

1 GEOFFREY HANSEN
Acting Federal Public Defender
2 Northern District of California
SOPHIA WHITING
3 Assistant Federal Public Defender
4 19th Floor Federal Building - Box 36106
450 Golden Gate Avenue
5 San Francisco, CA 94102
Telephone: (415) 436-7700
6 Facsimile: (415) 436-7706
Email: Sophia_Whiting@fd.org
7

8 Counsel for Defendant [REDACTED]

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.
17 [REDACTED] [REDACTED]

18 Defendant.
19

Case No.: CR [REDACTED]

**DECLARATION OF LISA TARASYUK
IN SUPPORT OF DEFENDANT'S
SENTENCING MEMORANDUM**

Court: Courtroom 3, 17th Floor

Hearing Date: April 12, 2021

Hearing Time: 1:00 p.m.

20
21 I, Lisa Tarasyuk, declare the following:

- 22 1. I am employed as a paralegal at the Federal Public Defender's Office in San Francisco. I
23 have been employed in this position since August of 2019. Prior to my employment with
24 the office, I graduated from the University of California, Berkeley with a Bachelor's
25 Degree in economics, rhetoric, and pure mathematics. During my time at Berkeley, I
26 completed coursework in statistics and econometrics covering topics such as sampling,
27 data collection, regression analysis, and robustness checks.
28

- 1 2. I have reviewed the following United States Sentencing Commission documents prior to
2 use of their data files:
- 3 a. “Effective Use of Federal Sentencing Data”¹
 - 4 b. “USSC Variable Codebook FY1999-FY2019”²
 - 5 c. The Office of Research and Data’s six “Research Notes”³
- 6 3. I familiarized myself with the sentencing characteristics specific to Mr. [REDACTED] case
7 by reading the Indictment at Dkt. 10, Plea Application at Dkt. 29, and the
8 Presentencing Report at Dkt. 33.
- 9 4. I reviewed the Amendment History for Guideline §2K2.1. I noted the following:
10 Prior to Amendment 691, effective November 1, 2006, §2K2.1(b)(4) did not distinguish
11 the 2-level and 4-level enhancements for possession of a stolen firearm as opposed to
12 possession of a firearm with an altered or obliterated serial number, as the Guideline
13 Manual distinguishes today.
- 14 5. Since the §2K2.1(b)(4)(A) enhancement applies in Mr. [REDACTED] case, as opposed to
15 §2K2.1(b)(4)(B), Mr. [REDACTED] is not similarly situated with those defendants who today
16 receive a greater enhancement for the conduct specified in §2K2.1(b)(4)(B). Thus,
17 those sentenced under Guidelines Manuals from prior to 2006 are excluded to preserve
18 the similarly situated analysis.
- 19 6. On June 8, 2020, data experts in our office compiled a composite dataset of the publicly
20 available FY 2002-2019 Sentencing Commission data files.⁴
- 21 7. I analyzed this dataset using the statistical program “R” by limiting it to those who had
22 no missing data for sentence received in months,⁵ looking at defendants Nationwide, in
23 the Ninth Circuit, and in the Northern California District.⁶

24
25 ¹ <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/20131122-ACS-Presentation.pdf>

26 ² https://www.ussc.gov/sites/default/files/pdf/research-and-publications/datafiles/USSC_Public_Release_Codebook_FY99_FY19.pdf

27 ³ <https://www.ussc.gov/research/datafiles/research-notes>

28 ⁴ <https://www.ussc.gov/research/datafiles/commission-datafiles>

⁵ When variable SENTTOT0 is not missing. SENTTOT0 greater than 470 is limited to 469.99. SENTTCAP is used when SENTTOT0 is missing.

⁶ Variables MONCIRC=9 and DISTRICT=71, respectively.

