

No. __- _____

In the Supreme Court of the United States

CARLOS TROCHE-ALVARADO,

Petitioner,

v.

UNITED STATES,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is as follows:

The First Circuit held that the district court did not abuse its discretion when it imposed an above-Guidelines sentence, which also exceeded the prosecution's recommended sentence, after relying on an erroneous fact as the justification for the excessive sentence and then, once the error was called to its attention, providing no other meaningful justification for the above-Guidelines sentence. The question presented in this petition is:

Whether a sentencing court violates 18 U.S.C. § 3553 when it imposes an above-Guidelines sentence, which also exceeds the prosecution's recommended sentence, without providing any coherent explanation for the chosen sentence beyond an erroneous factual basis and a rote recitation of the required sentencing factors.

PARTIES TO THE PROCEEDINGS

Petitioner, who was the criminal defendant below, is Carlos Troche-Alvarado.

Respondent is the United States, which prosecuted Petitioner below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Carlos Troche-Alvarado respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS AND ORDERS BELOW

The decision of the First Circuit affirming Mr. Troche-Alvarado's sentence, rendered on May 15, 2018, was issued through an unreported judgment that is reproduced at Appendix A to this petition.

The district court's sentence was imposed at a sentencing hearing on November 12, 2015, the transcript of which is reproduced at Appendix B to this petition. The sentence imposed was also contained in a judgment that the district court issued on that same date, which is reproduced at Appendix C to this petition.

JURISDICTION

The First Circuit affirmed Mr. Troche-Alvarado's sentence through a judgment entered on May 15, 2018. This Court has jurisdiction under 28 U.S.C. § 1254.

RELEVANT STATUTORY PROVISION

18 U.S.C. § 3553(c) reads as follows (emphasis added):

Statement of reasons for imposing a sentence. – The court, at the time of sentencing, *shall state in open court the reasons for its imposition of the particular sentence*, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the **specific reason** for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

STATEMENT OF THE CASE

Appellant Carlos Troche-Alvarado, a first-time offender, was charged in a May 27, 2015 indictment with possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A).

On August 13, 2015, the government and Mr. Troche-Alvarado entered into a written plea agreement. Pursuant to the plea agreement, Mr. Troche-Alvarado

agreed to plead guilty to a violation of § 924(c)(1)(A)(i). Mr. Troche-Alvarado and the government agreed to a joint recommendation of a 60-month sentence, which they also agreed was both the mandatory minimum and the sentence that the United States Sentencing Guidelines recommended for the violation.

A pre-sentence report was prepared that calculated Mr. Troche-Alvarado's Guidelines sentence as equal to the statutory mandatory minimum, 60 months, consistent with the parties' joint recommendation in the plea agreement. The PSR found no grounds for a deviation from the Guidelines sentence of 60 months.

Despite the parties' joint recommendation, and the Probation Department's agreement with that recommendation through its PSR calculation and its finding of no factors warranting a non-Guidelines sentence, the district court imposed an above-Guidelines sentence of 72 months.

In explaining the sentence it was imposing on Mr. Troche-Alvarado, the district court incorrectly stated that Mr. Troche-Alvarado's daughter lived at his home, from which the police seized the firearm and drugs:

[THE COURT:] In addition to the pistol, Mr. Troche had in his possession, or in his home, controlled substances, specifically, close to two kilograms of marijuana and rubber balls that contained hashish, drug paraphernalia, 99 rounds of ammunition of various calibers, two magazines, in addition to the one on the pistol, \$248,930 in United States currency. All that points to a person who is significantly involved in drug trafficking. *He had all of that marijuana and hashish at his home, where there was a minor present, a juvenile, his 12-year-old daughter.*

(App. B, at 8a-9a (emphasis added).)

When counsel corrected the district court's mistake by noting that Mr. Troche-Alvarado's daughter did not live in that home, the district court nonetheless maintained the excessive, above-Guidelines sentence, without offering any other findings that could legitimately support an above-Guidelines sentence:

[THE COURT:] Well, I'm going to deny your motion for reconsideration. And whether or not the daughter lived with him, the fact that a significant amount of marijuana was found, as well as hashish, and almost \$250,000 were found in his apartment, demonstrates to the Court that he is very much involved in drug trafficking. So your motion for reconsideration is denied.

(App. B, at 14a.)

REASONS FOR GRANTING THE PETITION

The issue that this case presents – what constitutes adequate explanation for an above-Guidelines sentence – is one of exceptional importance in which the Court has historically provided limited guidance, resulting in dramatically different approaches throughout the nation's courts. In *Rita v. United States*, 551 U.S. 338 (2007), and *Gall v. United States*, 552 U.S. 38 (2007), the Court examined the requirement of 28 U.S.C. § 3553(c) and its recognition of the need for courts to provide adequate explanations when imposing sentences. After the passage of more than a decade since these decisions, district and circuit courts remained perplexed and divided regarding the standard of adequacy for the requisite explanations of above-Guidelines sentences.

