

TRINA A. HIGGINS, United States Attorney (#7349)
CHRISTOPHER BURTON, Assistant United States Attorney (NV #12940)
Attorneys for the United States of America
20 North Main Street, Suite 208
St. George, Utah 84770
Telephone: (435) 634-4270
Christopher.Burton4@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRUZBERTO ALBALLAR,

Defendant.

Case No. 4:23-cr-00055-RJS-PK

UNITED STATES' SENTENCING
MEMORANDUM

Judge Robert J. Shelby

Sentencing Date: January 10, 2024

The United States of America, by and through Assistant United States Attorney Christopher Burton, hereby files this Sentencing Memorandum for Defendant Cruzberto Alballar in this case. As detailed below, in consideration of the facts and circumstances of the instant offense together with Alballar's extensive criminal history, and taking into account his acceptance of responsibility, the United States recommends a sentence at the middle of his advisory guidelines range and requests a sentence of 100 months followed by a five-year term of supervised release.

I. RELEVANT FACTS

On April 9, 2023, a citizen reported their truck stolen. The truck was equipped with GPS and on April 10, the owner reported to police that the GPS was geolocating the

truck in the area of Santa Clara Parkway. The owner used his key fob to engage the truck alarm and could hear it in the detached garage at 1557 N. Canyon View Drive.

Officers responded to the residence and knocked on the front door. Alballar opened the door and stepped outside to speak with the officers. When Alballar did so, officers could detect the strong odor of raw marijuana emanating from the home. When confronted with the information that the alarm for a truck stolen the night prior was sounding in the detached garage on the property, Alballar expressed surprise. Alballar told officers someone named “Alex” had asked Alballar if they could keep the truck there and that Alballar had given permission to do so but noticed it didn’t have any keys and the driver’s side window was smashed.

Officers learned there were additional people inside the home and asked them to exit as well. As they did, the front door was again opened and officers confirmed the strong odor of raw marijuana coming from inside the house. Officers detained the occupants pending a search warrant for the home.

A search of the home revealed it had three bedrooms. The master bedroom was identified as belonging to Alballar and had an attached master bathroom and closet. As officers searched the Alballar’s bedroom, they found a small backpack that contained multiple “torch” style lighters as well as a Smith & Wesson magazine with ammunition. Inside Alballar’s bedside tables, officers found an empty handgun holster, an empty large capacity magazine for a Springfield firearm, and small bags commonly used to package drugs. On the top shelf of Alballar’s master closet, officers found a large jar of marijuana

as well as an empty gun box for a Smith & Wesson M&P firearm. On another shelf, officers found a box of 9mm Fiocchi Luger ammunition with loose rounds of ammo inside.

As officers searched the Alballar's bathroom, they found mail from the Social Security Administration addressed to another individual who did not reside in the home. At the bottom of a built-in cabinet in the same bathroom, officers discovered that the kick plate was removeable and concealed a secret compartment. Inside, officers found three firearms: 1) an Astra A100 handgun; 2) a Smith & Wesson M&P Compact 911 handgun; and 3) a Diamond Back AR15 556 rifle. Officers determined that the serial number on the Smith & Wesson handgun matched the box found in Alballar's closet and the firearm had been reported stolen. Officers also located multiple large capacity magazines for the guns, including a double-drum magazine.





In the same secret compartment, officers also found two bags containing approximately 160 grams of a methamphetamine.



The bags that contained the methamphetamine were consistent with the empty bags found in the bedside table. Officers also found a digital scale in the same box.¹

Alballar's red GMC truck² was parked in the driveway of the home and officers conducted a K9 open air sniff around the truck. The K9 positively alerted to the scent of narcotics in the vehicle. Officers then obtained a second search warrant for Alballar's vehicle and inside found a methamphetamine pipe as well several additional bags containing methamphetamine.

II. SENTENCING GUIDELINES

All sentencing proceedings should begin with correctly calculated sentencing guidelines. *United States v. Rosales-Miranda*, 755 F.3d 1253, 1259 (10th Cir. 2014).

