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FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 29 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LEONEL MARIN-TORRES,

Defendant-Appellant.

No. 19-30164

D.C. No.
2:09-cr-00262-RSL-1

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted February 16, 2023**
Seattle, Washington

Before: PAEZ and VANDYKE, Circuit Judges, and BENITEZ, *** District Judge.

Defendant-Appellant Leonel Marin-Torres appeals the district court's denial of his motion for reduction of sentence under § 404(b) of the First Step Act of 2018, alleging the district court abused its discretion in applying the 18 U.S.C. § 3553(a)

* 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).

*** The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

Appendix A

factors and denying his request for plenary resentencing. Marin-Torres is serving a term of 192 months in prison, 132 of which were imposed for a crack cocaine offense. While in prison, he has been convicted of assault with a dangerous weapon, possessing contraband, and assault of an officer.

Because Marin-Torres was sentenced before the Fair Sentencing Act of 2010 took effect, he did not benefit from the changes it made to sentences for those convicted of crack cocaine offenses. *See Dorsey v. United States*, 567 U.S. 260 (2012). But § 404(b) makes certain provisions of the Fair Sentencing Act retroactively applicable to persons like Marin-Torres who would have been within its scope had they been sentenced after its effective date.

We review for an abuse of discretion the district court’s decision to deny a motion for sentence reduction. *See Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022). Marin-Torres alleges he is entitled to plenary resentencing. The district court correctly rejected this argument because the text of the First Step Act and rationale of *Concepcion* do not require a full resentencing hearing. While § 3582(c)(1)(B) permits modification of a sentence where expressly authorized by another statute—here, the First Step Act—§ 3582(c)(1)(B) “does not impose any substantive or procedural limits on a district court’s discretion.” *Concepcion*, 142 S. Ct. at 2402 n.5. By its plain language, § 404 of the First Step Act permits, but does not require, a court to reduce an eligible defendant’s sentence. *Id.* The text of

the First Step Act also does not require any particular procedure aside from a “motion.” § 404(b).

The district court did not abuse its discretion in denying Marin-Torres’s motion for resentencing. “All that the First Step Act requires is that a district court make clear that it reasoned through the parties’ arguments.” *Concepcion*, 142 S. Ct. at 2404 (citation and internal quotation omitted). A court need not “make a point-by-point rebuttal of the parties’ arguments” to do so. *Id.* at 2405. Here, Marin-Torres argued that his recalculated guidelines range would be lower, that this lower range reflects a policy determination that his current sentence is unjust, and that his old age would minimize any risk to the public upon his earlier release. The district court did not make express reference to these arguments, but the reasons it provided for denying Marin-Torres’ motion nonetheless make clear why it did not find them persuasive. The district court explained that it considered the § 3553(a) factors, including the applicable guideline range and Marin-Torres’s history and conduct. It relied on Marin-Torres’s background and history of violence, noting the defendant’s two assault convictions while in prison.¹ These “post-sentencing convictions ...

¹ In its 2016 denial of the motion for sentence reduction, the district court described Marin-Torres as “one of the most dangerous offenders” it had seen. The court detailed Marin-Torres’s “violent criminal past,” which includes multiple prior assault convictions, a conviction for unlawful possession of a firearm, and other charges for assault and kidnapping. On one occasion, Marin-Torres was convicted for repeatedly punching a female victim in the face such that “she feared for her life.”

only serve[d] to heighten the Court’s concern rather than alleviate it.” In short, the district court properly used its discretion to weigh the § 3553(a) factors and supported its decision with compelling reasoning. The district court need not provide more.

In addition, Marin-Torres has filed a motion to supplement the record with materials that he argues support his ineffective assistance of counsel claim by showing he never authorized his counsel to file the § 404(b) motion. On appeal, modifying or supplementing the record is permitted only in “extraordinary” circumstances. *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); *see also* *United States v. Garcia*, 997 F.2d 1273, 1278 (9th Cir. 1993). Federal Rule of Appellate Procedure 10(e) provides that new material may not be introduced; only material that is “omitted from or misstated in the record by error or accident” may be presented. Fed. R. App. P. 10(e)(2); *Garcia*, 997 F.2d at 1278. Courts may correct errors and omissions—and may always consider new facts that render a controversy moot and divest jurisdiction—but such circumstances are rare. *Lowry*, 329 F.3d at 1024.

Here, Marin-Torres attempts to introduce into the record new information that post-dates the district court’s decision. He contends that this is his only opportunity to seek review of these materials in support of his claims. But this is not true. Marin-Torres could have presented the materials to the district court, but has not done so.

See Fed. R. Crim. P. 37(a). Because he has shown no extraordinary circumstance, he cannot supplement the record on appeal.

Finally, Marin-Torres would be unable to establish that his counsel was ineffective even if the new material was considered. Under the *Strickland* test, Marin-Torres must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Even assuming defense counsel was deficient, Marin-Torres has not presented evidence of prejudice.

Marin-Torres asserts that he told his counsel not to file a § 404(b) motion. Assuming Marin-Torres's assertion is true, he has not presented evidence that suggests that any alternative § 404(b) motion would have been granted.

AFFIRMED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
LEONEL MARIN-TORRES,
Defendant.

Case No. 2:09-CR-262-RSL

ORDER DENYING
DEFENDANT'S MOTION
FOR RESENTENCING AND
IMPOSITION OF A
REDUCED SENTENCE

This matter comes before the Court on defendant Leonel Marin-Torres's "Motion for Resentencing and Imposition of a Reduced Sentence Pursuant to Section 404 of the First Step Act." Dkt. #164.

BACKGROUND

A. Underlying Conviction

On March 2, 2010, defendant was convicted by a jury on three charges of Possession of Cocaine Base in the Form of Crack Cocaine with Intent to Distribute, see 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), Carrying a Firearm During and in Relation to a Drug Trafficking Crime, see 18 U.S.C. § 924(c)(1)(A)(i), and Felon in Possession of a Firearm, see 18 U.S.C. § 922(g)(1). Dkt. #110. He was sentenced to a total of 192 months; 132 months on Count One, 120 months on Count Three to run concurrently with Count One, and 60 months on Count Two to run consecutively to Counts One and Three. Id. at 2. The judgment was affirmed on appeal. Dkt. #139. Defendant has since been convicted, while serving his sentence, of Assault with a

1 Dangerous Weapon with Intent to Do Bodily Harm, see 18 U.S.C. §§ 113(a)(3) and 7(3),
 2 Possessing Contraband in Prison, see 18 U.S.C. §§ 1791(a)(2), (b)(3), (d)(1)(B) and 7(3), and
 3 Assault of an Officer, see 18 U.S.C. §§ 111(a) and (b). Dkt. #168 at 3–4; Dkt. #164 at 3. These
 4 have added an additional 147 months to his imprisonment. Id.

5 In 2016, defendant sought a sentence reduction under Amendment 782 to the United
 6 States Sentencing Guidelines (“the Guidelines”). Dkt. #146; see 18 U.S.C. § 3582(c)(2). The
 7 Court found that defendant was eligible for a sentence reduction from the 132 months imposed
 8 for Count One. However, after consideration of the applicable 18 U.S.C. § 3553(a) factors, the
 9 Court declined to exercise its discretion to reduce defendant’s sentence. Dkt. #155. That
 10 decision was also affirmed on appeal. Dkt. #161.

11 **B. First Step Act**

13 Defendant filed his “Motion for Resentencing and Imposition of a Reduced Sentence
 14 Pursuant to Section 404 of the First Step Act” on March 6, 2019. At the time of defendant’s
 15 sentencing, the Anti-Drug Abuse Act of 1986 provided for a sentencing range of up to 20 years
 16 if the offense involved less than 5g or an unspecified amount of crack cocaine, and 5 to 40 years
 17 if the offense involved 5 grams to 50 grams of crack cocaine. 21 U.S.C. § 841(b) (1996). On
 18 August 3, 2010, Congress enacted the Fair Sentencing Act. Section 2 altered the penalty
 19 structure for cocaine base offenses. For offenses involving less than 28g or an unspecified
 20 amount of cocaine base, the sentencing range is now up to 20 years. 21 U.S.C. § 841(b).

21 On December 21, 2018, Congress enacted the First Step Act of 2018. Section 404 made
 22 retroactive the portions of the Fair Sentencing Act that lowered the statutory penalties applicable
 23 to certain offenses involving cocaine base. First Step Act, § 404(b). The government does not
 24 dispute that defendant has met the eligibility requirements of the statute for a reduction in
 25 sentence. Id.; see Dkt. #168 at 9. What remains in dispute is whether defendant is entitled to a
 26 plenary sentencing hearing, and whether the Court should exercise its discretion to reduce
 27 defendant’s sentence.

28 ORDER DENYING DEFENDANT’S MOTION FOR RESENTENCING
 AND IMPOSITION OF A REDUCED SENTENCE - 2

DISCUSSION

A. Eligibility for Sentence Reduction

Section 404 states that the provisions of the First Step Act apply to “Covered Offenses,” defined as a “violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 … that was committed before August 3, 2010.” First Step Act, § 404(a). However, a court shall not entertain a motion to reduce a defendant’s sentence “if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act … or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.” Id. at § 404(c). “Courts retain discretion to deny motions of otherwise eligible offenders, and the First Step Act does not ‘require a court to reduce any sentence.’” United States v. Mason, No. 2:04-CR-00209-RHW-1, 2019 WL 2396568, at *2 (E.D. Wash. June 6, 2019) (quoting First Step Act, § 404(c)).

Defendant committed the offense of Possession of Cocaine Base in the Form of Crack Cocaine with Intent to Distribute before August 3, 2010. Dkt. #164 at 5. Section 2 of the Fair Sentencing Act modified the statutory penalties for that offense, reducing the sentencing range for his possession of 9.18g of crack cocaine from imprisonment for 5 to 40 years to imprisonment for up to 20 years—or up to 30 years in his case due to the 21 U.S.C. § 841 enhancement based on a prior drug offense. 21 U.S.C. § 841(b); see Dkt. #164 at 1. He has not previously filed a Section 404 motion. The Court has the authority to impose a reduced sentence for Count One. First Step Act, § 404.

B. Plenary Sentencing Hearing

Under the Fair Sentencing Act, the Court “may … impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 … were in effect at the time the covered offense was committed.” First Step Act, § 404(b). Defendant requests that he be transported to the Court for a plenary sentencing hearing. Dkt. #164 at 7. The government argues that he is not

ORDER DENYING DEFENDANT'S MOTION FOR RESENTENCING
AND IMPOSITION OF A REDUCED SENTENCE - 3

1 entitled to a hearing. Dkt. #168 at 6. The Court of Appeals for the Ninth Circuit has not yet
 2 addressed this issue. See, e.g., United States v. Graves, 925 F.3d 1036, 1041 (9th Cir. 2019)
 3 (“When the district court re-sentences [the defendant], it may also consider what effect, if any,
 4 the recently enacted First Step Act has on his sentence.”); United States v. Spearman, 913 F.3d
 5 958 (9th Cir. 2019) (remanding case for “re-sentencing in light of, and in accordance with, the
 6 First Step Act of 2018”); United States v. Mapuatuli, 762 F. App’x 419 n.3, 423 (9th Cir. 2019)
 7 (mem) (“[W]hen the district court re-sentences [the defendant], it may also consider what effect
 8 (if any) the recently enacted First Step Act has on [his] sentence.”).

