

No. _____

**In the
Supreme Court of the United States**

JAIME VEGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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JAIME VEGA

QUESTION PRESENTED

To what extent does 18 U.S.C. § 3553 require a district court to specifically state the reasons for imposing a revocation sentence above the guidelines sentencing range?

PARTIES TO THE PROCEEDINGS

The parties are Petitioner, Jaime Vega, and Respondent, United States of America. All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Jaime Vega, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on December 16, 2019, Ninth Circuit Court of Appeal № 18-10495.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum in this matter. App. 1a. See also *United States v. Vega*, 787 F. App'x 945 (9th Cir. 2019). The district court order from which Mr. Vega appealed is also unpublished. App. 3a.

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its memorandum in the instant matter was December 16, 2019. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE AND FACTS

A. Mr. Vega's Personal History

In 1977, Mr. Vega was born in Fresno, California and thereafter raised in a loving family. PSR, pp. 2, 17. He did, however, suffer a variety of setbacks. At 16, he learned that the man he thought was his father was actually his stepfather. In this regard, Mr. Vega has no memories of his biological father ever being in his life. PSR, p.17. When Mr. Vega learned that his stepfather was not his biological father, he started drinking alcohol on a daily basis.

Tragically, one of Mr. Vega's brothers was murdered at a young age. PSR, p.17. In response to his brother being killed, Mr. Vega began using a variety of drugs on a daily basis. PSR, p.19. In addition to drug use, the tragedies that befell Mr. Vega led him to suffer from PTSD for which he was prescribed medication. ER 19.

Mr. Vega completed the eleventh grade, enrolled in continuation school, and later attended Hamilton School. Although he did not receive

his General Education Diploma, he also attended Fresno City College. PSR, p. 19- 20.

Mr. Vega's early work history included a number of jobs. His first job was at Wendy's Restaurant. He was later hired by McDonald's Restaurant and also worked at Beef Packers and Zacky Farms. PSR, p. 20. At the time the district court revoked supervision, Mr. Vega was considered an industrious worker in the construction industry. ER 23.

At the time his supervised release was revoked, Mr. Vega was in a relationship with Vanessa Stoutinburg. Ms. Stoutinburg worked at an elementary school as a Kindergarten Instructional Aide, and was scheduled to begin course work for her Masters Degree in Education/Elementary Teaching. ER 27. She was expecting the couple's first child. ER 27. Mr. Vega also had four older children from previous relationships. PSR, p.17-18.

B. The Conviction Giving Rise to Mr. Vega's Supervised Release

On August 25, 2011, Fresno police officers stopped Mr. Vega for a vehicle code violation. Mr. Vega exited the vehicle and ran away after stopping the car. Officers gave chase and observed a silver object fall to the ground from Mr. Vega's possession. They discovered the object was a stolen, loaded Smith and Wesson 9mm handgun. ER 101; PSR, p. 3. At the time the offense was committed, Mr. Vega was on probation. PSR, p.15.

On September 22, 2011, the U.S. Attorney for the Eastern District of California filed a one-count indictment alleging Mr. Vega was a felon in possession of a firearm in violation of 18 USC § 922(g)(1), a class C felony. ER 115. On December 3, 2012, Mr. Vega pleaded guilty as charged. ER 106, 113; PSR, p.3.

In recommending a sentence, the Office of Probation calculated Mr. Vega's total offense level as 19, with a Criminal History Category of VI. ER 88; PSR, p.15. The convictions that were used to calculate Mr. Vega's Criminal History Category included the following: false information to a

peace officer (misdemeanor); possession of a switchblade knife (misdemeanor); possession of marijuana for sale (felony); various probation violations; battery of cohabitant (misdemeanor); second degree burglary (felony); parole violation; obstruction/resisting an executive officer (felony); various instances of driving with 0.08% or higher blood alcohol content (misdemeanors); various instances of obstructing a peace officer (misdemeanors); hit and run property damage (misdemeanor); hit-and-run driving (felony); various instances of corporal injury to spouse/cohabitant (misdemeanors), willful cruelty to child (misdemeanor), obstructing a peace officer (misdemeanor); and, vandalism under \$400 (misdemeanor). PSR, pp. 5-14.

