
7 York, Pennsylvania. He's in constant contact with them, daily  
8 contact. He visits his family regularly on the weekend.

9 His father has early stage dementia, sadly. And he  
10 regularly visits them to help with their care. He's also in  
11 touch with his other family members, his sister in New York,  
12 as well as his brother who lives in this area.

13 Mr. Rivera was married for 16 years. He has two  
14 adult children, a son and daughter, who he maintains strong  
15 ties with, and also an adult stepson and two stepdaughters.  
16 He currently lives with his fiancée.

17 That's sort of the -- the hard data. And I know  
18 that was in the PSI and the Court has reviewed that. But I  
19 want the Court to know that when Mr. Rivera graduated from  
20 high school, there were two jobs acceptable to his mother,  
21 police officer or priest. He dreamt of becoming a police  
22 officer. And to make that dream a reality, he applied for a  
23 position from Baltimore City Police Department in 1994.

24 Your Honor, he was 22 years old. He applied, and he  
25 went through several rounds of employment testing. The last

1 test was a physical test. He was worried about his poor  
2 eyesight disqualifying him. And -- and it did. And to this  
3 day, he remembers how distraught he was on the long ride home  
4 from New York -- to New York.

5 He was able to get corrective surgery, and he was  
6 accepted to the department. He entered the police academy on  
7 a \$24,500-a-year salary, or about \$12.50 an hour. The academy  
8 should have prepared him for the unique challenges that  
9 confront our police officers every day in the community.

10 As the Commission to Restore Trust recognizes,  
11 ethics training should be an essential part of an officer's  
12 training. It was not. There was no training on corruption at  
13 the academy, no training about the different ways that an  
14 officer can be tested on the streets. When he graduated from  
15 the academy, he felt as though he was given a toolbox without  
16 the tools. His words.

17 As a patrol officer in the Eastern District, he had  
18 to learn from more senior officers how to conduct surveillance  
19 on drug corners, make vehicle stops, conduct searches. When  
20 he saw how things actually worked, he began to realize, this  
21 is what it's like. He was never trained what about to expect.  
22 He wondered, frankly, even at that young age, what he had  
23 gotten himself into.

24 He was barely taught the basics and then thrown out  
25 there. All that he really knew was to look to officers who

1 had years of experience on him. And it was around 1999, when  
2 the broken windows policing policy resulted in an emphasis on  
3 the numbers rather than integrity in policing and created a  
4 perception of policing in a war zone instead of a community.  
5 With a focus on interdicting drugs, Mr. Rivera was tested in  
6 ways he never imagined and was never prepared for by the  
7 academy or continuing professional training.

8 While still in his 20s, as a young man, he encountered  
9 corruption by his senior officer who was part of the good ole  
10 boys network. This occurred in a culture of silence where  
11 being accepted as a good cop by a more senior officer was the  
12 motivating factor. Mr. Rivera very much wanted to be the good  
13 cop. And, frankly, in many ways, he really was.

14 Still, his integrity was again tested in the 2009  
15 incident that is the subject of his false statement. That  
16 event was too much for Mr. Rivera. Although he never again  
17 would engage in such conduct, his life had already started to  
18 spiral down. His marriage was failing. His drinking became a  
19 daily ritual. There was little to instill a sense of pride in  
20 his work.

21 He hit bottom in 2012 when he was charged with DUI  
22 and suspended from the force. He struggled back from that low  
23 point in his life and recommitted himself to policing and his  
24 family. And he did so with respect and he did honor his  
25 family.

1           Still, when federal agents, as the government points  
2 out, came to speak with him many years later, he lied. He  
3 followed and fell in line with the blue code of silence. And  
4 for this, he has profound remorse, because he now knows just  
5 how corrupting silence is within the department.

6           Mr. Rivera's insight about the corrupting effect of  
7 silence motivated him to take action. His actions shift the  
8 balance of sentencing factors. Why? Because integrity is the  
9 backbone of effective policing. A central factor that breeds  
10 a culture of ineffective and corrupt policing is the blue code  
11 of silence. If you don't talk about it, it never happened.

