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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 15-20264-CRIMINAL-LENARD

UNITED STATES OF AMERICA, Miami, Florida  
Plaintiff, July 27, 2015  
vs. 4:03 p.m. to 4:55 p.m.  
MIGUEL MORÁN DÍAZ,  
Defendant. Pages 1 to 28

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SENTENCING HEARING  
BEFORE THE HONORABLE JOAN A. LENARD,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MARC ANTON, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
99 Northeast Fourth Street  
Miami, Florida 33132

FOR THE DEFENDANT: DANIEL ECARIUS, ESQ.  
ASSISTANT FEDERAL PUBLIC DEFENDER  
150 West Flagler Street  
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FOR US PROBATION: MICHELLE BURGESS

REPORTED BY: LISA EDWARDS, RDR, CRR  
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United States District Court  
400 North Miami Avenue  
Twelfth Floor  
Miami, Florida 33128  
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1 THE COURT: United States of America versus Miguel  
2 Morán Díaz, Case No. 15-20264.

3 Good afternoon, counsel and Probation. State your  
4 appearances, please, for the record.

5 MR. ANTON: Good afternoon, your Honor. Marc Anton on  
6 behalf of the United States.

7 THE COURT: Good afternoon.

8 MR. ECARIUS: Good afternoon, Judge. Daniel Ecarius  
9 from the Federal Defender's Office on behalf of Mr. Miguel  
10 Morán Díaz, who's seated next to me.

11 THE COURT: Good afternoon.

12 THE PROBATION OFFICER: Good afternoon, your Honor.  
13 Michelle Burgess on behalf of US Probation.

14 THE COURT: Good afternoon.

15 Mr. Morán Díaz is set for sentencing today.

16 Mr. Morán, have you read the revised advisory  
17 presentence investigation report and its addendums?

18 THE DEFENDANT: Yes.

19 THE COURT: And have you and your attorney discussed  
20 the advisory presentence investigation report and its  
21 addendums?

22 THE DEFENDANT: Yes.

23 THE COURT: My examination of the file indicates that  
24 neither the Government nor the Defendant have filed any  
25 objections to the revised advisory presentence investigation

1 report and its addendums. And neither side has filed any  
2 additional motions.

3 Is that correct?

4 MR. ANTON: That's correct, your Honor.

5 MR. ECARIUS: That's correct, your Honor.

6 THE COURT: Does the Government make the motion for the  
7 third level off under 3E1.1?

8 MR. ANTON: Yes, your Honor.

9 THE COURT: That motion is granted.

10 The Court will adopt the factual findings and guideline  
11 applications as contained in the revised advisory presentence  
12 investigation report.

13 Before going further, I would ask counsel to review  
14 with me the major calculations in the revised advisory  
15 presentence investigation report. The offense level is 19; the  
16 criminal history category is Roman Numeral II; the advisory  
17 guideline range is 33 to 41 months' imprisonment, one to three  
18 years' supervised release; \$100 special assessment.

19 Is that correct in its totality?

20 MR. ANTON: Yes, your Honor.

21 MR. ECARIUS: Yes, your Honor.

22 THE COURT: Mr. Morán, you are in court today to  
23 receive your sentence. Before that happens, I must ask you if  
24 there's any legal cause as to why the sentence of the law  
25 should not be imposed upon you.

1 MR. ECARIUS: No legal cause.

2 THE COURT: No legal cause having been shown as to why  
3 sentence should not be imposed, the Court will consider  
4 whatever you may wish to say in mitigation.

5 Yes, Mr. Ecarius.

6 MR. ECARIUS: Your Honor, I would ask you to consider  
7 that Mr. Morán Díaz did accept responsibility promptly in this  
8 case. He's certainly very sorry for this situation.

9 He's 45 years old. He's somebody who does have a long  
10 work history. He was mostly compliant when he was on  
11 supervision last time.

12 I would ask the Court to consider the low end of the  
13 guideline range in this case. I think that would be sufficient  
14 to punish and deter in this case.

15 Again, he will be on supervised release. There will be  
16 someone monitoring him after he's released. I think under the  
17 circumstances of this case, that would be appropriate.