The Office of Probation calculated Mr. Vega's guideline range as 63 to 78 months. ER 88 On February 23, 2013, the district court convicted Mr. Vega as pled and imposed, *inter alia*, 63 months of incarceration to be followed by 36 months of supervised release. ER 72. Mr. Vega's conditions of supervised release required, *inter alia*, that he refrain from the unlawful

use of a controlled substance and alcohol, participate in a substance abuse program as directed by his probation officer, and report to his probation officer as directed. ER 75, 78, 90-91.

**C. Mr. Vega's Conduct While on Supervised Release and the
Petition to Revoke Supervision**

Toward the end of his 63-month term of incarceration, Mr. Vega was released to a halfway house. He, however, was violated for drinking alcohol and returned to custody. PDM,¹ p. 3. On May 5, 2017, Mr. Vega completed his 63-month term of incarceration and then began his three-year term of supervised release. ER 16-17.

Mr. Vega's probation officer opined that during the beginning stages of supervision, Mr. Vega appeared focused on his sobriety and his family's needs. He began full-time employment with SF Supermarket. ER 16; PDM,

¹"PDM" refers to the Office of Probation's Dispositional Memorandum dated November 13, 2018.

p. 3.

On July 19, 2017, Mr. Vega tested positive for methamphetamine and admitted to using drugs to cope with personal issues. As a result, Probation referred him to Turning Point Outpatient Drug Treatment Services. PDM, p. 3.²

On August 9, 2017, Mr. Vega tested positive for methamphetamine and cocaine. PDM, p. 3. He admitted to drug use and asked for another opportunity to comply so that he could maintain employment. PDM, p. 3. In response, Probation increased Mr. Vega's outpatient treatment attendance to twice weekly. PDM, p. 3.

On August 21, 2017, Mr. Vega tested positive for methamphetamine. He admitted that the addiction was negatively affecting his life. ER 70; PDM, p. 3. Probation considered revoking Mr. Vega's supervised release at that time. However, because Mr. Vega had maintained steady

²On July 28, 2017, the district court approved the probation officer's treatment plan. ER 62.

employment since being on supervision, he was given another opportunity to comply. To address the non-compliant behavior, Probation increased Mr. Vega's individual substance abuse treatment. Mr. Vega also agreed to temporarily reside at the Residential Reentry Center (RRC) to focus on his sobriety and personal life. ER 70; PDM, p. 3.

On September 6, 2017, Mr. Vega entered the RRC, testing positive for methamphetamine and admitting that he had used methamphetamine a few days earlier. PDM, p. 3. On September 9, 2017, Mr. Vega entered the Salvation Army inpatient program, and as a result, was required to quit his job at SF Supermarket.³ ER16.

At one point, Mr. Vega was terminated from the Salvation Army program. The termination occurred while he was at a doctor's appointment, and upon his return to the facility, he found all his belongings had been packed up. He did not have an opportunity to challenge his

³On October 6, 2017, the district court approved the probation officer's treatment plan. ER 62.

termination. Mr. Vega immediately called his probation officer regarding the termination and reported the next day to discuss getting into another program. Mr. Vega contacted a lieutenant at the Fresno Salvation Army who was able to get him into the Stockton Salvation Army program where he finished the six-month program. ER 16.

On April 23, 2018, Mr. Vega provided Probation with a urinalysis. Before doing so, he admitted to having used methamphetamine a few days earlier. PDM, p. 4. As a result, Probation filed a petition for a warrant on April 25, 2019, alleging that Mr. Vega had violated his supervised release. PDM, p. 2.

The district court issued an arrest warrant, and Probation directed Mr. Vega to report to its Fresno Office. Mr. Vega, however, did not appear for that appointment and his whereabouts became unknown. PDM, p. 4. While his whereabouts were unknown, Mr. Vega stayed with the mother of his seven-year old son in Tulare because she was homeless and he was compelled to provide the assistance that he could to save them from having

to sleep in the streets, finding housing for them where he could. ER 17.

In its dispositional memorandum, Probation claimed that on May 29, 2018, the United States marshal's apprehension team attempted a traffic stop to arrest Mr. Vega. He allegedly evaded officers by going at a high rate of speed in the wrong lane and into oncoming traffic. ER 58-59; PDM, p. 4. Based on these allegations, Probation filed a superseding petition on June 5, 2018 listing four charges against Mr. Vega which included the following: (1) unlawful use of a controlled substance; (2) failure to report to probation as directed; (3) new law violation;⁴ and, (4) new law violation.⁵ ER 45-46. The latter two charges were based on the alleged encounter between Mr. Vega and Fresno County deputies on May 29, 2018. ER 42, 45.

