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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY ALLEN JUSTICE,

Defendant.

No. CR 16-499-GW

GOVERNMENT'S RESPONSE TO PRE-
SENTENCE INVESTIGATION REPORT AND
POSITION WITH RESPECT TO
SENTENCING OF DEFENDANT GREGORY
ALLEN JUSTICE; EXHIBITS

Sentencing Date: Sept. 18, 2017
Sentencing Time: 8:00 a.m.

Plaintiff United States of America, by and through its counsel of record, the Office of the United States Attorney for the Central District of California and undersigned counsel, hereby files the Government's Response to Pre-Sentence Investigation Report and Position with Respect to Sentencing of Defendant Gregory Allen Justice.

The government's sentencing position and response to the Pre-Sentence Investigation Report (the "PSR") is based upon the attached sentencing memorandum and exhibits, the files and records in this

1 case including the PSR, the plea agreement, and the affidavit in
2 support of the criminal complaint, and such further evidence and
3 argument as the Court may permit.

4 Dated: August 21, 2017

Respectfully submitted,

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9 Chief, National Security Division

10 /s/

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

While working as an employee of a cleared defense contractor, defendant met on multiple occasions with a person he thought was an agent of a Russian intelligence service. At those meetings, defendant handed over thumb drives containing trade secrets and technical data controlled for export from the United States related to military satellites, which files defendant had downloaded from his employer's computer network just before each meeting. Defendant understood the sensitivity of the data he stole and supplied, explained its significance and how the data could be used to exploit U.S. satellites, and continued meeting knowing that the information would be sent "to Moscow" and that his Russian handler likened his role to the characters in the television show "The Americans."

Defendant's Russian "handler" was in reality an under-cover employee ("UCE") of the Federal Bureau of Investigation ("FBI"). While defendant told the UCE that his motive to sell secrets was to pay for his wife's medical bills, in fact, defendant sent much of the \$3,500 cash he received from the UCE to his online paramour. That cash was just a portion of over \$20,000 defendant mailed to his paramour, in addition to televisions and other gifts he sent to her; meanwhile, defendant told his wife she needed to cancel her upcoming medical appointments because he did not have the money to pay for them. Worse still, defendant leveraged his secret relationship with the UCE to barter secrets for Anectine, a muscle relaxant that defendant intended to administer to his wife unwittingly--as the evidence below shows--in order to kill her.

1 The government agrees with the factual findings and Guidelines
2 calculations in the Pre-Sentence Investigation Report ("PSR")
3 prepared by the U.S. Probation Office ("USPO"), with one exception:
4 the evidence shows that the offense involved the conscious or
5 reckless risk of death or serious bodily injury, which warrants the
6 application of a two-level enhancement. This one enhancement is the
7 only disputed guidelines factor under the plea agreement.

8 Defendant betrayed his country, sold out his employer, and
9 prepared to kill his wife. Regardless of whether that enhancement
10 is applied, the facts set forth below supporting are, at a minimum,
11 aggravating and should be accounted for under 18 U.S.C. § 3553(a),
12 and thus a sentence of eighty-seven months' imprisonment, three
13 years of supervised release, and a \$100 mandatory special assessment
14 is a just punishment for defendant's conviction for committing
15 economic espionage and violating the Arms Export Control Act.

16 **II. FACTUAL BACKGROUND**

17 **A. Procedural History**

18 After a meeting with the UCE, defendant was arrested pursuant
19 to a complaint on July 7, 2016, and was ordered detained. (CR 1, 7,
20 9.) Defendant was indicted on July 19, 2016, for the same two
21 charges contained in the complaint: Count One charged defendant
22 with attempted economic espionage in violation of 18 U.S.C.
23 § 1831(a)(5), and Count Two charged defendant with attempting to
24 send export-controlled technical data out of the United States in
25 violation of the Arms Export Control Act ("AECA"), 22 U.S.C.
26 § 2778(b)(2) and (c), and the International Traffic in Arms
27 Regulations ("ITAR"), 22 C.F.R. § 127.1(a) and (e). (CR 13.) Those
28 charges arose from one of defendant's meetings with the UCE on March

1 4, 2016, when defendant provided a USB thumb drive containing files
2 defendant had downloaded from his employer's computer network.

3 Defendant pled guilty to both counts of the indictment pursuant
4 to a plea agreement on May 22, 2017. (CR 34, 36.)

5 The USPO disclosed the PSR and its recommendation letter (the
6 "USPO Letter") on August 7, 2017. (CR 37, 38.)

7 **B. Defendant Supplied a Person He Thought Was a Russian Spy**
8 **with Sensitive Military Satellite Technology**

9 Defendant's offense conduct is set forth in detail in the
10 affidavit in support of the complaint (CR 1), the plea agreement (CR
11 34 ¶ 14), and the PSR (¶¶ 15-43, ¶¶ 91-97). Defendant was an
12 engineer at a cleared defense contractor ("Cleared Contractor A"),
13 where he worked on multiple military and U.S. government satellite
14 programs, including the Wideband Global Satellite Communications or
15 "WGS." (PSR ¶¶ 16).