12           This code of silence enables corruption. And how  
13 does BCPD create a culture of compliance? The Department of  
14 Justice, the Commission to Restore Public Trust, the  
15 department itself sought that answer. They discussed  
16 measures. Very smart and able members of the commission  
17 and -- and counsels have discussed about increased  
18 accountability, ethics training, rewarding high ethics,  
19 messaging and model behaviors, reform of internal affairs.

20           But here's the insight that we offer and that I  
21 offer from my work with Mr. Rivera: A central factor to each  
22 of these measures is combating a culture of silence. And to  
23 that end, this is an opportunity to acknowledge the pervasive,  
24 corrosive effect of silence that is the root cause of the  
25 problems we see in policing. It's an opportunity for the

1 Court to send a message that speaking out and breaking that  
2 code of silence is essential.

3 Mr. Rivera is the one officer who fully cooperated  
4 with the commission and BCPD's root-cause investigation. In  
5 doing so, he has broken the blue code of silence. To be sure,  
6 he lived by that code of silence, but he has now broken from  
7 the chains of that code of silence, and it is not at  
8 insignificant risk.

9 That fact shifts the balance of sentencing factors  
10 and outweighs the factors cited by the government. A  
11 reasonable sentence is a sentence within the guidelines.  
12 Alternatively, a period of home detention would be sufficient,  
13 but not greater than necessary, to accomplish the goals of  
14 sentencing.

15 As I said at the beginning, I asked the Court to see  
16 Mr. Rivera as a changed person, a person who has come to  
17 realize, through the crucible of a career police officer's  
18 life on the streets, that his moral compass is central to his  
19 character, not what his senior officers thought of him. He is  
20 a person who knows now that there are consequences to every  
21 action and that silence does not make bad events disappear.  
22 That it is your ethics that allow you to overcome the  
23 challenges of life and a profession to serve the public. He  
24 does live these core values now, and he seeks to instill them  
25 within his family and their -- his former colleagues.

1           And I'll close on a -- on a personal note for  
2 Mr. Rivera. And Mr. Rivera still is, I think, in many ways --  
3 it's hard for him to speak about some of the things that he  
4 close -- holds closest to his heart. But I know his  
5 relationship with his father is particularly close. I know  
6 his father has dementia. I know that Mr. Rivera goes to care  
7 for him. I'm very concerned that if Mr. Rivera is separated  
8 for the period of time that the government's asked for in  
9 terms of imprisonment, that by the time he leaves, his father  
10 will not recognize him.

11           Now, Mr. Rivera knows that he bears responsibility  
12 for his actions and that his actions have consequences, as  
13 I've just said. And that would be a heart-breaking  
14 consequence. But, on balance, given Mr. Rivera's actions and  
15 his courage to really step forward and to break the blue code  
16 of silence, and because that is a central enabling feature of  
17 corruption in policing, not only in this community but across  
18 all communities, I ask the Court to impose a sentence that is  
19 within the guidelines, because it is sufficient, but not  
20 greater than necessary, to accomplish the goals of sentencing.

21           Thank you.

22           THE COURT: Thank you. Thank you, Mr. Mercer.

23           MR. WISE: Your Honor, may I -- may I just respond  
24 to one or two points?

25           THE COURT: Go ahead, Mr. Wise.

1           MR. WISE: Your Honor, I -- Mr. Rivera didn't break  
2 the code of silence. Four police officers testified in the  
3 Gun Trace Task Force trial. They're the ones that really blew  
4 open what's -- what's followed and resulted in -- we're now at  
5 14 convictions. So I think it is vastly overstating what he  
6 has done, to act like he was the first one to come forward.

7           Secondly, he wasn't silent. He affirmatively lied.  
8 Silence would have been telling the FBI agents, I don't want  
9 to talk to you. He tried to throw them off by lying to them  
10 about his involvement in this event.

11           And the last thing I would say, Your Honor, is  
12 police officers shouldn't need to be trained not to steal  
13 three kilograms of cocaine. And I've heard this argument  
14 before that it's a failure of training. I would buy that if  
15 this were a civil rights case and the question was in a -- in  
16 a sticky spot, you know, when they went into a building, did  
17 that -- did that constitute exigent circumstances, or did they  
18 engage in police tactics that you might argue were in some --  
19 in some -- I've heard police officers sometimes talk about  
20 gray zone, which I don't think exists.