18 Thank you.

19 THE COURT: Mr. Morán, is there something you want to  
20 say, sir?

21 THE DEFENDANT:.. Yeah. I just want to take this brief  
22 opportunity to apologize to the community, to the  
23 US Government, my family of course, which is going through a  
24 lot right now, without my help. My mother in Cuba is very  
25 concerned about my situation. I just want to guarantee it

1 won't happen again, you know.

2 That's it.

3 THE COURT: What does the Government say?

4 MR. ANTON: Judge, it's the Government's position that  
5 a sentence at the high end of the guideline range is the most  
6 appropriate sentence in this case.

7 As your Honor is aware from reviewing the presentence  
8 investigation report, this is a Defendant who possesses violent  
9 beliefs, as evidenced by his Facebook posts regarding ISIS, a  
10 known foreign terrorist organization.

11 This is a Defendant who wanted to purchase additional  
12 firearms from a confidential human source, including a  
13 .308-caliber rifle and a Glock handgun.

14 This is a Defendant who bragged about how his  
15 collapsible stock rifle was perfect to smuggle into a stadium  
16 undetected.

17 This is a Defendant who conducted active surveillance  
18 of targeting locations in Miramar, Florida, a Homeland Security  
19 processing facility.

20 This is a Defendant who indicated his desire to be a  
21 lone wolf --

22 THE COURT: Where is that information? I saw that  
23 information in the detention order, but it was not contained in  
24 the report about surveilling the Homeland Security processing  
25 facility. And I don't believe it was in the factual proffer.

1 MR. ANTON: Judge, that information was brought out at  
2 the detention hearing as a result of surveillance that was  
3 conducted by the FBI. There were undercover observations of  
4 the Defendant, along with this source, conducting surveillance  
5 at the Homeland Security processing facility in Miramar,  
6 Florida. Early on in this investigation, the Defendant had  
7 discussed conducting attacks with a potential bomb.

8 Ultimately, those negotiations or conversations kind of  
9 petered out, and the Government was ultimately left with the  
10 firearms charge in this particular case. But there was a time  
11 over a course of between January and April of 2015 when the  
12 Defendant and the undercover source in this particular case  
13 were conducting pretty hot-and-heavy active discussions and  
14 surveillance regarding an attack here in the United States.

15 Judge, this is also a Defendant, as I mentioned, who  
16 indicated he wanted to be a lone wolf for ISIS. He advocated  
17 killing people and inscribing "ISIS" into shell casings. He  
18 viewed instructions on bomb making in *Inspire* magazine, which  
19 is Al-Qaeda's propaganda magazine.

20 He was observed actively practicing firing and shooting  
21 his weapons. He wanted to buy more ammunition from our source.  
22 And during the takedown in this particular case, there was a  
23 loaded firearm with 15 rounds in the firearm itself and an  
24 additional 15 rounds in a magazine contained on his person.

25 During a search warrant execution at his residence, the

1 law enforcement officers found a rifle with 297 more rounds of  
2 ammunition.

3 This is a Defendant who in his criminal history  
4 section, Judge, has a prior conviction for carrying a concealed  
5 firearm in 1995. Undeterred, he became involved with a  
6 conspiracy to possess with intent to deliver over 4 kilos of  
7 cocaine and was sentenced to 46 months in 2005.

8 He was released in 2008, and this offense occurred in  
9 January of 2015.

10 During his confession, he indicated, according to him,  
11 that his terroristic threats were a joke, but that he did  
12 support the Islamic caliphate, and he did not want to commit  
13 any violent acts in the United States.

14 THE COURT: Where is that in the report? That's the  
15 first time I hear any of that. Where is that in the revised  
16 advisory presentence report?

17 MR. ANTON: The portions dealing with the confession,  
18 your Honor, is not in the report. That, again, was brought out  
19 at the detention hearing.

20 MR. ECARIUS: Your Honor, I object to that being  
21 considered as part of the factual basis for the sentencing.  
22 It's not in the report. I haven't had time to analyze that or  
23 respond to that.

24 THE COURT: I would agree. I'm not going to consider  
25 any statements he made or any of the surveillance of the

1 Homeland Security Processing Center or discussion of attacks  
2 regarding bombs other than what's in the revised advisory  
3 presentence investigation report.

4 MR. ANTON: Understood, your Honor.

5 THE COURT: It does contain viewing an online magazine  
6 and discussions with the confidential source about at least two  
7 bombs.