Rita held that it was appropriate for appellate courts reviewing sentences to apply a presumption of reasonableness for *within*-Guidelines sentences. That same

year, *Gall* rejected the Eighth Circuit’s holding that a departure from the Guidelines required a justification that was proportional to the difference between the Guidelines and the sentence imposed. In so holding, however, the Court admonished “that a district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications.” *Gall*, 552 U.S. at 46. The Court recently revisited this subject broadly in *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1962 (2018), reiterating that “[i]n some cases, it may be sufficient for purposes of appellate review that the judge simply relied upon the record, while making clear that he or she has considered the parties’ arguments and taken account of the § 3553(a) factors, among others. But in other cases, more explanation may be necessary”

Chavez-Meza v. United States, 138 S. Ct. 1959, 1965 (2018). The *Chavez-Meza* opinion repeated that “under different facts and a different record, the district court’s use of a barebones form order in response to a motion like petitioner’s would be inadequate.” *Id.* at 1967. The Court reached these conclusions even in the context of a case involving a *within*-Guidelines sentence. It said nothing further to elaborate on *Gall*’s decade-old direction that a sentencing court “must explain [its] conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications.”

These opinions, while emphasizing the importance of § 3553(c)’s requirement that district courts explain their sentences adequately, and recognizing that the

need for explanation may be heightened when a court imposes a non-Guidelines sentence, nevertheless provide little guidance as to when more than reference to the list of sentencing factors is required, and what is required when a court must do more than assert the conclusion that it has considered those factors. As a result, the courts of appeals have taken dramatically inconsistent approaches when assessing the adequacy of sentencing explanations.

This case presents an opportunity to provide that guidance with respect to sentences that exceed the Guidelines.

I. The Decision Below Illustrates the Confusion Among Courts in Applying This Court’s Directives With Respect to the Required Justifications for Above-Guidelines Sentences.

When sentencing Mr. Troche-Alvarado, the district court initially gave three reasons for imposing, on a first-time offender who had pled guilty, a sentence that exceeded the Guidelines and even the prosecution’s recommendation. At the sentencing hearing, the district court stated that the factual record “points to a person who is significantly involved in drug trafficking,” and that “[h]e had all of that marijuana and hashish at his home, where there was a minor present, a juvenile, his 12-year-old daughter.” (App. B, at 8a-9a.) The district court then ticked off in entirely conclusory fashion the § 3553(a)(2) factors, stating that it “finds that the sentence to which the parties agreed does not reflect the seriousness of the offense, does not promote respect for the law, does not protect the public from further crimes by Mr. Troche and does not address the issues of deterrence and punishment.” (*Id.* at 9a.) Once defense counsel clarified that Mr. Troche-Alvarado’s daughter did not in fact live at his home, the district court made no change to the

above-Guidelines sentence, but repeated its statement that Mr. Troche-Alvarado was “very much involved in drug trafficking.” (App. 8, at 14a.)

Thus, even after expressly basing its sentence, in part, on a mistake of fact, and then having that mistake corrected for it, the district court made no change to the chosen sentence. Without the erroneous factual justification, Mr. Troche-Alvarado was left with an explanation for the harsh sentence that consisted of a rote recitation of the sentencing factors and a statement that he was “very much involved in drug trafficking.” The latter was obvious makeweight, as Mr. Troche-Alvarado had pled guilty to a violation of 18 U.S.C. § 924(c)(1)(A), for possessing a firearm “in relation to any crime of violence or drug trafficking crime.” His being “very much involved in drug-trafficking” was no grounds for a variance; it was merely an element of the very crime for which he was being punished.

The First Circuit affirmed the sentence in a one-paragraph decision:

After considering the briefs and the record on appeal, we affirm the district court’s judgment. Contrary to defendant’s arguments, the district court did not rely on an unsupported fact when arriving at a specific sentence, *see United States v. Santa-Otero*, 843 F.3d 547, 550 (1st Cir. 2016) (review of sentencing court’s factfinding is for clear error), and the district court adequately explained the reasons behind the upward-variant sentence imposed. More generally, the district court did not abuse its discretion in selecting the sentence that it did. *See United States v. Flores-Machicote*, 706 F.3d 16, 21 (1st Cir. 2013) (standard of review and general principles).

(App. A.) The First Circuit’s citation to its *Flores-Machicote* opinion is telling.