As calculated in the Presentence Investigation Report, the amount of methamphetamine Alballar possessed with the intent to distribute results in a Base Offense Level of 24 (USSG § 2D1.1(a)(5)). Alballar is also subject to a two-level enhancement because he possessed firearms in connection with the offense. Alballar accepted responsibility and timely notified the government of his intention to plead guilty, resulting in a three-level reduction and a Total Offense Level of 23. Alballar has a substantial criminal history, resulting in 21 points and a Criminal History Category of VI. With a Total Offense Level of 23 and a Criminal History Category of VI, the applicable

¹ In the detached garage, officers found the stolen vehicle as well as several spent shell casings.

² The truck was registered in Alballar's name and police had previously stopped the vehicle on January 1, 2023, with Alballar driving.

guidelines range is 92-115 months. Pursuant to the plea agreement, the United States recommends Alballar be sentenced to a mid-range sentence of 100 months, followed by a five-year term of supervised release.

III. SENTENCING DISCUSSION

After calculation of the guidelines, the Court generally examines the factors under 18 U.S.C. § 3553(a) to consider a just and fair sentence - a sentence that is sufficient, but not greater than necessary. A sentence of 100 months, the middle of the applicable guidelines range, is just and fair without being greater than necessary and comports with the 3553(a) factors. Alballar's offense is part of a nearly unbroken series of criminal convictions spanning more than a decade of his life. Seemingly the only thing that will prevent Alballar from committing further crimes at this time is to incapacitate him for a substantial period of time.

A. The Nature and Circumstances of the Offense Warrant the Requested Sentence

Alballar's crime of trafficking methamphetamine is a serious offense. And it is made exponentially more serious by his possession of multiple firearms (one of which being stolen and all of which he cannot legally possess in the first place) and large-capacity magazines in connection with his drug trafficking.³ Unsatisfied with committing gun and drug offenses, the investigation also revealed that Alballar was harboring a

³ U.S. SENT'G GUIDELINES MANUAL § 2D1.1, cmt. n.11(A) ("The enhancement for weapon possession in subsection (b)(1) reflects the increased danger of violence when drug traffickers possess weapons.") (U.S. SENT'G COMM'N 2021).

stolen truck in his detached garage. In short, Alballar was using his residence to commit a variety of criminal offenses.

B. Alballar's History and Characteristics Likewise Warrant a Guidelines Sentence

Alballar is 33 years old and has 21 criminal history points, well above the threshold to qualify him for Criminal History Category VI. A few of Alballar's prior convictions warrant further discussion.

In 2013, Alballar was convicted of possession of a stolen vehicle and in 2014 he was convicted of taking a vehicle without the owner's consent (his first two felony convictions). While on probation for the latter conviction, he was again arrested for felony possession of stolen vehicle. Probation for this third felony offense was short-lived as he was arrested later the same year and convicted of evading law enforcement in disregard of safety (another felony). Shortly after, Alballar was arrested and convicted of being a felon in possession of a firearm (another felony). As a result of these numerous new felony offenses, Alballar's probation was revoked and he was sentenced to four years' incarceration.

Upon release, it appears Alballar immediately reverted to committing crimes and was arrested and convicted of once again evading law enforcement in 2018. He served a two-year prison sentence for that conviction.

Alballar was once again released from prison and once again began committing new felony offenses. He committed the instant offense in April 2023 and was arrested

and charged. While the charges were pending, Alballar was once again arrested in May 2023 and ultimately pleaded guilty to unlawful possession/transfer of financial card, a felony. It seems nothing can deter Alballar from committing felony offenses at this point in his life and his extensive criminal history further warrants a guidelines sentence.

C. The Requested Sentence Reflects the Seriousness of the Offense, Promotes Respect for the Law, and Provide Just Punishment

Drug trafficking is a scourge on communities. It leads to property crime, violence, overdoses, and countless societal problems. It causes misery and broken lives. Methamphetamine is lethal and caused more than 15,000 deaths in 2019, the last year for which data is available and a 180% increase from 2015.⁴ Alballar's offense is serious and his punishment should reflect that.

D. The Requested Sentence Affords Adequate Deterrence

The Court would do well to impose a significant and substantial sentence to send a message to Alballar, and to the community, that the judicial system does not tolerate the mixture of guns and drugs. One hopes that such a sentence would demonstrate to Alballar and the public that drug trafficking is ill-advised and incompatible with appropriate citizenship in the community, especially when it includes the possession and use of firearms. A significant and substantial sentence would further demonstrate that the United States' judicial system recognizes the severity of harm that drug trafficking carries and

⁴ NATIONAL INSTITUTES OF HEALTH, METHAMPHETAMINE-INVOLVED OVERDOSE DEATHS NEARLY TRIPLED BETWEEN 2015 TO 2019, NIH STUDY FINDS (September 22, 2021), <https://www.nih.gov/news-events/news-releases/methamphetamine-involved-overdose-deaths-nearly-tripled-between-2015-2019-nih-study-finds>.

that such activity should be deterred.

E. The Requested Sentence Protects the Public from Further Crimes and Provides Correctional Treatment, Educational Training, and the Like for Alballar

Despite Alballar's extensive track record to the contrary, the United States hopes that he will not commit further crimes on the public after this experience with the federal justice system. In any event, the requested sentence should protect the public from further crimes at Alballar's hands at least for the time he is incarcerated. And the government is encouraged that Alballar has expressed interest in applying for the RDAP program while incarcerated with the Bureau of Prisons. Should Alballar make good on his expressed interest and/or take advantage of other opportunities for counseling, educational training, and the like, he should certainly be incentivized by the potential for earned credit against his sentence.

F. The Sentence Avoids Unwarranted Sentencing Disparities Among Similarly Situated Defendants

"A properly calculated Guidelines sentence will typically reflect an accurate application of the factors listed in § 3553(a), including the need to avoid unwarranted sentencing disparities under § 3553(a)(6)."⁵ The presentence report accurately calculates the guideline range. That range reflects Alballar's conduct and a sentence within that range would treat Alballar the same as other drug trafficking defendants across the United States.

⁵ *United States v. Hildreth*, 485 F.3d 1120, 1128 (10th Cir. 2007) (cleaned up).

G. The Requested Sentence Affords a Sufficient Measure of Mercy

Finally, it should be noted that the negotiation in this case contemplates a measure of mercy that further justifies a guidelines sentence. A sentencing judge has a duty to ensure that a contemplated sentence is sufficient but not greater than necessary.⁶ Here, various prosecutorial decisions have satisfied that duty such that a mid-range sentence is appropriate. First, by allowing Alballar to plead guilty to Count 2 and dismissing Count 1 at sentencing, he avoids the potential of a weapons conviction, which would have likely resulted in a Total Offense Level of 25 and a higher guidelines range.⁷ Further, as a matter of prosecutorial discretion, charges for 18 U.S.C. § 924(c) were not presented to the Grand Jury. If they had been charged and Alballar had been convicted of those offenses, he would be facing five-year mandatory minimum consecutive sentences for each. The exercise of prosecutorial discretion in this case has thus substantially benefitted Alballar and further justifies a guidelines sentence.

⁶ 18 U.S.C. 3553(a).

⁷ The government's calculation is based on a Base Offense Level of 20 under USSG § 2K2.1(a)(5), a two-level enhancement for the number of firearms under § 2K2.1(b)(1)(A), a two-level enhancement for Alballar's possession of a stolen firearm under § 2K2.1(b)(4)(A), a four-level enhancement for Alballar's possession of the firearms in connection with another felony offense under § 2K2.1(b)(6)(B), and the three-level reduction for acceptance of responsibility.

IV. CONCLUSION

Based on the foregoing information, the United States recommends a significant and substantial sentence at the middle of the advisory guidelines range. This recommendation accounts for the facts and circumstances of Alballar's crime, his substantial criminal history, and his acceptance of responsibility in this matter. In accordance with the facts and arguments discussed above, the United States requests this sentence because it is sufficient, but not greater than necessary, for Alballar's punishment.

DATED this 3rd day of January, 2024.

TRINA A. HIGGINS
United States Attorney

/s/ Christopher Burton
CHRISTOPHER BURTON
Assistant United States Attorney