9 In general, the Court may not modify a term of imprisonment once it has been imposed.
 10 18 U.S.C. § 3582(c). However, it may do so “to the extent otherwise expressly permitted by
 11 statute or by Rule 35 of the Federal Rules of Criminal Procedure,” under 18 U.S.C. §
 12 3582(c)(1)(B), and “in the case of a defendant who has been sentenced to a term of
 13 imprisonment based on a sentencing range that has subsequently been lowered by the
 14 Sentencing Commission … if such a reduction is consistent with applicable policy statements
 15 issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2). “When the Commission makes
 16 a Guidelines amendment retroactive, 18 U.S.C. § 3582(c)(2) authorizes a district court to reduce
 17 an otherwise final sentence that is based on the amended provision.” Dillon v. United States, 560
 18 U.S. 817, 821 (2010). The Supreme Court has held that the text of § 3852(c)(2), “together with
 19 its narrow scope, shows that Congress intended to authorize only a limited adjustment to an
 20 otherwise final sentence and not a plenary resentencing proceeding.” Id. at 826. “Relevant here,
 21 subsection (c)(1)(B) authorizes a court to ‘modify an imposed term of imprisonment to the
 22 extent otherwise expressly permitted by statute.’” Mason, 2019 WL 2396568 at *3 (quoting 18
 23 U.S.C. § 3582(c)(1)(B)). “Section 404(b) of the First Step Act provides this express statutory
 24 authorization.” Id. (citing United States v. Shelton, No. CR 3:07-329 (CMC), 2019 WL
 25 1598921, at *2 (D.S.C. Apr. 15, 2019)).

26
 27 The Fair Sentencing Act and the First Step Act do not expressly provide for a plenary
 28 resentencing. See generally First Step Act; see Mason, 2019 WL 2396568 at *3; see United

ORDER DENYING DEFENDANT’S MOTION FOR RESENTENCING
 AND IMPOSITION OF A REDUCED SENTENCE - 4

1 States v. Potts, No. 2:98-CR-14010, 2019 WL 1059837, at *2 (S.D. Fla. Mar. 6, 2019). Nor does
 2 the First Step Act specifically incorporate 18 U.S.C. § 3852, or any other statute. Defendant is
 3 correct in that “a court should not add language to an unambiguous statute absent a manifest
 4 error in drafting or unresolvable inconsistency.” Aronsen v. Crown Zellerbach, 662 F.2d 584,
 5 590 (9th Cir. 1981). However, § 3582(c) is the procedural vehicle through which the Court can
 6 modify a defendant’s sentence under the First Step Act. See Potts, 2019 WL 1059837 at *3
 7 (citing United States v. Maiello, 805 F.3d 992, 999 (11th Cir. 2015)); see United States v.
 8 Kamber, No. 09-CR-40050-JPG, 2019 WL 399935, at *2 (S.D. Ill. Jan. 31, 2019). This is
 9 because Section 404(b) of the First Step Act provides the express statutory authorization
 10 required to modify the imposed term of imprisonment under § 3582(c)(1)(b). Mason, 2019 WL
 11 2396568 at *3 (citing Shelton, 2019 WL 1598921 at *2); see United States v. Delaney, No.
 12 6:08-CR-00012, 2019 WL 861418, at *1 (W.D. Va. Feb. 22, 2019). The Supreme Court has
 13 already held that a defendant is not entitled to a resentencing proceeding under § 3852(c)(2).
 14 Dillon, 560 U.S. at 826. It follows that a defendant is not entitled to a resentencing proceeding
 15 under the First Step Act, either, through the procedural mechanism of § 3582(c)(1). Mason,
 16 2019 WL 2396568 at *3 (“... defendants are not entitled to full resentencing in the analogous
 17 context of subsection 3582(c)(2) proceedings, which are based on retroactive amendments to the
 18 U.S. Sentencing Guidelines... Similarly, the First Step Act permits a sentence reduction based
 19 on the retroactive application of the Fair Sentencing Act. Much like § 3852(c)(2), it
 20 contemplates only a limited adjustment to an otherwise final sentence and not a plenary
 21 resentencing proceeding.”); see Potts, 2019 WL 1059837 at *2; see United States v. Cole, 417 F.
 22 App’x 922, 923 (11th Cir. 2011) (“... a defendant is not entitled to a full resentencing during a §
 23 3582(c) proceeding.”).

24 The fact that Section 404 prohibits successive motions while § 3852(c)(2) does not is
 25 irrelevant. See Dkt. #164 at 8. The content of § 3852(c)(2) is not implicitly incorporated into
 26 Section 404. Rather, § 3852(c)(1)(B) is the mechanism through which Section 404 may be
 27 effectuated. Mason, 2019 WL 2396568 at *3. The use of the word “impose” instead of “modify”
 28

ORDER DENYING DEFENDANT’S MOTION FOR RESENTENCING
 AND IMPOSITION OF A REDUCED SENTENCE - 5

1 or “reduce” does not compel a contrary conclusion, either. Dkt. #164 at 9. “The reason is that
 2 the Act’s use of the word ‘impose’ must be read in context: it authorizes courts to ‘impose a
 3 reduced sentence,’ referring to a proceeding to ‘reduce’ a sentence. … This does not signal
 4 authorization for a full resentencing.” Mason, 2019 WL 2396568 at *4 (internal citation
 5 omitted). Finally, if the First Step Act authorized plenary resentencing proceedings for
 6 individuals convicted of crack cocaine offenses, this would be unfair to individuals convicted of
 7 other drug offenses. Mason, 2019 WL 2396568 at *4 (citing United States v. McKinney, No.
 8 06-20078-01-JWL, 2019 WL 2053998, at *4 (D. Kan. May 9, 2019). “If the Court were to
 9 engage in such a re-sentencing, applying other laws and Guidelines that have been changed
 10 since [the] original sentencing, it would work an injustice to offenders sentenced in the past who
 11 did not have a crack cocaine conviction qualifying for sentence reduction pursuant to the Fair
 12 Sentencing Act of 2010.” Russo, 2019 WL 1277507 at *1.

13 Most district courts that have considered this issue have come to the same conclusion.
 14 Mason, 2019 WL 2396568 at *3; see McKinney, 2019 WL 2053998 at *4; see United States v.
 15 Coleman, 382 F. Supp. 3d 851 (E.D. Wis. 2019); United States v. Sampson, 360 F. Supp. 3d
 16 168, 171 (W.D.N.Y. 2019); United States v. Davis, No. 07-CR-245S (1), 2019 WL 1054554, at
 17 *2 (W.D.N.Y. Mar. 6, 2019); Potts, 2019 WL 1059837 at *3; United States v. Russo, No.
 18 8:03CR413, 2019 WL 1277507, at *1 (D. Neb. Mar. 20, 2019); United States v. Rivas, No. 04-
 19 CR-256-PP, 2019 WL 1746392, at *7 (E.D. Wis. Apr. 18, 2019); United States v. Glore, No.
 20 99-CR-82-PP, 2019 WL 1761581, at *5 (E.D. Wis. Apr. 22, 2019).

21 The Court is therefore authorized to do only “one thing—recalculate the sentence on
 22 Count [One] as if section 2(a) of the FSA had been in effect when he committed that crime.”
 23 Coleman, 382 F. Supp. 3d at 851. Defendant’s presence is not required. See Fed. R. Crim. P.
 24 43(b) (“A defendant need not be present … [where] the proceeding involves the correction or
 25 reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c).”).

26
 27
 28 ORDER DENYING DEFENDANT’S MOTION FOR RESENTENCING
 AND IMPOSITION OF A REDUCED SENTENCE - 6

C. Reduction to Defendant's Sentence

“The First Step Act makes clear that sentence reductions are discretionary.” Mason, 2019 WL 2396568 at *6 (citing First Step Act § 404(c)). “In deciding how to exercise their discretion and determine the extent of a sentence reduction under the Act, courts should consider the factors set forth in 18 U.S.C. § 3553(a), which requires consideration of the applicable guideline range as well as all other pertinent information about the offender’s history and conduct.” Id.

Defendant has a significant history of violence. See 18 U.S.C. § 3553(a); see Dkt. #155. His post-sentencing convictions for assault only serve to heighten the Court’s concern rather than alleviate it. See United States v. Mitchell, No. CR 05-00110 (EGS), 2019 WL 2647571, at *7 (D.D.C. June 27, 2019) (“... consideration of [the defendant]’s post-sentencing conduct and the factors set forth in 18 U.S.C. § 3553(a) is appropriate under Section 404(b) of the First Step Act.”); United States v. Berry, No. 1:09-CR-05-2, 2019 WL 2521296, at *4 (W.D. Mich. June 19, 2019); United States v. Williams, No. 03-CR-1334 (JPO), 2019 WL 2865226, at *3 (S.D.N.Y. July 3, 2019). The Court declines to exercise its discretion to reduce defendant’s sentence. See First Step Act, § 404(c).

CONCLUSION

For all the foregoing reasons, defendant's motion is DENIED.

DATED this 19th day of July, 2019.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge

ORDER DENYING DEFENDANT'S MOTION FOR RESENTENCING
AND IMPOSITION OF A REDUCED SENTENCE - 7

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 5 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LEONEL MARIN-TORRES,

Defendant-Appellant.

No. 19-30164

D.C. No.
2:09-cr-00262-RSL-1

Western District of Washington,
Seattle

ORDER

Before: PAEZ and VANDYKE, Circuit Judges, and BENITEZ,* District Judge.

Judges Paez and VanDyke have voted to deny rehearing en banc, and Judge Benitez has recommended to deny the same. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The panel judges have voted to deny the petition for panel rehearing.

Appellant's petition for panel rehearing and rehearing en banc, ECF No. 78, is DENIED.

* The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

LEONEL MARIN-TORRES,

Defendant.

NO. CR09-262RSL

ORDER DENYING MOTION TO REDUCE SENTENCE

I. Introduction

This matter comes before the Court on Defendant’s “Motion to Reduce Sentence Based on 2014 Amendment to Drug-Quantity Sentencing Guidelines (Amendment 782), Pursuant to 18 U.S.C. § 3582” (Dkt. # 146). Defendant requests a sentence reduction under 18 U.S.C. § 3582(c)(2) based on Amendment 782 to the United States Sentencing Guidelines (“Sentencing Guidelines”), which reduces the base offense level for many drug offenses. For the reasons set forth below, the Court DENIES defendant’s motion.

II. Discussion

A. Background

Prior to defendant's current incarceration, defendant had a violent criminal past. In 1999, a jury found defendant guilty of assault in the fourth degree. Defendant had repeatedly punched a female victim in the face, and the victim told officers she feared for her life. Later on in that same year, defendant was charged with unlawful possession of a firearm, assault in the second degree and kidnaping in the second degree. The charges were ultimately dropped after the victim

1 moved to Mexico. The victim's cousin stated that defendant's friends threatened to kill the
 2 victim and his family if he testified against defendant. In 2002, a jury found defendant guilty of
 3 three counts of assault in the second degree and one count of unlawful possession of a firearm in
 4 the first degree.¹ According to a detective on the scene, defendant pointed a handgun at several
 5 men and threatened to kill them.