Flores-Machicote applies this Court’s decision in *Gall v. United States*, 552 U.S. 38 (2007), in part for *Gall*’s holding that one form of procedural error in sentencing can be a “fail[ure to] adequately ‘explain the chosen sentence – including an

explanation for any deviation from the Guidelines range.” *Flores-Machicote*, 706 F.3d at 20 (quoting *Gall*, 552 U.S. at 51). The First Circuit’s decision in this case, while terse, thus demonstrates that its application of the requirement that a sentencing court “adequately” explain its rationale for an above-Guidelines sentence demands very little, even for an above-Guidelines sentence, and even when the district court had expressly linked its sentence to an erroneous fact as an initial matter. Indeed, if the First Circuit’s decision is a correct application of *Gall* to the facts of this case, then *Gall* will never demand much, or anything, more than that sentencing courts recite the list of § 3553(a) factors without further explanation, even when issuing a non-Guidelines sentence.

II. The Lack of Clear Guidance as to What an Adequate Explanation Requires in a Non-Guidelines Case Has Resulted in Inconsistency Among Courts When Reviewing the Adequacy of District Courts’ Explanations.

The First Circuit is not alone in adopting the lowest of hurdles for explaining a non-Guidelines sentence, even while purporting to apply § 3553(c)’s mandate that the sentencing court provide “the *specific reason* for the imposition of a sentence different from” what the Guidelines recommend. Nor, however, is such a low bar the only approach that courts have embraced. The result is significant lack of clarity within, and inconsistency among, the Circuits and across caselaw as to when sentencing courts must do more than merely recite the sentencing factors, and how far they must go in justifying the sentences they impose when varying from the Guidelines.

For example, as with the First Circuit in Mr. Troche-Alvarado’s case, the Eleventh Circuit, *en banc*, has suggested that *Gall* does not require courts in that circuit to provide extensive explanation: “No member of this Court has ever before indicated that a sentencing judge is required to articulate his findings and reasoning with great detail or *in any detail for that matter.*” *United States v. Irey*, 612 F.3d 1160, 1195 (11th Cir. 2010) (*en banc*) (emphasis added). The Eleventh Circuit made this statement in heavy reliance on the circumstances before this Court in *Rita*, despite *Rita* involving a *within*-Guidelines sentence. *Id.* (“In sentencing the defendant the judge [in *Rita*] did not say much, and the Court acknowledged that he ‘might have said more,’ but it surmised that ‘[h]e must have believed that there was not much more to say.’ Although the judge [in *Rita*] did not even state that he had considered the evidence and argument or why he rejected the arguments for a variance, it was enough that ‘the context and record’ indicated the reasoning behind his conclusion.” (quoting *Rita*, 551 U.S. at 359; internal citations omitted)).

The Seventh Circuit, in contrast, while applying the same statute and line of caselaw, has required significantly more explanation for non-Guidelines sentences. *See, e.g., United States v. Omole*, 523 F.3d 691, 698 (7th Cir. 2008) (holding that due to the disparity between the Guidelines and the sentence imposed, “the district judge had to enunciate persuasive reasons, based on the factors listed in § 3553(a), for the variance”). In fact, the Seventh Circuit has demanded significantly more, even for within-Guidelines sentences, than what the First Circuit found sufficient in

this case. *United States v. Lyons*, 733 F.3d 777, 785 (7th Cir. 2013) (vacating a sentence where the district court explained that it had considered the pre-sentence report, the Guidelines, the § 3553 factors, and both sides' arguments, because a rote statement that all relevant factors were considered does not suffice). The D.C. Circuit similarly reads § 3553(c) and *Gall* as requiring far more than the First Circuit concluded here. *See, e.g., In re Sealed Case*, 527 F.3d 188, 192 (D.C. Cir. 2008) (holding that “§ 3553(c)(2) requires not just a statement of reasons, and not just a written statement of reasons, but a statement explaining the reason for a departure from a guideline or policy statement ‘with specificity.’” (internal quotation marks omitted)).

This Court’s last word on the issue directed that *Gall* and *Rita*, correctly applied, mean that certain circumstances require more explanation than others: “In some cases, it may be sufficient for purposes of appellate review that the judge simply relied upon the record, while making clear that he or she has considered the parties’ arguments and taken account of the § 3553(a) factors, among others. But in other cases, more explanation may be necessary” *Chavez-Meza v. United States*, 138 S. Ct. 1959, 1965 (2018). This latest pronouncement came in the context of a within-Guidelines sentence. It also did not elaborate on when § 3553(c) requires more, or on what it requires beyond rote acknowledgment by the sentencing court that it was aware of the § 3553(a) considerations.

As this case demonstrates, more guidance is needed from this Court in defining those categories of cases in which “more explanation may be necessary,”

particularly where a sentencing court eschews the Guidelines' recommendations. That is, if the First Circuit were correct that the facts of Mr. Troche-Alvarado's case – first-time offender, clear factual error in the initial explanation, above-Guidelines sentence, sentence above government's recommendation – are still not such that more than rote recitation of the sentencing factors is required, then it is difficult to imagine a circumstance in which an "adequate" explanation would ever demand more. This case thus provides the Court with an opportunity to more precisely delineate when a sentencing court may rely on generalized, rote principles, and when a more robust explanation is needed.

CONCLUSION

Accordingly, the Court should grant this petition.

Respectfully submitted,

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August 9, 2018

Appendix A

Judgment of the United States Court of Appeals for the First Circuit, No. 15-2513
(May 15, 2018).....1a

United States Court of Appeals For the First Circuit

No. 15-2513

UNITED STATES,

Appellee,

v.

CARLOS TROCHE-ALVARADO,

Defendant, Appellant.

Before

Howard, Chief Judge,
Kayatta and Barron, Circuit Judges.

JUDGMENT

Entered: May 15, 2018

After considering the briefs and the record on appeal, we affirm the district court's judgment. Contrary to defendant's arguments, the district court did not rely on an unsupported fact when arriving at a specific sentence, see United States v. Santa-Otero, 843 F.3d 547, 550 (1st Cir. 2016) (review of sentencing court's factfinding is for clear error), and the district court adequately explained the reasons behind the upward-variant sentence imposed. More generally, the district court did not abuse its discretion in selecting the sentence that it did. See United States v. Flores-Machicote, 706 F.3d 16, 21 (1st Cir. 2013) (standard of review and general principles). All pending motions are denied.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

cc:

Joshua Louis Solomon
Mariana E. Bauza Almonte
Daynelle Maria Alvarez-Lora

Appendix B

Sentencing Hearing Transcript, United States District Court for the District of Puerto Rico, No. 15-CR-00378-FAB (November 12, 2015)2a

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF PUERTO RICO

3 -00o-

4

5 THE UNITED STATES OF AMERICA,)
6 Plaintiff,) Case No. 3:15-CR-00378-FAB
7 -vs-)
8 CARLOS TROCHE-ALVARADO,)
9 Defendant.)
10 _____

11 TRANSCRIPT OF SENTENCING HEARING

12 HELD BEFORE THE HONORABLE FRANCISCO A. BESOSA
13 CLEMENTE RUIZ-NAZARIO U.S. COURTHOUSE, HATO REY, PUERTO RICO
14 THURSDAY, NOVEMBER 12, 2015

15 A P P E A R A N C E S

16 For the United States of America:

17 Assistant U.S. Attorney Cristina Caraballo-Colon

18 For the Defendant:

19 Attorneys Alfredo M. Umpierre-Soler and Francisco J.
20 Adams-Quesada

21

22

23

24

25

Cindy Lee Brown, Official Court Reporter
U.S. District Court, District of Puerto Rico

(775) 722-9061

2a

1 (Proceedings commenced at 9:22 am.)

2 -00o-

3 THE CLERK: Criminal 15-378, United States of America
4 versus Carlos Troche-Alvarado, for sentencing hearing. On
5 behalf of the government, Assistant U.S. Attorney Cristina
6 Caraballo. On behalf of defendant, Attorneys Alfredo Umpierre
7 and Francisco Adams. Defendant is present and assisted by the
8 court interpreter.

9 MS. CARABALLO-COLON: Good morning, Your Honor. The
10 United States is ready to proceed.

11 MR. UMPIERRE-SOLER: Good morning, Your Honor.
12 Attorney Alfredo Umpierre-Soler and Francisco Adams for Carlos
13 Troche-Alvarado.

14 THE COURT: Good morning.

15 Mr. Adams, thank you for your sentencing
16 memorandum.

17 Is there anything you would like to say on behalf of
18 Mr. Troche before I pronounce sentence?

19 MR. UMPIERRE-SOLER: Yes, Your Honor.

20 THE COURT: If there is anything that you want, if
21 there is anything you want to highlight from the sentencing
22 memorandum.

23 MR. UMPIERRE-SOLER: Yes, Your Honor. Attorney
24 Alfredo Umpierre for, to discuss the sentencing memorandum.

25 Mr. Troche-Alvarado is a 41-year-old male who has

1 accepted responsibility since the moment the agents showed him
2 the search warrant. In fact, he showed them where the firearm
3 was. He told him, Yes, it's mine. And he's always accepted
4 that responsibility. In the case always, he also accepted
5 responsibility in a fast manner.

6 He has always worked. When he was growing up, he
7 played sports. He played competitive skateboarding, and he
8 became a sales representative for governments for clothing.
9 He's always worked. We produce some, in the presentencing
10 report there is, there is evidence of those, of his
11 commissions.

12 He has a daughter, which is very close to him. She's
13 sitting in the back row with his mother. We have produced
14 letters. He's the one who took her to school, who pick her
15 from school. He took her to cheerleading practices. He paid
16 for all of the fees. Basically, his life is his daughter.

17 We have also produced letters from his neighbors, who
18 says he's very respectful, responsible neighbor, parents, and
19 they always see him with his daughter, which he takes very good
20 care of.