8. Individuals were further isolated according to the following parameters:

	Variable Specification	Characteristic
a.	SOURCES = 1	Only cases with information representing known court findings included;
b.	AMENDYR ≥ 2006	Defendant sentenced under Guidelines Manual from 2006 or later;
c.	NEWRACE ⁷ = {1,2,3}	Race of defendant is White, Black, or Hispanic; ⁸
d.	GDLNEHI = {2D1.1, 2L1.1, 2K2.1, 2G2.2}	Chapter 2 Guideline §2D1.1, §2L1.1, §2K2.1, §2G2.2 applied;
e.	XCRHISSR = {1, 2, 3, 4, 5, 6}	Final Criminal History Category of I-IV;
f.	GDLNEHI = 2K2.1	Chapter 2 Guideline §2K2.1 applied;
g.	XCRHISSR = 4	Final Criminal History Category of IV;
h.	BASEHI = 20	§2K2.1(a)(4) Base Offense Level of 20;
i.	ADJ_BHI = 0	§2K2.1(b)(1) not applied;
j.	ADJ_CHI = 0	§2K2.1(b)(2) not applied;
k.	ADJ_DHI = 0	§2K2.1(b)(3) not applied;
l.	ADJ_EHI = 2	§2K2.1(b)(4) 2 level increase;
m.	ADJ_FHI = 0	§2K2.1(b)(5) not applied;
n.	ADJ_GHI = 0	§2K2.1(b)(6) not applied;
o.	ADJ_HHI = 0	§2K2.1(b)(7) not applied;
p.	ACCTRESP = -3	§3E1.1 applied with a 3 level decrease in offense level;
q.	XFOLSOR = 19	Final Adjusted Offense Level of 19.

9. Table statistics were calculated and reported according to the above parameters:

	Specifications	Table Description
Table 1	Not Applicable;	U.S. and Northern California District Racial Demographics
Table 2	(a)-(d)	Racial Composition of Sentencing Data and Individual Guidelines
Table 3	(a)-(c)	Present Custody Status, by Race, in the Sentencing Data
Table 4	(a)-(c), (f)	Present Custody Status, by Race, within Guideline §2K2.1
Table 5	(a)-(c), (f), (g)	§2K2.1 Treatment of all Criminal History Categories, by Race
Table 6	(a)-(c), (e), (f)	Northern California District §2K2.1 Treatment of Criminal History Category IV, by Race
Table 7	(a)-(c), (f)-(q)	Individuals sentenced under §2K2.1, in Criminal History Category IV, with Base Offense Level 20, no enhancements under §2K2.1(b), save for a 2-level enhancement under §2K2.1(b)(4), who received 3-level decrease under §3E1.1, and a Final Adjusted Offense Level of 19.

⁷ NEWRACE creates a fourth “Other” category that the analysis considers not to be descriptive. As the analysis focuses on the disparities present among Black, White, and Hispanic defendants, the variable NEWRACE is utilized, and does not report the statistics of the “Other” group.

⁸ Following the Sentencing Data, Hispanic is considered as a race for the purposes of this analysis, recognizing that the term “Hispanic” often refers to an ethnicity and not a race.

1 10. I reproduced the demographics information below from the United States Census
 2 Bureau’s Quick Facts Table⁹ of the United States Population and the Northern District
 3 of California¹⁰ as of July 1, 2019:

4 Table 1: U.S. Population and Northern District of California Racial¹¹ Demographics

Individual’s Race	Percent of U.S. Population	Percent of Northern District Population
White alone, not Hispanic or Latinx	60.1%	39.8%
Black or African American alone	13.4%	5.6%
Two or More Races	2.8%	4.7%
Hispanic or Latinx	18.5%	25.6%

10 11. I used the statistical software “R” to calculate and report the statistics regarding the
 11 racial composition of the entire Sentencing Data as well as Guidelines §2D1.1, §2L1.1,
 12 §2K2.1, §2G2.2:

13 Table 2: Racial Composition of Sentencing Data and Individual Guidelines

Region	Race	Sentencing Data	§2D1.1	§2L1.1	§2K2.1	§2G2.2	Total No. of Cases
National	Black	20.93%	26.97%	2.98%	49.37%	3.33%	177665
	White	24.43%	24.21%	16.36%	28.83%	85.05%	207310
	Hispanic	49.92%	45.58%	77.85%	18.92%	9.19%	423697
Ninth Circuit	Black	6.34%	6.48%	2.36%	23.37%	2.68%	10462
	White	24.91%	24.94%	34.93%	35.23%	79.72%	41074
	Hispanic	60.27%	60.94%	58.09%	31.6%	12.45%	99404
Northern California	Black	24.01%	21.49%	0%	58.05%	4.8%	1637
	White	23.6%	17.76%	14.29%	13.87%	70.31%	1609
	Hispanic	39.07%	49.25%	38.1%	22.82%	14.41%	2664