6 On March 2, 2010, defendant was convicted by a jury of three federal felony offenses:
 7 1) Possession of Cocaine Base in the Form of Crack Cocaine with Intent to Distribute, in
 8 violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B); 2) Carrying a Firearm During and in
 9 Relation to a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i); and 3) Felon
 10 in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1). Dkt. # 110. Because the
 11 Government filed a penalty enhancement for the first offense, the mandatory minimum for that
 12 offense was ten years. At the trial for these offenses, two of the primary witnesses testified to
 13 defendant's violent reputation.

14 Sentencing was held on May 28, 2010. Dkt. # 109. Counts 1 and 3 were sentenced
 15 together using the base offense level of Count 1, which the Court determined was 24. Because
 16 the Court also determined that defendant obstructed justice, it applied a two-level adjustment for
 17 a total offense level of 26 with an advisory range of 120 to 137 months. As for Count 2, the
 18 Court determined that the mandatory minimum of 60 months applied. In total, the Court
 19 sentenced defendant to 192 months: 132 months on Count 1; 120 months on Count 3 to run
 20 concurrently with Count 1; and 60 months on Count 2 to run consecutively to the other counts.
 21 Dkt. # 110.

22 Defendant has been convicted of two additional offenses while in custody and these
 23 offenses add an additional 147 months to his imprisonment. On December 23, 2012, while in
 24 federal custody, defendant used a makeshift knife to assault another inmate. Defendant was

25
 26 ¹ These convictions were overturned because an interpreter was not present in the courtroom at
 27 the time the Court addressed a question from the jury.

1 found guilty of Assault with a Dangerous Weapon with Intent to Do Bodily Harm, in violation
 2 of 18 U.S.C. §§ 113(a)(3) and 7(3) and Possessing Contraband in Prison, in violation of 18
 3 U.S.C. §§ 1791(a)(2), (b)(3), (d)(1)(B) and 7(3). Security video footage showed defendant
 4 repeatedly slashing at the victim's neck and head, causing the victim injuries that required
 5 significant treatment. On July 21, 2014, defendant assaulted a deputy sheriff working at the jail.
 6 Defendant was found guilty of Assault of an Officer, in violation of 18 U.S.C. § 111(a) and (b).
 7 Defendant attacked the deputy sheriff as he attempted to move defendant back to his cell.

8 **B. Analysis**

9 The Sentencing Reform Act provides the Court with the authority to retroactively lower
 10 the sentences of inmates when certain conditions are met:

11 [I]n the case of a defendant who has been sentenced to a term of imprisonment based on a
 12 sentencing range that has subsequently been lowered by the Sentencing
 13 Commission . . . the court may reduce the term of imprisonment, after considering the
 14 factors set forth in section 3553(a) to the extent that they are applicable, if such a
 15 reduction is consistent with applicable policy statements issued by the Sentencing
 16 Commission.

18 U.S.C. § 3582(c)(2).

17 In Dillon v. United States, 560 U.S. 817, 826-27 (2010), the Supreme Court directed
 18 district courts to follow a two-step approach to determine whether a retroactive guideline
 19 amendment applies. First, the court must determine defendant's eligibility by determining the
 20 amended advisory range. Id. Second, the court must consider any applicable § 3553(a) factors
 21 and determine whether, in its discretion, the reduction is warranted. Id. The Sentencing
 22 Commission Commentary specifically highlighted "public safety" as a consideration for courts
 23 determining whether a reduction in sentence is appropriate. U.S.S.G. 1B1.10(a). The Sentencing
 24 Commission Commentary also indicates that courts may consider post-sentencing conduct in
 25 making its determination. Id.

26 The parties agree on step one of the analysis: defendant is eligible for a sentencing
 27

28 ORDER DENYING MOTION TO REDUCE SENTENCE - 3

APPENDIX D

1 reduction. In Amendment 782 to the Sentencing Guidelines, the Sentencing Commission
 2 lowered the base levels for many drug offenses. According to the Sentencing Commission,
 3 Amendment 782 can be applied pursuant to § 3582(c)(2) “in cases in which the order reducing
 4 the defendant’s term of imprisonment has an effective date of November 1, 2015, or later.”
 5 U.S.S.G. 1B1.10(d)(e). Under the current guidelines, the base offense level of Count 1 has
 6 decreased from 24 to 16, and by adding the same two-level adjustment for obstruction, the total
 7 offense level is now 18. The mandatory minimums for the drug offense, however, still apply;
 8 thus the amended guideline “range” is 120 months. This “range” is lower than the previous range
 9 of 120 to 137 months, so defendant is eligible for a sentence reduction from the 132 month
 10 sentence imposed for Count 1.

11 Turning to step two, however, the Court has considered the applicable § 3553 factors and
 12 determined that reduction is not warranted under the particular circumstances of this case. Step
 13 two is a discretionary decision, and many courts have denied sentencing reductions for eligible
 14 defendants. See e.g., United States v. Dunn, 728 F.3d 1151, 1159-60 (9th Cir. 2013) (affirming
 15 the district court’s decision to deny a motion for reduced sentence under § 3582(c)(2)). One of
 16 the factors to be considered in imposing a sentence is the need to “protect the public from further
 17 crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(c). Based on defendant’s violent criminal past,
 18 and continued violent crimes post-conviction, the court concludes that a sentence reduction is
 19 not warranted. The safety of the community is best protected by the defendant serving the
 20 entirety of his original sentence. Defendant is one of the most dangerous offenders that the Court
 21 has seen in the past eighteen years, and the Court declines to exercise its discretion to reduce
 22 defendant’s sentence.

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28 ORDER DENYING MOTION TO REDUCE SENTENCE - 4

APPENDIX D

III. Conclusion

For all of the foregoing reasons, defendant's motion for a reduction of his sentence (Dkt. # 146) is DENIED.

DATED this 1st day of November, 2016.

Mrs Casnik

Robert S. Lasnik
United States District Judge

ORDER DENYING MOTION TO REDUCE SENTENCE - 5

APPENDIX D

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) No. CR09-262-RSL
Plaintiff,)
v.) MOTION FOR RE-SENTENCING AND
LEONEL MARIN-TORRES,) IMPOSITION OF A REDUCED
Defendant.) SENTENCE PURSUANT TO SECTION
) 404 OF THE FIRST STEP ACT
) Noted for March 15, 2019
)
)

Section 404 of the First Step Act of 2018, which was enacted on December 21, 2018, independently authorizes a district court to impose a reduced sentence for cocaine base (“crack cocaine”) convictions where the statutory penalty provisions of the Fair Sentencing Act of 2010 would have applied had that Act been in effect at the time of the original sentencing. Mr. Torres was sentenced in 2010, shortly before the effective date of the Fair Sentencing Act, to one count of possession of cocaine base in the form of crack cocaine with intent to distribute in violation of 21 U.S.C. §841(b)(1)(B) following a jury determination that he possessed at least 5g of crack cocaine, one count of carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. §924(c)(1)(A)(i), and one count of felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1). Dkt. 110. Under the Fair Sentencing Act, the threshold for a conviction under 21 U.S.C. §841(b)(1)(B) is now 50g of crack cocaine. Thus, the amount of cocaine base attributed to Mr. Marin-Torres would trigger no mandatory minimum and a statutory range of 0-30 years, including the § 851 enhancement. 21

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MOTION FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(*Leonel Marin-Torres, CR09-262-RSL*) - 1

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1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100**

1 U.S.C. §841(b)(1)(C). Undoubtedly, the Fair Sentencing Act changed the statutory
 2 penalty in his case making Mr. Marin-Torres eligible for relief under the First Step Act.
 3

4 Mr. Marin-Torres' guideline range would also change, although such a change is
 5 not relevant for determining *eligibility* under the First Step Act. If sentenced today, Mr.
 6 Marin-Torres's advisory range for the crack cocaine offense would change from 120-
 7 137 months to 51-63 months, based on the amount of drugs attributed to him in the
 8 PSR.
 9

10 Mr. Marin-Torres requests that a sentencing hearing be scheduled at the earliest
 11 available date and that the United States Marshals be directed to transport him to this
 12 district for that hearing as soon as practicable.
 13

14 **I. Statement of Facts.**

15 On July 22, 2009, Mr. Marin-Torres was charged by complaint with Possession
 16 of Cocaine Base in the form of Crack Cocaine with the Intent to Distribute in violation
 17 of 21 U.S.C. §841(b)(1)(B)(iii) and Felon in Possession of a Firearm, in violation of 18
 18 U.S.C. §922(g). Dkt. 1. On August 6, 2009, the Government charged Mr. Marin-Torres,
 19 by indictment, with the same offenses. Dkt. 9. On September 19, 2009, Mr. Marin-
 20 Torres filed a motion to suppress evidence. Dkt. 16.
 21

22 After the suppression motion was filed, the Government increased the potential
 23 penalties faced by Mr. Marin-Torres. On October 1, 2009, the Government added an
 24 additional charge in the First Superseding Indictment, Carrying a Firearm During and in
 25 Relation to a Drug Trafficking Crime, in violation of 18 U.S.C. §924(c). Dkt. 24. On
 26 October 7, 2009, the Government filed a penalty enhancement under 21 U.S.C. §851
 based on a prior drug offense from 1996. Dkt. 28. The § 851 enhancement elevated the
 mandatory minimum from five years to ten years. PSR §§2, 71.

27 On November 13, 2009, the Court granted Mr. Marin-Torres's request to
 28 proceed pro se. Dkt. 40. Mr. Marin-Torres proceeded to jury trial, representing himself.
 29 Dkt. 84-100. On March 2, 2010, he was found guilty of all charges. Dkt. 100.
 30

31 Sentencing was held on May 28, 2010. Dkt. 109. Based on the weight and type
 32 of drugs, 9.18g of crack cocaine, this Court determined that Mr. Marin-Torres's base
 33

APPENDIX E

1 offense level was 24. PSR §17; SOR. The Court also determined that Mr. Marin-Torres
 2 obstructed justice, resulting in a two-level enhancement and a total offense level of 26
 3 with an advisory range of 180-197 months which includes the 60-month consecutive
 4 sentence for the §924(c) offense. SOR; PSR ¶ 17–26. This Court sentenced Mr. Marin-
 5 Torres to a total term of 192 months; 132 months for the §841(b)(1)(B) drug offense,
 6 120 months for the Felon in Possession of a Firearm offense to run concurrently with
 7 the drug offense, and 60 months for the §924(c) offense to run consecutively to the
 other offenses. Dkt. 110 (Judgment); SOR.