21 He accepts it was a huge mistake. He's very ashamed
22 of the mistake he made. He knows this mistake will cost him
23 time that he can't spend with his daughter, which is his life,
24 basically, time that he can't spend with his mother, who raised
25 him alone, along with his sister.

1 He's not going to be there to help his mother
2 economically, emotionally. And he's not going to be there for
3 some years that his daughter's going to spend without the
4 father figure that has always been present in her life.

5 His daughter right now is receiving psychological
6 help. We also produced that evidence, a letter from a
7 psychologist. She's depressed because she misses him.

8 And he's aware that he's going to have to pay his
9 mistake with a time that he's not going to be able to see her.
10 But the only thing he wants is to be able to learn from his
11 mistake, which he has learned, and when he gets out, work in a
12 respectful manner, in a legal manner, to be able to provide for
13 his daughter all the economic and emotional needs that right
14 now she's going to lack for a period of time.

15 We also produced letters from the people he worked
16 with, that he sold clothing to, basically, owners of clothing
17 stores, which all of them, three of them specifically, describe
18 him as a very professional, respectful person in his business.

19 So basically, we have a person who is ashamed of what
20 he did, is willing to pay for his mistake, but he asks for this
21 Honorable Court to sentence him to the 60 months that he agreed
22 to, because we think that this person has all the tools needed
23 in order, when he gets out, be a very responsible and
24 productive citizen in Puerto Rico, professionally and for his
25 daughter and his mother, who both of them are in court and have

1 been with him the whole process and are going to be there when
2 he gets out to point him in the right direction.

3 THE COURT: Ms. Caraballo?

4 MS. CARABALLO-COLON: Yes, Your Honor.

5 Today's proceedings are part of a plea agreement, as
6 Brother Counsel mentioned. The defendant would plead guilty to
7 Count Three. And we both agree to recommend to the Honorable
8 Court a sentence of 60 months, and the government agrees to
9 dismiss Count One and Two after sentencing, Your Honor.

10 Also, as part of the agreement, the defendant agrees
11 to pay a monetary assessment and forfeiture as part of it.
12 While the presentence report mirrors the agreement and the
13 recommendation that it's presented to the Court today, so the
14 government recommends a sentence of 60 months as well, Your
15 Honor.

16 THE COURT: Mr. Troche, is there anything you would
17 like to say?

18 THE DEFENDANT: Good morning, Your Honor.

19 Welcome to everyone that is here today.

20 I am repentant of, of what I'm being charged with.
21 And what I want most is to be able to get back to my daughter
22 as soon as I can, because she has no support from my side of
23 the family. My side of the family really has not supported as
24 much. And all I want to do is be able to provide for her as a
25 father.

1 She is coming into her teenager years. And, well,
2 I'm not going to be here for her during these very critical
3 years. And I've always been with her, and I've always given
4 her good advice.

5 Well, I am being charged with a crime of violence,
6 but I am really not a violent person. And I, well, I am
7 repentant. And I hope that you take my words into
8 consideration, my honesty and that I want to continue moving
9 forward in life, and that next time you her my surname, Troche,
10 T-R-O-C-H-E, that it will be in a positive light.

11 THE COURT: I hope so too.

12 I just want to make a change, correction in the
13 translation. He said -- when you translated "my side of the
14 family," what he said was, "my father's side of the family."

15 THE INTERPRETER: The interpreter stands corrected.

16 THE COURT: On August 13th, 2015, Defendant Carlos
17 Troche-Alvarado pled guilty to Count Three of the Indictment in
18 Criminal Case Number 15-378, which charges a violation of Title
19 18, U.S. Code, Section 924(c) (1), capital A, possession of a
20 .40 caliber, model 23, loaded Glock pistol, serial number
21 MEB502, in furtherance of a drug-trafficking crime, which is a
22 Class A felony.

23 The guideline for the offense of conviction is found
24 in Section 2K2.4(b) of the guidelines manual. That section
25 provides that a defendant convicted of violating Section 924(c)

1 must be sentenced to the minimum term of imprisonment required
2 by statute, which, in this case, is 60 months. In addition, a
3 term of supervised release of at least two, but not more than
4 five years, must be imposed, and a fine of up to \$250,000 may
5 also be imposed.

6 The Court has also considered the factors set forth
7 in Title 18, U.S. Code, Section 3553(a). Mr. Troche is 41
8 years old. He has a bachelor's degree, was employed as a sales
9 representative prior to his arrest for his offense, and he does
10 have a history of using marijuana.

11 The parties agreed to a sentence of 60 months of
12 imprisonment. Mr. Troche appears to have been a successful
13 sales representative for various companies. The companies for
14 which he provided his work speak very highly of him, and that
15 he was a, a responsible sales representative. So I really
16 don't understand why he was involved in drug-trafficking.

