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 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JUSTIN ROBERT BURKETT,

16 Defendant.

No. CR 17-00055-RGK

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT JUSTIN ROBERT
BURKETT

Hearing Date: September 18, 2017
 Hearing Time: 10:00 a.m.
 Location: Courtroom of the
 Hon. R. Gary
 Klausner

20 Plaintiff United States of America, by and through its counsel
 21 of record, the Acting United States Attorney for the Central District
 22 of California and Assistant United States Attorney William M.
 23 Rollins, hereby files its sentencing position with respect to
 24 defendant JUSTIN ROBERT BURKETT.

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1 This sentencing position is based upon the attached memorandum
2 of points and authorities, the files and records in this case, and
3 such further evidence and argument as the Court may permit.

4 Dated: September 13, 2017

Respectfully submitted,

5 SANDRA R. BROWN
Acting United States Attorney

6 LAWRENCE S. MIDDLETON
7 Assistant United States Attorney
Chief, Criminal Division

8
9 /s/ William M. Rollins
10 WILLIAM M. ROLLINS
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On May 22, 2017 defendant JUSTIN ROBERT BURKETT ("defendant")
4 pled guilty to Count One of the indictment in United States v.
5 Burkett, CR 17-00055-RGK, charging him with possession with intent to
6 distribute at least 50 grams of methamphetamine, in violation of 21
7 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii). Pursuant to a written plea
8 agreement, the government has agreed to dismiss Count Two of the
9 indictment, which charges defendant with possession of a firearm in
10 furtherance of a drug trafficking crime, in violation of 18 U.S.C.
11 § 924(c)(1)(A)(i)

12 On July 10, 2017, the United States Probation Office ("USPO")
13 disclosed its Presentence Investigation Report ("PSR"). The USPO did
14 not disclose a Sentencing Recommendation Letter in this matter. The
15 USPO calculated a total offense level of 29 and a criminal history
16 category of I, resulting in a Sentencing Guidelines range of 87 to
17 108 months. Notwithstanding this range, the sentence is governed by
18 the ten-year mandatory minimum set forth in 21 U.S.C. §§ 841 (a)(1),
19 (b)(1)(A). Therefore, the guideline term of imprisonment is 120
20 months. U.S.S.G. § 5G1.1(b). The USPO did not identify any factors
21 that would warrant a departure from the applicable Sentencing
22 Guidelines, or that would warrant a sentence outside of the
23 Guidelines range.

24 The government concurs with the USPO's calculation of
25 defendant's offense level, criminal history category, and Sentencing
26 Guidelines range. Taking into account the sentencing factors
27 enumerated in 18 U.S.C. § 3553(a), the government recommends a term
28 of imprisonment of 120 months, which is the mandatory minimum

1 sentence. The government also recommends a five-year term of
2 supervised release and payment of a \$100 special assessment.

3 **II. FACTUAL BACKGROUND**

4 On December 13, 2016, a California Highway Patrol ("CHP")
5 officer pulled defendant over for speeding while he was driving a
6 stolen rental car. (PSR ¶ 8.) During a search of the vehicle, law
7 enforcement officers recovered 110.83 grams of methamphetamine hidden
8 in various compartments in the vehicle, which he possessed with the
9 intent to distribute to another person. (PSR ¶¶ 9-10.) Officers
10 also recovered a loaded .38 caliber revolver inside the vehicle in
11 close proximity to the methamphetamine. (PSR ¶ 11.) Defendant
12 admits that he possessed the firearm in connection with the offense.
13 (PSR ¶ 12.)

14 On January 31, 2017, the government charged defendant in Count
15 One of the indictment with possession with intent to distribute at
16 least 50 grams of methamphetamine, in violation of 21 U.S.C.
17 §§ 841(a)(1), (b)(1)(A)(viii), and, in Count Two of the indictment,
18 with possession of a firearm in furtherance of a drug trafficking
19 crime, in violation of 18 U.S.C. § 924(c)(1)(A)(1). (Dkt. 12.) On
20 May 22, 2017, Defendant pled guilty Count One of the indictment
21 pursuant to a plea agreement. (Dkt. 38.)