8 MR. ANTON: Understood, your Honor.

9 The Defendant was ultimately sentenced to the 46 months  
10 on his cocaine conspiracy, released and conducted the instant  
11 offense over the course of approximately four months in early  
12 2015.

13 This is not an individual, your Honor, who is deserving  
14 of the low end of the guideline range. This is a violent  
15 individual who didn't just simply possess a firearm as a  
16 convicted felon.

17 It's the Government's position that the Defendant's  
18 offense conduct in this case was much more serious than a  
19 simple possession of a firearm by a convicted felon, especially  
20 in light of fact that he had a prior concealed firearm carry  
21 back in 1995 and didn't learn his lesson, then again got  
22 involved with very serious criminal activity here in federal  
23 court and in 2005 and continued his ways by not carrying just  
24 one firearm, but possessing two firearms in conjunction with  
25 these extremely serious beliefs and actions taken over the



1 course of four months.

2 THE COURT: Anything further, Mr. Ecarius?

3 MR. ECARIUS: Your Honor, I would note that the reason  
4 things petered out is because he was being encouraged by the  
5 confidential source to go forward and to engage in some kind of  
6 terrorist activity. He did not take that bait. He didn't go  
7 forward with it. He wasn't interested in that. That's why  
8 that case petered out eventually.

9 He does admit that he had firearms and he was not  
10 supposed to have them.

11 As to his personal beliefs, I'm not going to comment on  
12 that.

13 But, your Honor, I would ask the Court to consider the  
14 charges that he has here and the fact that he accepted  
15 responsibility for them and that he is -- that the -- that he's  
16 here at this time having accepted responsibility.

17 Thank you.

18 THE COURT: What I'm going to consider here today is  
19 the factual proffer and the relevant offense conduct as  
20 contained in the revised advisory presentence investigation  
21 report, to which there were no objections. So those facts are  
22 taken as true.

23 Under United States Code, Title 18, United States Code,  
24 Section 3553(a), the Court shall impose a sentence sufficient  
25 but not greater than necessary to comply with the purposes set

1     forth in Paragraph 2 of this subsection.

2             The Court in determining the particular sentence to be  
3     imposed shall consider -- in the Eleventh Circuit in the cases  
4     of *United States versus Rosales-Bruno* and *United States versus*  
5     *Shaw* -- and *Rosales-Bruno* is 2015 Westlaw 3825109, a June 19th,  
6     2015, decision; and *United States versus Shaw* is 560 F.3d 1230,  
7     a 2009 decision.

8             And in those decisions, the Eleventh Circuit details  
9     how the Court with that language "shall" is required to  
10    consider the various factors under 3553, all the factors,  
11    including the advisory guidelines.

12            And in *Rosales-Bruno*, the Eleventh Circuit stated as  
13    follows at Headnote I: "The District Court's task is to impose  
14    a sentence that will adequately (1) "reflect the seriousness of  
15    the offense; (2) promote respect for the law; (3) provide just  
16    punishment; (4) afford adequate deterrence; (5) protect the  
17    public from further crimes of the Defendant; and (6) provide  
18    the Defendant with any needed training and treatment in the  
19    most effective manner."

20            The task is a holistic endeavor that requires the  
21    District Court to consider a variety of factors: (1) the  
22    nature and circumstances of the offense; (2) the Defendant's  
23    history and characteristics; (3) the kinds of sentences  
24    available; (4) the applicable sentencing guideline range; (5)  
25    pertinent policy statements of the Sentencing Commission; the

1 need to provide restitution to any victims; and (6) the need to  
2 avoid unwarranted sentencing disparities.

3 The Eleventh Circuit goes on to state at Page 4: "As  
4 the governing statute makes clear, and as we have explained in  
5 an *en banc* opinion, the advisory guideline range is but one of  
6 many considerations that a Court must take into account in  
7 exercising its sentencing discretion," citing the *en banc*  
8 decision in *United States versus Irej*, I-R-E-Y, 612 F.3d. 1160,  
9 at 1217, a 2010 decision by the *en banc* Eleventh Circuit.

10 And in that decision, Eleventh Circuit goes on to  
11 state -- in *United States versus Shaw* to state: "To arrive at  
12 an appropriate sentence, the District Court must consider all  
13 of the applicable 3553(a) factors." And *Rosales-Bruno* teaches  
14 us that the Court can accord and is permitted to attach great  
15 weight to one factor over another, and the 3553(a) factors do  
16 not have to be given equal weight.

17 *Rosales-Bruno* goes on to state that "In assigning  
18 weight to the 3553(a) factors as part of the weighing process,  
19 a Court may and should consider individualized, particularized  
20 specific facts and not merely the guidelines label that can be  
21 put on the facts."

22 And in *United States versus Shaw*, the 2009 decision by  
23 the Eleventh Circuit, which is a case that factually is  
24 analogous to this case in that that Defendant was charged with  
25 possession of a firearm by a convicted felon, his advisory

1 guideline range was 30 to 37 months' imprisonment; and Judge  
2 Moore sentenced him to the statutory maximum.

3 And in that case, the Eleventh Circuit cited, as do I  
4 today, *Gall versus United States*, 552 US 38, 128 Supreme Court,  
5 586, a 2007 decision by the United States Supreme Court. At  
6 1237 and 1238, the Eleventh Circuit stated as follows: "The  
7 District Court must evaluate all of the 3553(a) factors when  
8 arriving at a sentence, but is permitted to attach great weight  
9 to one factor over others.

10 In assessing the factors, the sentencing Court should  
11 remember that each -- this is the quote from *Gall* at 598:  
12 "Each convicted person is an individual and every case is a  
13 unique study in the human failings that sometimes mitigate,  
14 sometimes magnify the crime and the punishment to ensue."

15 And the *Shaw* case goes on at 1238 to state: "When the  
16 district court decides after serious consideration that a  
17 variance is in order, it should explain why that variance is  
18 appropriate in a particular case with sufficient  
19 justifications. The justifications must be compelling enough  
20 to support the degree of the variance and complete enough to  
21 allow meaningful appellate review."

22 And here, after giving serious consideration to all of  
23 the 3553(a) factors, including the advisory guidelines, I find  
24 that an upward variance to the statutory maximum of 120 months  
25 is the appropriate sentence.

1 Under 3553(a), the Court first shall consider the  
2 nature and circumstances of the offense and the history and  
3 characteristics of the Defendant.

4 The Defendant stands before the Court having pled  
5 guilty to felon in possession of a firearm and ammunition under  
6 Title 18, United States Code, Section 922(g)(1).

7 And the nature and circumstances of the offense, as  
8 detailed in the offense conduct, the relevant offense conduct  
9 in the revised advisory presentence investigation report,  
10 revolved around these facts: The FBI launched an investigation  
11 of the Defendant who maintained a Facebook page under the name  
12 of Azizi al-Hariri. A review of that page revealed numerous  
13 postings of ISIS, a known terrorist organization, related  
14 articles and a posting showing the Defendant with a firearm.

15 A confidential source then met with the Defendant and  
16 the Defendant introduced himself as Miguel.

17 The Defendant at that meeting asked the confidential  
18 source to purchase a "Baby Glock" for him and discussed with  
19 the confidential source that he wished to purchase several  
20 weapons and that he would arrange -- the Defendant would  
21 arrange to have the weapons stolen from the confidential  
22 source's vehicle so the confidential source could claim they  
23 were stolen. And he agreed that he would pay the confidential  
24 source \$500 in United States currency.

25 During that first meeting, the Defendant also told the

1 confidential source that he was a convicted felon and therefore  
2 he could not purchase the firearms himself.

3 The Defendant went on to tell the confidential source  
4 that he had multiple weapons, including a rifle he used for  
5 hunting in the Everglades, and a Kel-Tec 2000 with a  
6 collapsible stock. And he further explained that the Kel-Tec  
7 2000 with the collapsible stock was a perfect firearm because  
8 he would be able to hide it in his backpack and then go to a  
9 stadium -- into a stadium undetected.

10 He additionally told the confidential source that he  
11 possessed a Springfield XD(M) handgun and then showed a picture  
12 of himself on his cell phone holding a rifle with a scope,  
13 another picture of a rifle with a collapsible stock and green  
14 sight that he identified as the Kel-Tec 2000.

15 He then proceeded to take the confidential source to  
16 his vehicle and showed him a gray backpack that was on the  
17 front passenger floorboard. He instructed the confidential  
18 source to open the backpack and to open his shirt that was  
19 inside the second zippered pocket; and wrapped inside that  
20 shirt was a loaded handgun, the Springfield XD(M) .40.