17 In addition to the pistol, Mr. Troche had in his
18 possession, or in his home, controlled substances,
19 specifically, close to two kilograms of marijuana and rubber
20 balls that contained hashish, drug paraphernalia, 99 rounds of
21 ammunition of various calibers, two magazines, in addition to
22 the one on the pistol, and \$248,930 in United States currency.
23 All that point to a person who is significantly involved in
24 drug-trafficking. He had all that marijuana and hashish at his
25 home, where there was a minor present, a juvenile, his

1 12-year-old daughter.

2 Well, the Court finds that the sentence to which the
3 parties agreed does not reflect the seriousness of the offense,
4 does not promote respect for the law, does not protect the
5 public from further crimes by Mr. Troche and does not address
6 the issues of deterrence and punishment. Accordingly, it's the
7 judgment of the Court that Carlos Troche-Alvarado is committed
8 to the custody of the Bureau of Prisons to be in prison for a
9 term of 72 months.

10 Upon release from confinement, Mr. Troche shall be
11 placed on supervised release for a term of five years to be
12 served under the following terms and conditions:

13 He shall observe the standard conditions of
14 supervised release recommended by the United States Sentencing
15 Commission and adopted by this Court.

16 He shall not commit another federal, state or local
17 crime.

18 He shall not possess firearms, destructive devices,
19 or other dangerous weapons.

20 He shall not possess controlled substances
21 unlawfully. He shall not use controlled substances unlawfully,
22 and shall submit to a drug test within 15 days of release from
23 imprisonment.

24 After his release, Mr. Troche shall submit to random
25 drug-testing, not less than three samples during the

1 supervision period, but not more than 104 samples each year, in
2 accordance with the Drug Aftercare Program Policy of the United
3 States Probation Office, as has been approved by this Court.

4 If the illegal use of controlled substances is
5 detected in any sample, Mr. Troche shall participate in an
6 inpatient or an outpatient substance abuse treatment program
7 for evaluation or treatment, as arranged by the probation
8 officer. Payment shall be based on his ability to pay or the
9 availability of payments by third parties, as approved by the
10 Court.

11 He shall perform 250 hours of unpaid community
12 service work during the supervision period at a private
13 nonprofit or public facility, to be selected and under the
14 arrangements that the probation officer may determine.

15 He shall provide the probation officer access to any
16 financial information upon request.

17 He shall remain under curfew at his residence of
18 record from 6:00 p.m. to 6:00 a.m. for a period of six months,
19 to commence upon his release from imprisonment. During this
20 time, he shall remain in his residence, except for employment
21 or other activities approved in advance by the probation
22 officer.

23 He shall wear an electronic device 24 hours a day and
24 shall observe the rules specified by the probation officer.

25 Mr. Troche is ordered to pay the daily cost of the electronic

1 monitoring device. Payment shall be based on his ability to
2 pay or the availability of payments by third parties, as
3 approved by the Court.

4 In addition to any other telephone or cell phone that
5 he may have, Mr. Troche shall maintain a telephone at his
6 residence, without a modem, an answering machine or a cordless
7 feature, during the term of electronic monitoring.

8 He shall submit himself and his property, house,
9 residence, vehicles, papers and effects, computers and other
10 electronic communication or data storage devices, or media, to
11 a search, at anytime, with or without a warrant, by the
12 probation officer, and if necessary, with the assistance of any
13 other law enforcement officer, but only in the lawful discharge
14 of the supervision functions of the probation officer, who must
15 have a reasonable suspicion of unlawful conduct or of a
16 violation of a condition of supervised release.

17 The probation officer may seize any communication or
18 electronic device or medium, which will be subject to further
19 forensic investigation or analysis. Failure to permit a search
20 and seizure may be grounds for revocation of supervised
21 release. Mr. Troche shall warn any other resident or occupant
22 that his premises may be subject to searches pursuant to this
23 condition.

24 He shall cooperate in the collection of a DNA sample,
25 as directed by the probation officer, pursuant to the Revised

1 DNA Collection Requirements in Title 18, U.S. Code, Section
2 3563(a)(9).

3 Having considered Mr. Troche's financial condition, a
4 fine is not imposed. A special monetary assessment in the
5 amount of \$100 is imposed, however, as required by law.

6 Mr. Troche, you have entered into a plea agreement in
7 which you waive your right to appeal your conviction and
8 sentence. That waiver is enforceable. But if your waiver is
9 unenforceable, you may present that argument to the appellate
10 court.

11 A notice of appeal must be filed within 14 days of
12 judgment being entered in your case. If you are unable to pay
13 the cost of an appeal, you may apply for leave to appeal in
14 forma pauperis. If you request it, the Clerk of the Court will
15 prepare and file a notice of appeal on your behalf.

