

1 E. MARTIN ESTRADA
 United States Attorney
 2 MACK E. JENKINS
 Assistant United States Attorney
 3 Chief, Criminal Division
 SEAN D. PETERSON
 4 Assistant United States Attorney
 Chief, Riverside Branch Office
 5 MITCHELL M. SULIMAN (Cal. Bar No. 301879)
 Assistant United States Attorney
 6 Riverside Branch Office
 3403 Tenth Street, Suite 200
 7 Riverside, California 92501
 Telephone: (951) 276-6026
 8 Facsimile: (951) 276-6202
 Email: Mitchell.Suliman@usdoj.gov

9 Attorneys for Plaintiff
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 v.
 16 MICHAEL ALLEN STARKWEATHER,
 17 Defendant.

ED CR No. 22-00271-SVW

UNITED STATES' SENTENCING POSITION
 AND RESPONSE TO PRESENTENCE REPORT
 FOR DEFENDANT MICHAEL ALLEN
 STARKWEATHER

Sentencing Date: July 17, 2023
 Sentencing Time: 11:00 a.m.
 Location: Ctrm. of the Hon.
 Stephen V. Wilson

18
 19
 20
 21
 22
 23 Plaintiff United States of America, by and through its counsel
 24 of record, the United States Attorney for the Central District of
 25 California and Assistant United States Attorney Mitchell Suliman,
 26 hereby files its Sentencing Position and Response to Presentence
 27 Report for Defendant MICHAEL ALLEN STARKWEATHER.

28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 15, 2022, in San Bernardino County, California, defendant Michael Allen Starkweather ("Defendant"), a felon, unlawfully possessed a pipe bomb, which was a destructive device and firearm defined in 26 U.S.C. §§ 5845(a)(8) and 5845(f)(1)(A). Law enforcement officers found the pipe bomb in defendant's room when conducting a safety sweep of the residence following a stabbing. Defendant was on post release community supervision at the time. Defendant has pleaded guilty to possession of an unregistered firearm in violation of 26 U.S.C. § 5861(d).

On June 12, 2023, the United States Probation and Pretrial Services Office ("Probation") disclosed the Presentence Investigation Report (Dkt. 32, "PSR") and issued its Recommendation Letter (Dkt. 31, "RL"). The United States concurs with Probation's Sentencing Guidelines calculations, which found that the Total Offense Level is 21 and defendant is designated in Criminal History Category VI, with a resulting Guidelines range of 77-96 months of imprisonment. (PSR ¶¶ 23-35, 55-57, 106.)

For the reasons set forth below, the United States respectfully requests, consistent with Probation's recommendation, that the Court impose the following sentence: (1) 87 months' imprisonment, (2) three years of supervised release, and (3) a \$100 mandatory special assessment. A sentence of 87 months' imprisonment is necessary to reflect the seriousness of the offense, afford appropriate deterrence, and protect defendant's community and the greater public, among other things.

1 **II. STATEMENT OF FACTS**

2 On April 24, 2023, defendant pled guilty to the single-count
3 Indictment, and admitted to the following facts under oath,
4 consistent with the Plea Agreement. (Dkt. 28 ¶ 11; see PSR ¶¶ 12-19;
5 36-39.)

6 On October 15, 2022, San Bernardino Police Department officers
7 were dispatched to a residence in San Bernardino County, within the
8 Central District of California, for a reported stabbing. The
9 officers conducted a safety sweep of the residence. During the
10 safety sweep, the officers encountered defendant, who was on post
11 release community supervision and had a pending hold for violations.
12 Law enforcement searched defendant's room and discovered a galvanized
13 steel pipe that was modified into an explosive pipe bomb. Defendant
14 admitted under Miranda that the pipe bomb was his. The pipe bomb is
15 both a firearm and a destructive device as defined by 26 U.S.C. §§
16 5845(a)(8) and (f) because it was an explosive or incendiary bomb.
17 The device classifies as a destructive device which can be placed or
18 thrown and is destructive in nature. Furthermore, the device is
19 capable of causing serious injury and/or death. The defendant
20 knowingly possessed this pipe bomb and was aware that the device was
21 a pipe bomb. The destructive device was not registered to the
22 defendant in the National Firearms Registration and Transfer Record.

