

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA )  
 )  
 v. ) Docket No. 5:19-cr-76-1  
 )  
 ARIEL QUIROS, )  
 Defendant. )

GOVERNMENT’S SENTENCING MEMORADUM

The criminal conduct in this case can be viewed in multiple different ways. At co-defendant Bill Stenger’s sentencing on April 14, 2022, the Court focused on the AnC fraud in determining the appropriate sentence. Looking through that same lens here paints a mixed picture for Quiros. On the one hand, Quiros was along for the ride, letting his co-defendants lead the way in creating and executing the plan for the fraudulent project. On the other hand, Quiros helped design a project that would line his pockets with millions in “legitimate” profits and millions more in hidden profits. From late 2013 to 2015, Quiros misused investor funds because his financial plans were collapsing under the weight of the SEC’s investigation and the many claims to available funds. He relied heavily on advisors, including Bill Kelly, to help him navigate these difficult waters.

As described below, one cannot assess Quiros’s role or his cooperation without an understanding of his background and personality. Quiros knew he was engaging in fraud but latched onto justifications that turned hollow. His cooperation, which began in 2020, provided a huge gain to the government’s case. From the beginning of Quiros’s cooperation, the other defendants lost the ability to convince a jury that there was no crime. While they could have tried to blame Quiros at trial, he would have provided an insider’s view of the

criminal conspiracy. Based on all the circumstances, the Court should reward Quiros for his cooperation. Nevertheless, in light of the scope of the fraud, the Court should impose a significant jail sentence.

#### I. Introduction

The criminal conduct at issue in this case was wide-ranging, complex, and nuanced. One prong of the fraud involved lies about AnC job creation and future revenues to the investors, the Vermont Regional Center (VRC), and U.S. Citizenship and Immigration Services (USCIS). These misrepresentations made the entire \$110 million AnC project a fraud. This fraud, which was not part of any prior civil suit, was managed in large part by Stenger. Quiros was largely passive regarding this aspect of the fraud. It should have little weight on his sentence.

The second prong of the fraud, the misuse of investor funds, triggered the SEC and Vermont civil suits and generated the most public attention. Some have labelled this criminal conduct: theft or a Ponzi scheme. These labels fail to capture the causes and the execution of this prong of the fraud. The misapplication in this case is more akin to a lapping scheme: using other people's money to pay debt that could not be legitimately covered. Both schemes involve "stealing from Peter to pay Paul," but the misrepresentations to investors and the flow of misused money differs between the two kinds of schemes.

Here, the misuse of investor funds was principally caused by debts and cost overruns that the defendants handled by misusing funds and hiding these financial problems from investors, the VRC, and the SEC. Quiros was convinced by Stenger that they could buy Jay Peak with borrowed funds, which created a significant debt from the outset. Stenger was responsible for the huge cost overruns. The EB-5 projects were all designed to include

substantial “profits” for the owners—*i.e.*, Quiros and, at times, Stenger—who were entitled to receive tens of millions in land “sales” and “supervision fees” based on the offering materials. For the AnC project, Kelly, Quiros, and Stenger were entitled to split \$12 million in construction supervision fees. Quiros wanted to reap the owner profits, including AnC profits, but he also needed to use profits to pay off other costs. Quiros’s misapplication of funds flowed from trying to do both and failing. This prong of the scheme supports a significant prison sentence.

The motivations and personalities of the three defendants played a critical role in the scheme. The crimes could not have occurred without the toxic mix of these three men’s strong personalities. Quiros was, at bottom, a wheeler-dealer who was in it for the money. He came to believe that he was truly rich, rather than simply misusing other people’s money. He wanted the gravy train to keep rolling, if possible. He didn’t care what Stenger and Kelly said to investors, the SEC or the VRC. Kelly used his legal training to strengthen his role as the consummate fixer for Quiros. Quiros relied on his counsel. Kelly carefully attended to trying to outwit the regulators. Stenger was the visionary, the deluded optimist, and the man responsible for the Jay Peak jewel. He had to keep the projects going because failure was not an option; his vision and his reputation would collapse. All three wanted EB-5 fundraising to continue, even if deceit was necessary to accomplish that goal. Their desperation only grew as the regulatory challenges mounted between 2013 and 2016.

## II. The Advisory Sentencing Guidelines

The Presentence Report calculates the guideline offense level as 34. Quiros’s advisory guideline range is 151 to 188 months. Neither party objects to this calculation. The parties entered into a binding plea agreement that limits the sentence to 97 months or less.