In his dispositional memorandum, Mr. Vega pointed out that he was

⁴Probation alleged that on May 29, 2018, Mr. Vega was charged with Willful Child Endangerment/Abuse, a felony offense, in violation of California Penal Code section 273a(a). ER 42.

⁵Probation alleged that on May 29, 2018, Mr. Vega was charged with Obstructing or Resisting Arrest, a misdemeanor offense, in violation of California Penal Code 148(a)(1). ER 45.

not in Fresno on May 29, 2018 and that he was never charged or arrested by the Fresno County Sheriff for any criminal behavior which allegedly occurred on that date. ER 17.

D. Mr. Vega's Arrest, Plea, Revocation, Sentencing and Appeal

On September 20, 2018, marshals located and arrested Mr. Vega. PDM, p. 4. On that same date, Mr. Vega appeared in court and denied the allegations regarding the violation of supervised release. The district court issued a detention order placing Mr. Vega in custody where he remained throughout the proceeding. ER 38-40, 42; PDM, p. 1.

At the October 17, 2018 status conference, Mr. Vega admitted the first two charges of the superseding petition. In response, Probation agreed that it would dismiss the third and fourth charges. ER 30-34; PDM, p. 1.

In its dispositional memorandum, Probation acknowledged that Mr. Vega was charged with a grade "C" violation as defined by USSG §7B 1. l(a)(3), and thus the district court could revoke his supervised release under

USSG §7B 1.3(a)(2). Because Mr. Vega qualified for a criminal history category of VI at the original sentencing, the recommended custody term for Mr. Vega's release violation was 8-14 months under USSG §7B1.4(a). PDM, p. 5.

Pursuant to USSG §7B1.3(c)(2), Mr. Vega's minimum term of custody could be satisfied by a custody term of at least 4 months followed by supervised release with a special condition of at least 4 months of community confinement or home detention for the balance of the minimum term. PDM, p. 5. Probation, however, recommended that the district court commit Mr. Vega to the custody of the Bureau of Prisons for a term of 24 months. PDM, p. 7.

In response, to Probation's memorandum, Mr. Vega filed a memorandum requesting that the court impose a sentence of four months incarceration and four months of home detention with supervision to follow. ER 16. In support of this request, Mr. Vega attached letters of support from those who knew him well. Diana Luna, Mr. Vega's aunt

stated:

Jaime came home [following his release from incarceration] with a determination I have never seen before. He was open to listening and asked for assistance in continuing to be [] productive. He met all his dates for his program. [He] worked on himself and obtained employment. I could see that he was in the contemplation stage of change. He has a willingness and determination to succeed for himself and his family.

In my conversations with Jaime I have witnessed a willingness to open up and share his feelings with me on his fears as well as what he sees for himself and I was pleasantly impressed. He had a willingness to make adjustments for being a better person and to work on getting better.

ER 21-22.

Mr. Vega's younger brother, Julio related:

Since he has been released this last time, Jaime has been trying to turn a new leaf. Jaime was at Turning Point of Central California while maintaining a part time job at SF Supermarket. He was also seeking rehabilitation with The Salvation Army where we could see a real change in his character. Jaime was making new friendships with people that were overcoming similar struggles.

* * *

With help from my connections in the architecture and construction industry, Jaime has been working odd jobs in the construction field. Slowly Jaime has been networking with people that can make a serious change in his life. . . . [S]ince he's been recently arrested, I've been getting several phone calls from contractors that are looking for his help with their projects. They have shared with me that Jaime Vega has shown them that he has the drive, the willingness to learn, and is the hard worker they look for out on the construction site. Though work isn't always consistent in this industry, having made this sort of impact where he is being called for because he is a good worker, says that Jaime has begun to make a new name for himself. Having a good work ethic is shown only with presence.

ER 23.

Mr. Vega's mother proffered:

When my son was released he was a different person. A person with a purpose. He followed the program he was assigned and did well. He also found a job and was a very hard worker. He began to feel good about himself and voiced wanting to do things correctly this time. I knew he was serious because I had never heard him speak this way before. I have waited years to hear him say that. He

was on good behavior ¶ It is a process of learning to be back into society. He is trying to do the right thing and has made accomplishments and I believe with the right help and the support from his family he can do it.

ER 25-26.

Mr. Vega's girlfriend, Vanessa Stoutinburg, who worked at an elementary school as a Kindergarten Instructional Aide and who was returning to school to work on her Masters in Education, also expressed her loving support of Mr. Vega and her belief in his potential. ER 27-28.

