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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF ARIZONA

8
9 United States of America,
10 Plaintiff,

11 v.

12 Diego Leon-Molina,
13 Defendant.

CR-06-1165-PHX-JAT

**GOVERNMENT'S SENTENCING
MEMORANDUM**

(Sentencing scheduled for
September 17, 2007)

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16 The United States of America, by and through undersigned counsel, hereby submits the
17 attached memorandum in anticipation of defendant's upcoming sentencing. For the reasons set
18 forth below, the government asks that defendant be sentenced to the low end of the advisory
19 sentencing guideline range, 135 months in prison.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 I. **RELEVANT FACTS**

22 Defendant was arrested on December 18, 2006 when Phoenix Police stopped the car
23 defendant was driving and discovered a gun in his waistband and approximately 21 kilograms
24 of cocaine in a secret compartment in the car. (PSR ¶ 10.) Defendant had just come from a stash
25 house of an organization under investigation by the Drug Enforcement Administration (DEA),
26 where he had picked up the drugs from the local head of that organization, Juan Tapia-Quintero.
27 (PSR ¶¶ 4-10.) Telephone intercepts that day between Tapia-Quintero's phone and one used by
28 defendant reveal that Tapia-Quintero called defendant after a load vehicle carrying drugs from

1 Mexico arrived at the stash house and told defendant he could come over and pick up drugs.
2 (PSR ¶¶ 9-10.) Others involved in Tapia-Quintero’s drug trafficking organization told DEA that
3 defendant had picked up drugs from Tapia-Quintero on at least three occasions, that defendant
4 often provided Tapia-Quintero with large amounts of money, and that on one occasion defendant
5 gave Tapia-Quintero approximately \$300,000. (PSR ¶ 11.) Defendant was known to both
6 Tapia-Quintero and to Tapia-Quintero’s associates in Mexico as “Guero.” (PSR ¶¶ 9-10.)

7 A federal grand jury indicted defendant December 20, 2006 on one count of possession
8 with intent to distribute cocaine, being an alien in possession of a firearm and carrying a firearm
9 in furtherance of a drug-trafficking offense. (PSR ¶ 1.) On June 26, 2007, defendant pled guilty
10 to the drug charge. As part of the plea agreement, the parties stipulated that the amount of drugs
11 involved in the offense conduct was between 15 and 50 kilograms of cocaine. The government
12 also agreed to dismiss the gun charges against defendant. (PSR ¶ 2.)

13 II. SENTENCING RECOMMENDATION

14 The guideline range calculated in the PSR is 135-168 months. (PSR ¶ 41.) The
15 government believes that a sentence at the low end of this range, 135 months, is an appropriate
16 sentence for defendant. Although 135 months is a long time, and defendant has no identifiable
17 criminal history, his offense on December 18, 2006 was certainly not his first criminal activity.
18 He was a trusted member of the drug trafficking organization, known to high-ranking members
19 of the organization both in Mexico and the United States. He picked up drugs and delivered
20 payments for drugs on multiple occasions before he was caught on December 18th. The large
21 quantity of drugs and large amounts of money with which he was entrusted show that he had the
22 confidence of the organization, as does the fact that he was trusted to know the location of the
23 stash house and to interact directly with Juan Tapia-Quintero.

24 As part of the parties’ plea agreement, defendant is not being convicted of the gun charges
25 in the indictment. Had he been convicted of all the charges, he would have been facing not only
26 a 10-year mandatory minimum sentence for the drug charge but also a 5-year mandatory
27 minimum consecutive sentence for the gun. Defendant thus already has received the benefit of
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1 having a minimum 15-year sentence be reduced to a minimum 10-year sentence. His possession
2 of the gun on the date of his arrest, however, is undisputed. He had it in his waistband at the
3 time he was pulled over. (PSR ¶ 10.) The fact that defendant was armed, combined with the
4 circumstances showing he had the trust of a large-scale drug trafficking organization, shows the
5 seriousness of his offense conduct.

6 The PSR writer compares defendant's conduct to that of a defendant sentenced in a
7 related case to 84 months and argues that justifies a variance below the advisory guideline range
8 in this case to 120 months. This comparison is not appropriate because that defendant, Eligio
9 Gaxiola, is not similarly situated to defendant Leon-Molina. Gaxiola was a passenger in a
10 vehicle stopped and found to contain drugs. There was no evidence in that case that Gaxiola
11 drove the car, that he made the arrangements for picking up the drugs, that he was known to
12 high-ranking drug trafficking organization members in Mexico, that he also delivered large
13 quantities of cash for the organization on a regular basis, or that he possessed a gun. In all of
14 these ways, Gaxiola's situation is distinguishable from defendant Leon-Molina's. Leon-Molina
15 was no bystander or mere passenger in the drug trafficking offense here. Moreover, Gaxiola
16 received an adjustment for having played a minor role in the drug offense of which he was
17 convicted (over the government's objection), which reduced his advisory guideline range
18 considerably. Defendant Leon-Molina is not entitled to such an adjustment, and his advisory
19 guideline range thus is higher. Defendant Leon-Molina's advisory guideline range already
20 takes into account the few applicable mitigating factors, such as his lack of criminal history

21 The government, therefore, asks that the Court accept its sentencing recommendation
22 and sentence defendant to the low end of his advisory guideline range, 135 months in prison.
23 This sentence takes into account the nature and circumstances of the offense; the history of the
24 defendant; the need for the sentence imposed to reflect the seriousness of the offense, promote
25 respect for the law, provide just punishment for it, provide adequate deterrence and protect the
26 public. This sentence also appropriately considers the advisory sentencing guidelines and the
27 need to avoid unwarranted sentence disparities among defendants with similar records who
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