

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HECTOR BARRETO,

Defendant.

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Case No. SA-21-CR-00404-JKP

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through the United States Attorney for the Western District of Texas, and the undersigned Assistant United States Attorney, files this sentencing memorandum and response to Defendant Hector Barreto’s Memorandum. Dkt. No. 192-2.¹

INTRODUCTION

Merriam-Webster dictionary defines “charity” as “generosity and helpfulness especially toward the needy or suffering.”² Dr. Rapier and the Wells Fargo Foundation donated millions of dollars under the care of Hector Barreto and co-defendant Miguel Gutierrez with the intent that it be used to help the needy or suffering. It was not. Much of that money went to line the pockets of Barreto, Gutierrez, their friends, family, and business associates. In his Sentencing Memorandum, Barreto argues the Latino Coalition Foundation (“LCF”) was not harmed by his theft. Defendant’s Memorandum at 47- 50. Certainly both Dr. Rapier and Wells Fargo Foundation were not made destitute by Barreto’s crimes. However, Barreto shows no remorse for (or even

¹ The Defendant’s Memorandum was filed under seal. In the Defendant’s Motion for Leave to File Under Seal, the Defendant listed the information within the Memorandum which necessitated the sealing. The United States does not dispute that information will not reference or address that information in this memorandum. As such, the United States does not file this pleading under seal.

² Merriam-Webster’s Collegiate Dictionary (11th ed.). (2019).

mentions) the true victims of his crimes. Those victims are the people who these donations were intended to help. The real victims are the underprivileged youth who Dr. Rapier intended to help through establishing and funding a \$1.35 million apprenticeship program. Although it is impossible to know their names, there are real people who have been deprived of the opportunities that money would have afforded because of Barreto's and Gutierrez's greed. Likewise, the Wells Fargo Foundation intended to help Hispanic businesses grow and prosper and those business were denied the assistance the Wells Fargo Foundation intended.

The charity system of the United States does so much good for so many people. However, it is based upon trust. People donating their hard-earned money trust that money is being used by those who run the charity for its intended charitable purposes. When that money is instead stolen, it not only hurts those who would have otherwise benefited, but it cast mistrust on the entire charitable system. For several years, Barreto and Gutierrez chose to steal money that was intended for the needy and suffering. In doing so, they broke the trust Dr. Rapier and Wells Fargo Foundation put in them when donating their money. For his crimes and as further discussed below, Barreto should be sentenced to 27 months imprisonment, a fine of \$250,000, and restitution as set forth in the Presentence Report.

FACTUAL SUMMARY

1. The Rapier apprenticeship program

Dr. George Rapier is a man of great means who consistently gives away millions of his own money to charity. Since 2013, Dr. Rapier had been the primary funder for LCF which is a 501(c)(3) charity. Initially and for years, Dr. Rapier believed his donations to LCF were being used for general charitable purposes based upon his belief and trust in defendants Miguel Gutierrez and Hector Barreto. Unbeknownst to Dr. Rapier, much of his donations were flowing to Gutierrez,

Barreto, and their family, friends, and business associates. Dr. Rapier never knew or discussed paying Gutierrez or Barreto through his donations to either LCF or the political advocacy entity Hispanic Business RoundTable Institute (“HBRI”). *See* Exhibit 1: FBI interview of Dr. George Rapier on 11/20/20.³

In 2017, Dr. Rapier wanted to specifically help underprivileged youths gain valuable trade experience in an apprenticeship program. In June of 2017, Dr. Rapier reached out to Gutierrez and asked to set up a call with Barreto to get Barreto’s input “on programs that mentor and provide apprenticeships.” Exhibit 2: 6/14/17 Email from Dr. Rapier to Gutierrez (trial exhibit 5006). Seeing an opportunity, Barreto came up with a proposal for a Dr. Rapier to fund an apprenticeship program and sent it to Gutierrez to send to Dr. Rapier. Exhibit 3: 8/21/17 email from Barreto to Gutierrez (trial exhibit 5010). The proposal contemplated over a million dollars in funding from Dr. Rapier of an apprenticeship program.

Dr. Rapier was not satisfied with the proposal alone and wanted specific deliverables of exactly how his donation would be spent and the results it would be expected to achieve. Barreto agreed to work on the deliverables to present to Dr. Rapier. *See* Exhibit 4: 9/23/17 email between Barreto and Gutierrez (trial exhibit 5014). A few days later, Barreto sent the list of deliverables to Gutierrez to send to Dr. Rapier. The deliverables listed the specific things which would be done with Dr. Rapier’s donation. *See* Exhibit 5: 9/25/17 email between Barreto and Gutierrez (trial exhibit 5017). Still, Dr. Rapier wanted even more specifics. On October 1, 2017, Dr. Rapier emails Gutierrez and stated:

³ “RAPIER "never ever" discussed paying GUTIERREZ or HECTOR BARRETO through his (RAPIER's) donations to HBRI or the Latino Coalition Foundation (LCF). RAPIER assumed GUTIERREZ was being paid "completely and adequately" by WellMed. RAPIER had "no idea" BARRETO was being paid by out of RAPIER's donations.” Exhibit 1 at 1.

I also need what outcomes we will measure and what expected outcomes are going to be in year one and subsequent years. Please get with Hector and propose something. The ultimate outcome will be students placed in apprenticeship programs and students completing the program and getting a job, but may also need some earlier outcomes, like #hits on website, # apprenticeship openings created, #companies offering apprenticeships, etc.

Gutierrez sent this request to Barreto who stated, “I’ll work on it.” Exhibit 6: 10/1/17 email (trial exhibit 5018). On October 12, 2017, Gutierrez sent the Barreto drafted list of specific deliverables to Dr. Rapier for the apprenticeship program including deliverables such as “provide 30 students with internships”, create content for a monthly newsletter called “Rapier Apprenticeship and Technical Matchmaking Newswire”, “build and promote online skills-based jobs site targeting employers and young workers”, and “organize and plan 4 matchmaking events in Texas and Florida.” Exhibit 7: 10/12/17 email between Gutierrez and Dr. Rapier (trial exhibit 5023). At no point did Barreto or Gutierrez mention any payments to themselves from the donation.

The ruse worked because on October 12, 2017, Dr. Rapier donated the first \$250,000 for the Rapier Apprenticeship Program. Unbeknownst to Dr. Rapier, Barreto immediately stole \$100,00 for himself and Gutierrez. Within a week of the first donation, Barreto caused LCF to wire \$100,000 to Brent De La Paz who, in turn, wired \$50,000 to Gutierrez and \$50,000 to Barreto. *See* Exhibit 8 (trial exhibit 412).

Barreto and Gutierrez never intended to use Dr. Rapier’s donation for the good it was intended. In an interview with federal agents, Gutierrez admitted that other than using a small part of the overall donations (approximately \$100,000) to build a house for SA Youth, “none of the deliverables sent to RAPIER to induce him to donate to the Latino Coalition Foundation (LCF) for an apprenticeship program were done or even attempted.” Exhibit 9: FBI 302 9/7/22 interview of Gutierrez at 1. Gutierrez stated that

he and Barreto “never intended to deliver on the deliverables.” Id. Gutierrez admitted the “plan was to take the money RAPIER donated for themselves.” Id., at 2.

Dr. Rapier donated \$850,000 in total for the Rapier Apprenticeship program. Dr. Rapier would have donated an additional \$500,000 except for the federal investigation alerting him to Barreto’s and Gutierrez’s crimes. While the scheme was ongoing, Gutierrez and Barreto sent Dr. Rapier false success reports to ensure he continued to donate. Barreto and Gutierrez so fooled Dr. Rapier that after one such false report, Dr. Rapier praised Gutierrez and Barreto for the program’s success. On March 11, 2018, Gutierrez (with Barreto cc’d) emailed Dr. Rapier a false success report. The following day, Dr. Rapier responded:

Fantastic.
Guys, this was my idea, but you all are making it work. It would only be an idea without you. I know this is really important. One of the things that make me so proud of Kyms kids is its success in low income communities. Please make sure we include low and medium and high income schools.

GREAT JOB.

Exhibit 10: 3/12/18 email (trial exhibit 6023).

Dr. Rapier’s money would have helped low-income youths in communities get skills and opportunities for good jobs and tried his best to see that happen. Dr. Rapier demanded deliverables to see exactly where this money would be spent. Dr. Rapier trusted Gutierrez and Barreto to be a good stewards of his donation. Sadly, Barreto and Gutierrez decided their own greed was more important than those Dr. Rapier wanted to help. Barreto and Gutierrez lined their own pockets then hid their theft by funneling money through third parties and using false invoices. Certainly Barreto and Gutierrez took advantage of Dr. Rapier’s charitable desires but it was the needy and

suffering for whom Dr. Rapier's charity was intended who are the true victims of the defendants' crimes.