8 Mr. Marin-Torres has since acquired two new convictions while in the Bureau of
 9 Prisons, which are unrelated to the offenses before this Court. The new offenses add an
 10 additional 147 months to his imprisonment. Mr. Marin-Torres was charged on January
 11 22, 2014 with committing assault with a dangerous weapon with intent to do bodily
 12 harm (Count 1) and possessing contraband in prison (Count 3) due to an incident
 13 occurring on December 23, 2012, with a third charge dismissed before trial. Mr. Marin-
 14 Torres possessed a metal can lid fashioned into a sharp-edged object, assaulted a fellow
 15 inmate with the lid, and was sentenced to 96 months for Count 1 running concurrently
 16 with 60 months for Count 3, both running consecutively with his underlying sentence,
 17 on February 24, 2015. On July 21, 2014, Mr. Marin-Torres was charged with assaulting
 18 an officer engaged in official duties after striking an officer. On April 11, 2016, Mr.
 19 Marin-Torres was sentenced to 51 months to run consecutively to all previous
 sentences.

20 In 2016, Mr. Marin-Torres sought a sentence reduction under Amendment 782 to
 21 the U.S. Sentencing Guidelines, which allowed courts to reduce a defendant's sentence
 22 to the low end of the new guideline range under very limited circumstances that do not
 23 apply here. Dkt 146. This Court denied the motion. Dkt 155.

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MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
 SECTION 404 OF THE FIRST STEP ACT
 (Leonel Marin-Torres, CR09-262-RSL) - 3

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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 **II. Argument**

2 **A. Mr. Marin-Torres is now eligible for a reduced sentence under the Fair
3 Sentencing Act of 2010 because Section 404 of the First Step Act of 2018
4 made the Fair Sentencing Act retroactive.**

5 Mr. Marin-Torres was sentenced under the statutory provisions of the Anti-Drug
6 Abuse Act of 1986 which imposed especially harsh statutory penalties for drug offenses
7 involving crack cocaine. 100 Stat. 3207. Due to that Act, Section 841(b) to United
8 States Code Title 21 provided, as of 1996, for three tiers of penalties for offenders
9 convicted of distributing or conspiring to distribute crack cocaine in violation of 21
U.S.C. §§841(a) or 846. Specifically:

- 10 • Section 841(b)(1)(C) provided for a sentencing range of up to 20 years if the
11 offense involved less than 5 grams or an unspecified amount of crack cocaine;
- 12 • Section 841(b)(1)(B)(iii) provided for a sentencing range of 5 to 40 years if the
13 offense involved 5 grams or more but less than 50 grams of crack cocaine; and
- 14 • Section 841(b)(1)(A)(iii) provided for a sentencing range of 10 years to life if
15 the offense involved 50 grams or more of crack cocaine.

16 21 U.S.C. §841(b) (1996).

17 On August 3, 2010, Congress enacted the Fair Sentencing Act of 2010. 124 Stat.
18 2372. It did so because the Sentencing Commission and public had long concluded that
19 the 1986 Anti-Drug Abuse Act's penalty scheme for cocaine base offenses was far too
20 harsh and had a disparate impact on African American defendants. *See Dorsey v.*
21 *United States*, 567 U.S. 260, 268–69 (2012). Specifically, section 2 of the Fair
22 Sentencing Act changed the penalty structure for cocaine base offenses as follows:

- 23 • Section 841(b)(1)(C) now provides for a sentencing range of up to 20 years if the
24 offense involved less than 28 grams or an unspecified amount of cocaine base;
- 25 • Section 841(b)(1)(B)(iii) now provides for a sentencing range of 5 to 40 years if
26 the offense involved 28 grams or more but less than 280 grams of cocaine base;
and

APPENDIX E

1 • Section 841(b)(1)(A)(iii) now provides for a sentencing range of 10 years to Life
 2 if the offense involved 280 grams or more of cocaine base.

3 21 U.S.C. §841(b) (2018); *see Dorsey*, 567 U.S. at 269 (explaining effect of section 2 of
 4 the Fair Sentencing Act).

5 To more thoroughly put an end to the “disproportionate status quo,” the Supreme
 6 Court held that the new penalty structure in the Fair Sentencing Act would apply to any
 7 defendant sentenced after August 3, 2010, even if the offense was committed prior to
 8 that date. *Dorsey*, 567 U.S. at 278. This remedy fell far short since it left intact many
 9 unjust sentences imposed from 1986 through 2010 under the pre-Fair Sentencing Act
 10 penalty structure. For example, Mr. Marin-Torres was sentenced on May 28, 2010, dkt
 11 110, less than three months before the effective date of the Fair Sentencing Act.

12 The First Step Act of 2018 has now created a freestanding remedy to
 13 retroactively reduce sentences of this type. In essence, it aims to let courts impose
 14 reduced sentences on any prisoner who is still serving a sentence for a cocaine base
 15 offense if that sentence was imposed when the pre-Fair Sentencing Act penalty
 16 structure still applied. Section 404 of the First Step Act establishes its remedy in two
 17 steps, and it clearly applies to Mr. Marin-Torres at each step.

18 First, the Act defines what offenses are covered by its remedy:

19 Definition of Covered Offense: In this section, the term “covered offense”
 20 means a violation of a Federal criminal statute, the statutory penalties for
 21 which were modified by section 2 or 3 of the Fair Sentencing Act of 2010
 22 (Public Law 111-220; 124 Stat. 2372), that was committed before
 23 August 3, 2010.

24 First Step Act, Title IV, §404(a). Mr. Marin-Torres’ drug offense is a “covered offense”
 25 because section 2 of the Fair Sentencing Act “modified” the “statutory penalties” for
 26 count 1 of Mr. Marin-Torres’ conviction involving cocaine base, and he committed the
 27 offense before August 3, 2010.

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 OF A REDUCED SENTENCE PURSUANT TO
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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 Second, the First Step Act provides the circumstances under which a district
 2 court can reduce the sentence for defendants previously sentenced for a “covered
 3 offense”:

4 Defendants Previously Sentenced: A court that imposed a sentence for a
 5 covered offense may, on motion of the defendant . . . , impose a reduced
 6 sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public
 7 Law 111-220; 124 Stat. 2372) were in effect at the time the covered
 8 offense was committed.

9 First Step Act, Title IV, §404(b). This provision plainly applies to Mr. Marin-Torres
 10 because this Court previously “imposed a sentence” on him “for a covered offense,”
 11 and he is moving for imposition of a reduced sentence. Thus, this Court can now
 12 “impose a reduced sentence” on Mr. Marin-Torres for his cocaine base offense as if the
 13 Fair Sentencing Act was in effect.

14 Mr. Marin-Torres proceeded to trial and, for the crack cocaine offense (count 1),
 15 the jury returned a verdict of guilty with a finding that he possessed more at least 5g of
 16 crack cocaine. Dkt. 10. With that finding, Mr. Marin-Torres is no longer subject to the
 17 statutory penalties under 21 U.S.C. §841(b)(1)(B) under the Fair Sentencing Act.
 18 Instead, he is guilty of 21 U.S.C. §841(b)(1)(C) which includes no mandatory minimum
 19 term.

20 Third, the Act provides only narrow limitations on this resentencing power. A
 21 court shall not entertain a motion made under Section 404 of the First Step Act to
 22 reduce a sentence “if the sentence was previously imposed or previously reduced in
 23 accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act
 24 of 2010,” or “if a previous motion made under this section to reduce the sentence was,
 25 after the date of enactment of this Act, denied after a complete review of the motion on
 26 the merits.” *Id.*, §404(b). Neither of these limitations apply to Mr. Marin-Torres. He is

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MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 serving the 192-month sentence imposed by this Court, and this is his first Section 404
 2 motion under the First Step Act.

3 Proving eligibility under the First Step Act is relatively simple. A defendant is
 4 eligible if he was convicted of a cocaine base offense, was sentenced when the pre-Fair
 5 Sentencing Act statutory penalties were still in effect, and continues to serve a sentence
 6 that has not already been reduced to post-Fair Sentencing Act levels. Because
 7 Mr. Marin-Torres satisfies all of these requirements, the Court has the authority to
 8 impose a reduced sentence for the count of conviction related to his cocaine base
 9 convictions.

10 **B. A plenary sentencing hearing is required.**

11 Mr. Marin-Torres would like to be transported back to Court for a plenary
 12 sentencing hearing, as anticipated by the First Step Act.

13 Although the First Step Act does not incorporate the limitations in 18 U.S.C.
 14 §3582(c)(2), the defense anticipates that Government will argue that section should
 15 apply to these proceedings. Thus, the Government argues that a sentencing hearing with
 16 the defendant present should not be held. The Government's arguments are without
 17 merit. First, §404 of the First Step Act of 2018 creates a freestanding remedy for
 18 eligible defendants and therefore no other statute is an appropriate or permissible
 19 procedural vehicle for §404 motions. Second, defendants who are eligible for relief
 20 under §404 have a right to a full resentencing, which includes a right to a hearing at
 21 which they are present, unless the defendant waives the hearing or his presence.

22 1. Section 404 creates a new, freestanding statutory remedy for courts
 23 to impose a reduced sentence.

24 The plain text of §404 establishes a freestanding remedy for defendants who are
 25 eligible for relief under its terms. The plain text refers to a "motion made under this
 26 section," and refers to no extraneous statute. Courts are not free to add words to a

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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 statute that Congress did not include in the statute it enacted. *See Aronsen v. Crown*
 2 *Zellerbach*, 662 F.2d 584, 590 (9th Cir.1981) (“It is consistent with the general
 3 principle of statutory construction that a court should not add language to an
 4 unambiguous statute absent a manifest error in drafting or unresolvable inconsistency.”)
 5 The purpose of §404 is to allow courts to impose reduced sentences for defendants
 6 sentenced when the pre-Fair Sentencing Act statutory penalties were in effect. Congress
 7 did not subject §404 motions to procedures under other statutes that serve different
 8 purposes. Instead, Congress deliberately enacted a freestanding remedy.

9 The statutory language of the First Step Act is inconsistent with 18 U.S.C.
 10 §3582(c)(2). Section 404(c) prohibits successive motions under certain circumstances—
 11 “no court shall entertain a motion made under this section . . . if a previous motion
 12 made under this section to reduce the sentence was, after the date of enactment of this
 13 Act, denied after a complete review of the motion on the merits”—whereas there is no
 14 bar on successive motions under §3582 and stricter bars on successive motions under
 15 §2255. Congress clearly did not intend to implicitly incorporate a statute, §3582(c)(2),
 16 that directly contradicts the First Step Act. This is further textual evidence that §404
 17 creates a freestanding remedy.

18 2. Section 404 authorizes courts to conduct a resentencing hearing at
 19 which the defendant is present, absent waiver.

20 The plain text of §404 gives the court authority to conduct a resentencing
 21 hearing in the defendant’s presence. First, §404 gives the court discretion to impose a
 22 reduced sentence of any length consistent with sections 2 and 3 of the Fair Sentencing
 23 Act, without limitation on what the court may consider. *See* §404(b). And it gives the
 24 court discretion to deny a motion even though the defendant is eligible for imposition of
 25 a reduced sentence so long as the court denies the motion “after a complete review . . .
 26 on the merits.” *See* §404(c). A complete review on the merits requires an opportunity

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 (Leonel Marin-Torres, CR09-262-RSL) - 8

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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 for the defendant to be present and to allocute. Without a full hearing, this Court simply
 2 cannot conduct “a complete review . . . on the merits” as required under §404(c).

3 Second, §404(b) gives the court jurisdiction to “impose a reduced sentence”
 4 (emphasis added). Congress’ choice of the verb “impose,” instead of “modify” or
 5 “reduce,” is significant. Federal sentencing statutes use the verb “impose” to mean
 6 “sentence” in light of all relevant factors. *See, e.g.*, 18 U.S.C. §3553(a) (“The court
 7 shall *impose* a sentence sufficient, but not greater than necessary, to comply with the
 8 purposes set forth in paragraph (2) of this subsection.”); §3553(a)(2) (directing courts to
 9 consider “the need for the sentence *imposed*” in light of the purposes of sentencing);
 10 §3553(c) (“Statement of Reasons for *Imposing* a Sentence. The court, at the time of
 11 sentencing, shall state in open court the reasons for its *imposition* of the particular
 12 sentence”). Because “identical words . . . are intended to have the same meaning,” the
 13 First Step Act’s use of the verb “impose” directs a re-sentencing. *Department of*
 14 *Revenue of Oregon v. ACF Industries, Inc.*, 510 U.S. 332, 342 (1994); *Sorenson v.*
 15 *Secretary of Treasury*, 475 U.S. 851, 860 (1986); *see also* FED. R. CRIM. P. 32(b)(1)
 16 (using verb “impose”). In other words, §404 is not a ministerial math exercise, but the
 17 power to impose a reduced sentence as if the Fair Sentencing Act were in effect.

18 Given the unique circumstances that will exist in many of the §404 cases, a full
 19 resentencing hearing makes practical sense as well. Subsection (c) provides the court
 20 discretion to decide whether to “reduce any sentence pursuant to this section.” §404(c).
 21 A hearing on why the court should, or should not, exercise its discretion or to what
 22 extent the discretion should be exercised will be appropriate in most cases. The best
 23 way for the court to impose a reduced sentence as if the Fair Sentencing Act were in
 24 effect, *see* §404(b), is to hold a full resentencing hearing with the defendant’s presence
 25 where the defendant and his counsel can present a constitutionally sufficient argument
 26 under 18 U.S.C. §3553(a).

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 OF A REDUCED SENTENCE PURSUANT TO
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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 Furthermore, §404 is entirely unlike 18 U.S.C. §3582(c)(2), which authorizes
 2 courts to “reduce” a term of imprisonment (not “impose a reduced sentence”) based on
 3 a retroactive guideline amendment and only if “consistent” with Commission policy
 4 statements specifying “in what circumstances and by what amount.” *See* 18 U.S.C.
 5 §3582(c)(2); 28 U.S.C. § 994(u); *Dillon v. United States*, 560 U.S. 817, 819–22, 825–
 6 27 (for those reasons, holding that §3582(c)(2) does not authorize a “plenary
 7 resentencing proceeding”). With the previous retroactive guideline reductions, the
 8 maximum reduction was two levels under the guidelines and it was subject to all the
 9 restrictions in U.S.S.G. §1B1.10 (e.g., mandatory minimum, career offender, previous
 10 departure/variance to or below the amended guideline range). Here, there are no such
 11 limits. Section 404 lays out two stages. Eligibility under subsections (a) and (c) is very
 12 broad, and the extent of a reduction under subsection (b) is limited only by the
 13 mandatory minimum under the Fair Sentencing Act based on the drug quantity element
 14 of which the defendant was convicted, not the drug amount in the PSR like in the two-
 15 level guideline reduction cases. Imposing a sentence under §404 is equivalent to a
 16 resentencing following a successful appeal or collateral challenge where the defendant
 17 has a right to be present at the resentencing hearing.

18 Finally, 18 U.S.C. §3582(c)(1)(B) states that “the court may modify an imposed
 19 term of imprisonment to the extent otherwise permitted by statute.” This merely states
 20 the obvious: “Subsection (c)(1)(B) simply notes the authority to modify a sentence if
 21 modification is permitted by statute.” S. Rep. No. 98-225, at 121 (Aug. 4, 1983). Here,
 22 the First Step Act plainly falls under §3582(c)(1)(B) with no other restrictions, in
 23 contrast to §3582(c)(2) which the Government seeks to incorporate.

24 In sum, Congress enacted a freestanding remedy in §404. Section 404 is the only
 25 permissible procedural vehicle in these cases, and it authorizes a full resentencing
 26 including a hearing at which the defendant is present.

APPENDIX E

MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
 SECTION 404 OF THE FIRST STEP ACT
 (Leonel Marin-Torres, CR09-262-RSL) - 10

FEDERAL PUBLIC DEFENDER
 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

III. Conclusion

Congress, pursuant to Section 404 of the First Step Act, has now granted the Court broad discretion to order re-sentencing and to reduce sentences imposed under the excessively harsh penalty structure which existed at the time of Mr. Marin-Torres' sentencing. Mr. Marin-Torres respectfully asks that the Court schedule a re-sentencing hearing at the next reasonably available date and order that his presence is required.

DATED this 6th day of March, 2019.

Respectfully submitted,

s/ *Dennis Carroll*
Assistant Federal Public Defender
Attorney for Leonel Marin-Torres

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MOTION FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(*Leonel Marin-Torres, CR09-262-RSL*) - 11

**FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100**

CERTIFICATE OF SERVICE

I certify that on March 6, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/ *Alma R Coria*
Senior Legal Assistant

APPENDIX E

MOTION FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(*Leonel Marin-Torres, CR09-262-RSL*) - 12

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

1 THE HONORABLE ROBERT S. LASNIK
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,) No. CR09-262-RSL
11 Plaintiff,)
12 v.) (PROPOSED) ORDER GRANTING
13 LEONEL MARIN-TORRES,) MOTION FOR RE-SENTENCING AND
14 Defendant.) IMPOSITION OF A REDUCED
15) SENTENCE PURSUANT TO SECTION
16) 404 OF THE FIRST STEP ACT
17)
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THE COURT has considered Leonel Marin-Torres's motion for re-sentencing and for imposition of a reduced sentence pursuant to Section 404 of the First Step Act, which authorizes a district court to impose a reduced sentence for cocaine base "crack cocaine" convictions where the statutory penalty provisions of the Fair Sentencing Act would have applied had that Act been in effect at the time of the original sentencing.

THE COURT finds that Mr. Marin-Torres is eligible for relief under the First Step Act and ORDERS that Mr. Marin-Torres be re-sentenced. The Court will determine the appropriate sentence at a sentencing hearing, after receiving sentencing memoranda from the parties. The parties are directed to file their sentencing memoranda no later than seven days before the newly scheduled sentencing date.

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ORDER FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(Leonel Marin-Torres, CR09-262-RSL) - 1

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1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

1 THE COURT hereby schedules a re-sentencing hearing for
2 _____.

3 The COURT further orders that Mr. Marin-Torres be transported to the
4 Western District of Washington at the earliest available date, no later than the day
5 before the sentencing date scheduled above.

6
7 DATED this _____ day of _____ 2019.
8
9
10

ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

11 Presented by:
12

13 *s/ Dennis Carroll*
14 Assistant Federal Public Defender
15 Attorney for Leonel Marin-Torres
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ORDER FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(Leonel Marin-Torres, CR09-262-RSL) - 2

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

1 The Honorable Robert S. Lasnik
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5 UNITED STATES DISTRICT COURT FOR THE
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE
8
9

10 UNITED STATES OF AMERICA,
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12 Plaintiff,
13 v.
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15 LEONEL MARIN-TORRES,
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17 Defendant.
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CASE NO. 2:09-cr-00262-RSL
23
24

25 **UNITED STATES' RESPONSE
26 TO DEFENDANT'S MOTION
27 FOR RE-SENTENCING AND
28 IMPOSITION OF A REDUCED
SENTENCE PURSUANT TO THE
FIRST STEP ACT**

29 **INTRODUCTION**
30
31

32 The United States of America, by and through Brian T. Moran, United States Attorney
33 for the Western District of Washington, and Helen J. Brunner, Assistant United States
34 Attorney for said District, files this response to Leonel Marin-Torres's motion for a reduction
35 in sentence pursuant to the First Step Act of 2018, Pub. L. 115-391. As set forth in detail
36 below, the Act provides limited authorization to reduce a sentence if the Fair Sentencing Act
37 Amendments would alter the penalties applicable to the defendant. A review of the record in
38 this case demonstrates that Marin-Torres is eligible for a reduction in the sentence imposed for
39 his conviction for possession of cocaine base with intent to distribute. Because of his
40 institution history, however, the United States asks this Court to exercise its discretion and
41 deny the motion.

42 **PROCEDURAL AND FACTUAL HISTORY**
43
44

45 **A. The Charges Against Marin-Torres and his Conviction.**
46
47

48 In 2010, Marin-Torres was convicted by a jury of three federal felony offenses:
49 (1) possession of 5 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and
50 841(b)(1)(B); (2) carrying a firearm during and in relation to a drug trafficking crime, in
51 violation of 18 U.S.C. § 924(c)(1)(A)(i); and (3) possession of a firearm as a convicted felon,
52
53

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55
56

1 in violation of 18 U.S.C. § 922(g)(1). Dkt. 110. The convictions all stemmed from an incident
 2 in 2009, during which Marin-Torres was contacted by police officers responding to a call for
 3 assistance because an armed drug dealer was scaring people in an apartment and would not
 4 leave. PSR ¶ 9. When officers encountered Marin-Torres in the apartment, they found he
 5 matched the description of the armed drug dealer. During a search that followed, officers
 6 found found that Marin-Torres was carrying crack cocaine, \$240 in currency, and a stolen
 7 handgun in his pockets. PSR ¶ 9.

8 The testimony at trial established the 9-1-1 caller and her boyfriend had agreed to allow
 9 Marin-Torres to use the apartment in exchange for crack cocaine. Thereafter, Marin-Torres
 10 began to bring women to the apartment to provide them with cocaine in exchange for sex. If
 11 a woman resisted, Marin-Torres used his firearm and his violent reputation to collect what he
 12 believed he was owed. The caller and her boyfriend also testified about a heated exchange
 13 that Marin-Torres had with another drug dealer at the apartment. The caller testified that when
 14 she confronted Marin-Torres and asked him to leave the apartment, he pulled out his firearm,
 15 pointed it at her head, and told her that the only problem with killing her would be finding a
 16 place to bury her body. It is this conduct that ultimately led to the call to police.

17 Prior to trial, the United States filed an Enhanced Penalty Information based on
 18 Marin-Torres' prior Washington felony drug delivery conviction, thus triggering the recidivist
 19 provisions applicable to Count 1, pursuant to 21 U.S.C. §§ 841(b)(1)(B) and 851. See PSR ¶
 20 2. As a result, the applicable statutory mandatory minimum prison term applicable to this
 21 count was ten years. Marin-Torres also faced a mandatory consecutive five-year prison
 22 sentence for Count 2 charging a violation of 18 U.S.C. § 924(c).