21           But if this were a case like that where you could  
22 say, oh, he wasn't given -- whatever the analogy was -- the  
23 tools in the toolbox, a police officer doesn't need to be  
24 trained not to steal drugs from people and sell them. And I  
25 think this is so far beyond anything that you could point to a

1 failure in training for. I just think it's -- it's -- it  
2 almost takes my breath away.

3 There is undoubtedly a culture of corruption that  
4 needs to be combated. But it's not the fault of the  
5 institution that Mr. Rivera didn't understand he shouldn't do  
6 this.

7 MR. MERCER: And, Your Honor, briefly, if I could  
8 counter-respond. That was certainly not our point and not our  
9 argument, that without training, one would not know that that  
10 is corrupt behavior. I was putting in context Mr. Rivera's  
11 story and how it started and the long slippery slope that  
12 culminated in -- in that event.

13 So I appreciate the government's desire to respond  
14 to that, but I think, you know, making these bald statements  
15 about, you know, don't -- he's trying to blame training really  
16 misses the point that Mr. Rivera has made a commitment to  
17 speaking to. And, frankly, if given the opportunity, I'm sure  
18 he would go even further than he has with his detailed  
19 debriefings, which have been very candid and very personal,  
20 with those investigating this -- this long-standing, systemic  
21 problem in our policing.

22 THE COURT: Thank you. And thank you both.

23 I agree, Mr. Mercer, I did not take your comments  
24 about training to suggest that you have to be trained about  
25 not stealing drugs. I appreciate that you are not the only



1 one that thinks that there have been training failures in the  
2 past in the police department. And learning on the job is not  
3 always the best way to learn.

4 That's a little bit different from the points that  
5 you were making, I think -- or that Mr. Wise thought you were  
6 making. And I also appreciate that -- I did not take your  
7 comments to mean that Mr. Rivera was the one that had come  
8 forward or taken major responsibility for breaking this open  
9 in any way, but only in regard to his willingness to speak  
10 with the Commission and the city investigators.

11 Let me ask you, before I turn to your client,  
12 Mr. Mercer, regarding conditions -- whatever the sentence may  
13 be, regarding conditions, there are various mandatory and  
14 standard conditions that are recommended in the presentence  
15 report, as well as a special condition of any mental health  
16 counseling that the probation officer might recommend. Do you  
17 have any additions or objections or anything else you'd want  
18 to request or remark on behalf of your client?

19 MR. MERCER: I should have remarked, Your Honor,  
20 that Mr. Rivera has already begun counseling. And that's  
21 been -- part of his journey has been to engage in mental  
22 health counseling. So he embraces that. There's no issue  
23 whatsoever with that at all.

24 THE COURT: Okay. Thank you.

25 Mr. Rivera, if there's anything you'd like to say,

1 you certainly have the right to do that. You don't have to.  
2 I won't hold it against you. If you don't, your counsel has  
3 spoken. But if there's anything you'd like to say, you do  
4 have the right to do that. And we just need to figure out a  
5 way to make sure you're close enough to the microphone.

6 MR. MERCER: You can take your mask off and I'll put  
7 my mask on.

8 THE DEFENDANT: I just basically -- what I want to  
9 say is start off with the deepest apologies to you, to the  
10 Courts.

11 THE COURT: And I'm sorry to interrupt, but just a  
12 minute.

13 Can the court reporter hear, or do we need a little  
14 bit more volume?

15 (Discussion off record.)

16 THE COURT: Sorry.

17 THE DEFENDANT: I just wanted to say deepest  
18 apologies to you, to the government, to the investigating  
19 officers, detectives, my attorney, also extended to the BPD  
20 and the citizens of Baltimore, but most importantly, to my  
21 family who's been there with love and support. I know I hurt  
22 a lot of people, but I stand before you a changed man.

23 I'm -- God willing, I want to continue to break down  
24 the wall of silence and challenge and speak, you know, to  
25 recruits in the academy and plant a seed and share my story

1 with them and be transparent.