2. TLC Matchpoint

Barreto and Gutierrez also defrauded the Wells Fargo Foundation of \$250,000 donated to LCF which was in support of a matchmaking program the Wells Fargo Foundation believed would be helping Hispanic businesses. Instead, much of the money went into the pocket of Barreto and Gutierrez (directly or through the payment of credit cards used for their own personal use). As with Dr. Rapier, Barreto prepared a detailed proposal of how Wells Fargo Foundation's donation would be used, and it was also a lie. *See Exhibit 11 (trial exhibit 49)*. Wells Fargo Foundation's donated funds intended for charity were used to pay off credit card expenses that Barreto and Gutierrez used for their own personal pleasure and play. Gutierrez and Barreto texted back and forth some of these expenses such as expensive football tickets:



and drinks and food at a bar called “The Office” in Cabo San Lucas.

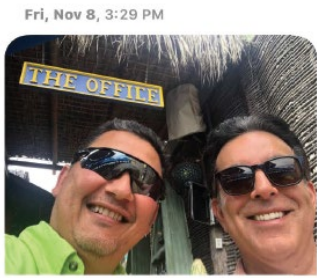


Exhibit 12: text exchanges between Gutierrez and Barreto at 4-5 (excerpts from trial exhibit 8). Wells Fargo Foundation trusted Barreto to be use their donation for charity. Instead, Barreto’s first action after securing the donation was to cause LCF to pay himself and Gutierrez.

BARRETO’S SENTENCING MEMORANDUM

Throughout his sentencing memorandum, Barreto makes several erroneous assertions and attempts to rationalize and minimize his criminal behavior. As few of the factual inaccuracies are as follows:

A. LCF did not pay for staff.

The Defendant asserts LCF did not pay for any staff. *See* Defendant’s Memorandum at 40. However, Mrs. Prisma Soto was the primary bookkeeper and administrative assistant for LCF and HBRI. Mrs. Soto was paid regularly from LCF. *See* Exhibit 13: schedule of LCF’s Bank of America account x1896 showing numerous payments to Mrs. Soto (trial exhibit 401). Further, Mrs. Soto stated she did work for Barreto’s private businesses such as Tributo Tequila and Barreto Insurance but was not paid by those entities—instead being paid for that work by LCF. *See* Exhibit 14: FBI 302 9/14/20 interview of Mrs. Soto at 1-2.

B. Barreto did not “align the objectives of the non-profits with donors.”

The Defendant claims he did, in fact, accomplish some of the goals of the Rapier’s Apprenticeship program. The solicited donation for the Rapier’s Apprenticeship Program was

\$1,350,000 over five years. Of that amount, Dr. Rapier donated \$850,000.⁴ Initially, the donations was to be five donations of \$250,000 each. For the second of five donations, Dr. Rapier agreed to include an additional \$100,000 for the financing of building a home in partnership with SA Youth. This separate \$100,000 was the only amount mostly used as intended. Beyond that one instance, the remainder of the donation stolen and misused by Barreto and Gutierrez. Barreto brazenly attempts to minimize his actions by claiming the “non-profits facilitated Dr. Rapier’s goal of financing and developing a training program for low-income youth in San Antonio”⁵ when he and Gutierrez used over 88% of the donated funds for their own benefit.

Barreto also claims that he “[o]btained the participation of Secretary of Labor Alexander Acosta in support of the SA Youth Project.” Secretary Acosta never referenced or came out in support of the SA Youth Project. Further, FBI SA Monroe Giese contacted the Department of Labor as part of the investigation and the Department of Labor had no records or information to support the Defendant’s assertion. *See* Exhibit 15: emails from Department of Labor OIG.

Barreto also cites his “value” to Wells Fargo Foundation in the development of MatchPoint. Defendant’s Memorandum at 43-44. MatchPoint is matchmaking software which was developed by Jeff Vigil and for which entities purchase an annual license to use. This is akin to a Westlaw service in which an organization pays a fee to use their services. Numerous organizations use this service such as various chambers of commerce and government agencies. *See* Exhibit 16: FBI 302 12/15/20 interview of Jeff Vigil. The Latino Coalition Inc paid \$25,000 annually for this already created service and the annual purchase of the license began in 2018

⁴ Federal agents informed Dr. Rapier’s of Barreto’s and Gutierrez’s activities before he could made the remaining two donations of \$250,000 each.