24
 25 ⁹ <https://www.census.gov/quickfacts/fact/table/US/PST045219>

26 ¹⁰ The racial demographics of the following fifteen counties are considered in Table 1, as defined
 27 by the Northern District Court Website: “Today, the boundaries of the Northern District of
 28 California encompass fifteen counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake,
 Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa
 Cruz, and Sonoma.” <https://www.cand.uscourts.gov/about/northern-district-history/>. Accessed
 April 3, 2021.

¹¹ These are intentionally limited to those racial groups that may be considered by the Sentencing
 Data NEW RACE variable, as discussed in Note 7.

1 12. Present custody status is not captured in the Sentencing Data. To calculate this, I used
 2 the statistical software “R” to add the sentence received in months to the month and year
 3 the defendant was sentenced in, subtracting the amount of time credited to the individual
 4 at sentencing.¹² Those with a resulting date on or after April 1, 2021 are counted as in
 5 custody.¹³

6 Table 3: Present Custody Status Overall, by Race¹⁴

Race	In	Out	No. of Cases
Black	36.01%	18.17%	177665
White	29.37%	23.52%	207310
Hispanic	30.91%	53.41%	423697

13 13. I conducted the same calculation using “R” to examine the custody status of those
 14 sentenced under §2K2.1:

16 Table 4: Present Custody Status within Guideline §2K2.1, by Race

Race	In	Out	No. of Cases
Black	61.05%	46.11%	38183
White	24.72%	29.97%	22294
Hispanic	12.22%	20.79%	14632

22
 23 ¹² Variables SENTOT0, SENTRYR, SENTMON, TIMSERVD, and TIMSERVM, respectively.

24 ¹³ The Sentencing Data does not capture sentencing date to the day. As such, I set each
 25 defendant’s date to the first of the month. This means that some individuals who will be released
 in April of 2021 are counted as currently in custody, despite the fact that some may be released on
 the first of the month and some on the 30th. There are 2724 such individuals, which is about 1.9%
 of those in custody, and .2% of the entire dataset.

26 ¹⁴ Comparing the results derived from the data with that which appears on the Federal Bureau of
 27 Prison’s (“BOP”) website, confirms the calculation’s approximate accuracy. Namely, the BOP
 reports 38.6% of individuals are Black, 57.5% are White, and 30.1% are Hispanic as of Saturday,
 28 March 27, 2021. Taking into account that the BOP provides statistics on race and ethnicity
 independently, it is likely a good percentage of the 30.1% Hispanic folks make up the 57.5% of
 White folks: https://www.bop.gov/about/statistics/statistics_inmate_race.jsp

14. I used "R" to examine how individuals in Criminal History Category IV are sentenced:

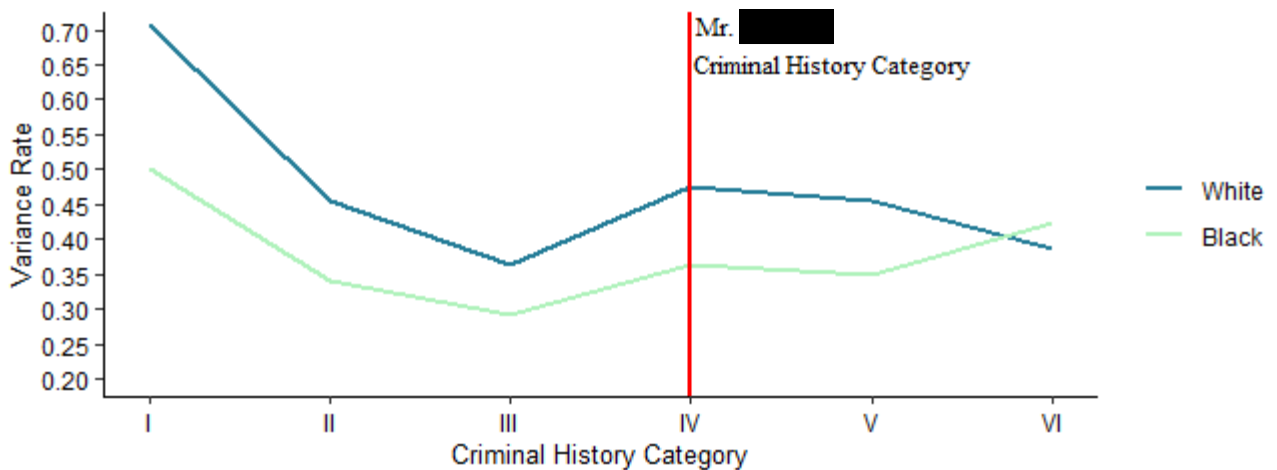
Table 5: §2K2.1 Treatment of Criminal History Category IV, by Race¹⁵