16 Between February and July 2016, defendant met in person with the
17 UCE six times, first in a public location and each of the following
18 meetings in a hotel room. At all of the hotel meetings, defendant
19 provided a USB thumb drive containing files he had downloaded from
20 Cleared Contractor A's computer network, and the UCE gave defendant
21 first \$500 and then \$1,000 cash at each of the subsequent meetings
22 (except the last when defendant was arrested). (PSR ¶¶ 28-29, 32,
23 35, 37, 40.) Defendant understood that the information he provided
24 would be sent "back to Moscow and they will review this," and
25 defendant also understood the security risks in his endeavor. (PSR
26 ¶ 26.)

27 Defendant entered into this relationship, with a person who he
28 thought was a Russian spy, with eyes wide open. Defendant asked the

1 UCE about his place in Russian intelligence services, asking if the
2 UCE was "in the FSB."¹ (PSR ¶ 27.) The UCE said that he was not,
3 that he was in the SVR, which he likened to the American CIA. (Id.)
4 The UCE said that the best way to explain his position was by
5 reference to the television show "The Americans," which defendant
6 said he had seen. (Id.)

7 The four trade secrets that are the subject of the charges were
8 downloaded by the defendant on March 2, 2016, among 29 items that
9 defendant downloaded onto a USB thumb drive. (Complaint Aff. ¶ 52.)
10 Defendant provided the USB drive to the UCE when they met in a hotel
11 room on March 4, 2017. (PSR ¶ 32.) Those trade secrets all related
12 to WGS: one related to verifying encryption and decryption
13 functionality; another related to testing the satellites operations;
14 another related to the plan used to develop the firmware that will be
15 installed on WGS satellites; and another related to the plan used to
16 test the configuration of Cleared Contractor A's sensitive anti-
17 jamming technology used on WGS satellites. (PSR ¶¶ 18-21; Plea Agt.
18 ¶ 14.b.i-iv.) Those files are covered by Category XV(f) of the
19 United States Munitions List, and thus controlled for export by the
20 ITAR, which requires a license before they could be exported to any
21 country or disclosed to foreign persons. (PSR ¶ 23.) The cost of
22 developing those four files, as determined by a subject matter expert
23 who examined the contracts and files, is \$3,186,072. (PSR ¶ 44, 58;
24 Plea Agt. ¶ 14.w, 16.a.)

25
26
27 ¹ The "FSB," or Federal Security Service of the Russian
28 Federation, is the principle security agency of the Russian
government and the main successor agency to the KGB, the Soviet-era
intelligence agency.

1 Those four files are a fraction of the total files for WGS and
2 other satellite programs that defendant supplied the UCE. (E.g.,
3 Complaint Aff. ¶ 44.d ("Copying 46 items (148 MB)"), ¶ 61.d ("Copying
4 8 items (14.5 MB)" and "Copying 19 items (82.9 MB)"), ¶ 73.c
5 ("Copying 15 items (11.4 MB)"); PSR ¶ 34 (defendant provided
6 information related to GPS satellites to the UCE), ¶¶ 32, 35
7 (defendant provided data related to TDRS satellite to the UCE).) At
8 the second-to-last meeting, defendant said that he had brought all of
9 the schematics for how the satellite was built, explaining that what
10 he provided would allow the UCE's associates to build and test it
11 themselves. (PSR ¶ 37.)

12 Defendant knew well the sensitive nature of the files that he
13 stole and delivered to the person he thought was a Russian spy.
14 Defendant had access to these sensitive files by virtue of his
15 position at Cleared Contractor A. (PSR ¶ 65.) He was trained on the
16 sensitivities regarding export controls, and circumvented the
17 measures that Cleared Contractor A used to maintain the information
18 contained in the files as confidential technical data and trade
19 secrets. (PSR ¶ 22, 24.) In describing the materials he gave to the
20 UCE, defendant said they were "considered trade secrets so none of
21 that's gunna be available" on the Internet. (PSR ¶ 25.) Showing he
22 knew exactly the type of sensitive technical data he had secreted
23 from his employer and the illegality of doing so, defendant
24 repeatedly described it as material controlled by ITAR. At one
25 meeting defendant told the UCE that "everything is ITAR. Do you know
26 ITAR?" (PSR ¶ 25.) At the third meeting, defendant confirmed that
27 "everything that we have is going to be governed by ITAR" (PSR ¶ 31),
28 described ITAR more in the fourth meeting (PSR ¶ 34), and in the

1 fifth meeting explained more research he had done into ITAR (PSR
2 ¶ 36). After defendant was arrested, in a recorded and Mirandized
3 interview, defendant said he knew what he was doing was "pretty
4 illegal."