Mr. Vega's sentencing hearing took place on December 17, 2018. Present at the hearing were Mr. Vega's mother and his girlfriend, Ms. Stoutinburg. ER 5. The district court revoked Mr. Vega's supervision and sentenced him to 18 months of incarceration. ER 1-2, 12. In so doing, the district court recognized the positive nature of Mr. Vega's completion of the Salvation Army's drug program. ER 11. At the government's request, the district court dismissed charges three and four of the petition. ER 1, 12.

On December 24, 2018, the district court filed Mr. Vega's notice of

appeal challenging the December 19, 2018 judgment. ER 14. On February 2, 2019, the Ninth Circuit Court of Appeals affirmed the judgment in an unpublished memorandum. App. 1a.

E. Bail Status

Mr. Vega was release from incarceration on or about January 10, 2020.
See www.bop.gov/inmateloc.

REASONS FOR GRANTING THE WRIT

- I. THE DECISION IN THIS MATTER IS CONTRARY TO DUE PROCESS AND CONFLICTS WITH THE DECISIONS OF SISTER CIRCUITS ON AN IMPORTANT ISSUE OF LAW; THUS, THERE ARE COMPELLING REASONS TO GRANT CERTIORARI.

The Court of Appeals' memorandum holds that a district court need not specifically state its reasons for imposing a sentencing in excess of the sentencing guideline range. App. 2a. This holding is contrary to the plain language of 18 U.S.C. § 3553(c). It is also in conflict with case law addressing this issue in sister circuits.

Section 3553(c) requires the district court:

. . . at the time of sentencing, [to] state in open court the reasons for its imposition of the particular sentence, and, if the sentence –

* * *

(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 be stated with specificity in the written order of judgment and

commitment....

18 U.S.C. § 3553(c). See also, *United States v. Miquel*, 444 F.3d 1173, 1177 (9th Cir. 2006).

Section 18 U.S.C. § 3553(a)(4) states in relevant part:

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

18 U.S.C. § 3553(a)(4)(B).

In his opening brief, Mr. Vega explained that, because the sentence imposed was in excess of the calculated sentence guideline range, then the district court was required to state on the record the specific reason why it was imposing sentence outside of the range.

When it imposed sentence on Mr. Vega, the district court stated that it “. . . considered the statutory provisions, including the sentencing factors set forth in 18 USC Section 3583(e) and the policy statements

issued by the Sentencing Commission” and then proceeded to discuss one of the factors found in 18 U.S.C. § 3553(a) as referenced by 18 U.S.C. § 3582(e). ER 9-12. What the district court wholly failed to do was give a specific explanation as to why it deviated from the guideline range. The Court of Appeals’ memorandum holds that the district court’s failure was permissible.

The Supreme Court has admonished that a sentencing court ought to state its reasons for imposing a particular sentence,"including an explanation for any deviation from the Guidelines range." *Gall v. U.S.*, 552 U.S. 38, 50-51 (2007). More specifically, this Court has held that, "Where the judge imposes a sentence outside the Guidelines, he will explain why he has done so." *Rita v. United States*, 551 U.S. 338, 357 (2007). In an attempt to follow the Supreme Court’s directive, federal Courts of Appeals have taken conflicting courses of action.

In the instant matter, the Ninth Circuit Court of Appeals determined that there was no need for the district court to specifically discuss why it deviated from the guidelines range. Rather, the district court’s general discussion regarding the sentence was sufficient. The

Seventh Circuit takes a similar position, as does the Tenth Circuit. See *United States v. Molton*, 743 F.3d 479, 484 (7th Cir. 2014) wherein the Court of Appeals merely looked to see if the district court gave an explanation generally, but not specifically directed at the fact that the sentence was above the guidelines. See also *United States v. White*, 265 F. App'x 719, 728 (10th Cir. 2008) wherein the Court of Appeals looked merely to the general statements made in support of the sentence. Similarly, the First Circuit only requires that the district court provide a “coherent justification” for the sentence as a whole. *United States v. Marquez-Garcia*, 862 F.3d 143, 146–147 (1st Cir. 2017). See also *United States v. Del Valle-Rodríguez*, 761 F.3d 171, 177 (1st Cir. 2014).

