

JUDGE RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,	)	NO. CR03-5765RBL (W.D. Wash)
	)	CR04-00195 (C.D. Cal.)
Plaintiff,	)	CR04-40030DLJ (N.D. Cal)
	)	
vs.	)	
	)	MEMORANDUM IN SUPPORT OF
HOEGH FLEET SERVICES, A/S,	)	GOVERNMENT’S REQUESTED
	)	WHISTLEBLOWER AWARD
Defendant.	)	
	)	
_____	)	

Through Counsel Jerome Kuh presents the court his memorandum. Mr. Farnacio appeared before the court, in custody, held as a material witness in September of 2003. Counsel was appointed for Mr. Farnacio at that time.

**I. INTRODUCTION**

In its Supplemental Sentencing Memorandum the Government urges the Court to award Mr. Farnacio \$300,000 as a whistleblower pursuant to 33 U.S.C. § 1908(a). Mr. Farnacio agrees that this award is appropriate and asks the Court to make the award. In this brief memorandum Mr. Farnacio wishes to provide the Court with additional information on his life since and his return to the Philippines which he hopes will assist the Court in concluding that the government’s requested award is appropriate.

## II. SUPPORTING INFORMATION

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2 The government's memorandum accurately describes Mr. Farnacio's role in the  
3 Hoegh Fleet Services case. Mr. Farnacio provided information to the Coast Guard  
4 allowing them to prosecute individuals as well as Hoegh Fleet Services for pumping oil-  
5 contaminated water into the ocean. He did this despite great risk to himself. Since  
6 providing this information to the Coast Guard, Mr. Farnacio has not returned to work  
7 and remains fearful of retaliation for his actions.

8 Mr. Farnacio believed he was taking a great personal risk when he contacted the  
9 Coast Guard through two notes written while the Hoegh Minerva was in California and  
10 Washington. As he told the Coast Guard at that time, Mr. Farnacio believed his life to  
11 be at risk. Given the nature of his information and the potential exposure of both  
12 individuals connected to the ship and the ship's owners, this was not an unreasonable  
13 fear. Despite this fear he supplied not only a first note indicating that oil-contaminated  
14 water was being discharged by the ship, but when inspectors were unable to locate the  
15 device used to bypass the ships treatment system, he provided a diagram the authorities  
16 used to locate the hidden device.

17 Mr. Farnacio lives with his wife in the Manilla area. His wife is employed in the  
18 health care field. The couple depended on Mr. Farnacio's income as their primary  
19 source of support. In September, shortly after he was taken off the ship, Mr. Farnacio  
20 informed his wife what he had done. She was very supportive. In the early part of the  
21 investigation the government did what it could to keep his cooperation secret. Mr.  
22 Farnacio became increasingly aware, however, of the magnitude of what he had done  
23 and the risk he had put on his family back in the Philippines. Mr. Farnacio did what  
24 little he could to minimize his and his family's risk. For example, he was careful to  
25 appear as just another one of the crew while he was in Seattle and told no one what he  
26 had done. Through this period he continued to cooperate even though he was told that

1 the time would come in the criminal case against the shipping company when the  
2 government would have to provide information to the company about what Mr. Farnacio  
3 had done.

4 Eventually the case progressed to the point where the government did have to  
5 disclose Mr. Farnacio's role to the shipping company. Mr. Farnacio became extremely  
6 concerned about his family's safety. While generally concerned about the danger of  
7 cooperation, he was specifically concerned about his role in the prosecution and  
8 conviction of one of the ship's crew. He believed, and still believes that this crew  
9 member was a powerful, emotional individual who was well connected in the  
10 Philippines. He feared this individual could intend to hurt or intimidate both Mr.  
11 Farnacio and his family.

12 Because of his concerns, Mr. Farnacio returned to the Philippines with great  
13 trepidation. His life since returning home has not been easy. Although he and his family  
14 remain safe, he continues to fear retribution. He has not returned to work. He did not  
15 ask to be assigned to a ship immediately upon his return to the Philippines as he wanted  
16 to make sure his family was safe. In recent months the family's financial situation  
17 deteriorated. He reluctantly attempted to return to work on a ship. His recent attempts  
18 to resume employment have been unsuccessful in part because, apparently, he did not  
19 attempt to return to work immediately and lost his place in line.

20 Mr. Farnacio continues to fear others from the crew of the Minerva and the  
21 shipping company. He agrees the shipping company has done what it promised him it  
22 would do. The company flew him back home, and made sure he received his wages.  
23 The company's performance, unfortunately, has done little to allay his fears. While he  
24 fears the company may eventually attempt to get back at him, he also fears the other  
25 crew members whose lives he disrupted. His fears can hardly be described as  
26 unreasonable: Mr. Farnacio's knows that the sea is very big and the night is very dark.

1 Finally, Mr. Farnacio wants the Court to know that, despite the immediate impact  
2 his actions have had on his life and his family, he does not regret providing the  
3 information to the Coast Guard. He knows he did the right thing by sending his notes to  
4 the Coast Guard. He also hopes others rise to the occasion and do the right thing as he  
5 did.

6 DATED this 28th day of June, 2004.

7 Respectfully submitted,

8  
9 /s/ Jerome Kuh

10 Jerome Kuh  
11 Attorney for Defendant  
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2004, I efiled and/or faxed one copy of Emanuel Farnacio's Memorandum in Support of Government's Requested Whistleblower Award to:

Mr. Larry Kennedy  
SAUSA  
United States Coast Guard  
via facsimile: (206) 220-7119

Mr. Arlen Storm  
Assistant United States Attorney  
601 Union St., Suite 5100  
Seattle, WA 98101-3903

DATED this 28th day of June, 2004.

*/s/ Amy Strickling*  
\_\_\_\_\_  
Amy Strickling