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10 UNITED STATES OF AMERICA
11

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 JUAN CARLOS GARCIA,
18 Defendant.
19
20
21

No. CR 13-00824-CAS

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT JUAN CARLOS GARCIA

Hearing Date: February 12, 2018
Hearing Time: 2:30 p.m.
Location: Courtroom of the
Hon. Christina A.
Snyder

22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California and Assistant United States Attorneys Miguel Espinoza and
25 William M. Rollins, hereby files its sentencing position with respect
26 to defendant JUAN CARLOS GARCIA.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 11, 2017 defendant JUAN CARLOS GARCIA ("defendant") pled guilty to a superseding information in United States v. Juan Carlos Garcia, CR 13-00824-CAS, charging him with possession with intent to distribute at methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii). Pursuant to a written plea agreement, the government has agreed to dismiss the underlying indictment, which charged defendant with distribution of at least 50 grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii).¹

On September 28, 2017, the United States Probation Office ("USPO") disclosed its Presentence Investigation Report ("PSR") and a Sentencing Recommendation letter. The USPO calculated a total offense level of 27 and a criminal history category of III, resulting in a Guidelines range of 87 months to 108 months' imprisonment.

The government concurs with the USPO's calculation of defendant's offense level, criminal history category, and Sentencing Guidelines range. Taking into account the sentencing factors enumerated in 18 U.S.C. § 3553(a), the government recommends a term of imprisonment of 87 months' imprisonment. The government also

¹ Defendant was originally charged in a two-count indictment with distribution of methamphetamine, in violation of 21 U.S.C.A. § 841(a)(1) and (b)(1)(A)(viii), on November 22, 2013. After a four-day trial, defendant was acquitted on count two (as was his co-defendant Orellana), but he was found guilty on count one and was sentenced by the Court, on December 8, 2014, to 120 months in custody to be followed by five years of supervised release. Defendant timely appealed. On June 6, 2016, the Court vacated defendant's conviction and ordered a new trial upon issuance of the mandate of the Ninth Circuit Court of Appeals.

1 recommends a four-year term of supervised release and payment of a
2 \$100 special assessment.

3 **II. FACTUAL BACKGROUND**

4 On March 26, 2012, defendant sold 84.2 grams of methamphetamine
5 to a confidential source ("CS"). This drug deal was video recorded.
6 Defendant's calls with the CS were also recorded, and captured
7 defendant bragging about the purity of his product, setting the price
8 for his product, and arranging to meet the CS in a laundromat parking
9 lot - with his children in the back seat of his car - to conduct the
10 illicit transaction. In a post-arrest interview, and during the
11 prior trial in this case, defendant identified himself as the person
12 who sold drugs to the CS during the controlled buy in March 2012.
13 Subsequent DEA analysis revealed that the methamphetamine was 94.9
14 percent pure. (See PSR ¶¶ 9-14.) In the factual basis of the
15 written plea agreement, defendant admitted that he knew the substance
16 he possessed was methamphetamine, and that he knowingly sold the
17 drugs to the CS. (Dkt. 274.)

18 **III. THE PRESENTENCE INVESTIGATION REPORT**

19 Based on the above facts, and pursuant to U.S.S.G.
20 § 2D1.1(a)(5),(c)(3), the USPO determined defendant's base offense
21 level to be 30, and applied a three-level reduction for acceptance of
22 responsibility, for a total offense level of 27. (PSR ¶¶ 21-30.)
23 The statutory minimum term of imprisonment, however, is five years.
24 (PSR ¶ 113.)

25 The USPO also determined that defendant had two criminal history
26 points based on a misdemeanor conviction for domestic battery, and
27 added an additional two points under U.S.S.G. § 4A1.1(d) because the
28 instant offense was committed after defendant's probation was revoked

1 and a warrant issued in that same case as a result of his failure to
2 complete the "domestic batterers program," resulting in a total
3 criminal history score of four, and placing defendant in criminal
4 history category three. (PSR ¶¶ 34-38.)