⁵ Defendant’s Memorandum at 50.

before Wells Fargo Foundation ever made their 11/12/19 donation. *See* Ex 17: business record relating to Matchpoint (trial exhibit 96).

C. LCF was harmed

The most egregious attempts at minimization and justifications are Barreto's assertions that the "Non-Profits Were Not Harmed". Defendant's Memorandum at 47. Despite diverting most of the funds from LCF to his and Gutierrez's own personal use, the Defendant claims "there can be no doubt that the nonprofits substantially benefited from Mr. Barreto's leadership and generosity." Defendant's Memorandum at 76. This is stunning minimization. The Defendant argues his services to the "non-profits" were so valuable, he was owed the money he stole anyway. The Defendant is essentially claiming his theft of charitable funds intended to help low-income youths caused no harm because Barreto was somehow due the money anyway. The Defendant double downs on this assertion as the basis to advocate for a below guidelines and non-custodial sentence. This rationalization and minimization should be wholly rejected by this Court.

Firstly, the defendant conflates the Latino Coalition Inc with LCF and HBRI and puts them all under the umbrella of "non-profits". This is misleading and factually inaccurate. The Latino Coalition Inc. was its own entity with its own mission, separate donors and own separate board. Although the Defendant essentially controlled all three entities, the money donated to LCF by Dr. Rapier and Wells Fargo Foundation were for LCF to use for specific charitable purposes, and the Defendant had no rights to pay those donations to himself or Gutierrez.

Factually, each entity was legally distinct with separate boards and purposes. Dr. Rapier primarily funded LCF and HBRI while The Latino Coalition Inc. was funded by other donors. LCF was the only 501(c)(3) charity. The defendant himself made this distinction in a board

meeting of the Latino Coalition Inc. on August 7, 2014. During that meeting, Barreto recognized Gutierrez's fundraising for LCF and stated:

I also want to thank Miguel (Gutierrez) for the work that he's been doing with Latino Coalition Foundation and Hispanic Business Roundtable Institute. **Obviously those are different organizations**, but Miguel has been instrumental in raising some very important and significant funds for those organizations, which we are utilizing for projects and for outreach and other items. **Again, we have to keep those things separate, and we do.** But again, these organizations are supportive of each other and related to each other.

Exhibit 18 at 9-10 (emphasis added).

As noted above, beginning in October 2017, Dr. Rapier pledged five donation totaling \$1.35 million dollars to LCF for a specific purpose—the Rapier apprenticeship program. To induce this donation, Barreto and Gutierrez lied to Dr. Rapier about the ways that money would be spent. Barreto's true intent was quickly revealed because the first thing Barreto stole \$100,000 for himself and Gutierrez within a week of the first \$250,000 donation. Instead of using the charitable funds for their intended and promised purpose, Barreto and Gutierrez chose to to line their pockets, take expensive vacations, eat fancy meals, support their outside business interest, and pay family, friends, and associates.

What Barreto did not do was set up and run an apprentice program. Barreto did not prepare monthly newsletters, set up a web page, attend match making events or any of the other “deliverables” he promised to Dr. Rapier. Despite this, Barreto now claims there was no harm in the theft of the donations because he was somehow owed money for work purportedly done for another entity funded by other donors (and which he also controls). This demonstrates an unfortunate lack of accountability and troubling attempt to minimize his criminal behavior.

It is also notable that Barreto never had any compensation approved by the Boards of LCF or HBRI. Barreto never listed any compensation for his efforts on the 990s of LCF or HBRI (or

the Latino Coalition Inc.). Mrs. Soto (and others) stated that Barreto “consistently made it a point to tell her several times throughout the years that he did not get paid to do work for the nonprofits.” Exhibit 14 at 3. Further, Barreto and Gutierrez lied to Dr. Rapier when directly (at federal agent’s behest) asked about whether they were receiving compensation.

At the onset of the investigation, Dr. Rapier, at federal agent’s behest, sent an email to Gutierrez asking if any of the charitable monies were used “for compensation of officers or directors.” Exhibit 19: 10/9/19 email between Dr. Rapier and Gutierrez (trial exhibit 7060). Gutierrez immediately forwarded the email to Barreto, and the pair jointly crafted a response which made no mention of any of the hundreds of thousands of dollars in payments and benefits that Barreto and Gutierrez stole from Dr. Rapier’s donation. Exhibit 20: 10/9/19 and 10/16/19 emails between Gutierrez and Barreto (trial exhibits 7062 & 7065). Barreto’s actions clearly prove he knew he was not entitled to any of this money.