23 **B. Marin-Torres' Sentencing**

24 Using the November 2009 version of the Sentencing Guidelines, the presentence report
 25 calculated Marin-Torres' base offense level to be 24 based on his possession of 9.18 grams of
 26 cocaine base. PSR ¶ 17. Although the presentence report did not address obstruction of
 27 justice, at the May 28, 2010 Sentencing Hearing, this Court included a two-level upward
 28

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1 enhancement for obstruction of justice pursuant to USSG § 3C1.1 as a result of Marin-Torres'
 2 untruthful trial testimony. As a result, this Court found his total offense level to be 26.

3 The presentence report concluded that Marin-Torres' criminal history score was
 4 12 resulting in a Criminal History Category of V. This history included a 1996 conviction for
 5 delivery of cocaine, a 1997 conviction for escape, a 1999 conviction for domestic violence
 6 fourth degree assault, and a 2002 conviction for unlawful possession of a firearm.

7 Based on a total offense level of 26 and a Criminal History category of V, this Court
 8 found the applicable advisory Guidelines range as to Counts 1 and 3 to be 51-63 months.
 9 However, because of the applicable mandatory minimum his range was 120 months plus the
 10 60-month mandatory minimum consecutive term for Count 2. This Court imposed a total
 11 sentence of 192, imposing a sentence of 132 months as to Count 1, a concurrent 120-month
 12 sentence as to Count 3, and a consecutive 60-month term on Count 2.

13 **C. Marin-Torres' Appeal, his Second Conviction and Other Post-Conviction
 14 Litigation.**

15 Marin-Torres filed a direct appeal challenging this Court's decision to deny his motion
 16 to suppress and the decision to permit the government to introduce evidence pursuant to Fed.
 17 R. Evid. 404(b). The Ninth Circuit affirmed his conviction in a memorandum disposition. *See*
 18 *United States v. Marin-Torres*, 450 F. App'x 669 (9th Cir. 2011).

19 Marin-Torres' criminal conduct did not stop while in custody serving his sentence. In
 20 2014, Marin-Torres was convicted of assault with a dangerous weapon with intent to do bodily
 21 harm, in violation of 18 U.S.C. §§ 113(a)(3) and 7(3); and possession of prison contraband, in
 22 violation of 18 U.S.C. §§ 1791(a)(2), (b)(3), (d)(1)(B) and 7(3). The conviction was based on
 23 Marin-Torres' attack on another inmate with a sharp-edged object made from the folded lid of
 24 a metal can. Marin-Torres received a total sentence of ninety-six months for these crimes to
 25 be served consecutive to the sentence imposed by this Court. *See United States v. Marin-*
 26 *Torres*, 2014 WL 7405653 (D. Or. 2014). This conviction was also affirmed by the Ninth
 27 Circuit. *United States v. Marin-Torres*, 671 F. App'x 468 (9th Cir. 2016).

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1 Marin-Torres' criminal conduct did not end with his 2014 conviction. In 2016,
 2 Marin-Torres was convicted of assaulting an officer, in violation of 18 U.S.C. §§ 111(a) and
 3 (b). For that offense, Marin-Torres was sentenced to serve an additional fifty-one-month
 4 sentence consecutive to the other federal sentences he had received. This conviction too was
 5 affirmed on appeal. *See United States v. Marin-Torres*, 702 F. App'x 634 (9th Cir. 2017).

6 Regarding the conviction before this Court, in 2016, Marin-Torres sought a reduction
 7 in his sentence pursuant to 18 U.S.C. § 3582(c)(2) based Amendment 782 to the Sentencing
 8 Guidelines. Although this Court concluded that Marin-Torres was eligible for a reduction in
 9 sentence on Count 1 to a sentence of 120 months, after consideration of the relevant factors in
 10 18 U.S.C. § 3553(a), this Court exercised its discretion to deny the reduction based on Marin-
 11 Torres' history and criminal conduct. Dkt. 155. That decision was affirmed on appeal. *See*
 12 *United States v. Marin-Torres*, 702 F. App'x 645 (9th Cir. 2017), cert denied, 138 S. Ct. 2588
 13 (2018).

14 Marin-Torres now seeks a reduction in his sentence pursuant to the First Step Act.

15 **ARGUMENT**

16 **A. The First Step Act Provides Limited Discretion to Resentence a Defendant.**

17 Enacted on December 21, 2018, Section 404 of the First Step Act of 2018 ("First Step
 18 Act") makes retroactive the portions of the Fair Sentencing Act of 2010 ("Fair Sentencing
 19 Act") that lowered the statutory penalties applicable to certain offenses involving cocaine base
 20 (crack cocaine) as of August 3, 2010. Specifically, Section 404 provides:

21 (a) Definition Of Covered Offense.—In this section, the term "covered
 22 offense" means a violation of a Federal criminal statute, the statutory penalties
 23 for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010
 24 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3,
 2010.

25 (b) Defendants Previously Sentenced.—A court that imposed a sentence for a
 26 covered offense may, on motion of the defendant, the Director of the Bureau of
 27 Prisons, the attorney for the Government, or the court, impose a reduced
 28 sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law

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1 111–220; 124 Stat. 2372) were in effect at the time the covered offense was
 2 committed.

3 (c) Limitations.—No court shall entertain a motion made under this section to
 4 reduce a sentence if the sentence was previously imposed or previously
 5 reduced in accordance with the amendments made by sections 2 and 3 of the
 6 Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a
 7 previous motion made under this section to reduce the sentence was, after the
 8 date of enactment of this Act, denied after a complete review of the motion on
 9 the merits. Nothing in this section shall be construed to require a court to
 10 reduce any sentence pursuant to this section.

11 Pub. L. 115-391, Section 404. By its terms, Section 404 provides authorization to this
 12 Court to reduce a sentence imposed for a violation of 21 U.S.C. § 841(a) that was committed
 13 on or before August 3, 2010, the date of enactment of the Fair Sentencing Act of 2010, if “the
 14 statutory penalties” for the offense were “modified by section 2 or 3” of that Act.

15 As relevant to Marin-Torres’s motion, prior to enactment of the Fair Sentencing Act,
 16 the statutory penalties for an offense involving 5 grams or more of cocaine base, such as
 17 charged in Count 1, included a mandatory minimum term of imprisonment of five years and a
 18 maximum term of imprisonment of forty years. 21 U.S.C. § 841(b)(1)(B). Section 2 of the
 19 Fair Sentencing Act changed the threshold quantity for this provision to 28 grams of cocaine
 20 base. Therefore, after the enactment of the Fair Sentencing Act, offenses involving anything
 21 less than 28 grams of cocaine base were subject to the penalties set forth in 21 U.S.C.
 22 § 841(b)(1)(C). That Section does not contain any mandatory minimum penalties, but does
 23 provide for a higher maximum penalty where a penalty enhancing information is filed pursuant
 24 to 21 U.S.C. § 851. Pursuant to 21 U.S.C. § 841(b)(1)(C), the maximum penalty applicable
 25 under this subsection for a repeat offender is a thirty-year prison term.

26 By its terms, The First Step Act provides this Court with limited discretion to reduce
 27 the sentence of a defendant whose sentencing exposure would be different had the statutory
 28 changes resulting from Section 2 of the Fair Sentencing Act been in place at the time of

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 2:09-cr-00262-RSL

UNITED STATES ATTORNEY
 700 STEWART STREET, SUITE 5220
 SEATTLE, WASHINGTON 98101
 (206) 553-7970

1 sentencing.¹ Based on the statutory language, a court may exercise that discretion to reduce a
 2 defendant's sentence so long as the following elements are met: (1) the defendant committed
 3 his offense before August 3, 2010; (2) his sentencing exposure was affected by Section 2 of
 4 the Fair Sentencing Act; and (3) he was not sentenced (or later resentenced) in accordance
 5 with the Fair Sentencing Act and the resulting retroactive Guidelines amendments. As
 6 described, Marin-Torres meets these requirements and thus is technically eligible for a
 7 reduction in sentence.

8 As set forth above, the First Step Act provides that a court "may . . . impose a reduced
 9 sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time
 10 the covered offense was committed." Section 404(c) of the First Step Act then further provides
 11 that "[n]othing in this section shall be construed to require a court to reduce any sentence
 12 pursuant to this section." Therefore, even if this Court agrees that Marin-Torres is eligible for
 13 a reduction in sentence, this Court must then determine whether any reduction is appropriate.
 14 The statute makes clear that even where eligibility is established, this Court has no obligation
 15 to reduce a sentence and may conclude that the sentence originally imposed was appropriate.
 16 As discussed below, Marin-Torres' history is such that this Court should not reduce his
 17 sentence.

18 **B. The First Step Act Does Not Authorize a Full Resentencing or Invalidate the**
 19 **Career Offender Finding Made at the Original Sentencing Hearing.**

20 Contrary to the defense's argument, Section 404 does not authorize a plenary
 21 resentencing. The language simply states that the Court "may" impose a reduced sentence as
 22 if the changes resulting from the Fair Sentencing Act applied at the time of the original
 23 sentencing. In that regard, the language of this statute is similar to the language found in
 24 18 U.S.C. § 3582(c)(2) which permits a court to reduce a term of imprisonment based on a
 25 retroactively-applicable Sentencing Guidelines Amendment. In *Dillon v. United States*,
 26 560 U.S. 817 (2010), the Supreme Court held that a reduction of sentence under 18 U.S.C.
 27

28 ¹ The reductions resulting from Section 3 of the Fair Sentencing Act have no application to this case.

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1 § 3582(c)(2) does not involve a plenary resentencing, only the application of the new
 2 Guidelines range as dictated by the Commission. The Supreme Court observed, “[i]t is also
 3 notable that the provision applies only to a limited class of prisoners—namely, those whose
 4 sentence was based on a sentencing range subsequently lowered by the Commission,” and that
 5 the statutory text, together with its narrow scope, shows that Congress intended to authorize
 6 only a limited adjustment to an otherwise final sentence and not a plenary resentencing
 7 proceeding.” *Dillon*, 560 U.S. at 825–26.

8 Although the First Step Act does not specifically incorporate Section 3582(c)(2), the
 9 reasoning in *Dillon* strongly supports construing the First Step Act in similar fashion. Section
 10 404(b) of the First Step Act authorizes the Court to “impose a reduced sentence”; it does not
 11 authorize a “further sentencing” or a “resentenc[ing].” *See Dillon*, 560 U.S. at 825 (quoting
 12 18 U.S.C. § 3742(f)–(g)). Likewise, the First Step Act authorizes the Court to impose a
 13 reduced sentence “as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect
 14 at the time the covered offense was committed.” This provision, along with the absence of
 15 any provision concerning the substantive scope of the proceeding, indicates that Congress
 16 contemplated “only a limited adjustment to an otherwise final sentence.” *Id.* at 826. That is
 17 particularly true where, as here, a defendant was also sentenced for another offense. Finally,
 18 like Section 3582(c)(2), the First Step Act applies only to a limited set of defendants: those
 19 who committed an offense before August 3, 2010, and who stand to benefit from the threshold
 20 quantity changes in the Fair Sentencing Act. Accordingly, Section 404(b), like Section
 21 3582(c)(2), does not require a full resentencing.