In contrast to the instant opinion and the case law of the First, Seventh, and Tenth Circuits, other circuits require a district court to specifically state why it deviated from the guidelines in imposing sentence. A general statement of reasons for the sentence will not suffice. For example, in the Fourth Circuit, see *United States v. Carter*, 564 F.3d 325, 328–329 (4th Cir. 2009) and *United States v. Khan*, 461 F.3d 477, 499 (4th Cir. 2006), as amended (Sept. 7, 2006). The Eighth Circuit also requires a statement directed specifically at the deviance. See *United*

States v. Chettiar, 501 F.3d 854, 861 (8th Cir. 2007) holding that “. . .a court maintains a duty to explain its reasons for the sentence imposed with some degree of specificity.”

The Eleventh Circuit’s position is in even greater contrast to the holding in the instant matter in that the Eleventh Circuit requires a district court to articulate that the deviant sentence was based on an aggravating circumstance that was inadequately taken into consideration by the Sentencing Commission. See United States v. Dempsey, 957 F.2d 831, 833 (11th Cir. 1992).

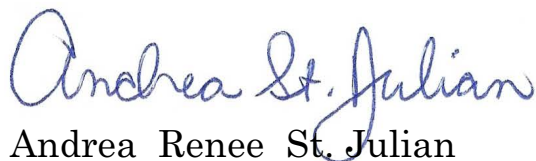
The conflicts between the memorandum in the instant and that of the enumerated sister circuits are deep and important. Under these circumstances, this Court should grant the instant petition.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: March 12, 2020

Respectfully submitted,



Andrea Renee St. Julian
Counsel of Record for Petitioner,
Jaime Vega

APPENDICES

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-10495

Plaintiff-Appellee,

D.C. No. 1:11-cr-00318-DAD
BAM-1

v.

JAIME VEGA, AKA Jimmy Johnson,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted December 11, 2019**

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Jaime Vega appeals from the district court's judgment and challenges the 18-month sentence imposed upon revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Vega argues that the district court erred by failing to provide specific

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reasons for his above-Guidelines sentence. Because Vega did not raise this objection in the district court, we review for plain error. *See United States v. Miquel*, 444 F.3d 1173, 1176 (9th Cir. 2006). The record demonstrates that the district court imposed the sentence after considering Vega's history and characteristics, particularly Vega's very poor history on supervision. *See* 18 U.S.C. § 3583(e). The district court adequately explained its reasons for imposing the above-Guidelines sentence. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

Vega next contends that the sentence is substantively unreasonable. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The 18-month sentence is substantively reasonable in light of the 18 U.S.C. § 3583(e) sentencing factors and the totality of the circumstances, including Vega's history on supervision. *See Gall*, 552 U.S. at 51.

AFFIRMED.

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA

v.

JAIME VEGA**JUDGMENT IN A CRIMINAL CASE**(For **Revocation** of Probation or Supervised Release)Criminal Number: **1:11CR00318-001**

Defendant's Attorney: Carolyn Phillips

THE DEFENDANT:

- ☒ admitted guilty to violation of charge(s) 1 and 2 as alleged in the violation petition filed on 6/5/2018 .
- ☐ was found in violation of condition(s) of supervision as to charge(s) ____ after denial of guilt, as alleged in the violation petition filed on ____.

The defendant is adjudicated guilty of these violations:

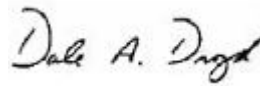
Violation Number	Nature of Violation	Date Violation Ended
Charge 1	UNLAWFUL USE OF A CONTROLLED SUBSTANCE	April 23, 2018
Charge 2	FAILURE TO FOLLOW INSTRUCTIONS OF THE PROBATION OFFICER	April 27, 2018

The court: ☒ revokes: ☐ modifies: ☐ continues under same conditions of supervision heretofore ordered on 2/25/2013 .The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☒ Charge(s) 3 and 4 are dismissed. ☐ APPEAL RIGHTS GIVEN**Any previously imposed criminal monetary penalties that remain unpaid shall remain in effect.**

It is ordered that the defendant shall 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.

12/17/2018

Date of Imposition of Sentence



Signature of Judicial Officer

Dale A. Drozd, United States District Judge

Name & Title of Judicial Officer

12/19/2018

Date

DEFENDANT: JAIME VEGA

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CASE NUMBER: 1:11CR00318-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 18 months.

- ☒ No TSR: Defendant shall cooperate in the collection of DNA.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ 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 ____ 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 ____ on ____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Officer.
- If no such institution has been designated, to the United States Marshal for this district.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal