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United States of America

9 UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA ) No. ED CR 08-244-VAP  
12 )  
Plaintiff, ) GOVERNMENT'S SENTENCING POSITION  
13 ) STATEMENT FOR SENTENCING OF  
v. ) DEFENDANT FRANK DARRYL HOLDER  
14 )  
FRANK DARRYL HOLDER, ) Sentencing Date: Nov. 30, 2009  
15 ) Time: 9:00 a.m.  
16 )  
17 )  
Defendant. )  
18 )

19 Pursuant to Rule 32(f) of the Federal Rules of Criminal  
20 Procedure, plaintiff United States of America hereby submits its  
21 position regarding the sentencing of defendant FRANK DARRYL  
22 HOLDER ("defendant"). The government hereby accepts the factual  
23 findings and guideline calculations in the Guideline Presentence  
24 Report and Sentence Recommendation ("PSR") for defendant Holder.

25 The government, however, disagrees with the Probation  
26 Office's recommendation that defendant be sentenced to a term of  
27 36 months of imprisonment with a three year period of supervised  
28 release. (See Probation Office's Sentencing Recommendation

1 Letter filed October 26, 2009, pgs. 1-2). The PSR found  
2 defendant's total adjusted offense level to be 25 and defendant's  
3 criminal history category to be I, with a Guidelines range of 57  
4 to 71 months. The government submits that a low end sentence of  
5 57 months imprisonment would be the more appropriate sentence in  
6 this case where defendant admitted in his plea agreement that he  
7 had robbed two banks over a two week period in October 2008, and  
8 additionally admitted during a Mirandized interview to robbing  
9 two other banks in February and April 2008.

10 **The Charge and Conviction**

11 On August 17, 2009, defendant pleaded guilty to counts one  
12 and two of the Indictment, charging him with Bank Robbery, in  
13 violation of Title 18, United States Code, Section 2113(a),  
14 pursuant to a written plea agreement. (PSR, ¶¶ 1-6).

15 Specifically, defendant admitted in his plea agreement that:

16 "On or about October 15, 2008 defendant entered Union Bank  
17 of California, located at 601 West Route 66, Glendora within the  
18 Central District of California. Defendant walked up to the bank  
19 teller C.M., and while holding up a canvas bag, demanded that  
20 C.M. give him all her money from the top and bottom cash drawers.  
21 C.M. placed money from both cash drawers in the canvas bag.  
22 Defendant took the canvas bag and left the bank with  
23 approximately \$1,392.00 of the bank's money.

24 On or about October 29, 2008 defendant entered Bank of  
25 America, located at 11570 4<sup>th</sup> Avenue, Rancho Cucamonga, within  
26 the Central District of California. Defendant walked up to the  
27 bank teller C.J., placed a canvas bag on the counter, and

1 demanded money from the top and bottom cash drawers. C.J. placed  
2 money from both cash drawers in the canvas bag. Defendant took  
3 the canvas bag and left with approximately \$2,546.00 of the  
4 bank's money. Defendant walked along the sidewalk toward his  
5 pick-up truck when the dye pack exploded inside his canvas bag.  
6 Defendant was stopped and arrested by the San Bernardino  
7 Sheriff's Department (SBSD) near the intersection of Whittram and  
8 Ilex in Rancho Cucamonga. Approximately \$2,546.00 was recovered  
9 from defendant's truck.

10 At the time of the above robberies, Union Bank of California  
11 and Bank of America were federally insured by the FDIC. Bank  
12 Tellers C.M. and C.J. were all intimidated by defendant and  
13 feared for their safety. For that reason, each of the bank  
14 tellers complied with defendant's demands for money from their  
15 cash drawers." (Defendant's Amended Plea Agreement filed August  
16 17, 2009).