22 Indeed, there is nothing in the language of the First Step Act that requires this Court to
 23 hold a hearing to consider a motion under Section 404. The reduction is authorized by the Act
 24 and, as such, by 18 U.S.C. § 3582(c)(1)(B), which states: “The court may not modify a term
 25 of imprisonment once it has been imposed except that . . . the court may modify an imposed
 26 term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of
 27 the Federal Rules of Criminal Procedure.” Rule 43(b)(4) of the Federal Rules of Criminal
 28 Procedure states that a defendant need not be present where “[t]he proceeding involves the

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1 correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)." *See Dillon*,
 2 560 U.S. at 827-28 (observing that, under Rule 43(b)(4), a defendant need not be present at a
 3 proceeding under § 3582(c)(2) regarding the imposition of a sentencing modification). Given
 4 that nothing in the First Step Act authorizes a full resentencing, there is no basis to conclude that
 5 a hearing is required.

6 The defense seeks to avoid these conclusions by focusing on language contained in the
 7 limitations paragraph contained in Section 404(c) and suggesting that this language demands
 8 a complete resentencing. A review of the claim, however, shows that it lacks merit. The
 9 complete language at issue provides that a court should not entertain a motion under this First
 10 Step Act if the court considered a prior motion based on this statute that was "denied after a
 11 complete review *of the motion* on the merits." *See* First Step Act, Section 404(c) (emphasis
 12 added). The plain text suggests it is the motion that must be reviewed on the merits, and not
 13 the complete sentence. And the principle focus of the motion is on eligibility.

14 The fact that Section 404 of the First Step Act, unlike 18 U.S.C. § 3582(c)(2) does not
 15 permit successive motions does not change the analysis. A reduction under § 3582(c)(2) is
 16 based on amendments to the Sentencing Guidelines that the Commission determines should
 17 be applied retroactively. As this Court is well aware, there have been three successive changes
 18 to the drug Guideline concerning crack cocaine offenses permitting an eligible defendant to
 19 revisit the sentence on each occasion. Here, where the question is whether a prior statutory
 20 amendment if applied retroactively would change a defendant's sentencing exposure, there is
 21 no purpose served to permit multiple motions.

22 Further, the First Step Act does not speak of vacating a sentence; rather, it permits a
 23 court to "impose a reduced sentence as if sections 2 . . . of the Fair Sentencing Act . . . were in
 24 effect at the time the covered offense was committed." This language simply requires that this
 25 Court consider what impact, if any, the statutory change resulting from the Fair Sentencing
 26 Act might have on its sentencing determination.

27 In support of the argument that a resentencing is required, the defense hangs too much
 28 on Congress' use of the word "impose." There is nothing in the use of that word that suggests

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1 that Congress intended a full resentencing. Indeed, the statutory authority to reduce a sentence
 2 is expressly limited to only “a sentence for a covered offense” and permits a court to “impose
 3 a reduced sentence as if section 2 and 3 of the Fair Sentencing Act” were effective when the
 4 defendant committed the “covered offense.” *See* Section 404(b). These limitations suggest
 5 that a motion under the First Step Act should be treated in a manner similar to proceedings
 6 under 18 U.S.C. § 3582(c)(2). Since neither a reduction in sentence under Rule 35 or a motion
 7 pursuant to § 3582(c)(2) requires a new sentencing hearing, none is required here.

8 Finally, nothing in the First Step Act authorizes this Court to reconsider any sentencing
 9 determinations independent of those affected by the Fair Sentencing Act. Thus, there is no
 10 basis for reconsidering the sentences imposed on Counts 2 and 3. There is nothing in the First
 11 Step Act that authorizes this type of full resentencing or reconsideration of issues. Rather, this
 12 Court should simply consider what impact, if any, application of the Fair Step Act would have
 13 on the penalties for Marin-Torres’ drug charge. It should then assess whether, in its discretion,
 14 a sentencing reduction is warranted. If this Court concludes a reduction in sentence is
 15 appropriate, the Court should then consider the Section 3553(a) factors and may consider post-
 16 offense conduct to determine whether it should exercise its discretion to reduce Marin-Torres’
 17 sentence.

18 **C. The Application of the First Step Act to Marin-Torres.**

19 Because the amount of cocaine base involved in his offense was only 9.8 grams, had
 20 Section 2 of the Fair Sentencing Act been enacted prior to Marin-Torres’ offenses, he would
 21 have been subject only to the penalty provisions in 21 U.S.C. § 841(b)(1)(C). As a result, as
 22 noted above, had the Fair Sentencing Act been in place at the time of Marin-Torres’
 23 sentencing, the maximum term of imprisonment to which Marin-Torres could have been
 24 exposed on Count 1 was thirty years of imprisonment because of the § 851 enhancement. He
 25 would no longer be subject to a mandatory minimum sentence on this Count. Thus, as
 26 observed above, Marin-Torres has met the eligibility requirements under the statute.

27 But as noted above, eligibility is just the first step. This Court also must determine
 28 whether exercising the discretion to reduce Marin-Torres’ sentence is warranted. It is on this

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1 point that Marin-Torres' motion fails. Marin-Torres is a defendant whose history of violence
2 suggests that no reduction in sentence is warranted, and nothing in his motion provides any
3 basis to conclude to the contrary. Indeed, the report received from the Bureau of Prisons
4 concerning his conduct suggests that little has changed. *See Exhibit 1.* As this Court noted
5 when it denied Marin-Torres' motion for a reduced sentence pursuant to 18 U.S.C.
6 § 3582(c)(2), Marin-Torres "is one of the most dangerous offenders that the Court has seen in
7 the past eighteen [now twenty] years . . ." Dkt. 155 at 4. Nothing that he has offered in his
8 motion that suggests there is any reason for this Court to change that assessment. Therefore,
9 the United States respectfully requests this Court to deny the motion.

10 Dated this 20th day of March, 2019.

11 Respectfully submitted,

12 BRIAN T. MORAN
13 United States Attorney

14 s/Helen J. Brunner
15 HELEN J. BRUNNER
16 Assistant United States Attorney
17 United States Attorney's Office
18 700 Stewart Street, Suite 5220
19 Seattle, Washington 98101-1271
20 Phone: 206-553-5172
Fax: 206-553-4073
E-mail: Micki.Brunner@usdoj.gov

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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am an employee in the Office of the United States Attorney for the Western District of Washington and am a person of such age and discretion as to be competent to serve papers;

It is further certified that on March 20, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the counsel for the Defendant.

Dated this 20th day of March, 2019.

s/Elisa G. Skinner
ELISA G. SKINNER
Paralegal Specialist

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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Exhibit 1

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SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 001 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

REPORT NUMBER/STATUS.: 3203774 - SANCTIONED INCIDENT DATE/TIME: 12-19-2018 0604

UDC HEARING DATE/TIME: 12-20-2018 1010

FACL/UDC/CHAIRPERSON.: LEW/D-BLOCK/GRIFFIN

REPORT REMARKS.....: TO CHANGE NEGATIVE BEHAVIOR UDC SANCTIONS 30 DAYS LOSS
OF LP PHONE AND 30 DAYS LOSS OF LP COMMISSARY

302 MISUSING AUTH MEDICATION - FREQ: 1
LP PHONE / 30 DAYS / CS
FROM: 12-20-2018 THRU: 01-18-2019
COMP: LAW: INMATE GUILTY
307 REFUSING TO OBEY AN ORDER - FREQ: 1
LP COMM / 30 DAYS / CS
FROM: 12-20-2018 THRU: 01-18-2019
COMP: LAW: INMATE GUILTY

REPORT NUMBER/STATUS.: 3113072 - SANCTIONED INCIDENT DATE/TIME: 04-15-2018 1415
DHO HEARING DATE/TIME: 04-18-2018 1350 DHO REPT DEL: 05-08-2018 1700

FACL/CHAIRPERSON.....: POL/S. ENGLISH

REPORT REMARKS.....: INMATE ADMITTED TO FIGHTING WITH ANOTHER INMATE

104 POSSESSING A DANGEROUS WEAPON - FREQ: 1
DIS GCT / 41 DAYS / CS
COMP:010 LAW:P
DS / 30 DAYS / CS
COMP: LAW:
LP PHONE / 30 DAYS / CS
COMP: LAW: RESTORES ON 05-18-2018
201 FIGHTING WITH ANOTHER PERSON - FREQ: 1
DIS GCT / 27 DAYS / CS
COMP:010 LAW:P
LP COMM / 30 DAYS / CS
COMP: LAW: RESTORES ON 05-18-2018

REPORT NUMBER/STATUS.: 3053642 - SANCTIONED INCIDENT DATE/TIME: 11-07-2017 1820
DHO HEARING DATE/TIME: 11-15-2017 0830 DHO REPT DEL: 11-27-2017 0830

FACL/CHAIRPERSON.....: POL/B. VALLE

APPEAL CASE NUMBER(S): 925462

REPORT REMARKS.....: ADMITTED POSSESSING HOMEMADE WEAPON;
PLASTIC SHARPENED TO A POINT

104 POSSESSING A DANGEROUS WEAPON - FREQ: 1
DIS GCT / 41 DAYS / CS
COMP:010 LAW:P
DS / 30 DAYS / CS / SUSPENDED 60 DAYS
COMP: LAW: SUSPENDED PENDING CLEAR CONDUCT
LP COMM / 60 DAYS / CS
COMP: LAW: RESTORE 1/13/18

G0002

MORE PAGES TO FOLLOW . . .

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SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 002 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME..: MARIN-TORRES, LEONEL
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

DHO HEARING DATE/TIME: 11-15-2017 0830 REPORT 3053642 CONTINUED
LP VISIT / 60 DAYS / CS
COMP: LAW: RESTORE 1/13/18

REPORT NUMBER/STATUS.: 2710228 - SANCTIONED INCIDENT DATE/TIME: 04-29-2015 1010
DHO HEARING DATE/TIME: 06-27-2016 0930 DHO REPT DEL: 07-29-2016 1530
FACL/CHAIRPERSON.....: LEW/CHAMBERS B
REPORT REMARKS.....: DENIES, STATES IR WRITTEN "IN RETALIATION." POSSESSION
TWO PAIRS RUBBER GLOVES & AA BATTERY POST.

305 POSSESSING UNAUTHORIZED ITEM - FREQ: 1
LP COMM / 90 DAYS / CS
COMP: LAW:
LP VISIT / 90 DAYS / CS
COMP: LAW:

REPORT NUMBER/STATUS.: 2709725 - SANCTIONED INCIDENT DATE/TIME: 04-28-2015 0850
DHO HEARING DATE/TIME: 06-27-2016 0920 DHO REPT DEL: 07-29-2016 1530
FACL/CHAIRPERSON.....: LEW/CHAMBERS B
REPORT REMARKS.....: DENIES, STATES IR WRITTEN "IN RETALIATION." ATTEMPTED TO
SPIT ON ANOTHER I/M, INADVERTENTLY HIT STAFF.