2 So that's kind of pretty much what I'm -- I'm  
3 wanting to do. I do -- I'm not running away from this. I --  
4 I'm taking this as my -- my responsibility to do what I have  
5 to do, which is do the right thing. And I felt like I have  
6 been doing the right thing. And most definitely, there should  
7 be more that I do, and I think it's -- I need to do. So --  
8 for me and for my family, and just go to make amends for all  
9 of this and to kind of start my second half of life, so to  
10 speak.

11 Thank you.

12 THE COURT: Okay. Thank you. Thank you, Mr.  
13 Rivera.

14 Okay. Anything else that anybody has not had a  
15 chance to say that they would like to?

16 All right. So I appreciate counsel on both sides  
17 and what you've said and what Mr. Rivera has said and the  
18 letters that I've received. I've taken all of this into  
19 account. It's -- I'll just comment that it's a sad aspect of  
20 this. One of the things that Mr. Mercer reflected on was how  
21 much this career, at least initially, meant to his client, his  
22 dream of becoming an officer. And this is not the first time  
23 I have heard that from people that, unfortunately, have been  
24 in front of me for sentencing for these serious offenses. And  
25 it's just unfortunate to see how those dreams kind of went

1 down the wrong road and people found themselves involved in  
2 very, very serious offenses that clearly they should not have  
3 been.

4 But it's a difficult situation for everyone. This  
5 is a very serious offense. Mr. Rivera not only lied, of  
6 course, to the federal agents, repeatedly, as the government  
7 has correctly pointed out, in 2019, when he didn't have to, he  
8 didn't have to offer anything. But he did. And what he lied  
9 about, while -- had happened, of course, many years in the  
10 past, was an extremely serious offense, what he was concealing  
11 was a significant betrayal of trust.

12 Sending a very large quantity of drugs back into the  
13 community for sale, knowing as I'm sure he did from his work  
14 as an officer, the tragedy and destruction that those drugs  
15 can bring, he nonetheless participated in it and profited from  
16 it. And later, unfortunately, why he's here, is because he  
17 did lie about that to a federal agent investigating these very  
18 serious matters. I have to take that into account. I have to  
19 take into account deterrence and the importance of general  
20 deterrence of sending a message.

21 And I understand Mr. Mercer's point. There are two  
22 ways of looking at this. Someone who has been willing to talk  
23 and come forward should get some credit for that. But at the  
24 same time, it's extremely important to send a message that,  
25 not just silence, but criminal behavior and/or refusing to

1 talk about it and come in and explain and speak truthfully  
2 and, for that matter, report it if another -- if an officer  
3 sees another officer doing something that they know is a  
4 crime, it ought to be part of the culture that they don't  
5 tolerate it. That it's unacceptable. And that's part of the  
6 message that has to come today, that this culture of  
7 corruption, code of silence, whatever it may be called, is  
8 unacceptable.

9 I have to compare sentences that I have given to  
10 similarly situated people in this case. Counsel have referred  
11 to Mr. Vignola. I did find that 18 months was sufficient for  
12 Mr. Vignola who lied to the grand jury. What he lied about  
13 had to do with planting a gun at the request of another  
14 officer to justify certain police action. I'm not sure  
15 there's a -- it's an easy distinction to make between selling  
16 drugs and lying about it or planting evidence and lying about  
17 it. They're both extremely serious things. And it does  
18 matter what the untruthful statement related to.

19 On the other hand, I certainly -- as Mr. Mercer  
20 said, I certainly have to consider Mr. Rivera as an  
21 individual. I do believe that he has, recently, at least,  
22 more fully accepted responsibility than some of the other --  
23 many of the other officers involved in this in this way, which  
24 is the willingness to talk to the state commission and the  
25 independent investigator, and perhaps in some way contribute

1 to some changes and improvement down the road. And I agree  
2 that his willingness to do this indicates some change. He has  
3 publicly acknowledged that that's what he's doing, that he's  
4 cooperating with these interviews and providing -- providing  
5 information in some effort to make recompense.

6 The contribution to the particular charity involved,  
7 I understand Mr. Wise's point, and I agree to the extent that  
8 I don't think you should give one person credit for a  
9 financial action that another person was simply unable to do.  
10 On the other hand, it is certainly true there are -- there are  
11 people who have appeared in front of me who had the means to  
12 make restitution or make some sort of giving back, restoration  
13 of what they had gained, and have done nothing about it. So I  
14 think it is something that can fit into the entire picture of  
15 the history and circumstances of Mr. Rivera.