21 So here, we have a Defendant who was charged with one  
22 count of possession of a firearm and ammunition. And he was in  
23 possession of two guns and over 300 rounds, as the facts detail  
24 in the revised advisory presentence investigation report, of  
25 .40-caliber ammunition.

1           On January 30th, the Defendant and the confidential  
2 source met again; and the Defendant then instructed the  
3 confidential source to enter his vehicle. And the Defendant  
4 described himself as a lone wolf for the ISIS group. He went  
5 on to state that he wanted to acquire a Savage .308-caliber  
6 bolt-action rifle and he was going to scratch "ISIS" in the  
7 .308 shell casings. And then he described that after killing  
8 people, authorities would find the ISIS-engraved shell casings  
9 and know that there was a sniper in town, that he could put the  
10 city in checkmate and disrupt the city for a week or two until  
11 he was being caught.

12           Later that same day in the evening, the Defendant and  
13 the confidential source viewed a terrorist-inspired magazine  
14 website, and the Defendant explained to the confidential source  
15 that the magazine provided detailed instructions on how to  
16 build bombs.

17           And then he stated that the Boston bombers found their  
18 bomb on this magazine and that was the instructions provided to  
19 them, and he showed the confidential source detailed  
20 instructions from the magazine on how to construct a car bomb  
21 using oxygen and propane tanks as fuel.

22           On February 8th, 2015, the Defendant and the  
23 confidential source met and drove to a remote area of  
24 Everglades National Park and exited the vehicle on foot. They  
25 both carried backpacks with weapons to an area where they then

1 proceeded to have shooting practice with the Defendant shooting  
2 two weapons, a Springfield XD(M) .40-caliber handgun and a  
3 .40-caliber Kel-Tec 2000 rifle with a collapsible stock.

4 At the Defendant's request, the confidential source  
5 used a cellular telephone to record the target shooting.

6 Then on April 2nd, a search warrant was issued for the  
7 Defendant's residence and his car. The Defendant was stopped  
8 in his vehicle, and in his waistband was a loaded with 15  
9 rounds of .40-caliber ammunition -- a loaded Springfield XD(M)  
10 .40-caliber handgun, and in his pocket was a .40-caliber  
11 magazine that was loaded with 15 rounds of .40-caliber  
12 ammunition.

13 The search warrant was then executed on his residence.  
14 At the residence, the FBI agents recovered a Kel-Tec 2000  
15 .40-caliber rifle and approximately 297 rounds of .40-caliber  
16 ammunition.

17 The items were recovered from a bedroom that was  
18 utilized by the Defendant and contained his personal property  
19 and identity documents.

20 After given his Miranda warnings, the Defendant advised  
21 that he was aware that he was not supposed to own or possess  
22 weapons due to his prior felony conviction and that he had  
23 purchased the weapons from private individuals to avoid  
24 scrutiny and purchased the ammunition from local gun stores.

25 The Court also shall consider the history and



1 characteristics of the Defendant.

2 The Defendant is 45 years old. He completed a year of  
3 college at the John Jay College of Criminal Justice in  
4 New York. His criminal history began over 20 years ago.

5 On December 29th, 1994, he was adjudicated guilty for  
6 petty larceny. And the facts -- when he was 25 years old --  
7 the facts underlying that offense is that he was driving a  
8 stolen vehicle. He was given one day of credit time served and  
9 adjudicated guilty.

10 He then was arrested on November 18th, 1995. And on  
11 December 20th, 1995, he was adjudicated guilty for carrying a  
12 concealed firearm.

13 He was stopped on a traffic stop. And when he was  
14 asked by the Miami Police officer whether he had any weapons,  
15 he said yes. A search of the vehicle revealed a 9-millimeter  
16 Beretta pistol inside a holster and under the passenger seats.  
17 For that offense, he was adjudicated guilty. On December 20th,  
18 1995, he was given six months' probation; and interestingly  
19 enough, the probation was terminated on that same day.

20 He then is arrested again on March 3rd, 2005. And he  
21 pleads guilty to conspiracy to possess with intent to  
22 distribute cocaine before Judge Highsmith in Case No. 05-20216.  
23 He receives a sentence of 46 months' imprisonment and three  
24 years' supervised release. He's 35 years old.