The government entered into that agreement, which required cooperation, prior to deciding to use Quiros as a witness. Over the following year, the government concluded that Quiros would be a valuable witness. The government moves for a substantial departure in light of that cooperation.

### III. Section 3553(a) Factors

The Court should assess the appropriate sentence based on four points of reference: the seriousness of the overall scheme, the defendant's role and individual culpability in the scheme, the defendant's personal history and circumstances, and the defendant's cooperation with the government.

#### A. The Nature and Circumstances of the Offense

As the Court has already recognized, the criminal conduct here was egregious and caused massive harm. The government will attempt here to summarize the facts relevant to Quiros's culpability regarding the misuse of investor funds.

##### 1. 2011: Setting the Stage

As of mid-2011, the Jay Peak projects and the AnC project were on different tracks. The defendants created JCM to help deal with the huge cost overruns on Phases I and II caused by Stenger. They hoped to manage these problems without telling anyone; this is what became the lapping scheme for the remaining Jay Peak projects.

The AnC project was a bit dormant. Stenger and Alex Choi had conceived AnC as a \$50 million project in 2009 but little had happened with the plan since then. Choi told the other defendants that his plan was to build the same building that he had built in Korea in Newport and to operate his Korean business ventures there. In 2010 and 2011, however,

Choi was having business problems in Korea. Quiros was generally aware of those problems but largely deferred to Choi about AnC.

In 2011, the defendants increased the price tag on the AnC project to \$100 million. (The government has never received clarity on the origins of this change). As the Court knows, the defendants had no real plan other than Choi's vague ideas. Stenger was eager to buy the Bogner land for the AnC project. Stenger convinced Quiros to use \$3.2 million to buy the land in mid-2011. Of course, they used money from Jay Peak project investors. That was the only money available.

In the meantime, Quiros still had a margin loan at Raymond James, which had been used to buy the resort. Quiros had not paid off the purchase debt. Stenger had convinced Quiros to buy the resort based on the ability to earn huge profits on the EB-5 projects from land sales and supervision fees. Quiros had already started using these "profits" from Phases I and II to keep up with the costs of those projects. In 2011, Quiros still had a debt of \$23 million from the resort purchase in 2008.

Quiros controlled the money that Stenger sent to him from Raymond James. Due to Quiros's lack of sophisticated business experience and desire to take what he thought he was entitled to; he largely treated the money at Raymond James as one big fund. He often moved money between the margin loan and the QResorts accounts before sending it to Stenger to spend on project costs. Neither Quiros nor Stenger had any interest in properly accounting for the funds. Quiros was not taking a salary at QResorts or at Jay Peak. Instead, he dipped into the project cash flows. Before the huge problems were evident in 2011, he was taking "profits" along the way but not keeping track of the total.

2. 2012: Problems Erupt

The Hulme dispute and departure disrupted the defendants' operations. Hulme and Stenger were running the EB-5 projects before 2012. Hulme had not only marketed all the projects, but he had also put the PPMs and budgets together. Quiros had little involvement in any aspect of EB-5 other than managing the money in Miami. Quiros didn't care about the regulatory details. When Hulme parted ways with the defendants and their EB-5 projects in 2012, Stenger had to assume total responsibility for the marketing and someone had to put the AnC project together.

In 2010, Quiros began to be concerned about the rising project costs. He hired a Miami accounting firm, reporting to him, to investigate the finances in Vermont. By early 2011, he had concluded that Stenger was not effectively managing the finances of the resort or the EB-5 projects. As a result, Quiros hired George Gulisano as the Chief Financial Officer of Jay Peak. Later that year, he asked Kelly to act as the Chief Operating Officer; to be his eyes, ears, and voice in Vermont. Gulisano did not get along with Hulme. Moreover, Hulme's views about his own role in the Jay Peak EB-5 projects angered Quiros.

The extent of the defendants' commingling of investor funds through JCM concerned Hulme. Hulme's allegations also led to Quiros mispending more Jay Peak investor funds. In early 2012, Hulme's lawyers demanded that the defendants explain whether investor funds were encumbered by a margin loan. To hide what they were doing, Quiros paid off the margin loan and opened a new margin loan in the name of Jay Peak, still collateralized by the EB-5 investor funds, including the AnC investor funds. During this process, Quiros used \$7 million of the new margin loan to buy Burke Mountain, with the

plan to use that mountain to raise additional EB-5 funds and new profits that might help with the burgeoning financial problems.