5 With a total offense level of 27 and a criminal history category
6 of three, the USPO determined that the applicable Guidelines range is
7 87-108 months' imprisonment. (PSR ¶¶ 113-125.) The USPO recommended
8 a total term of imprisonment of 87 months, a mandatory term of four
9 years' supervised release, and a mandatory special assessment of
10 \$100. (Dkt. 281.)

11 **IV. A SENTENCE OF 87 MONTHS IS APPROPRIATE UNDER THE § 3553(A)**
12 **FACTORS**

13 The government respectfully requests that the Court adopt the
14 PSR's factual findings and Guidelines calculations. Additionally,
15 the government agrees that the Court should sentence defendant to 87
16 months' imprisonment, followed by four years of supervised release,
17 and that the Court order payment of a \$100 special assessment. The
18 government agrees with the PSR's determination of the offense level
19 and the applicable Guidelines range.

20 In terms of the nature and circumstances of the offense, see 18
21 U.S.C. § 3553(a)(1), defendant engaged in a transaction to sell 84.2
22 grams of methamphetamine at a level of 94.9% purity - a substantial
23 quantity of drugs. (PSR ¶ 12.) Defendant advertised the "crystal"
24 as \$1,300 per ounce, claimed that he would not sell less than four
25 ounces, and arranged to set the time and location of the drug deal.
26 When defendant and the CS met for the sale, the CS entered
27 defendant's car and gave him \$3,450 while his children were present
28 in the back seat. Defendant then walked to the supplier's car (which

1 was parked two spaces away), and returned to his own car with a
2 plastic bag containing methamphetamine, which he handed over to the
3 CS. (PSR ¶¶ 10-14.) That said, while defendant undoubtedly
4 committed a serious crime, the PSR also makes clear that defendant
5 spent much of his childhood in the midst of the violence of El
6 Salvador's civil war, and at least some of defendant's criminal
7 conduct can likely be attributed to these unique characteristics and
8 history, see 18 U.S.C. 3553(a)(1). (PSR ¶¶ 52-73.)

9 Section 3553(a)(2) requires the Court to consider the need for
10 the sentence to reflect the seriousness of the offense, to promote
11 respect for the law, to provide just punishment for the offense, to
12 afford adequate deterrence to criminal conduct, to protect the public
13 from further crimes of defendant, and to provide defendant with
14 needed educational or vocational training, medical care, or other
15 correctional treatment in the most effective manner. These
16 considerations also weigh in favor a sentence of 87 months.
17 Defendant committed a serious drug trafficking offense involving a
18 substantial quantity of narcotics, but he ultimately admitted his
19 guilt and has now accepted responsibility for the crime. Overall, an
20 87-month sentence would provide both specific and general deterrence
21 while protecting the public, and it would take into account the
22 mitigating aspects of defendant's background.

23 Finally, section 3553(a)(6) requires the Court to minimize
24 sentencing disparity among similarly-situated defendants. Using the
25 Sentencing Guidelines and the 3553(a) factors to sentence defendant
26 in light of his unique background and role in the offense here
27 accomplishes this goal.

28

1 **V. CONCLUSION**

2 In sum, a term of imprisonment of 87 months would be
3 "sufficient, but not greater than necessary, to comply with the
4 purposes enumerated in 18 U.S.C. § 3553(a)(2)." 18 U.S.C. § 3553(a).
5 A mandatory special assessment of \$100 and a four-year period of
6 supervised release, with the conditions of supervised release
7 recommended by the Probation Officer, is warranted under 18 U.S.C. §§
8 3583(c) and (d).

9
10 Dated: January 31, 2018

Respectfully submitted,

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United States Attorney

12 LAWRENCE S. MIDDLETON
13 Assistant United States Attorney
14 Chief, Criminal Division

15 /s/
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17 WILLIAM M. ROLLINS
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18 Attorneys for Plaintiff
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