25 And the underlying facts in that case were that the

1 Defendant had purchased 4 kilograms of cocaine with \$30,000 in  
2 cash.

3 The Defendant has continuously worked since he arrived  
4 in this country either as a driver or in construction.

5 The Court also in determining a sentence that is  
6 sufficient but not greater than necessary shall consider the  
7 need for the sentence imposed to reflect the seriousness of the  
8 offense, to promote respect for the law and to provide just  
9 punishment for the offense.

10 So here, we have a Defendant who has had several  
11 contacts with the criminal justice system. For two of those  
12 contacts, he received basically no sentence or very little  
13 sentence. And for the conspiracy to possess with intent to  
14 distribute cocaine, he received a 46-month sentence. And none  
15 of those sentences apparently have been sufficient for the  
16 Defendant to change his criminal conduct.

17 The offense conduct here establishes that the Defendant  
18 was being inspired by ISIS and terrorist activities; that he  
19 had thought out two ways to be a lone wolf: One, he was going  
20 to proceed to a stadium with the Kel-Tec 2000 with the  
21 collapsible stock and he would utilize that firearm because,  
22 with a collapsible stock, it was perfect. He could go into the  
23 stadium undetected with the firearm in his backpack.

24 The second way that he had thought out that he was  
25 going to be a lone wolf is that he would disrupt the city for

1 up to two weeks by killing people, by being a sniper, and the  
2 police would find engraved shell casing that he would engrave  
3 with the word "ISIS." He would put the city in checkmate.

4 He also had researched and read online and showed the  
5 confidential source about making bombs. He identified the  
6 bombs, bombs that were used by the Boston bombers on Patriots  
7 Day, and he spoke about and described a car bomb and exactly  
8 how car bombs could be made.

9 This is not his first gun charge. He previously was  
10 convicted of carrying a concealed firearm.

11 And even the 46-month sentence that he received from  
12 Judge Highsmith has not deterred him from further crimes.

13 I find that more punishment is needed to deter the  
14 Defendant from further crimes and to promote respect for the  
15 law.

16 The Defendant himself even stated to the confidential  
17 source that he knew he was a convicted felon and he couldn't  
18 possess a firearm.

19 I find that a more severe sentence is needed to protect  
20 the public. The prior sentences were not enough to stop the  
21 Defendant from committing other crimes.

22 And even though the Defendant was prohibited by law to  
23 have firearms and ammunitions, he possessed two firearms, at  
24 least two firearms and ammunition, and he thought about how he  
25 was going to utilize those firearms to kill a lot of people.

1           The sentence that I impose -- the Court shall consider  
2 the need for the sentence imposed to afford adequate deterrence  
3 to criminal conduct not only of this Defendant, though I found  
4 that a more severe sentence is necessary to deter criminal  
5 conduct, but other persons who may be considering such conduct.

6           And I cite various statements that have been made in  
7 recent months by James Comey, the director of the Federal  
8 Bureau of Investigation, who in a statement before the Senate  
9 Select Committee on Intelligence in Washington, DC, on July  
10 8th, 2015, stated the following:

11           Quote: "We continue to identify individuals who seek  
12 to join the ranks of foreign fighters traveling in support of  
13 the Islamic State of Iraq and the Levant, commonly known as  
14 ISIL, and also homegrown violent extremists who may aspire to  
15 attack the United States from within. These threats remain  
16 among the highest priorities for the FBI and the intelligence  
17 community as a whole.

18           "We closely analyze and assess the influence groups  
19 like ISIL have on individuals located in the United States who  
20 are inspired to commit acts of violence. Whether or not the  
21 individuals are affiliated with a foreign terrorist  
22 organization and are willing to travel abroad to fight or are  
23 inspired by the call to arms to act in their communities, they  
24 potentially pose a significant threat to the safety of the  
25 United States and United States persons."

1 "Social media" -- he went on to state, "Social media  
2 has allowed groups such as ISIL to use the Internet to spot and  
3 assess potential recruits. With the widespread horizontal  
4 distribution of social media, terrorists can identify  
5 vulnerable individuals of all ages in the United States, spot,  
6 access, recruit and radicalize, either to travel or to conduct  
7 a homeland attack."

8 The assistant director of the counterterrorism division  
9 for the Federal Bureau of Investigation, Michael B. Steinbach,  
10 stated on June 3rd, 2015, in a statement before the House  
11 Homeland Security Committee, quote: "ISIL continues to  
12 disseminate their terrorist message to all social media users,  
13 regardless of age. Following other groups, ISIL has advocated  
14 for lone wolf attacks."

