

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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
Miami, Florida 33130

FOR US PROBATION: MICHELLE BURGESS

REPORTED BY: LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court
400 North Miami Avenue
Twelfth Floor
Miami, Florida 33128
(305) 523-5499

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 Ireys*, 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.)

10

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.

15

16

17

DATE

/s/Lisa Edwards
LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court
400 North Miami Avenue, Twelfth Floor
Miami, Florida 33128
(305) 523-5499

18

19

20

21

22

23

24

25