23 Additionally, on or about October 7, 2021,¹ in San Bernardino
24 County, within the Central District of California, defendant was
25 found unlawfully possessing mail matter, identification documents,

26
27 ¹ The Pre-trial Services Report and Recommendation Letter
28 erroneously states that this conduct occurred eight days prior the
instant offense. (see PSR ¶ 36; RL 5). However, this offense occurred
approximately one year before the instant offense.

1 medical records, benefits/debit cards, and checks made payable to or
 2 belonging to 36 individuals or entities, other than defendant.
 3 Defendant also unlawfully possessed two postal arrow keys.
 4 Furthermore, defendant possessed US Bank records, showing that he had
 5 deposited a \$2,400 check from an individual, whose initials are J.R.
 6 The check listed defendant as the payee, even though J.R. did not
 7 authorize any such payment to defendant.

8 **III. THE PRESENTENCE INVESTIGATION REPORT**

9 **A. Offense Level Calculation**

10 In the PSR, the Probation Officer concluded that the Total
 11 Offense Level is 21. The Probation Officer calculated the offense
 12 level as follows:

13	Base Offense Level:	22	U.S.S.G. § 2K2.1(a)(3)
14	Specific Offense	+2	U.S.S.G. § 2K2.1(b)(3)(B)
15	Characteristics		
16	Acceptance of Responsibility	-3	U.S.S.G. §§ 3E1.1(a), (b)
17	Total Offense Level	21	

18 (PSR ¶¶ 24-35.)

19 **B. Criminal History Category Calculation**

20 In the PSR, the Probation Officer concluded that defendant is in
 21 Criminal History Category VI because defendant has 25 criminal
 22 history points. (PSR ¶¶ 55-57.)

23 **C. Probation's Recommended Sentence**

24 A Total Offense Level of 21 and Criminal History Category VI
 25 produce an advisory Sentencing Guidelines imprisonment range of 77 to
 26 96 months of imprisonment. (PSR ¶ 106.)

1 Probation recommends that the Court sentence defendant to (1) 87
2 months in custody, (2) three years of supervised release, and (3) a
3 \$100 mandatory special assessment. (RL 1-2.)

4 **IV. THE UNITED STATES' POSITION ON THE PRESENTENCE REPORT**

5 The United States concurs with the Total Offense Level and
6 Criminal History Calculations in the PSR. It has no factual or legal
7 objections and concurs with Probation's recommended sentence.

8 **V. THE UNITED STATES' RECOMMENDED SENTENCE AND SECTION 3553(a)**
9 **ANALYSIS**

10 **A. Nature, Circumstances, and Seriousness of the Offense**

11 Defendant's criminal conduct is serious. Defendant possessed an
12 unregistered firearm/destructive device, namely, a pipe bomb.
13 Further, law enforcement officers found defendant's destructive
14 device during a safety sweep of a residence in response to a reported
15 stabbing. (PSR ¶ 12.) This offense occurred when defendant was
16 under post-release supervision for a previous felony conviction and
17 after defendant had already sustained multiple prior convictions
18 related to firearms. (PSR ¶ 13, RL 5.) Defendant's possession of a
19 destructive device in this instant case is not the first time. (PSR
20 ¶ 47.) In 2006, the San Bernardino Sherriff's Department officers
21 were dispatched to a report of a possible explosion of firearms at an
22 apartment. Defendant, at the age of 22, was observed running through
23 the residence with a shotgun. (PSR ¶ 47.) During a search of
24 defendant's bedroom, officers recovered a 12-guage shotgun,
25 methamphetamine, a methamphetamine pipe, a shotgun shell, fireworks
26 with the powder removed, and an expended pipe bomb. (PSR ¶ 47.)