16 Anything else?

17 MR. ADAMS-QUESADA: Your Honor --

18 THE COURT: Mr. Adams?

19 MR. ADAMS-QUESADA: Yes. May we address the Court by
20 way of reconsideration, Your Honor?

21 THE COURT: Reconsideration denied.

22 MR. ADAMS-QUESADA: Your Honor, if we may, we just
23 want to, we just want to point out and clarify some matters.

24 THE COURT: Of course.

25 MR. ADAMS-QUESADA: First of all, I'm aware that the

1 Court is worried about the fact that the narcotics were found,
2 and the weapon, inside of my client's apartment, and that,
3 obviously, he has a daughter that he takes care of. We want to
4 point out and just clarify that the daughter does not live with
5 him. He will be active and present in her life, picking her up
6 in school, taking her to cheerleading classes, taking her to
7 the beach, all to the island, to go around, spend time
8 together, along with his mother.

9 Another fact that we want to point out, Your Honor,
10 and stress out, is that, Mr. Troche, he's a first-time
11 offender. If you're looking at all of the separate
12 recommendation letters and evidence presented to the Court by
13 way of the sentencing memorandum, and even the presentence
14 investigation report, the Court will notice that Mr. Troche's
15 character is that of a person that is a humble person, not a
16 violent person, a person that has always been available to help
17 everyone.

18 So looking into that, looking into the fact that,
19 well, into Mr. Troche's family circumstances, that is, that his
20 family is very small, and they're very united, Your Honor.
21 Basically, it's his mother, his sister and his daughter.
22 That's it. They don't have anyone else.

23 Mr. Troche's absence for an additional time of 60
24 months is going to be very detrimental to them, and to him.
25 And we understand that 60 months is a significant time that Mr.

1 Troche's going to be deprived from the contact with his family,
2 deprived from being with them present, giving emotional
3 support, financial support. And it's a pretty serious amount
4 of time. I think that is, is, has a deterrent factor to him
5 and to other people that will know about what was the sentence
6 of Mr. Troche.

7 And we, respectfully, Your Honor, request a
8 reconsideration as to the time that the Court has sentenced Mr.
9 Troche. We understand that when Mr. Troche comes out of his
10 term of imprisonment, the Court can impose severe restrictive
11 conditions that could balance out the concerns of the Court.

12 But as, as Mr. Troche's history has portrayed, we see
13 that there might be no need for an extensive sentence in this
14 case, Your Honor. We think that 60 months is reasonable in
15 this case.

16 Submitted.

17 THE COURT: Well, I'm going to deny your motion for
18 reconsideration. And whether or not the daughter lived with
19 him, the fact that a significant amount of marijuana was found,
20 as well as hashish, and almost \$250,000 were found in his
21 apartment, demonstrates to the Court that he is very much
22 involved in drug-trafficking. So your motion for
23 reconsideration is denied.

24 The forfeiture of the weapons, the cash, and the
25 other matters set forth in the forfeiture allegation, will be

1 made part of the judgment.

2 Is there any particular place that would, institution
3 that you would like me to recommend, Mr. Adams?

4 MR. ADAMS-QUESADA: Yes, Your Honor. Somewhere in
5 the State of Florida. Maybe, Coleman. And also, if he could
6 be recommended that he receive any sort of vocational training,
7 additional or educational training or, or courses that he could
8 take, along with the drug treatment program, Your Honor.

9 THE COURT: I will recommend that Mr. Troche be
10 designated to the Coleman facility in Orlando, Florida, that he
11 take advantage of any vocational training available at the
12 institution, and that he, if he qualifies, that he take the
13 500-hour drug treatment program offered by the Bureau of
14 Prisons.

15 Anything else, Ms. Caraballo?

16 MS. CARABALLO-COLON: That will be all, Your Honor.

17 I'm sorry. We request at this time, once again, the
18 dismissal of Counts One and Two.

19 THE COURT: Counts One and Two in Criminal Number
20 15-378, against Carlos Troche-Alvarado, are dismissed.

21 You're excused.

22 MS. CARABALLO-COLON: Thank you.

23 (Proceedings concluded at 9:46 a.m.)

24 -000-

25

1 UNITED STATES DISTRICT COURT)
2 DISTRICT OF PUERTO RICO) ss.

REPORTER'S CERTIFICATE

6 I, CINDY LEE BROWN, do hereby certify that the
7 above and foregoing, consisting of the preceding 14 pages,
8 constitutes a true and accurate transcription of my
9 stenographic notes and is a full, true and complete transcript
10 of the proceedings to the best of my ability.

