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6
7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,
10 Plaintiff,

No. CR 18-CR-231-JGB
SENTENCING MEMORANDUM

11 v.

12 JOHN OLIVAS,
13 Defendant.

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17 Defendant John Olivas, by and through his counsel of
18 record, Meghan Blanco, files the attached sentencing
19 memorandum. For the reasons stated below, Mr. Olivas
20 seeks a 121-month sentence followed by a significant
21 period of supervised release. He also requests that the
22 Court refer him to the RDAP program (understanding he is
23 ineligible for credit reductions) and recommend placement
24 in a medical facility as close to Southern California or
25 New Mexico as possible, to facilitate family visitation.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. Introduction

3 Mr. Olivas respectfully submits to this Court that a
4 121-month custodial sentence, followed by a significant
5 period of supervised release, is appropriate and in
6 compliance with the tenets of section 3553a.

7 B. Facts

8 John Olivas was found guilty, following trial, of
9 three counts of deprivation of rights under color of law.
10 The court observed two trials, where the facts of the case
11 were flushed out over several weeks. Mr. Olivas will not
12 rehash the facts here. But in short, his convictions stem
13 from allegations lodged against him by two former
14 girlfriends: one live-in girlfriend (NB) and one he
15 briefly dated over a decade ago (KL).

16 His relationships were undoubtedly tumultuous. They
17 were marred by jealousy, explosive fights, and
18 manipulative behavior. Often, the fights followed nights
19 of heavy drinking. And often, the fights were the result
20 of Mr. Olivas experiencing deep feelings of jealousy and
21 insecurity. At the time, he did not have the emotional
22 resources to appropriately handle his feelings, and he
23 would lash out.

24 During the period he dated NB and KL, Mr. Olivas was
25 dealing with financial pressures from being a single dad,
26 messy custody disputes with his ex-wife, work-related

1 stresses, and medical issues that he did not want to
2 confront. He suffered from low testosterone and was
3 prescribed testosterone replacement medication. At some
4 point, however, he began to use the medication in
5 quantities that greatly exceeded his prescribed doses.

6 The artificial hormones certainly impacted Mr.
7 Olivas's physical appearance and demeanor. He grew large,
8 and when he became upset, his outbursts became more
9 pronounced.

10 Mr. Olivas also struggled with the long-term impact of
11 service-related injuries he sustained while in the Air
12 Force. During a helicopter jump in his 20s, Mr. Olivas's
13 parachute did not properly deploy, and he seriously
14 injured his back. In the months that followed, he would
15 forget things and notice that his mood had change. He
16 experienced large gaps in his memory. However, he dreamed
17 of becoming a law enforcement officer, and he feared that
18 these changes may preclude him from achieving his dream.
19 He received medical treatment for his back injuries but
20 kept the rest of the injuries to himself, hoping they
21 would go away on their own. They did not.

22 Around this time, his first marriage to CO
23 deteriorated. He learned that she was pregnant with
24 another man's child, and they quickly divorced. The
25 betrayal he felt following the break-up of his first
26 marriage stayed with him for years. Combined with other
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1 stresses, injuries, and excessive testosterone injections,
2 Mr. Olivas changed as a person.

3 C.Mr. Olivas's Arrest in Riverside

4 In 2014, the Riverside District Attorney's office
5 charged Mr. Olivas with domestic violence and sodomy after
6 NB made complaints that she had been abused and raped by
7 Mr. Olivas. NB, KL, and RO were all listed as victims in
8 the matter, and following a plea to a subset of charges,
9 each woman gave a victim impact statement to the Court.

10 Mr. Olivas entered the plea reluctantly, after his
11 counsel advised that he was doing so pursuant to *People v.*
12 *West*. His decision was influenced by off-record
13 representations by both the Court and his counsel that he
14 was facing a severe penalty if he lost at trial, and that
15 by pleading guilty, he could end the nightmare brought on
16 by the allegations. His wife at the time, MO, urged him
17 to plead guilty so they could put the matter behind them.
18 The plea resulted in Mr. Olivas losing his job with ICE,
19 losing his house, and being incarcerated in state prison
20 for years. Shortly after his sentencing, his wife, MO,
21 left and became pregnant with another man's child. This
22 would mark the second time in Mr. Olivas's life that Mr.
23 Olivas's wife would conceive another man's child.

24 However, unlike years earlier, when CO became pregnant
25 during their marriage and Mr. Olivas allowed his anger and
26 sadness to balloon into unchecked fear and distrust, when
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1 Mr. Olivas was released from prison, he began to work on
2 himself. He attended therapy sessions, began taking
3 prescribed medication for anxiety, and stopped abusing
4 steroids. Since he was no longer allowed to work in law
5 enforcement, he obtained a job as a barber and in
6 construction - occupations that were far less stressful
7 than his previous career. He and MO rekindled their
8 relationship. He lovingly fathered the daughter that she
9 conceived with another man.