Group	%N	N	Variance Rate	Median Guidelines Range
National	100%	13821	31.92%	46-57
Black	60.61%	8377	30.37%	51-63
White	23.55%	3255	35.36%	46-57
Hispanic	12.99%	1796	31.9%	46-57
Ninth Circuit	100%	1503	42.25%	37-46
Black	32.34%	486	41.77%	46-57
White	31.54%	474	46.62%	37-46
Hispanic	24.95%	375	40.27%	37-46
Northern California	100%	196	38.27%	39-48
Black	65.82%	129	36.43%	46-57
White	10.71%	21	47.62%	46-57
Hispanic	20.92%	41	36.59%	37-46

15. I used "R" to generate statistics regarding the Variance Rate in each Criminal History Category ("CHC") in the Northern District of California, within Guideline §2K2.1:

Table 6: Northern California District CHC Variance Rates, by Race

CHC	I	N.I	II	N.II	III	N.III	IV	N.IV	V	N.V	VI	N.VI
Black	50%	14	34.21%	38	29.17%	120	36.43%	129	34.82%	112	42.45%	106
White	70.59%	17	45.45%	11	36.36%	22	47.62%	21	45.45%	22	38.71%	31
White	20.59%		11.24%		7.2%		11.18%		10.63%		-3.74%	



¹⁵ N = Number of cases; % N = the percentage of total cases; Variance Rate = the percentage of defendants who received a sentence below the low end of the Guidelines Range; Median Guidelines Range = the median of the low end of the Guidelines Range across defendants, and the median of the high end of the Guidelines Range across defendants.

1 16. I used "R" to calculate and report the following statistics for individuals with
 2 characteristics similar to Mr. [REDACTED] as outlined in the Variable Specifications table:

3 Table 7¹⁶

4 Group	%N	N	% ≤ 36	Var. Rate	Min.	1st Qu.	Median	Mean	3rd Qu.	Max.
5 National	100%	690	20.43%	32.03%	0	39	46	44.99	50	180
6 Black	68.41%	472	21.4%	32.63%	0	38.75	46	44.58	50	117
7 White	17.54%	121	17.36%	31.4%	0	40	46	45.84	50	180
8 Hispanic	10.87%	75	22.67%	33.33%	9.62	37	46	43.65	51	72
9 Ninth Circuit	100%	110	31.82%	42.73%	0	36	46	40.75	48	94
10 Black	51.82%	57	36.84%	43.86%	0	30	46	38.3	46	57
11 White	22.73%	25	32%	48%	12.03	36	46	42.28	48	72
12 Hispanic	14.55%	16	31.25%	43.75%	9.62	34.75	46	40.73	51	57
13 N.D. California	100%	17	41.18%	47.06%	0.03	36	46	38.53	46	51
14 Black	88.24%	15	40%	46.67%	0.03	35	46	38.2	46	51
15 White	5.88%	1	100%	100%	36	36	36	36	36	36
16 Hispanic	5.88%	1	0%	0%	46	46	46	46	46	46

17
 18 I declare under the penalty of perjury that the foregoing is true and correct.

19 Executed on April 6, 2021, in San Francisco, California.

20 

21 _____
 LISA TARASYUK

22
 23
 24
 25
 26 ¹⁶ N = Number of cases; % N = the percentage of total cases; % ≤ 36 = the percentage of individuals
 27 sentenced to 36 months or less; Var. Rate = the percentage of defendants who received a sentence
 28 = average sentence; 3rd Qu. = 75% of sentences are less than this sentence; Max = greatest
 sentence in months.