5 Defendant confirmed, for example, that all of the GPS
6 information he provided was current (PSR ¶ 34), provided a
7 handwritten document related to a sensitive component of the WGS
8 system (Id.), and suggested that the information he provided could be
9 used to intercept communications--or even substitute communications
10 (PSR ¶ 37). Just before he was arrested, defendant offered to
11 continue helping the UCE in new ways: defendant offered to plug in a
12 portable hard drive in order to copy information from a classified
13 computer system in a facility to which he had just gained access. He
14 also offered to give a tour of his work facility to the UCE, during
15 which he would allow the UCE to wear glasses that allowed him to take
16 photographs of the facility--which defendant knew was prohibited due
17 to the highly sensitive nature of the work conducted there. (PSR
18 ¶¶ 38-39.)

19 **C. Defendant's Wife and Online Paramour, and His Attempt to**
20 **Acquire Anectine**

21 At the outset of their relationship, the UCE asked defendant why
22 he sought out Russia and what defendant expected. Defendant said
23 that his wife's medical care was expensive and that he needed money.
24 (PSR ¶ 25; Complaint Aff. ¶¶ 42.a, 42.j.) Defendant later cited his
25 debt and "medical bills" when suggesting that the UCE ask his
26 superiors to assess the value of the information he supplied. (PSR
27 ¶ 27; Complaint Aff. 45.e ("[M]y wife is going to need medical care
28 for the rest of her life, so that number will grow.").)

1 While purporting to be driven by desperation and a desire to
2 provide for his wife's medical needs, defendant actually diverted
3 most of the \$3,500 cash he got from the UCE to his online paramour, a
4 woman he had never met in person and knew as "Chay." (PSR ¶ 42.)
5 The cash that defendant received from the UCE, however, was only a
6 small portion of at least \$21,420 in cash that defendant sent by
7 FedEx to Chay between December 2015 and May 2016. (PSR ¶ 43.) In
8 addition to cash, defendant also sent Chay various consumer goods
9 including televisions, a purse, a fan, a grill, and furniture.
10 (Complaint Aff. ¶ 31.)

11 While diverting over \$20,000 in cash to his paramour, whom he
12 had never met, defendant told his wife to cancel all of her upcoming
13 medical appointments for the foreseeable future because they did not
14 have the money to repair the car to bring her there. (Complaint Aff.
15 ¶ 24.)

16 But defendant plotted a darker path. Defendant began asking the
17 UCE for Anectine. (PSR ¶¶ 91-93.) Anectine, also known as
18 succinylcholine chloride, is a muscle relaxant for intravenous
19 administration generally administered in a hospital, doctor's office,
20 or clinic, and it can result in rapid muscle breakdown leading to
21 life-threatening symptoms, including cardiac arrest. (PSR ¶ 91 &
22 n.1.) During the fifth meeting on May 12, 2016, defendant said the
23 following to the UCE:

24 Anectine was one of the things they gave her to help her,
25 to help her relax her chest to be able to breathe. Um, so,
26 you know you, how you're supposed to breathe, right?
27 You're not supposed to breathe with your chest, you know,
28 you're not supposed to do that. Breathe with the
diaphragm. Like this. So the problem is, because of the
diabetes, she's gained so much weight that when she's
asleep, her diaphragm can't expand this way, so, so she
breathes like this, and her chest gets really tight so,

1 instead of, she's breathing like, and that was one of the
2 first things they saw in the sleep study so they gave her,
3 gave a shot of this muscle relaxer and almost instantly,
4 she's still breathing in her chest instead of down here,
5 but she was able to breathe much, much easier.

6 (PSR ¶ 93; Exh. A.) During the last meeting, just before he was
7 arrested, when the UCE brought a substance that he professed was
8 Anectine, defendant said he planned to administer it to his wife.
9 When asked if he had experience with this, defendant said that he had
10 been practicing with insulin. (Exh. B at 18-19.) When told that
11 Anectine could be very dangerous, defendant said that any medication
12 can be risky, and reiterated that he wanted it in order to help her
13 sleep. (Id. at 19-20.)

14 In fact, his wife had never received Anectine, it had never been
15 administered by the sleep center she visited, and it had never been
16 prescribed by the sleep center. (PSR ¶ 95; Complaint Aff. ¶ 69.) In
17 other words, defendant's account of his wife's expectation to be
18 injected with Anectine was fabricated.