15 Exactly how this Defendant identified himself: a lone  
16 wolf for ISIS.

17 Mr. Steinbach also stated on February 26, 2015, in a  
18 statement before the House Judiciary Committee Subcommittee on  
19 Crime, Terrorism, Homeland Security and Investigations, quote:  
20 "We are concerned about the possibility of homegrown extremists  
21 becoming radicalized by information available on the Internet."

22 Exactly what happened here. The access to the  
23 terrorist magazine about building bombs, ISIS-related articles,  
24 this Defendant posted on his Facebook page along with photos of  
25 himself armed and discussions with the confidential source

1 about what he wanted to accomplish with the purchase and use of  
2 these firearms.

3 Mr. Steinbach went on to state at that hearing, quote:  
4 "Individuals inspired by foreign terrorist groups could quietly  
5 arm themselves with the expertise and tools to carry out an  
6 attack. Community and world events may trigger one of these  
7 individuals to take action."

8 And on July 21st, 2015, at the FBI regional office in  
9 Salt Lake City, Utah, FBI Director James Comey stated that ISIS  
10 is actively recruiting in every state in the nation. And he  
11 stated as follows, quote: "What ISIL brings to us is a  
12 crowd-sourcing of terrorism using social media in a way that  
13 Al-Qaeda never imagined," end quote.

14 Quote: "Their message is: Travel to the caliphate,  
15 their so-called Islamic wonder world. Join us here in Iraq or  
16 Syria. And if you can't travel, kill somebody where you are.  
17 Kill somebody in uniform, preferably in the military or law  
18 enforcement, but just kill somebody," end quote.

19 He went on to state, quote: "In every state, we have  
20 investigations trying to understand where people are on the  
21 spectrum, from consumers of this poison to actors on behalf of  
22 this organization," end quote.

23 So here, we have a Defendant who was on the spectrum.  
24 He consumed this poisonous information and he detailed at least  
25 his thought process of how he was going to accomplish this and

1 what he wanted to do while he possessed firearms that he was  
2 not allowed to possess as a convicted felon.

3 The jurisprudence teaches us that the advisory  
4 guidelines are but one factor under 3553(a), that the Court  
5 shall consider all the 3553(a) factors and in its discretion  
6 may accord the appropriate weight to the factors under 3553(a).

7 I find after considering the individualized,  
8 particularized facts underlying the offense conduct and the  
9 history and characteristics of the Defendant that the combined  
10 force of the other 3553(a) factors are entitled to greater  
11 weight than the advisory guideline range.

12 Those include the seriousness of the offense; the need  
13 to protect the public; the need to promote respect for the law;  
14 the need to afford adequate deterrence of criminal conduct of  
15 this Defendant and other persons who may be considering such  
16 conduct; his criminal history, including a prior gun charge and  
17 a 46-month sentence for conspiracy to possess with intent to  
18 distribute cocaine that did not deter the Defendant from  
19 further conduct; and the nature and circumstances of the  
20 offense here.

21 Therefore, I find after considering all of the 3553(a)  
22 factors under Title 18, including the advisory guideline range,  
23 that the appropriate sentence is the statutory maximum in this  
24 case. And therefore, I will upwardly vary from the advisory  
25 guideline range to the statutory maximum.

1           If you would stand with your client, please.

2           The Court has considered the statements of the parties,  
3 the revised advisory presentence investigation report, which  
4 contains the advisory guidelines, and the statutory factors set  
5 forth in Title 18, United States Code, Section 3553(a).

6           It is the finding of the Court that the Defendant is  
7 not able to pay a fine, and therefore no fine shall be imposed.

8           Pursuant to the Sentencing Reform Act of 1984, it is  
9 the judgment of the Court that the Defendant, Miguel Morán  
10 Díaz, is hereby committed to the custody of the United States  
11 Bureau of Prisons to be imprisoned for 120 months.

12           Upon release from imprisonment, the Defendant shall be  
13 placed on supervised release for a term of three years.

14           Within 48 hours of release from the custody of the  
15 United States Bureau of Prisons, the Defendant shall report in  
16 person to the probation office in the district to which he is  
17 released.