Despite this, Barreto argues he should be given probation in part because he argues there is no harm. Barreto is legally and factually wrong. LCF was a conduit for money to flow from Dr. Rapier to unprivileged youths. There was real harm those low-income youth who would have benefited from a million-dollar apprenticeship program. This money and corresponding opportunities could have changed the course of lives. Instead, Barreto decided to steal this money. This Court should reject this argument as any basis for a downward departure or non-custodial sentence.

GOVERNMENTS’ SENTENCING RECOMMENDATION

The United States entered into a favorable plea agreement with the Defendant which agreed to an applicable base offense level of 20 which would give a guideline range of 33 to 41 months. *See* PSR ¶ 72. At the time of the plea agreement, the United States did not contemplate USSG §

4C1.1 which would give an addition two level reduction to the Defendant. Should the Court apply this reduction, Barreto's base offense level would be 18 which would give a guideline range of 27-33 months. However, as a matter of fairness, the United States contends this additional reduction should apply. The United States seeks this Court to sentence the Defendant to confinement of 27 months (low end of the guideline range) and be ordered to pay restitution in accordance with the plea agreement. Further, as shown during the trial, the Defendant benefited from hundreds of thousands of dollars from earlier donations from Dr. Rapier to LCF and donations to HBRI. As such, a maximum fine of \$250,000 would also be warranted as a punishment and to help divest the Defendant of some of these ill-gotten gains. The Defendant's crimes spanned years and robbed less fortunate youths of funds which could have changed their lives. For his actions, the Defendant deserves a guideline sentence.

A guideline sentence is further warranted because the Defendant's crimes were not isolated to a momentary lapse or one-time mistake. The Defendant made his choice to steal time and time again spanning years. At all applicable times, the Defendant had full control over LCF's bank accounts. Exhibit 21 (trial exhibits 412, 413, 414, & 417) tracks how the donations for the Rapier Apprenticeship program (\$850,000) and Wells Fargo Foundation (\$250,000) were spent. The Defendant caused approximately 60 different financial transactions from the LCF bank account to pay himself, Gutierrez, business associates, personal credit card expenses, and personal business expenses such as storage for his tequila business. Approximately 60 different times over 3 years Barreto chose use charitable donations to feed his and Gutierrez's greed.

The Defendant also took great steps to hide what he was doing. Barreto cause LCF to make payments to Brent De La Paz and in the name of Gutierrez' wife and had those payments funneled back to himself and Gutierrez so the books and records of LCF would hide his theft. Barreto and

Gutierrez used false invoices to hide and “paper up” their crimes. Barreto signed LCF’s IRS Form 990 tax disclosures which falsely stated Barreto received no income or benefits from LCF. Barreto bragged to Mrs. Soto and others that he never received any payments for his charitable work when it was all a lie. The Defendant knew he was not entitled to this money because he took great steps to hide receiving it. Each time Barreto wired money from LCF for his own greed he made a choice to steal. Each dollar Barreto and Gutierrez spent on themselves was a dollar not used for someone in need. This is Barreto’s true charitable legacy.

CONCLUSION

As can be seen by the PSR, Barreto has already received a significant benefit from the plea agreement (guideline range is 51 to 63 months under the PSR ¶ 71). Barreto should be sentenced to imprisonment of 27 months, restitution as set forth in the PSR, and a fine of \$250,000. This sentence is at the bottom of the guideline range, not overly harsh, and a lower recommendation than the United States even contemplated when it entered into the plea agreement (due to the implementation of USSG § 4C1.1). Charities largely run on trust. Donor trust those running the charities are using their donations for the intended purposes and not to line their own pockets. A 27-month sentence of imprisonment and \$250,000 fine will show there are consequences when that trust is broken. This would be a just and fair sentence. It is impossible to know the people whose lives may have been positively impacted if Dr. Rapier donation had been used to help them. But they exist, and they were harmed. For this harm, the Defendant should be sentenced within the guidelines.

Dated this the 9th day of January, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2024, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the Counsel of Record in this matter:

/s/Joseph E. Blackwell
JOSEPH E. BLACKWELL
Assistant U.S. Attorney