#### 17 The Guidelines Calculations

18 The Probation Office has determined that defendant's base  
19 offense level is 20, pursuant to United States Sentencing  
20 Guidelines ("U.S.S.G.") Section 2B3.1(a), the Guidelines section  
21 dealing with robbery. The Probation Office assessed an  
22 additional two points because the property of a financial  
23 institution was taken, pursuant to Section 2B3.1(b)(1) and an  
24 additional five points, pursuant to Section 2B3.1(b)(2)(C)  
25 because the defendant admitted that he possessed a .45 caliber  
26 pistol under his shirt when he robbed the Bank of America branch  
27 on October 29, 2008. (PSR, ¶¶ 24-26). The Probation Office also

1 assessed an additional one point multiple count adjustment  
2 pursuant to U.S.S.G. §§ 3D1.2-3D1.4, because defendant pleaded  
3 guilty to two counts of bank robbery. (PSR, ¶¶ 37-42). Finally,  
4 defendant received a 3-level decrease for acceptance of  
5 responsibility (U.S.S.G. § 3E1.1(a), (b)), resulting in an  
6 adjusted total offense level of 25. (PSR, ¶ 43-44).

7 The Probation Office determined that defendant had zero  
8 criminal history points, placing defendant in criminal history  
9 category I. (PSR, ¶¶ 53-54). The government concurs with these  
10 findings and calculations in the PSR.

11 Defendant's offense level of 25 and his criminal history  
12 category of I, results in a sentencing guideline range of 57 to  
13 71 months. (PSR, ¶ 102).

#### 14 **The Government's Sentencing Request**

15 Considering defendant's guideline range and the factors set  
16 forth in 18 U.S.C. § 3553(a), the Probation Office recommends  
17 that defendant be sentenced to a below Guidelines sentence of 36  
18 months imprisonment, no fine, three years of supervised release  
19 and a \$200 special assessment, plus restitution in the amount of  
20 \$1,392. (See Probation Office's Sentencing Recommendation  
21 Letter, at 1-2).

22 For the reasons listed below, the government respectfully  
23 disagrees with the Probation Office's recommendation and  
24 maintains that, after considering the factors enumerated in 18  
25 U.S.C. § 3553(a), and in accordance with the plea agreement,  
26 defendant should be sentenced in accordance with the Guidelines  
27

1 to a low-end term of imprisonment of 57 months. The government  
2 specifically requests that defendant be sentenced as follows:

3       Imprisonment:                   57 months  
4       Supervised Release:           3 years, on the terms recommended  
5   by the Probation Office  
6       Fine:                             \$0  
7       Special Assessment:            \$200

8       **The Government Submits That the Application of the Sentencing**  
9       **Factors in 18 U.S.C. § 3553(a) Warrants a Sentence of 57 Months**  
10       **Imprisonment**

11       The government recognizes that the Guideline range of 57 to  
12       71 months is now advisory. The government submits that a  
13       Guideline sentence is appropriate, here, and thus disagrees with  
14       the Probation Office that the sentence should be below the  
15       properly calculated Guideline range. The government recognizes,  
16       as the Probation Office notes, that defendant's history -- absent  
17       his actions robbing these banks -- shows him to be something of  
18       an exemplary citizen with a distinguished and lengthy military  
19       and public service record. Nevertheless, based on the  
20       seriousness of the crime, including defendant's committing  
21       multiple bank robberies and admittedly possessing a firearm  
22       during the last robbery, the government respectfully submits that  
23       a Guideline sentence of 57 months, at the low-end of the  
24       Guideline range, is the appropriate and reasonable sentence in  
25       this case.

26       18 U.S.C. § 3553(a)(1) requires the Court to consider the  
27       nature and circumstances of the offense and the history and  
28       characteristics of defendant. The offenses in this case are

1 crimes of violence, even though no weapon was brandished or even  
2 mentioned. Robbing a bank is a serious offense, inherently  
3 dangerous and frightening to all of the victims or law  
4 enforcement personnel who come into contact with the perpetrator.  
5 The seriousness of the offense is readily apparent, and here,  
6 defendant possessed a firearm during one of the robberies adding  
7 to the potential danger and seriousness.

8         Considering defendant's history and characteristics, the  
9 government does not dispute as the Probation Office notes, that  
10 other than his participation in multiple bank robberies,  
11 defendant seems to have lived an exemplary and law abiding life.  
12 Defendant had a long and praiseworthy career serving in the  
13 military and on two police forces. Defendant has no criminal  
14 history and has raised two sons who are also police officers  
15 committed to public service. (PSR, ¶ 70). The Probation Office  
16 also notes that a psychological report shows that defendant was  
17 diagnosed with post traumatic stress disorder and dysthymia, both  
18 of which began early on in his life. (PSR, ¶¶ 75-76). It is a  
19 study in contradiction that this defendant could have such a  
20 record and still commit multiple crimes of violence.