10 D. Mr. Olivas's Post-Release Rehabilitation

11 The Court heard extensive testimony concerning what
12 Mr. Olivas's relationships were like from the women he
13 dated and married for the roughly decade between his
14 divorce from CO in the early 2000s and the deterioration
15 of his relationship with NB in 2012. But it did not hear
16 about the changes Mr. Olivas made to his life after his
17 release from prison.¹ How he took his conviction and
18 sentence to heart and worked on his own rehabilitation.
19 How he was a doting father and a supportive figure for
20 MO's daughter from another relationship. How he would
21 pick up MO in the middle of the night, after they
22 divorced, when she fought with other men she dated. How

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25 ¹ MO testified positively about her then-current relationship with
26 Mr. Olivas during trial, indicating that she and Mr. Olivas co-
27 parented and got along. She also indicated it felt awkward
28 testifying against him. The two remained in contact, and on good
terms, for the duration of Mr. Olivas's case.

1 he would take his children and MO's daughter to school,
2 games, and amusement parks.

3 He also cared for his elderly father, who is legally
4 blind and in poor health. And he cared for his adult son
5 when alcohol addiction consumed him. He volunteered with
6 his local church and with youth sports.

7 But unbeknownst to Mr. Olivas, after his conviction in
8 Riverside, the matter was still not over. The FBI
9 continued to investigate the exact same allegations to
10 which he already pleaded guilty and served a state prison
11 sentence. Shortly after he was released from state
12 custody, Mr. Olivas was indicted in this matter. Mr.
13 Olivas remained on bond, without incident, for years.

14 D.Mr. Olivas should receive credit for the four-year
15 sentence he served in the related state case

16 Mr. Olivas served a four-year state court sentence for
17 some of the conduct alleged in this case. He should
18 receive credit for that time against any sentence the
19 Court imposes in this case.

20 E.A 121-month sentence is appropriate

21 A 121-month sentence and significant period of
22 supervised release is sufficient but not greater than
23 necessary to achieve the goals of sentencing.

24 Core principles in sentencing have now been resolved
25 by the Supreme Court in *United States v. Booker*, 125 S.
26 Ct. 738, (2005), *Gall v. United States*, 128 S.Ct. 586, 591

1 (2007) and *Kimbrough v. United States*, 552 U.S. 85, 128
2 S.Ct. 558(2007). The Guidelines are not only not mandatory
3 on sentencing courts; they are also not to be presumed
4 reasonable. *Nelson v. United States*, 129 S.Ct. 890,891
5 (2009.) What the Supreme Court has described as the
6 "overarching provision" of 18 USC section 3553(a) is set
7 forth in that provision's very first sentence - that "the
8 court shall impose a sentence sufficient, but not greater
9 than necessary, to comply with the purposes of sentencing
10 set forth in subparagraph (2) of this subsection."
11 *Kimbrough v. United States*, 128 S. Ct at 570. Thus,
12 factors justifying a sentence outside the guideline are no
13 longer required to be extraordinary." *Gall*, 128 S.Ct. at
14 595. Congress could not have been clearer in directing
15 that no limitation ... be placed on the information
16 concerning the background, character, and conduct of a
17 Defendant that a district court may receive and consider
18 for the purpose of imposing an appropriate sentence.
19 *Pepper v. United States*, 131 S. Ct. 1229, 1241 (2011).
20 Stated differently, after *Booker*, a sentencing court must
21 (1) correctly calculate the advisory guideline range and
22 (2) determine a reasonable sentence by considering the
23 sentencing range provided by the Sentencing Guidelines and
24 the §3553(a) factors. *United States v. Talley*, 431 F.3d
25 784, 786 (11th Cir. 2005).

1 While Mr. Olivas maintains his innocence to the
2 allegations that he raped NB and attempted to rape KL, he
3 accepts the fact that he was convicted of that conduct and
4 must be punished for it. He also recognizes that the
5 charges are extremely serious and warrant a significant
6 punishment.

7 However, prior to his arrest in Riverside for some of
8 the conduct at issue in the instant case, Mr. Olivas had
9 never been arrested or served any time in custody.
10 District courts have varied downward in sentencing where a
11 defendant, regardless of criminal history points, has not
12 previously served a significant custodial term. See, e.g.,
13 *United States v. Collington*, 461 F.3d 805 (6th Cir. 2006)
14 (upholding sixty-month downward variance in part because
15 defendant had only been incarcerated for seven months
16 prior to his crime, despite being in Criminal History
17 Category IV. For first-time offenders, long periods of
18 incarceration can do more damage than good by isolating
19 individuals from their communities. "When prison
20 sentences are relatively short, offenders are more likely
21 to maintain their ties to family, employers, and their
22 community, all of which promote successful reentry into
23 society. Conversely, when prisoners serve longer
24 sentences, they are more likely to become
25 institutionalized, lose pro-social contracts in the
26 community, and become removed from legitimate

1 opportunities, all of which promote recidivism. *Valerie*
2 *Wright, Deterrence in Criminal Justice, The Sentencing*
3 *Project, at 7 (Nov. 2010)*. Indeed, studies reveal that
4 low-risk offenders who are sentenced to long periods of
5 incarceration are more likely to reoffend. *Id.* See also
6 *United States v. Baker*, 445 F.3d 987 (7th Cir. 2006)
7 (affirming downward variance justified in part by court's
8 finding that prison would mean more to this defendant than
9 one who has been imprisoned before).