16 And I also do appreciate that he has certain health  
17 issues that would affect his service of a sentence.

18 So I am trying the best I can to balance all those  
19 things. I do believe -- and Mr. Mercer, the combination of  
20 the seriousness of the offense and the need for general  
21 deterrence do not permit me to impose a probationary sentence.  
22 That would not be reasonable under all the 3553(a) factors  
23 that I have to consider.

24 I think that -- as I found with Mr. Vignola, I think  
25 that the 24 months is more than is necessary in light of all

1 the factors that I've identified for Mr. Rivera. Where I come  
2 out, in the exercise of the best judgment I can, is that it is  
3 going to be a sentence of 14 months in the custody of the  
4 Bureau of Prisons for Mr. Rivera. That is going to be  
5 followed by a period of two years of supervised release.  
6 Special conditions, in addition to all the mandatory and  
7 standard, including the mental health counseling and treatment  
8 that he says he's already started on, which is, I'm sure, a  
9 good idea.

10 Mr. Rivera's financial circumstances, in light of  
11 the contribution and in light of other matters, simply looking  
12 at his financial circumstances, I don't think a fine is  
13 warranted here, but there is a required \$100 special  
14 assessment that I am imposing.

15 Now, I agree with Mr. Mercer that requiring Mr.  
16 Rivera to report to the Bureau of Prisons at this particular  
17 time would not be reasonable thing to do in light of the COVID  
18 situation and his specific health conditions, so I am willing  
19 to defer his voluntary surrender date. I don't know if you  
20 have a specific date in mind, Mr. Mercer, or if we might check  
21 in at a certain point. Obviously, it cannot be forever  
22 postponed, but this would not be a good time.

23 MR. MERCER: Perhaps we could check back with the  
24 Court, say, within 30 days. I would just like to get a sense  
25 of when BOP is going to have vaccines available or when Mr.

1 Rivera can be vaccinated, because I'm -- I'm expecting, just  
2 given the state of affairs, that it's probably not going to be  
3 until the summertime before the BOP facilities, assuming they  
4 get vaccines, are returning to some semblance of normal  
5 operations.

6 THE COURT: Possibly, Mr. Rivera will be able to get  
7 the vaccine earlier than that. But yes, checking in in  
8 30 days.

9 Mr. Wise, do you want to comment on that?

10 MR. WISE: I think checking in in 30 days would  
11 be -- would be fine, Your Honor. We're getting information  
12 that the BOP is vaccinating inmates. We actually received an  
13 email today that we can inquire about whether specific inmates  
14 have been vaccinated. So it is happening. I don't -- don't  
15 confess to know the plan specifically or how it's being rolled  
16 out and in what facilities, but -- but I would certainly think  
17 checking in in 30 days would be acceptable.

18 THE COURT: All right. Well, what I can do is we'll  
19 reflect in the Judgment and Commitment order that he's being  
20 permitted to voluntary surrender, and we'll put some language  
21 about the date to be set. And I'll speak with counsel. We  
22 can set up a conference call in about 30 days to discuss that  
23 further.

24 Is there anything else, anything I've left out, any  
25 legal objection to that sentence, anything from the probation



1 officer or others?

2 MR. WISE: Not from the United States, Your Honor.

3 Thank you.

4 MR. MERCER: Not from the defense. Thank you, Your  
5 Honor.

6 THE COURT: All right. Thank you all.

7 Mr. Rivera, in light of the sentence and the plea  
8 agreement, I'm not sure there's anything you have a right to  
9 or would want to appeal from, but if you were going to be  
10 noting any appeal, that would have to be within 14 days. Do  
11 you understand that, sir?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. Thank you all.

14 MR. WISE: Thank you, Your Honor.

15 MR. MERCER: Thank you, Your Honor.

16 (The proceedings were concluded.)

17  
18 I, Christine Asif, RPR, FCRR, do hereby certify that  
19 the foregoing is a correct transcript from the stenographic  
20 record of proceedings in the above-entitled matter.

21 \_\_\_\_\_/s/\_\_\_\_\_  
22 Christine T. Asif  
23 Official Court Reporter  
24  
25

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