The AnC Vermont private placement memorandum (PPM), assembled by Kelly and Stenger, exaggerated Choi's earlier plans without justification and built in a variety of profits for all of the defendants, including profits on the land and profits on the equipment for the facility. Choi's financial problems had only gotten worse in 2012. Choi saw AnC as his vehicle to inject millions into his failing business situation in Korea. Quiros saw more millions in profits.

In November 2012, the defendants went to Korea on the eve of AnC marketing. They still had no idea that the Korean building could not be built in Vermont. They still imagined that AnC could be financially separate from the continuing financial problems with the Jay Peak projects. Choi captured the AnC profit plan in a chart he sent to Quiros after the meeting:

AnC (Ariel n Choi) Profit Generation Table

		Remark			Remark
A	50,000,000	Original Estimated Profit			
B	6,000,000	Land	I	1,300,000	Profit from Land
C	5,000,000	Raymen James Deposit	J	5,000,000	
D	39,000,000	A-B-C			
E	16,000,000	Working Capital	K	10,000,000	Profit From Working Capital
F	23,000,000	D-E			
G	11,000,000	Management Fee	M	4,000,000	For Kelly
			N	6,000,000	For Ariel & Choi
			O	1,000,000	For Stenger
H	12,000,000	From Equipment	P	12,000,000	Profit from Equipement
			R	34,300,000	I+J+K+N+P
			S	11,319,000	Tax
			T	22,981,000	R-S
			U	1,500,000	John Kim
			V	21,481,000	T-U
			W	10,740,500	For Ariel
			X	10,740,500	For Choi
				???	Choi Expenses by Nicole

Choi and Quiros were to split \$21.5 million in AnC profit, Kelly was supposed to make \$4 million, and Stenger was supposed to make \$1 million. The profits were in the land sale, the supervision fee, the working capital, and the equipment costs. In addition, Choi was going to receive \$10 million for the “distribution” rights for the undeveloped products. Choi wanted the EB-5 funds to start flowing to Korea immediately.

By the end of 2012, Stenger had convinced about a dozen Jay Peak EB-5 investors to move their investments into AnC. Quiros wanted the \$6 million land sale profits up front. Stenger paid Quiros the first \$6 million in AnC investor funds. Quiros thought that this money was his to do with as he saw fit. He used part of it to buy a luxury condo in New York. The defendants still did not recognize that their frauds would be put to a stop. Stenger, Kelly, and Gulisano had been able to calm the worries of investor representatives and the VRC about Hulme’s vague allegations. They did not know that that the SEC was planning an investigation. Quiros also did not appreciate how serious Choi’s problems were in Korea.

### 3. 2013: Challenges

Quiros’s house of cards began to collapse in earnest in 2013. By the end of 2013, Quiros was reacting to multiple crises.

To begin with, Choi was arrested and jailed in Korea in January 2013. Quiros also knew that AnC Korea was in terrible shape. Quiros knew that public disclosure of these problems would negatively affect the AnC project. But Quiros also knew that Korean businessmen remain loyal to their bosses and hoped the problems would stay quiet. Quiros flew to Korea in March 2013. He met with the Koreans. He initially thought that Choi might weather these legal problems. This optimism turned out to be another miscalculation.



Because of Choi's legal problems, Quiros decided to move investor funds destined for AnC Korea through JCM. The first payment of \$2.6 million went to JCM in March 2013. Quiros sent \$2 million of those funds to Korea. Choi was released in mid-2013 on bail but jailed again on expanded charges in January 2014. Throughout this time, Choi repeatedly begged Quiros for more money. Quiros sent less than \$5 million to Korea in 2013, almost all of which Choi used to stem his Korean financial problems. Quiros became convinced that Choi would misspend additional AnC money. For instance, Choi was supposed to pay for the building's design, but Choi could not come up with money to pay the design company, NNE Pharmaplan. Quiros ended up covering NNE costs.

The SEC shoe dropped in early June 2013. Because the SEC investigation focused precisely on what Hulme knew and complained about, it was clear to the defendants that Hulme had gone to the SEC. Instead of facing the facts, the defendants decided to defend themselves and hide what was going on. The SEC investigation not only led to massive fraud against the SEC, but it also broke apart the cozy financial relationship Quiros had with Raymond James. Quiros had still not paid down the margin loan, now in the name of Jay Peak. Raymond James received a subpoena from the SEC and soon realized that its relationship with Quiros was problematic. Raymond James demanded Quiros pay off the margin loan, which totaled approximately \$21 million. He began using AnC investor funds parked at JCM to pay down the loan in \$500,000 monthly payments, while he looked for a new financial institution to replace Raymond James. He had trouble finding one.