10 The policy concerns justifying variances for
11 individuals who have never served significant periods of
12 incarceration are magnified in Mr. Olivas's case, as he
13 will enter prison as both a person convicted of a sex-
14 related crime and as a former law enforcement officer. He
15 will be a target for attack by every individual in general
16 population while he is in custody.

17 Mr. Olivas's conviction also renders him ineligible
18 for many programing benefits while in custody, including
19 any benefits under the First Step Act and RDAP programs.
20 If released on his requested sentence, he will be almost
21 60 years old when he returns to society. All his children
22 will be adults, and it is unlikely his father will still
23 be alive. He will neither have the resources or
24 opportunity to engage in any conduct described during
25 either trial. And the Court's supervisions of Mr. Olivas
26 will follow him well into his 60s. "Age and criminal history
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1 exert a strong influence on recidivism," with college graduates who
2 were over the age of 60 experiencing the lowest recidivism rates.
3 [https://www.ussc.gov/sites/default/files/pdf/research-and-
5 publications/research-publications/2017/20171207_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-
4 publications/research-publications/2017/20171207_Recidivism-Age.pdf)
6 (accessed May 1, 2023). "As the age of the offender increases, the
7 likelihood of sexual recidivism tends to diminish."

8 Mr. Olivas's suggested sentence of 121-month is a
9 significant punishment that meets the sentencing goals of
10 3553a.

11 F.Mr. Olivas's Medical Issues

12 Until his arrest in this case, Mr. Olivas received
13 payments and services for service-related injuries he
14 sustained during a jump accident in the Air Force.² While
15 on pretrial release in this case, he underwent brain
16 surgery for an aneurism. He still has a scar across the
17 top of his head from that surgery.

18 Although Mr. Olivas is not able to seek compassionate
19 release reductions at sentencing, this Court is able to
20 consider his medical condition in its sentencing decision.
21 Mr. Oliva's medical condition offers this Court a
22 compelling reason to depart downward moderately from Mr.
23 Olivas's Guideline's range.

24 In 28 U.S.C. § 994(t), Congress delegated to the
25 Sentencing Commission authority to "describe what should

26 ² Mr. Olivas also sustained significant hearing loss from faulty ear
27 plugs distributed to his squadron.

1 be considered extraordinary and compelling reasons for
2 sentence reduction, including the criteria to be applied
3 and a list of specific examples." The policy statement
4 issued in exercise of that authority, U.S.S.G. section
5 1B1.13, provides examples of "extraordinary and compelling
6 reasons." The examples generally fall into four categories
7 based on a defendant's (1) terminal illness, (2)
8 debilitating physical or mental health condition, (3)
9 advanced age and deteriorating health in combination with
10 the amount of time served, or (4) compelling family
11 circumstances. U.S.S.G. § 1B1.13, appl. note 1(A)-(C).
12 The commentary also includes a fifth catch-all provision
13 for "extraordinary and compelling reason other than, or in
14 combination with, the reasons described in subdivisions
15 (A) through (C)" as determined by the BOP director.
16 U.S.S.G. § 1B1.13, appl. note 1(D).

17 Mr. Oliva's service-related injuries are serious
18 enough to warrant services and disability payments from
19 the VA. Thus, Mr. Olivas's injuries qualify as a
20 "extraordinary and compelling reason" for a moderate
21 sentencing reduction in this case.

22 G.Mr. Olivas's Time in Custody

23 As noted above, Mr. Olivas's time in prison will be
24 more difficult than a person convicted of just about any
25 other crime. He will enter as a law enforcement officer
26 who was convicted of a sex-related crime. As such, he
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1 will have a mark on his back and will be the target of
2 attacks while in custody. The court can and should
3 consider the circumstances of Mr. Olivas's incarceration
4 and depart downward accordingly.

5 H.Mr. Olivas is not deserving of a functional LWOP
6 conviction

7 The probation department recommends a life sentence.
8 Because there is no parole in the federal system, a
9 sentence of life in the federal system is functionally the
10 same as a sentence of Life Without the Possibility of
11 Parole ("LWOP") in the state system. LWOP sentences in
12 the state are reserved for individuals who commit murders
13 under special circumstances. Those same individuals face
14 an alternative penalty of death. Mr. Olivas's conduct of
15 conviction is not on par with a person who commits murder
16 under special circumstances. He should not be punished
17 with the same severity.

18 Notably, as Mr. Olivas litigated in pretrial motions,
19 the state was aware of all the allegations presented to
20 the jury in his last two federal trials. Armed with that
21 information, it determined that a negotiated sentence of
22 4-years was appropriate.

23 Mr. Olivas is asking for a sentence in this case, for
24 conduct the state was fully aware of at the time of the
25 negotiated sentence, that is 250% more than he received in
26 the state. When combined with his state court sentence,
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