18           While on supervised release, the Defendant shall not  
19 commit any federal, state or local crimes; he shall be  
20 prohibited from possessing a firearm or other dangerous device;  
21 he shall not possess a controlled substance; he shall cooperate  
22 in the collection of DNA and shall comply with the standard  
23 conditions of supervised release that have been adopted by this  
24 Court and with the following special conditions:

25           The Defendant shall submit to a search of his person or



1 property conducted in a reasonable manner and at a reasonable  
2 time by the United States probation officer.

3 The Defendant shall not possess or use a computer or  
4 any access device with access to the Internet at any location  
5 without the prior written approval of the United States  
6 probation officer.

7 The Defendant is prohibited from associating with or  
8 visiting specific places either online or in person or  
9 individuals or groups such as terrorists, members of  
10 organizations advocating violence, organized crime, documented  
11 members of terrorist organizations or those known to be or  
12 frequent either online or in a physical place.

13 The Defendant shall provide complete access to  
14 financial information, including disclosure of all business and  
15 personal finances.

16 At the completion of the Defendant's term of  
17 imprisonment, the Defendant shall be surrendered to the United  
18 States Immigration and Customs Enforcement for removal  
19 proceedings consistent with the Immigration and Nationality  
20 Act.

21 If the Defendant is removed or if he voluntarily leaves  
22 the United States, he shall not reenter the United States  
23 without the prior express written permission of the Secretary  
24 of Homeland Security.

25 The term of the supervised release period shall be

1 nonreporting while the Defendant resides outside the United  
2 States.

3 If the Defendant should receive the prior express  
4 written permission of the Secretary of Homeland Security and  
5 reenter the United States within the term of the supervised  
6 release period, he is to report to the nearest United States  
7 Probation Office in the district to which he reenters within 48  
8 hours of his arrival.

9 It is further ordered that the Defendant shall pay to  
10 the United States a special assessment of \$100, which shall be  
11 due immediately.

12 And there are no remaining counts. Correct?

13 MR. ANTON: No additional counts, your Honor. That is  
14 correct.

15 THE COURT: Mr. Morán Díaz, it is my duty to inform  
16 you, sir, that you have 14 days with which to appeal the  
17 judgment and sentence of this Court. Should you desire to  
18 appeal and be without funds with which to prosecute an appeal,  
19 an attorney will be appointed to represent you in connection  
20 with that appeal.

21 Should you fail to appeal within that 14-day period, it  
22 will constitute a waiver of your right to appeal.

23 It is also my duty to elicit from counsel from both  
24 sides fully articulated objections to the Court's finding of  
25 facts and conclusions of law as announced at this sentencing

1 hearing and to further elicit any objections which either side  
2 may have to the manner in which sentence was imposed in this  
3 case.

4 Are there any objections from the Government?

5 MR. ANTON: There are no objections from the  
6 Government, your Honor.

7 But I would note that there were forfeiture allegations  
8 contained in the indictment. I'd ask that your Honor impose  
9 forfeiture as well.

10 THE COURT: Any objection to the motion for forfeiture?

11 MR. ECARIUS: No objection.

12 THE COURT: It'll be included in the judgment and  
13 commitment order.

14 Any objections by the Defendant?

15 MR. ECARIUS: Yes, your Honor.

16 We object to the upward variance. We don't believe  
17 that it was reasonable in applying the 3553(a) factors.

18 And it allowed -- the conduct that was cited was simply  
19 conversation, a lot of which was elicited and encouraged by the  
20 confidential informant to try to encourage Mr. Morán Díaz to do  
21 something more serious.

22 And that that's the basis for -- that his -- his  
23 statements are the result of this type of encouragement and  
24 this type of management by the confidential source.

25 And that that is used to enhance him and that's -- that

1 that analysis is not a good basis for the enhancement.

2 And that the sentence is unreasonable under the  
3 circumstances.

4 THE COURT: It's noted for the record.

5 The marshal will execute the sentence of the Court.

6 We're in recess in this matter.

7 Thank you.

8 MR. ANTON: Thank you, your Honor.

9 (Proceedings concluded.)

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C E R T I F I C A T E

11

12 I hereby certify that the foregoing is an  
13 accurate transcription of the proceedings in the  
14 above-entitled matter.

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\_\_\_\_\_  
DATE

/s/Lisa Edwards  
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