In early 2014, it looked like JP Morgan/Chase might extend Quiros a \$20 million loan. But before that arrangement was finalized, Raymond James required Quiros to pay off the remainder of the margin loan. In February 2014, Quiros had to come up with \$19

million. He did not have it. He had been delaying the scheduled “monthly” payments of AnC investor funds through JCM, largely because he saw no need for more money to go to Korea. AnC “owed” JCM about \$18 million. The defendants paid this money to JCM, and Quiros used the money to pay down the margin loan. At the time, he hoped to get another institution to provide financing to replace the Raymond James loan. That didn’t happen in 2014. In the meantime, Kelly came up with the idea of calling the payment from JCM to the margin loan a “fee” that JCM owed to QResorts.

As the Court knows, this margin loan paydown became a serious concern in the SEC investigation. Quiros was confronted about it in his May 2014 SEC sworn testimony. In spite of knowing Kelly’s cover story that the money was supposed to be a fee paid to QResorts, Quiros said that these funds were his profits. This moment speaks volumes to Quiros’s personality and world view, discussed further below. The SEC line of questioning in the sworn testimony also raised whether the AnC funds in JCM were owed to AnC Korea. This concern led to the creation of the false Korean declarations. Quiros instructed AnC Korea employees, who reported to Choi and Quiros, that they needed to sign the false declarations. As the Court knows, the declarations made it appear that the Koreans directed JCM’s payment of funds to Jay Peak and that funds paid to the margin loan would be “credited” towards the amounts due to AnC Korea for the AnC project. Quiros told the Koreans that he would make it up to them. Quiros still thought that he could repair the collapsing finances. Quiros used his JP Morgan banker as the notary for the declarations. This decision led to the SEC subpoenaing the banker, and JP Morgan declining to provide Quiros financing.

In mid-2013, the financial problems with the Jay Peak projects were growing rather than shrinking. In his August update to Quiros and Kelly, Gulisano reported that they needed over \$30 million to finish the two remaining Jay Peak projects, Lodge Townhouse and Stateside. They lacked funds to do that. Gulisano suggested selling Jay Peak. Between 2013 and 2016, Quiros and Kelly explored several possible suitors. None proved viable. The SEC investigation likely prevented any serious possibility of a sale.

By early 2014, Stenger was becoming desperate about finding funds to complete Stateside. He was busy raising funds for AnC and Burke. He encouraged Quiros to use those funds for Stateside. Quiros resisted. Stateside construction was delayed.

In late 2013, the VRC also began more actively questioning Stenger about AnC. VRC personnel caught a whiff of Choi's legal problems. The defendants worked together to quickly snuff that worry out. They began what turned out to be a two-year effort to hide the truth about Korea from the VRC and from investors.

#### D. The Collapse: 2014 and 2015

In June 2014, the VRC suspended AnC marketing. In the meantime, the SEC investigation was continuing. The defendants still tried to bail the water out of the sinking ship. By late 2014, the VRC was asking questions about the use of AnC funds and the Raymond James margin loan. Kelly and Stenger lied and dissembled. Quiros knew what was happening but largely remained in the background. He had lawyers, each with differing levels of knowledge about the truth, fighting on his behalf. (Stenger continued fundraising despite the "holds" but marketing success diminished.)

Quiros was still trying to find a new lender. It was not until early 2015 that Quiros found Citibank. The only loan Quiros could get from Citibank was a fully collateralized line

of credit. Quiros had to put \$15 million in a JCM account (funded by AnC investor funds) to borrow \$15 million. Quiros also had to lie to the bankers about the source of the JCM money. The first money out of that line of credit was \$6 million for a federal tax payment. Kelly had hoped that the \$21 million JCM paid to QResorts under the phony “Services Agreement” would not be considered income to QResorts but would rather be considered as a credit on a huge liability JCM had to QResorts (caused by the use of QResorts in the lapping scheme). But Quiros’s accountant concluded that the \$21 million had been categorized as income on the QResorts tax return, which led to Quiros having a huge tax liability on his personal return. Quiros needed to pay that tax liability.

Much of the remainder of that line of credit was used to make progress on Stateside. Stenger and DEW, the construction company, were continually pressing Quiros to finish Stateside. Stenger knew that delays only caused more problems for his ongoing false narrative that everything was fine.