19 In a post-arrest interview, defendant admitted that he had
20 planned to administer the putative Russian intelligence officer's
21 Anectine to his wife, that his wife did not know about Anectine and
22 had never consented to use it, that defendant had researched the drug
23 and was aware that outside of a hospital setting Anectine was most
24 often used as a poison "for killing," and that he had read about one
25 or more instances in which Anectine had been used as a murder weapon.
26 (PSR ¶ 97.)

27 Specifically, during his post-arrest statement, defendant said
28 that his "intent was that I would give it to my wife to help her
29 breath and help her sleep." The interviewing FBI agent inquired what
30 would happen if he asked defendant's wife about a prescription for

1 Anectine, and defendant said, "she doesn't have one." When asked a
2 similar question about inquiring of defendant's wife as to
3 conversations they had had about using Anectine to help her,
4 defendant said "we haven't had one." The agent then asked defendant
5 what his wife's reaction would be if she realized what Anectine would
6 do. Defendant explained that his wife was not familiar with
7 Anectine. Defendant said he intended to use it with his wife, and
8 reiterated that it was to help her sleep; however, he also admitted
9 that he had never discussed it with her and that she had never taken
10 it or ever had a prescription for it. Defendant said that several
11 months ago his colleague had showed him a story about a nurse who had
12 used Anectine to kill children, and that defendant understood that
13 Internet searching for Anectine brought up results "about killing."
14 Defendant said he understood that one "had to be very careful with
15 it," and that when used outside of a hospital setting, Anectine was
16 most often used "for killing." When asked what the agent was
17 supposed to think when evaluating the facts that defendant had just
18 acknowledged, defendant said: "You're supposed to think I'm trying
19 to kill my wife." Defendant said this would be a reasonable
20 assumption. Defendant nonetheless maintained that he was just trying
21 to help his wife sleep. Defendant acknowledged that "an overdose
22 would be lethal," but maintained that he did not intend to administer
23 a lethal dose to his wife--that it would be "unacceptable."²

27
28 ² The government may play several minutes of the video of
defendant's post-arrest statement on this topic at the sentencing
hearing.

1 Defendant had viewed multiple web pages relating to Anectine and
2 its generic name, including one that made reference to its use as a
3 poison in connection with a murder. (PSR ¶ 96; Exh. C.)

4 Thus, the following facts are undisputed:

- 5 • Defendant intended to administer the Anectine to his wife,
6 and his wife did not know about that plan.
- 7 • Defendant knew that Anectine was used for killing outside
8 of a hospital setting.
- 9 • Defendant knew there was a lethal risk of overdosing on
10 Anectine.
- 11 • Defendant was not aware of what a "safe" dose of Anectine
12 would be -- or even if there could be such a thing outside
13 of a hospital setting.
- 14 • Defendant lied about having a prescription.
- 15 • Defendant lied about his wife's alleged prior use of
16 Anectine at a sleep center.
- 17 • Defendant lied about his wife knowing about it at all.
- 18 • Defendant conducted online research about Anectine and its
19 use as a poison.
- 20 • Defendant sought to obtain this lethal drug for his wife,
21 without her knowledge, from a Russian intelligence agent in
22 a transaction that defendant presumed would never see the
23 light of day.

24 **III. GOVERNMENT'S SENTENCING POSITION AND RECOMMENDATION**

25 **A. Sentencing Guidelines Calculation**

26 As set forth in the plea agreement, the parties agree on a
27 number of sentencing factors, which collectively amount to an
28 offense level of 25. The parties have left open the enhancement for

1 conscious or reckless risk of death or serious bodily injury, which,
2 if applied--as the government submits it should be--would result in
3 an offense level of 27.

4 Defendant has pled guilty to two counts. The parties agree
5 that the offenses group under U.S.S.G. § 3D1.2(a) and § 3D1.2(b),
6 and that the count with the higher offense level will be the offense
7 level for the single group. Plea Agt. ¶ 18.

8 As to Count One, the parties agree that the base offense level
9 is 6 (U.S.S.G. § 2B1.1(a)(2)), that a four-level enhancement applies
10 for misappropriating a trade secret knowing and intending it would
11 benefit a foreign government, agent, or instrumentality (U.S.S.G. §
12 2B1.1(b)(13)(B)), and that a sixteen-level enhancement applies based
13 on a loss amount of more than \$1.5 million and up to \$3.5 million
14 (U.S.S.G. § 2B1.1(b)(1)(I)). Plea Agt. ¶ 16.a. That yields an
15 offense level of 26, before the application of an enhancement
16 pursuant to U.S.S.G. § 2B1.1(b)(15)(A) for offense conduct involving
17 the conscious or reckless risk of death or serious bodily injury,
18 discussed below. (Plea Agt. ¶ 16.a.i.)

19 As to Count Two, the attempted violation of the Arms Export
20 Control Act, 22 U.S.C. § 2778(b)(2) and (c) and 22 C.F.R. § 127.1(a)
21 and (e), the parties agree that the base offense level is 26
22 (U.S.S.G. § 2M5.2(a)(1)). Plea Agt. ¶ 16.b. With no specific
23 offense characteristics, that yields an offense level of 26 as well.

24 The parties agree that a two-level upward adjustment applies
25 for defendant's abuse of his position of trust pursuant to U.S.S.G.
26 § 3B1.3. Plea Agt. ¶ 17.

27 With the government's motion for defendant to receive a
28 reduction in offense level under U.S.S.G. § 3E1.1 (Plea Agt.

1 ¶ 3.c), defendant's offense level will be reduced by three levels.
2 (Plea Agmt. ¶ 18.)

3 As noted above, there is one enhancement the parties dispute--
4 whether defendant's offense involved conscious or reckless risk of
5 death or serious bodily injury pursuant to U.S.S.G.
6 § 2B1.1(b)(15)(A). Plea Agmt. ¶ 16.a.i. This enhancement should
7 apply because defendant sought Anectine from a person he thought was
8 a Russian intelligence officer, as consideration for secreting
9 Cleared Contractor A's sensitive military technology, in order to
10 secretly administer it to his wife. Although defendant had not gone
11 so far as to administer the substance he thought was Anectine, he
12 had schemed to acquire a hospital-grade muscle relaxant that he knew
13 was used as a murder weapon. Defendant himself conceded that it
14 would be reasonable to infer he intended to murder his wife.
15 Whether or not he did so intend, defendant's offense conduct
16 involved--at a bare minimum--a reckless risk that his wife would die
17 or be seriously injured when he injected her with the Anectine.

18 Defendant did not concede that he intended to use the substance
19 for anything other than helping her with her sleep, but even briefly
20 considering that assertion shows it is not credible. To do so would
21 mean that defendant sought a prescription drug he could not
22 otherwise get; that he sought it from a person whose relationship
23 with defendant was secret and which would not be revealed because of
24 their shared risk in other illegal conduct; that, even within that
25 relationship, defendant told his "handler" lies about his wife's
26 previous use of Anectine and her prescription for it; that defendant
27 read online how it could be used as a poison; and that, with no
28 medical basis or experience to conclude that it could be used for

1 breathing or sleep assistance from either the sleep center or his
2 own research--let alone knowledge of the appropriate dosage--
3 defendant planned to administer a dangerous drug with a lethal risk
4 of killing his wife without telling her. But, according to
5 defendant, he was planning to do it for her benefit, for the purpose
6 of letting her sleep better.

7 Even accepting defendant's statements at face value and in the
8 light most favorable to him, defendant indisputably provided to a
9 putative Russian intelligence officer sensitive satellite
10 information as consideration for a highly dangerous controlled drug
11 that he intended to secretly administer to his wife, that he knew
12 could be lethal in the wrong dose, and for which he did not know the
13 correct dosage (Ex. B at 20-21 (defendant inquired if the UCE's
14 associates "happen[ed] to mention a, uh, uh, an appropriate dose,"
15 and then claiming that the dose was on the "prescription" (that did
16 not exist))).) By these actions, at a bare minimum and by well more
17 than a preponderance of the evidence, defendant engaged in conduct
18 that would consciously and recklessly cause a risk of death or
19 serious injury to his wife. With that enhancement, the total
20 offense level in light of the other enhancements and adjustments
21 above yields a total offense level of 27. With a Criminal History
22 Category of 0 (PSR ¶ 78), defendant's advisory guidelines range is
23 70-87 months.

24 B. Nature and Circumstances of the Offense

25 The nature and circumstances of the offense are detailed at
26 length above, and warrant the recommended sentence. Defendant's own
27 words reflect his intent to compromise valuable and sensitive
28 military data on behalf of a foreign intelligence service, and he did

1 so for profit while undermining the national security of the United
2 States. In the same stroke, defendant sought to bargain those
3 secrets not only for cash for his online paramour, but also for a
4 lethal drug that he intended to administer to his wife without her
5 knowledge. A severely aggravating factor set in an already depraved
6 scheme to supply and guide the Russian government on how to disrupt
7 U.S. military satellites calls for a sentence of seven years and
8 three months. Regardless of whether the Court applies a two-level
9 enhancement pursuant to U.S.S.G. § 2B1.1(b)(15)(A), this sentence is
10 warranted under the totality of the circumstances and evidence set
11 forth above.

12 **C. History and Characteristics of the Defendant**

13 Defendant is an educated engineer, and a long-time employee of
14 a cleared defense contractor. He used his education and training to
15 seek out the materials that would be most valuable to the Russian
16 government, and then to explain their significance and guide the
17 Russian government on how that information could be used against the
18 United States--betraying the trust that had been placed in him. Any
19 financial urgency that drove his conduct could have been mitigated
20 by eliminating--or even just reducing--the cash and gifts he sent to
21 his online paramour.

22 **D. Seriousness of the Offense, Respect for the Law, Adequate
23 Deterrence, and Just Punishment**

24 A significant term of imprisonment is necessary to promote
25 respect for the law, and to deter both defendant and others. Similar
26 offenses by trained and well-resourced foreign agents or persons in
27 positions of trust in the U.S. government or cleared contractors can
28 be difficult to detect and fully investigate, and a significant

1 sentence is both warranted and necessary to effectively dissuade
2 others. The recommended sentence is both just and commensurate with
3 defendant's conduct, and it will deter others who may contemplate
4 doing the same.

5 **E. Kinds of Sentences Available and Policy Considerations**

6 For the two counts of conviction for violating 22 U.S.C. § 2778
7 and 18 U.S.C. § 1831, defendant may be sentenced to up to thirty-
8 five years in prison. A sentence of less than a quarter of that--
9 eighty-seven months--is warranted here, where defendant has pled
10 guilty to two offenses, his conduct bears multiple aggravating
11 factors, and by defendant's own words was designed to undermine the
12 U.S. military.

13 **F. Need to Avoid Sentencing Disparities**

14 A sentence of imprisonment of eighty-seven months is, taking
15 into account the other factors and considerations set forth herein,
16 likely to avoid a disparity with other cases nationwide, particularly
17 where the total offense level is 27 and eighty-seven months'
18 imprisonment is the high end of the resulting advisory Guidelines
19 range. See United States v. Becerril-Lopez, 541 F.3d 881, 895 (9th
20 Cir. 2008) (observing that sentences within the Guidelines range are
21 unlikely to create a disparity because "it represents the sentence
22 that most similarly situated defendants are likely to receive").
23 Other defendants are unlikely to be similarly situated, having
24 committed acts that both threaten national security and involve a
25 plot to poison one's spouse.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the government respectfully submits
28 that an appropriate sentence for defendant is eighty-seven months'

1 imprisonment, three years of supervised release with the terms
2 recommended by the USPO, and a \$100 mandatory special assessment.
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28

Exhibit A

1 UC: Very good.
2
3 CB: Today's the 12th?
4
5 UC: Yes, I believe so. Okay.
6
7 CB: Oh, and then I'll give you this.
8
9 UC: Ah yes. Oh thank you very much. Also I wanted to ask, do you still need this Anectine? I
10 wanted to make sure.
11
12 CB: Yea. Yes, please.
13
14 UC: Okay, I think I told you they said you could most likely two, I know you said originally
15 the prescription was for three.
16
17 CB: Yes.
18
19 UC: They said two. But I told you they say it will take little bit of time because it has to be on
20 ice constantly they said, so.
21
22 CB: Oh okay. Okay.
23
24 UC: Yes.
25
26 CB: Okay.
27
28 UC: You said your wife did this sleep study, did that help identify problems?
29
30 CB: Oh yes, and, and that, that uh, Anectine was one of the things they gave her to help her, to
31 help her relax her chest to be able to breathe. Um, so, you know you, how you're
32 supposed to breathe right? You're not supposed to breathe with your chest, you know,
33 you're not supposed to do that. Breathe with the diaphragm. Like this. So the problem is,
34 because of the diabetes, she's gained so much weight that when she's asleep, her
35 diaphragm can't expand this way, so, so she breathes like this, and her chest gets really
36 tight so, instead of, she's breathing like, and that was one of the first things they saw in
37 the sleep study so they gave her, gave a shot of this muscle relaxer and almost instantly,
38 she's still breathing in her chest instead of down here, but she was able to breathe much,
39 much easier.
40
41 UC: She was more comfortable this way?
42
43 CB: Yes.
44

1 UC: Did you, so they, this sleep study, I hear many people talk about sleep study but I have
2 never seen this, how does this work?
3
4 CB: Um, you go to a doctor, like your, your primary doctor and he will refer you to a sleep
5 clinic and you'll make an appointment and go there at like 8 o'clock at night and spend,
6 spend one or two nights.
7
8 UC: Oh so you sleep at this --
9
10 CB: Yea.
11
12 UC: Oh:
13
14 CB: Oh yea. They watch you sleep.
15
16 UC: Interesting. As long as it will, will benefit her, it's good.
17
18 CB: Yes.
19
20 UC: Sounds like breathing will be much better.
21
22 CB: It's very important.
23
24 UC: Yes it is. I understand.
25
26 CB: [Laughter]
27
28 UC: I'm trying to think anything else. Ah before I forget, next time I will call, I don't know,
29 you will remember maybe yes? May 1st or May 2nd, be available for me to call you and
30 set up next meeting.
31
32 CB: You mean June 1st?
33
34 UC: Yes, June 1st, yes, sorry, sorry.
35
36 CB: [Laughter]
37
38 UC: I've been traveling to much. June 1st or 2nd.
39
40 CB: Uh, yes.
41
42 UC: It will maybe be easier to remember June 1st, I will call same time.
43
44 CB: Okay.

Exhibit B

File Number: [REDACTED]

Disc Number: [REDACTED]

1 UC: Okay. Just, because they ask me what, because sometimes they confuse what you already
2 provided them to what I have received. So I, I try to make sure –
3
4 CB: Okay, and I, I, I try very carefully to make sure I don't duplicate what I give you.
5
6 UC: Because I think they said there was one or two that maybe, that's why I was trying to
7 figure out. No problem.
8
9 CB: Yes.
10
11 UC: We have plenty of time.
12
13 CB: [Laughter]
14
15 UC: Oh, and since you have ice now, I will, I will go get this out of refrigerator for you.
16
17 CB: Okay.
18
19 UC: Now, because it's very smart that you bring ice.
20
21 CB: Uh, like you said, I like to be prepared.
22
23 UC: Yes, I know. I always tell them you are very impressive person. So I did not know how
24 familiar with this, I know you said that, on the phone, you, you would have to administer
25 this?
26
27 CB: Uh, yes I will because this is –
28
29 UC: So this is, they said this is the true, true name is not the generic brand or not this brand
30 name.
31
32 CB: Yes.
33
34 UC: But this is generic formula and they said this is always what is on bottles in hospital.
35
36 CB: Okay.
37
38 UC: So as you see, it's very cold.
39
40 CB: Yes.
41
42 UC: They thought they would be able to give you two of these, but they said for now just one,
43 if you need more later.
44

File Number: [REDACTED]

Disc Number: [REDACTED]

1 CB: Okay.
2
3 UC: I didn't know how much you needed.
4
5 CB: Just any right now.
6
7 UC: They said this should last long time and, and for administration, do you have experience
8 with this, or -?
9
10 CB: Um, I've been practicing giving her, her insulin.
11
12 UC: Ah, so you can help her with this one, yes?
13
14 CB: Yes.
15
16 UC: So, so you understand the injection. This is normally, I don't know if you know
17 background on this, this is normally they said powder. It comes in powder form but they
18 wanted to go ahead and mix this for you.
19
20 CB: Oh okay.
21
22 UC: In case you did not know the right elements to mix and how to properly do this.
23
24 CB: Oh, so it comes in powder form and I would have to mix it myself?
25
26 UC: Yes but they went ahead and premixed it for you.
27
28 CB: Okay.
29
30 UC: So that's why it is like this.
31
32 CB: Oh okay.
33
34 UC: I did not know --
35
36 CB: No I didn't.
37
38 UC: How much you know about this or not. And then also, this is just for our awareness, I
39 trust you, you trust me, and we've developed a good relationship.
40
41 CB: Yes.
42
43 UC: And, they wanted me to make sure you know this is very, could be dangerous, could be
44 risky to use, um, are you aware of this?

File Number: [REDACTED]

Disc Number: [REDACTED]

1 CB: No. I mean any medication can be, can be risky.

2
3 UC: They said this is normally not given by a pharmacy, this usually in the hospital, and that
4 is fine, we are here to help and support you, yes?

5
6 CB: Okay.

7
8 UC: Whatever you ask for like this. They just wanted to find out, you know, because we have
9 this relationship, to trust each other, you should be able to confide.

10
11 CB: Okay.

12
13 UC: You know if there's any issues or anything that you would like to talk about.

14
15 CB: Okay, alright um, did they happen to mention a, uh, uh, an appropriate dose?

16
17 UC: They didn't mention dose, because they do not want to, you to think they are questioning
18 you because this is not what is going on.

19
20 CB: Okay.

21
22 UC: They just was curious exactly if, they didn't know, you said this was for breathing, they
23 said this maybe not help for breathing, you know, I looked online and they said this can
24 be used for other things which is fine too.

25
26 CB: Okay.

27
28 UC: No big deal, I just curious if, you know, since we've been talking and you know, share
29 this. We want to make sure of any liabilities we should be aware of because –

30
31 CB: Right. Um –

32
33 UC: I know you said you were having issues with your wife and always nagging you and
34 things, things like that.

35
36 CB: [Laughter]

37
38 UC: You know, I didn't know maybe if this was for that or –

39
40 CB: No [Laughter]

41
42 UC: I would understand this if so. I, I, my wife nags very often as well.

43
44 CB: [Laughter] No, this is just to help her sleep.

File Number: [REDACTED]

Disc Number: [REDACTED]

1 UC: Oh, okay. I was just curious. So you understand to keep this cold, yes?

2
3 CB: Yes.

4
5 UC: Okay. And the doctors did not tell you the dose that you should provide?

6
7 CB: Uh, it's written on the prescription, on the form which is at the pharmacy so I don't. I'll.
8 I'll ask. I'll ask the doctor. It shouldn't be, a very little bit.

9
10 UC: They said that, depending on what you plan on doing, this should, could last a while or
11 not.

12
13 CB: [Laughter]

14
15 UC: So, this is up to you.

16
17 CB: Okay.

18
19 UC: So, so what else is going on? You, you're always full of information.

20
21 CB: [Laughter] Um, I really don't have anything else going on just taking my wife to the
22 doctor's visits and, and go to work.

23
24 UC: Hmm, and this, you said this is late for you, yes?

25
26 CB: Uh, it'll be later in the evening. This would be about my 9 0'clock at night. For a normal
27 person.

28
29 UC: And she will not be angry with you?

30
31 CB: Uh, no. Uh, she is under the impression that I am in my boss' office having my midyear
32 review.

33
34 UC: Ah, well it is midyear, yes.

35
36 CB: It is midyear.

37
38 UC: Very creative.

39
40 CB: It's actually not, he is doing them this week.

41
42 UC: Oh.

43
44 CB: [Laughter]

Exhibit C

Succinylcholine, A Perfect ... X +

www.medgadget.com/2010/03/succinylcholine_a_perfect_poison_makes_appearance_in_the_dubai_murder.html

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Succinylcholine, A Perfect Poison, Makes Appearance in the Dubai Killing

EDITORS

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succinylcholine molecule

According to Dubai authorities, and as reported by *AFC News*, Hamas operative Mahmoud al-Mabhouh was given a shot of succinylcholine prior to other grossly things done to his body on the fateful (for him) day of January 13, 2010. And since your humble correspondent is an anesthesiologist by day, and by call at night, let me tell you why succinylcholine is such a perfect murder weapon.

The best poisons usually have three things in common: small effective dose, also called Median Lethal Dose (or LD50), ease of administration, and rapid and definitive action. The fourth characteristic, the difficulty in detection by a forensics team is a big premium that most poisons don't possess. Most poisons, that is, except succinylcholine and maybe a few others.

So let's review some science, shall we? Succinylcholine is a muscle relaxant. Anesthesiologists call it 'sux'. Sux is commonly used before intubations, as it completely relaxes patients. Sux is a rapidly acting depolarizer that can be given intravenously (IV) or intramuscularly (IM). Once administered, succinylcholine circulates in the blood, reaches nicotinic receptors on the surface of muscle cells, and there it imitates the action of acetylcholine, a neurotransmitter that our nerves naturally release to make our muscles move. When succinylcholine is given, seconds later the patient fasciculates, and all muscles in his body become depolarized. In essence, sux makes every muscle bounce to the point that it becomes unresponsive to any subsequent stimulation: you can't breathe, you can't even blink.

Sux is highly effective. In IV form, 100 mg of sux will depolarize every muscle in the body of a 70kg man in about 20 seconds. And the patient will not be able to take another breath for at least 5 minutes. So without assisted ventilation, he is toast. The IM dose of sux is not much different, but takes a little longer to set in.



sux victim

Succinylcholine, A Perfect ... X +

www.medgadget.com/2010/03/succinylcholine_a_perfect_poison_makes_appearance_in_the_dubai_murder.html

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So there you have it: succinylcholine is an easy to inject poison, it is highly effective, and is guaranteed to work quick. The fourth characteristic of succinylcholine is good news for assassins: it is almost impossible to detect because its metabolites are all naturally occurring molecules. Here's how it works. Most molecules of succinylcholine break down in blood into succinylmonocholine and choline, thanks to a circulating enzyme called pseudocholinesterase. The process is so efficient that only a small fraction of the molecules that were given actually reach neuromuscular junctions in the first place. Succinylmonocholine is subsequently hydrolyzed into succinic acid, or succinate, a naturally occurring substance well known to anyone who studied biochemistry. The reason succinate is so famous is because it is an important player in TCA (Krebs) cycle, a series of chemical reactions that powers all living cells that use oxygen.

Coming back to Mahmoud al-Mabhouh, he either had an abnormal genetic variant of pseudocholinesterase, which is not uncommon, so some of the sur was not metabolized, or Dubai authorities had access to a highly sensitive succinylmonocholine assay. Or, someone, we think, is just bluffing in the Middle East. No surprises there. Thanks for reading, and here's a great spy movie, courtesy of Dubai authorities.

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