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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11  
Plaintiff,  
12  
v.  
13 JOSE JESUS TORRES GARCIA,  
14  
Defendant.  
15

CASE NO. 1:21-CR-00190-DAD-BAM  
GOVERNMENT'S SENTENCING  
MEMORANDUM  
DATE: March 28, 2022  
TIME: 9:00 a.m.  
COURT: Hon. Dale A. Drozd

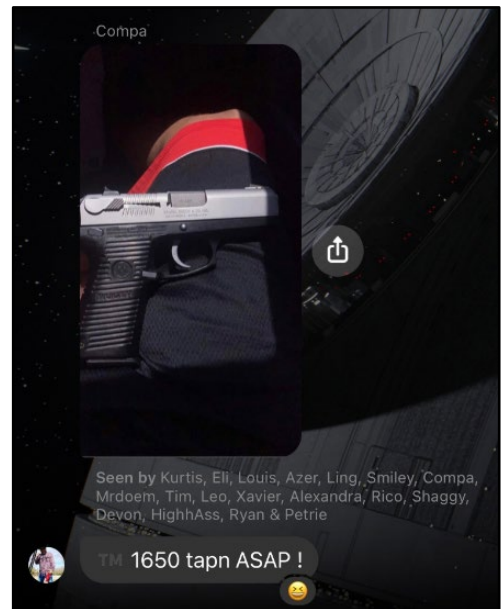
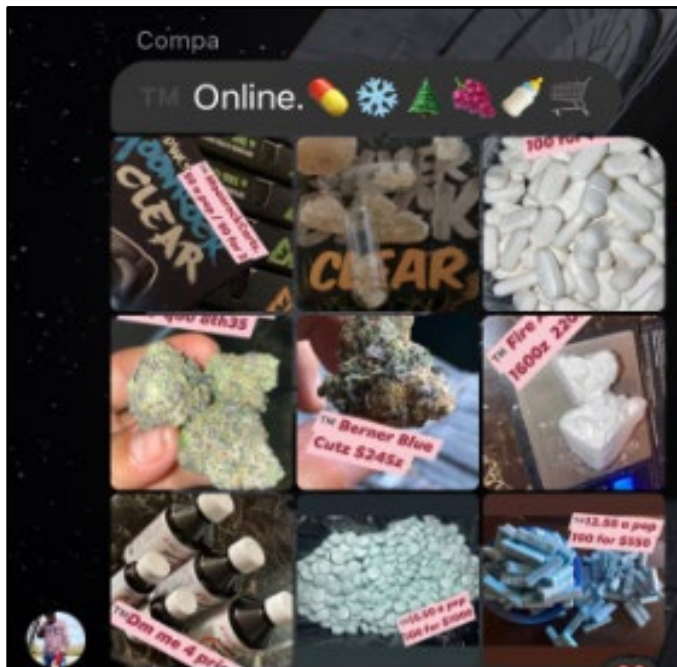
16 The government asks this court to sentence Defendant to 12 months in prison on Count One  
17 (fentanyl charge) and a consecutive 60 months in prison on Count Two (firearm charge), for a total of 72  
18 months.

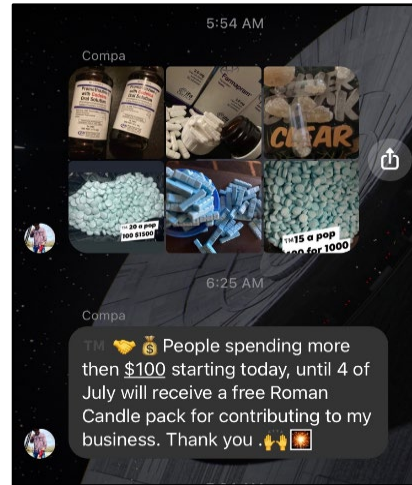
19 At the outset, the government writes to clarify a discrepancy between the guidelines calculation  
20 in the Presentence Report and the guidelines estimate included in the plea agreement. In the plea  
21 agreement—drafted by the government and negotiated by prior defense counsel—the parties estimated a  
22 base offense level of 16. The Presentence Report calculates a base offense level of 24. Based on the  
23 weight of the seized controlled substance, Probation's calculation is correct. The Probation officer  
24 notified the government and prior defense counsel about this discrepancy during the Presentence Report  
25 preparation process. The parties then realized that the base offense level listed in the plea agreement  
26 was an error, but neither knew how the parties had reached that erroneous calculation. Although the  
27 plea agreement contains language clarifying that the estimate in the plea agreement is only an estimate,  
28

1 in the interest of fairness to the defendant, the government agreed to stand by the erroneous calculation  
2 in the plea agreement and ask the court to sentence the defendant to 72 months.

3 A 72-month sentence is no greater than necessary to achieve the purposes of punishment and  
4 deterrence in this case. This case was investigated by the Fentanyl Overdose Resolution Team (FORT),  
5 a team working to reduce the illegal sales of fentanyl in the Central Valley. FORT investigators  
6 observed Defendant advertise on Facebook the sale of a firearm and large amounts of narcotics,  
7 including fentanyl pills. An undercover FORT agent exchanged Facebook messages with Defendant,  
8 who offered to sell 1,000 fentanyl pills for \$8,000. FORT applied for a federal search warrant for  
9 Defendant's residence. During execution of the warrant, agents found a loaded, short-barrel AR-15 rifle  
10 as well as M/30 fentanyl pills (packaged for sales), several hundred counterfeit Xanax pills, several bags  
11 containing smaller baggies, and a digital scale. During a post-Miranda interview Defendant admitted  
12 that he had been advertising and selling fentanyl pills through Facebook. And he admitted that he had  
13 been doing so for years.

14 Here are some of Defendant's Facebook posts:





Although Defendant lacks a criminal history, a guidelines sentence is appropriate in this case for specific, and general deterrence as well as for just punishment for Defendant's conduct. Defendant has been selling fentanyl pills for seven years, by his own post-Miranda admission. He's also shown a willingness to sell large numbers of fentanyl pills. And his criminal conduct extends beyond drug sales. In this case, he possessed an illegal short-barreled rifle with a high-capacity magazine in the same location as his drugs, conduct that, if differently charged could have carried a mandatory minimum 10-years to life. *See* 18 U.S.C. § 924(c)(1)(B)(i).

Importantly too, there was strong evidence that Defendant violated his pretrial release before entering a guilty plea in this case. Specifically, Defendant was originally placed on pretrial release and was ordered to participate in a 90-day residential drug treatment program at Turning Point. Seven days after entering the program, Defendant was unsuccessfully discharged, as several residents reported that Defendant had been intimidating other residents and was attempting to gain access to other residents' family to intimidate or harm them. Turning Point provided a supplemental incident report that indicated

1 that a resident reported that Defendant had told the resident that he (Defendant) had killed someone, and  
2 another individual had been arrested for it. Defendant was detained pending adjudication of the pretrial  
3 violation, but the issue was mooted by Defendant's remand into custody upon his entry of guilty plea.

4 Based on all the above, Defendant is deserving of the 60-month mandatory minimum sentence  
5 on the firearm charge and 12 months (to be served consecutively) on the fentanyl trafficking charge, for  
6 a total of 72 months.

7  
8 Dated: March 14, 2022

PHILLIP A. TALBERT  
United States Attorney

9  
10 By: /s/ JUSTIN J. GILIO  
11 JUSTIN J. GILIO  
Assistant United States Attorney