By the fall of 2015, when Stenger and Quiros were interviewed again by the SEC, Quiros knew that his plans were in disarray. The AnC project was basically on hold because new funds were escrowed. The misuse of investor funds on AnC was not going to be kept secret from the VRC much longer. The defendants had almost no AnC funds available. Construction could not commence, even if they could finalize a design. In early 2016, Quiros was desperately trying to find someone to loan him \$20 million. He began turning to loan brokers. Nothing came of it before the SEC and the State sued in April 2016.

#### B. History and Characteristics of the Defendant

One narrative has long been that Quiros was the mastermind behind this scheme. The government, which has looked deeply into the facts, has a more nuanced view of

Quiros. Moreover, Quiros has spoken with government personnel for many hours. Those interactions have led to important insights into Quiros's character that should mitigate his sentence, without regard to the cooperation reduction.

One cannot understand what makes Quiros tick without reference to his long service as an enlisted man, his immersion in and acceptance within Korean culture, and his lack of book smarts. Quiros never went to college. He graduated from military high school and went into the armed forces, where he served for many years. He then went into business as a trader, buying goods in one place and selling them somewhere else for a profit. He also became deeply involved in the Korean business culture, working as Choi's partner and friend. The government does not have the expertise to opine on Korean business culture, but it is clear that Korean business culture had a huge impact on the AnC project's trajectory. The Court could benefit from asking Quiros to explain how that culture impacted him and the AnC business decisions.

Quiros often locked himself into a way of looking at events and then solely hears and even talks about those matters through the lens of his view. The government has no doubt that Stenger convinced Quiros that he could become rich by reaping large profits from the EB-5 projects. Quiros committed to Jay Peak with that goal and chose to pursue that goal despite the financial problems the projects faced.

Further, Quiros has poor communication skills. He was not the originator of written or even spoken material in furtherance of this scheme. He was not capable of deciding how to fashion and execute this complex scheme. Instead, Quiros operated by developing relationships with others who had the skills needed to execute the scheme. As discussed above, Quiros relied on Kelly to carry out his wishes and to fix problems, he relied on

Stenger to fundraise and to act as the face of the project, and he relied on both of them to address the EB-5 details. In addition, Quiros surrounded himself with professionals—specifically, lawyers and accountants—who would provide the answers he wanted to hear, or whose answers he would hear as he wished. Quiros perceived that these professionals gave him cover: when confronted by regulators about the fraud, Quiros repeatedly justified his conduct by saying the professionals had blessed his actions.

Quiros's SEC depositions provide examples of his thinking and role. As noted above, when Quiros was first asked about the Raymond James margin loan payoff, he said he used his profits. As noted above, Kelly had created a more detailed cover story that the JCM payment was a fee JCM owed to QResorts, but Quiros largely ignored such nuance. He believed that he was entitled to large profits from the EB-5 profits that he could use when and how he wanted. He did not care about "contract" details. In a sense, he was being more "honest" about how he saw things than if he had parroted the services-fee story. Over a year later, when the SEC asked Quiros about the Korean declarations, Quiros readily admitted that he had told the Koreans that he would pay them that money later, a statement undercutting the declaration cover story that AnC Korea was paid with the margin loan.

#### B. Cooperation

Quiros's broad participation in the fraud scheme made him an important witness. He was the first full cooperator, which should result in significant credit. He spent many hours working with the prosecutors and agents to review the hundreds of events and documents relevant to the case. His cooperation, his explanation about the scope and range of the scheme, and his acceptance of responsibility for his role in the scheme all would have been significant in a trial.

The government would have faced some challenges using Quiros as a witness. His personality quirks, his communication issues, and his lack of nuance would have made for difficult direct and cross examinations. Despite these challenges, the government intended to call Quiros at any AnC fraud trial. He would have provided critical and important testimony about all aspects of the scheme. Despite the millions he made, he would have been a compelling witness.

Quiros's acceptance of responsibility should also weigh in his favor. After finding new counsel in 2020, Quiros quickly decided to admit his wrongdoing and offer his assistance to the government. Indeed, while Kelly demanded a three-year cap to cooperate, Quiros was willing to plead; without any assurance of a cooperation benefit and with an over eight-year cap.

Especially in white collar cases like this one, defendants who assist the government in unraveling a case, particularly the first cooperator, should receive a substantial reward. The Court should consider how future defendants perceive the benefits from cooperation. Quiros's cooperation with the government should receive much greater sentencing credit than Stenger's help to the Receiver in managing Jay Peak and Burke Mountain.

IV. CONCLUSION

The government asks the Court to determine what it would consider an appropriate sentence without considering Quiros's cooperation and then imposing a sentence substantially below that amount of jail time.

Respectfully submitted,

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