21         Defendant's history and characteristics show him to be a man  
22 who was "admired and looked up to." (PSR ¶ 85). He has what  
23 could be seen as a strong social support network, with a marriage  
24 of more than 30 years to a woman who describes him as "the  
25 perfect husband, father and grandfather," two exemplary children  
26 and two grandchildren. (PSR ¶ 69-71). He has a home, no health  
27 problems, and no history of substance abuse. (PSR ¶¶ 72, 74 and  
28

1 78). He was retired, with a significant pension of almost  
2 \$87,000 a year. (PSR ¶ 95). Even considering the explanation  
3 provided by the examining psychologist, however, that the highly  
4 focused nature of the tasks defendant performed in the army and  
5 as a police officer enabled defendant to "overcome his depressive  
6 affect and function well," such an explanation does not seem to  
7 adequately account for defendant's wholesale abandonment of his  
8 prior exemplary history in favor of such dangerous criminal  
9 behavior, over a period of 8-9 months, for financial gain.

10 In contrast to the view that defendant's actions can be  
11 seen as simply an aberrational period prompted by psychological  
12 distress, much of defendant's exemplary prior history can also be  
13 seen as having provided reason not to commit these crimes and  
14 reason to, frankly, know better. Defendant's position as a 35  
15 year police veteran, having a stable family and home-life and a  
16 significant pension could realistically be seen as the type of  
17 history that makes his conduct worse than that of more typical  
18 bank robbery offenders whose actions are motivated by substance  
19 abuse issues or follow long histories of abuse and neglect. All  
20 too often this Court is called upon to sentence defendants who  
21 have not had the opportunities and support, whether familial or  
22 financial, that this defendant appears to have. As such,  
23 considering both the mitigatory and aggravating nature of how  
24 defendant's prior history can be viewed, the government submits  
25 that based on defendant's history and characteristics, the  
26 reasonable and appropriate sentence in this case is the within  
27 Guidelines sentence that it recommends.

1 18 U.S.C. § 3553(a)(2) requires the Court to consider the  
2 need for the sentence to reflect the seriousness of the offense,  
3 to promote respect for the law, to provide just punishment for  
4 the offense, to afford adequate deterrence to criminal conduct,  
5 to protect the public from further crimes of defendant, and to  
6 provide defendant with needed educational or vocational training,  
7 medical care, or other correctional treatment in the most  
8 effective manner. The sentence requested by the government for  
9 the conduct will fulfill all of these factors.

10 The offenses here, multiple bank robberies, are quite  
11 serious crimes of violence. While it appears self-evident that  
12 defendant's history shows respect for the law, his actions as a  
13 former long time police veteran who embarked on the instant  
14 criminality tends to undercut the inference that this respect  
15 continues without question. In recommending a below Guidelines  
16 sentence, the Probation Office notes that defendant has now come  
17 to grips with his financial and psychological issues and is aware  
18 that he has a strong support system. (See Probation Office's  
19 Sentencing Recommendation Letter, at 4). Implicit in its below  
20 Guidelines recommendation is the inference that the 3553(a)(2)  
21 factors of just punishment for the offense, adequate deterrence  
22 and protection of the community can be amply addressed through  
23 such a sentence. Again, however, defendant's situation can also  
24 be seen as requiring at least a Guidelines sentence because he  
25 was able to ignore or overcome his long history of law  
26 abiding/upholding in order to commit these crimes. While the  
27 government is not saying that defendant's punishment should be

1 worse than the typical offender's because of his praiseworthy  
2 history prior to the instant offenses, it respectfully submits  
3 that there is likewise no reason, pursuant to § 3553(a), to  
4 sentence defendant to less than that called for by the Guidelines  
5 for a typical offender in this situation. Indeed, the facts  
6 revealed in the PSR frequently seem to cut both ways.