22 **III. THE PRESENTENCE INVESTIGATION REPORT**

23 Based on the above facts, and pursuant to U.S.S.G.
24 § 2D1.1(a)(5), the USPO determined defendant's base offense level to
25 be 30, and applied a two-level increase because a dangerous weapon
26 was possessed in connection with the offense. (PSR ¶¶ 10-18.) The
27 USPO found that a three-point decrease was warranted because
28 defendant accepted responsibility for his crime by timely pleading

1 guilty. (PSR ¶¶ 24-25.) The USPO also determined that defendant had
2 zero criminal history points, although defendant did have multiple
3 arrests for alleged state crimes including endangering a child,
4 participating in a street gang, assault or battery on school
5 property, threatening a crime with the intent to terrorize, hit-and-
6 run, and possession of a loaded firearm while in possession of
7 methamphetamine. (PSR ¶¶ 32-39.) Because defendant's total offense
8 level is 29, the mandatory minimum sentence is ten years, and his
9 criminal history category is zero, the USPO determined that the
10 applicable Guidelines range is 87 to 108 months' imprisonment
11 (exceeded by the 120-month mandatory minimum), five years of
12 supervised release, and a fine of \$30,000 to \$10,000,000. (PSR ¶¶
13 70-84.) The USPO did not disclose a Sentencing Recommendation Letter
14 in this case.

15 **IV. A SENTENCE OF 120 MONTHS IS BOTH MANDATORY AND APPROPRIATE UNDER**
16 **THE § 3553(A) FACTORS**

17 The government respectfully requests that the Court adopt the
18 PSR's factual findings and Guidelines calculations. Additionally,
19 the government respectfully requests that the Court sentence
20 defendant to 120 months' imprisonment, followed by five years of
21 supervised release, and payment of a \$100 special assessment. The
22 government agrees with the PSR's determination of the offense level,
23 the applicable Guidelines range, and the impact of the ten-year
24 mandatory minimum. Moreover, a sentence of 120 months satisfies the
25 factors set forth in 18 U.S.C. § 3553(a).

26 In terms of the nature and circumstances of the offense, see 18
27 U.S.C. § 3553(a)(1), defendant engaged in a transaction to transport
28 and distribute 110 grams of methamphetamine. That quantity is more

1 than double the amount required to trigger the ten-year mandatory
2 minimum set forth in 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii). The
3 amount required for the mandatory minimum is 50 grams of
4 methamphetamine. See id. Moreover, defendant admits that he
5 possessed a loaded firearm in connection with the offense, rendering
6 him ineligible for the safety valve in this case. (PSR ¶ 12.) See
7 18 U.S.C. § 3553(f); U.S.S.G. § 5C1.2.

8 While defendant does not have any prior convictions, he does
9 have multiple arrests for alleged state crimes including endangering
10 a child, participating in a street gang, assault or battery on school
11 property, threatening a crime with the intent to terrorize, hit-and-
12 run, and possession of a loaded firearm while in possession of
13 methamphetamine. (PSR ¶¶ 32-39.)

14 Section 3553(a)(2) requires the Court to consider the need for
15 the sentence to reflect the seriousness of the offense, to promote
16 respect for the law, to provide just punishment for the offense, to
17 afford adequate deterrence to criminal conduct, to protect the public
18 from further crimes of defendant, and to provide defendant with
19 needed educational or vocational training, medical care, or other
20 correctional treatment in the most effective manner. These
21 considerations also weigh in favor a sentence of 120 months.
22 Defendant committed a serious drug trafficking offense and he
23 possessed a firearm in connection with that offense; a 120-month
24 sentence would provide both specific and general deterrence while
25 protecting the public.

26 Section 3553(a)(6) requires the Court to minimize sentencing
27 disparity among similarly situated defendants. Using the Sentencing
28

1 Guidelines and the statutory mandatory minimum to sentence defendant
2 accomplishes this goal.

3 **V. CONCLUSION**

4 In sum, a term of imprisonment of 120 months would be
5 "sufficient, but not greater than necessary, to comply with the
6 purposes enumerated in 18 U.S.C. § 3553(a)(2)." 18 U.S.C. § 3553(a).
7 A five-year period of supervised release, with the conditions of
8 supervised release recommended by the Probation Officer, is warranted
9 under 18 U.S.C. §§ 3583(c) and (d).

10 Dated: September 13, 2017

11 Respectfully submitted,

12 SANDRA R. BROWN
13 Acting United States Attorney

14 LAWRENCE S. MIDDLETON
15 Assistant United States Attorney
16 Chief, Criminal Division

17 /s/ William M. Rollins
18 WILLIAM M. ROLLINS
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