27 Approximately one year prior to this instant offense, defendant
28 was found to be in possession of unlawful mail matter, identification

1 documents, medical records, benefits and debit cards, and checks made
2 payable to or belonging to 36 individuals or entities, other than
3 defendant. (PSR ¶ 37.) Defendant also unlawfully possessed two
4 postal arrow keys. (PSR ¶ 37.) Furthermore, defendant deposited
5 stolen checks from at least two different individuals, J.R. and J.A.
6 (PSR ¶ 38.) A sentence that includes significant time in custody is
7 necessary due to the recidivist nature of defendant's crimes and to
8 promote respect for the law.

9 **B. History and Characteristics**

10 Defendant's criminal history began in 2004 when he was 19 years
11 old. Since then, he has sustained thirteen adult convictions to
12 include nine felony convictions for possession of controlled
13 substances, possession of a firearm by a felon, evading a peace
14 officer, firearm access violation, and vehicle theft. (PSR ¶¶ 42-54,
15 RL 4.)

16 There are some mitigating factors in this case. Defendant's
17 parents separated when he was four years old. (PSR ¶ 76.) As a
18 child, defendant was diagnosed with ADHD, which contributed to
19 defendant getting into trouble in school and at home. (PSR ¶ 77.)
20 At the age of 13, defendant's father passed away suddenly due to an
21 automobile accident. (PSR ¶ 78.) His father's death affected him
22 greatly, and defendant resorted to drug use. (PSR ¶ 78.)

23 Balancing mitigating factors with aggravating factors present
24 favors a Guidelines sentence of 87 months' imprisonment followed by a
25 three-year term of supervised release.

1 **C. Unwarranted Disparities Can be Avoided by Imposing a**
2 **Sentence within the Guideline Range**

3 The Court should minimize sentencing disparities among similarly
4 situated defendants. 18 U.S.C. § 3553(a)(6). One way courts ensure
5 consistent sentences for similarly situated defendants across the
6 country is by applying the Guidelines uniformly. See *United States*
7 *v. Treadwell*, 593 F.3d 990, 1011 (9th Cir. 2010) (“Because the
8 Guidelines range was correctly calculated, the district court was
9 entitled to rely on the Guidelines range in determining that there
10 was no ‘unwarranted disparity’”); see also *Gall v. United*
11 *States*, 552 U.S. 38, 54 (2007) (“[A]voidance of unwarranted
12 disparities was clearly considered by the Sentencing Commission when
13 setting the Sentencing Guidelines ranges.”). A Guidelines-range
14 sentence is reasonable even where a defendant has endured challenges
15 in life or has struggled with substance abuse. *United States v.*
16 *Carter*, 560 F.3d 1107, 1121-22 (9th Cir. 2009) (finding the
17 imposition of a within-Guidelines sentence reasonable despite
18 defendant's youth, prior non-violent criminal history, and difficult
19 childhood because nothing about those circumstances placed the
20 defendant outside the heartland of similar characteristics and
21 circumstances contemplated by the Guidelines); *United States v.*
22 *Stoterau*, 524 F.3d 988, 1001-02 (9th Cir. 2008) (finding the
23 imposition of within-Guidelines sentence reasonable because abuse
24 defendant “suffered as a child, his mental health issues, and his
25 life-long struggle with methamphetamine addiction” did not constitute
26 special circumstances compelling a downward variance). Thus, a
27 Guidelines-range sentence of 87 months’ imprisonment is appropriate
28 here where Defendant does not fall outside the “minerun of roughly

1 similar cases' considered by the Sentencing Commission in formulating
2 the Guidelines." *Carter*, 560 F.3d at 1121-22.

3 **VI. CONCLUSION**

4 For the foregoing reasons, the United States respectfully
5 requests that the Court sentence defendant to 87 months' imprisonment
6 followed by a three-year term of supervised release, and with a
7 mandatory \$100 special assessment.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