11 Dated this 7th day of February, 2016.

14 /s/ Cindy Lee Brown

CINDY LEE BROWN, Federal
Official Court Reporter
150 Carlos Chardon, Room 150
San Juan, PR 00918
(775) 722-9061

Appendix C

Judgment in a Criminal Case, United States District Court for the District of Puerto Rico, No. 15-CR-00378-FAB (November 12, 2015) 17a

UNITED STATES DISTRICT COURT

JUDICIAL DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
v.
CARLOS TROCHE-ALVARADO

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15-cr-00378-1(FAB)

USM Number: 45628-069

Alfredo Umpierre-Soler and Francisco Adams-Quesada
Defendant's Attorney

THE DEFENDANT:

 pleaded guilty to count(s) Three (3) on August 25, 2015 pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:924(c)(1)(A)	Possession of a firearm in furtherance of a drug trafficking crime.	5/19/2015	3

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____ Count(s) remaining is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 12, 2015

Date of Imposition of Judgment

S/ Francisco A. Besosa

Signature of Judge

Francisco A. Besosa

U.S. District Judge

Name and Title of Judge

November 12, 2015

Date

DEFENDANT: CARLOS TROCHE-ALVARADO
CASE NUMBER: 3:15-cr-00378-1(FAB)**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

SEVENTY-TWO (72) MONTHS

The court makes the following recommendations to the Bureau of Prisons:

That defendant be designated to the institution in Coleman, FL.
That defendant participate, if he qualifies, in the 500-hour drug treatment program.
That defendant be allowed to participate in any vocational training he may be interested.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **CARLOS TROCHE-ALVARADO**
CASE NUMBER: **3:15-cr-00378-1(FAB)****SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

FIVE (5) YEARS

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CARLOS TROCHE-ALVARADO

CASE NUMBER: 3:15-cr-00378-1(FAB)

SPECIAL CONDITIONS OF SUPERVISION

1. He shall observe the standard conditions of supervised release recommended by the United States Sentencing Commission and adopted by this Court.
2. He shall not commit another Federal, state, or local crime.
3. He shall not possess firearms, destructive devices, and other dangerous weapons.
4. He shall not possess controlled substances unlawfully.
5. He shall not use controlled substances unlawfully and shall submit to a drug test within fifteen (15) days of release from imprisonment; after his release, he shall submit to random drug testing, not less than three (3) samples during the supervision period, but not to exceed 104 samples per year under the coordination of the U.S. Probation Officer. If substance abuse is detected in any sample, he shall participate in an in-patient or an out-patient substance abuse treatment program, for evaluation and/or treatment, as arranged by the U.S. Probation Officer until duly discharged. He is required to contribute to the cost of those services, in an amount arranged by the Probation Officer, based on his ability to pay or the availability by third parties.
6. Defendant shall perform 250 hours of unpaid community service work during the supervision period at a private non-profit or public facility to be selected and under such arrangements as the U.S. Probation Officer of the Court may determine.
7. He shall provide the U.S. Probation Officer access to any financial information upon request.
8. He shall remain under curfew at his residence of record from 6:00 pm to 6:00 am for a period of six (6) months, to commence upon his release from imprisonment. During this time, the defendant shall remain at his place of residence, except for employment, schooling, medical appointments, religious services or other activities, if approved in advance by the probation officer. The defendant shall wear an electronic device 24 hours a day and shall observe the rules specified by the probation office. The defendant is ordered to pay the cost of the Electronic Monitoring Device. Payment shall be based on his ability to pay or the availability of third-party payments, as approved by the Court. In addition to any other telephone or cellphone he may have, defendant shall maintain a telephone at his place of residence without any special features, modems, answering machines, or cordless telephones during the term of electronic monitoring.
9. He shall submit himself and his property, house, residence, vehicle, office papers, effects, computers and other electronic communications or data storage devices or media to a search, at any time, with or without a warrant, by a U.S. Probation Officer, and if necessary, with the assistance of any other law enforcement officer, but only in the lawful discharge of the supervision functions of the probation officer, who must have a reasonable suspicion of contraband, or of evidence of a violation of a condition of supervised release. The probation officer may seize any electronic communication or electronic device or medium which will be subject to further forensic investigation or analysis. Failure to submit to a search or permit a seizure may be grounds for revocation of supervised release. The defendant shall warn any other resident or occupant that the premises may be subject to searches pursuant to this condition.
10. He shall cooperate in the collection of a DNA sample, as directed by the Probation Officer, pursuant to the Revised Collection Requirements and Title 18, U.S. Code Sec. 3563(a)(9).

DEFENDANT: CARLOS TROCHE-ALVARADO

CASE NUMBER: 3:15-cr-00378-1(FAB)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>TOTALS</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 100.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____ 0.00	\$ _____ 0.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CARLOS TROCHE-ALVARADO
CASE NUMBER: 3:15-cr-00378-1(FAB)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 249,030.00 due immediately, balance due

not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

One (1) loaded Glock pistol, Model 23, Caliber.40, serial number MEB502, 198 rounds of ammunition and all magazines, in addition to \$248,930 in US currency, the amount of proceeds involved in the offense

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.