

5.3 Sentencing Entrapment

Comment

Sentencing entrapment is a separate defense from entrapment and, in appropriate cases, an issue for the jury. “A defendant ‘bears the burden of proving sentencing entrapment by a

preponderance of the evidence.’” *United States v. Biao Huang*, 687 F.3d 1197, 1203 (9th Cir.

2012) (quoting *United States v. Parilla*, 114 F.3d 124, 127 (9th Cir. 1997)). “The district court

must make express factual findings regarding whether the defendant has met his burden.” *Id.*

(citing *United States v. Riewe*, 165 F.3d 727, 729 (9th Cir. 1999) (per curiam)). When a defendant contends that he or she was entrapped as to the quantity of drugs involved in the crime, consult *United States v. Cortes*, 757 F.3d 850, 864 (9th Cir. 2014) and *United States v. Yuman-Hernandez*, 712 F.3d 471, 474-75 (9th Cir. 2013).

Sentencing entrapment should not be confused with sentencing manipulation. A defendant may be eligible for a downward departure or variance for sentencing entrapment where he “can show he was predisposed to commit a minor or lesser offense, but was entrapped to commit a greater offense, subject to greater punishment” *United States v. Boykin*, 785 F.3d 1352, 1360 (9th Cir. 2015) (citing *United States v. Mejia*, 559 F.3d 1113, 1118 (9th Cir. 2009)). “In contrast, ‘sentencing manipulation’ occurs when the government increases a defendant’s guideline sentence by conducting a lengthy investigation which increases the number of drug transactions and quantities for which the defendant is responsible.” *Id.* (citing *United States v. Torres*, 563 F.3d 731, 734 (8th Cir. 2009)). Sentencing entrapment focuses on the defendant’s predisposition; sentencing manipulation focuses on the government’s conduct and motives. *Id.* at 1360-61.

Revised Sept. 2018