7 For example, it is not unreasonable to posit that bank  
8 robberies committed by a former long time law enforcement officer  
9 are more serious than those conducted by a typical offender as  
10 the former's experience could place him in a better position to  
11 escape detection. What is more, defendant, as a former police  
12 officer, should have known far better than the typical offender  
13 why introducing a loaded weapon into the scenario could have led  
14 to tragedy far beyond that which occurred from his need for  
15 financial gain. Similarly, defendant, from his long history as a  
16 police officer, would have been in a much better position than a  
17 typical defendant to judge the potential impact even a run of the  
18 mill bank robbery (with no weapon involved) would have on the  
19 victim bank tellers, who possibly will never forget the  
20 experience of such a traumatic event as being robbed. Indeed,  
21 defendant, from his long law enforcement experience and training  
22 perhaps should have been more aware of the opportunities for  
23 counseling for mental health issues, as he no doubt encountered  
24 this all too frequent trigger to criminality during the course of  
25 his long career.

26 In sum, the government understands and notes defendant's  
27 unique situation, but is still recommending a Guidelines sentence

1 because such a sentence will take into account both the  
2 mitigatory and aggravating nature of how defendant's actions can  
3 be viewed from the perspective of the victim tellers and others,  
4 when looking at each of the 3553(a)(2) factors of seriousness of  
5 the offense, promoting respect for the law, providing just  
6 punishment, affording adequate deterrence to criminal conduct,  
7 and protecting the public from further crimes of defendant.

8 18 U.S.C. § 3553(a)(4) & (5) now merely requires the Court  
9 to take the Sentencing Guidelines as "advisory." 18 U.S.C.  
10 § 3553(a)(6) requires the Court to minimize sentencing disparity  
11 among similarly situated defendants, and use of the advisory  
12 Guideline Sentence will ensure that defendant's sentence is  
13 comparable to other similarly situated defendants. In this case  
14 in particular, a Guidelines sentence is necessary to do justice  
15 to the principle that similarly situated defendants should be  
16 treated similarly. Here, defendant admitted to having committed  
17 multiple bank robberies. His Guideline range accounts for both  
18 his lack of criminal history and the offense, but there are facts  
19 about defendant's history and the nature of the offense that,  
20 when viewed in context, can be seen as either mitigating or  
21 aggravating. The government submits that in the end, how these  
22 facts are viewed essentially balances out as neither mitigating  
23 nor aggravating, leaving defendant in the situation of a typical  
24 bank robbery offender. Thus, considering this defendant's  
25 individual specific circumstances, and considering the Guidelines  
26 as the "starting point and initial benchmark," not to be given  
27 more or less weight than the other § 3553(a) factors that are to

1 be taken into account in arriving at an appropriate sentence (See  
2 United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008)), a  
3 low-end Guidelines sentence is appropriate here to hold defendant  
4 accountable for his actions as a former long time law enforcement  
5 officer who robbed multiple banks, for what was at base simple  
6 financial gain, while paying heed to his otherwise exemplary  
7 history. A Guidelines sentence will fulfill the need to treat  
8 this defendant comparably to those similarly situated while  
9 accounting for "defendant-specific § 3553(a) mitigating or  
10 aggravating factors" so that the sentence fully, adequately, and  
11 reasonably reflects the sentencing factors. United States v.  
12 Amezcuva-Vasquez, 567 F.3d 1050, 1056 (9th Cir. 2009).

13 Finally, 18 U.S.C. § 3553(a)(7) requires the Court to  
14 consider restitution, and the government recommends that  
15 defendant be ordered to pay \$1,392 in restitution to Union bank  
16 of California as set forth in the Probation Office's  
17 recommendation letter. (See Probation Office's Sentencing  
18 Recommendation Letter, at 1).

19 **Conclusion**

20 For the reasons set forth above, the government submits that  
21 the requested sentence of 57 months pursuant to the applicable  
22 sentencing Guidelines in this case, adequately accounts for the  
23 circumstances surrounding defendant's offense, and that a  
24 sentence of 57 months imprisonment appropriately reflects the  
25 goals and purposes of sentencing set forth in 18 U.S.C. § 3553(a)  
26 for this defendant.

27 Dated: November 9, 2009

Respectfully Submitted,

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