224 ASSAULTING W/O SERIOUS INJURY - FREQ: 1 ATI: SH1 RFP: D
DIS GCT / 27 DAYS / CS
COMP:010 LAW:P
DS / 30 DAYS / CS
COMP: LAW:
LP COMM / 120 DAYS / CS
COMP: LAW:
LP VISIT / 120 DAYS / CS
COMP: LAW:

REPORT NUMBER/STATUS.: 2705308 - SANCTIONED INCIDENT DATE/TIME: 04-15-2015 0145
DHO HEARING DATE/TIME: 05-06-2015 1130 DHO REPT DEL: 08-13-2015 1400
FACL/CHAIRPERSON.....: SHE/D. CORTEZ
REPORT REMARKS.....: DENIED CHARGE, REFUSED ORDERS TO REMOVE PAPER FROM
SHU CELL DOOR

307 REFUSING TO OBEY AN ORDER - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: 30 DAYS LOSS OF COMMISSARY PRIVILEGES FROM
06-04-15 THROUGH 07-03-2015

G0002 MORE PAGES TO FOLLOW . . .

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SETGB * INMATE DISCIPLINE DATA * 03-20-2019
 PAGE 003 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
 FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

 REPORT NUMBER/STATUS.: 2705486 - SANCTIONED INCIDENT DATE/TIME: 04-15-2015 1405
 DHO HEARING DATE/TIME: 05-06-2015 1115 DHO REPT DEL: 08-13-2015 1300
 FACL/CHAIRPERSON.....: SHE/D. CORTEZ
 REPORT REMARKS.....: DENIED CHARGE REFUSED ORDERS TO REMOVE PAPER FROM SHU
 CELL DOOR. LOSS OF COMMISSARY THROUGH 06-04-15
 HEARING IS ALSO BASIS FOR EXECUTION OF LP COMM SUSPENDED 02-28-2015 0912
 307 REFUSING TO OBEY AN ORDER - FREQ: 1
 LP MPLAYER / 60 DAYS / CS
 COMP: LAW: 60 DAYS LOSS OF MP3 PLAYER FROM 5-6-15 THROUGH
 7-4-15

REPORT NUMBER/STATUS.: 2705589 - SANCTIONED INCIDENT DATE/TIME: 04-15-2015 1435
 DHO HEARING DATE/TIME: 05-06-2015 1100 DHO REPT DEL: 08-13-2015 1330
 FACL/CHAIRPERSON.....: SHE/D. CORTEZ
 REPORT REMARKS.....: DENIED CHARGE, ATTEMPTED TO BITE STAFF MEMBER DURING
 IMMEDIATE USE OF FORCE
 224A ASSAULTING W/O SERIOUS INJURY - FREQ: 1 ATI: SJ1 RFP: D
 DIS GCT / 27 DAYS / CS
 COMP: 010 LAW: P DISALLOW 27 DAYS GOOD CONDUCT TIME
 DS / 15 DAYS / CS
 COMP: LAW: 15 DAYS DISCIPLINARY SEGREGATION FROM 5-6-15
 THROUGH 5-20-15
 LP COMM / 60 DAYS / CS
 COMP: LAW: 60 DAYS LOSS OF COMMISSARY PRIVILEGES FROM 7-3-14
 THROUGH 8-31-15

REPORT NUMBER/STATUS.: 2704138 - SANCTIONED INCIDENT DATE/TIME: 04-12-2015 1007
 DHO HEARING DATE/TIME: 05-06-2015 1045 DHO REPT DEL: 08-13-2015 1345
 FACL/CHAIRPERSON.....: SHE/D. CORTEZ
 REPORT REMARKS.....: DENIED CHARGE REFUSED ORDERS TO STAND FOR COUNT WHILE
 HOUSED IN SHU
 320 FAILING TO STAND COUNT - FREQ: 1
 LP PHONE / 60 DAYS / CS
 COMP: LAW: 60 DAYS LOSS OF TELEPHONE PRIVILEGES FROM 5-6-15
 THROUGH 7-4-15

REPORT NUMBER/STATUS.: 2660899 - SANCTIONED INCIDENT DATE/TIME: 12-13-2014 0845
 DHO HEARING DATE/TIME: 02-28-2015 0912
 FACL/CHAIRPERSON.....: SHE/D. CORTEZ
 APPEAL CASE NUMBER(S): 817798
 REPORT REMARKS.....: CHARGED REDUCED FROM 203 TO 312. ADMITTED HE TOLD PA
 TO GO AWAY, DENIED THREATENING CHARGE

G0002 MORE PAGES TO FOLLOW . . .

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SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 004 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

DHO HEARING DATE/TIME: 02-28-2015 0912 REPORT 2660899 CONTINUED

312 BEING INSOLENT TO STAFF MEMBER - FREQ: 1
LP COMM / 30 DAYS / CS / SUSPENDED 180 DAYS
EXECUTED BASED ON HEARING OF 05-06-2015 1115
COMP: LAW: 30 DAYS LOSS OF COMMISSARY PRIVILEGES SUSPENDED
PENDING 180 DAYS OF CLEAR CONDUCT

REPORT NUMBER/STATUS.: 2649831 - SANCTIONED INCIDENT DATE/TIME: 11-11-2014 0930

UDC HEARING DATE/TIME: 12-12-2014 1400

FACL/UDC/CHAIRPERSON.: SHE/UNIT J2/EVANS, M.

REPORT REMARKS.....: NOT TRUE.

302 MISUSING AUTH MEDICATION - FREQ: 1
LOSE JOB / 180 DAYS / CS
COMP: LAW: LOSS OF JOB CONSIDERATION AT THE FDC FOR 180 DAYS.

REPORT NUMBER/STATUS.: 2487172 - SANCTIONED INCIDENT DATE/TIME: 09-01-2013 1033

DHO HEARING DATE/TIME: 09-12-2013 1230

FACL/CHAIRPERSON.....: LEW/JORDAN A

APPEAL CASE NUMBER(S): 754340

REPORT REMARKS.....: DENIED FIGHTING WITH REYES-DELEON 26343-069

201 FIGHTING WITH ANOTHER PERSON - FREQ: 1
DIS GCT / 27 DAYS / CS
COMP:010 LAW:P
DS / 30 DAYS / CS
COMP: LAW:
LP COMM / 90 DAYS / CS
COMP: LAW:
LP PHONE / 90 DAYS / CS
COMP: LAW:
LP VISIT / 90 DAYS / CS
COMP: LAW:

REPORT NUMBER/STATUS.: 2440171 - SANCTIONED INCIDENT DATE/TIME: 05-02-2013 0905

DHO HEARING DATE/TIME: 06-06-2013 0845

FACL/CHAIRPERSON.....: SHE/BUTLER

REPORT REMARKS.....: I/M WAIVED HEARING. I/M BIT ESCORTING STAFF MEMBER WHILE
CUFFED IN SHU.

HEARING IS ALSO BASIS FOR EXECUTION OF MON FINE SUSPENDED 03-13-2013 1340

224 ASSAULTING W/O SERIOUS INJURY - FREQ: 1 ATI: SJ2 RFP: D
DIS GCT / 10 DAYS / CS
COMP:010 LAW:P 10 DAYS DGCT. ONLY 10 DAYS LEFT FOR ANNIV. YEAR.
DS / 90 DAYS / CS
COMP: LAW: 90 DAYS DS TO RUN CONSECUTIVE TO PREVIOUS SANCTION
FROM 10-12-13 TO 1-9-14.

G0002 MORE PAGES TO FOLLOW . . .

APPENDIX F

SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 005 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME..: MARIN-TORRES, LEONEL
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

DHO HEARING DATE/TIME: 06-06-2013 0845 REPORT 2440171 CONTINUED
FF NVGCT / 30 DAYS / CS
COMP:010 LAW:P FORFEIT 30 DAYS NON-VESTED GOOD CONDUCT TIME.

REPORT NUMBER/STATUS.: 2429980 - SANCTIONED INCIDENT DATE/TIME: 04-07-2013 1420
DHO HEARING DATE/TIME: 05-01-2013 1250

FACL/CHAIRPERSON.....: SHE/CORTEZ D
REPORT REMARKS.....: INMATE WAIVED HEARING BEFORE DHO, INMATE REFUSED TO
SUBMIT TO HAND RESTRAINTS TO MOVE CELL IN SHU

307 REFUSING TO OBEY AN ORDER - FREQ: 1
DIS GCT / 14 DAYS / CS
COMP:010 LAW:P DISALLOW 14 DAYS GOOD CONDUCT TIME
DS / 14 DAYS / CS
COMP: LAW: 14 DAYS DISCIPLINARY SEGREGATION, TOTAL DS TIME IS
FROM 08-30-13 THROUGH 10-12-13

REPORT NUMBER/STATUS.: 2429981 - SANCTIONED INCIDENT DATE/TIME: 04-07-2013 0935
DHO HEARING DATE/TIME: 05-01-2013 1245

FACL/CHAIRPERSON.....: SHE/CORTEZ D.
REPORT REMARKS.....: INMATE WAIVED HEARING BEFORE DHO, FOUND IN SHU CELL WITH
BATTERY WHICH HAD BEEN FASHIONED INTO A SHARP EDGE
HEARING IS ALSO BASIS FOR EXECUTION OF DS SUSPENDED 03-13-2013 1424
LP MATTRES SUSPENDED 03-13-2013 1430

104 POSSESSING A DANGEROUS WEAPON - FREQ: 1
DIS GCT / 30 DAYS / CS
COMP:010 LAW:P DISALLOW 30 DAYS GOOD CONDUCT TIME WHICH EQUALS
75% OF AVAIL GCT FOR YEAR

REPORT NUMBER/STATUS.: 2418236 - SANCTIONED INCIDENT DATE/TIME: 03-07-2013 1603
DHO HEARING DATE/TIME: 03-13-2013 1430

FACL/CHAIRPERSON.....: SHE/CORTEZ D.
APPEAL CASE NUMBER(S): 731431

REPORT REMARKS.....: REFUSED TO STAND FOR COUNT, STATED HE WAS WAITING TO
BE PUT INTO LAW LIBRARY AND WOULD STAND THERE

320 FAILING TO STAND COUNT - FREQ: 1
LP MATTRES / 15 DAYS / CS / SUSPENDED 180 DAYS
EXECUTED BASED ON HEARING OF 05-01-2013 1245
COMP: LAW: LOSS OF MATTRESS PRIVILEGES FROM 0700 TO 2100
SUSPENDED PENDING 180 DAYS OF CLEAR CONDUCT

G0002 MORE PAGES TO FOLLOW . . .

APPENDIX F

SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 006 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

REPORT NUMBER/STATUS.: 2402546 - SANCTIONED INCIDENT DATE/TIME: 01-27-2013 0835
DHO HEARING DATE/TIME: 03-13-2013 1424

FACL/CHAIRPERSON.....: SHE/CORTEZ D.

REPORT REMARKS.....: ATTEMPTED TO SPIT ON ANOTHER INMATE WHO WAS IN SHOWER
STATED HE SPIT ON THE GROUND

224A ASSAULTING W/O SERIOUS INJURY - FREQ: 1 ATI: IH1 RFP: D
DIS GCT / 1 DAYS / CS
COMP:010 LAW:P FOR SENTRY COMPLIANCE ONLY, NO FURTHER GCT AVAIL
TO DISALLOW FOR ANNIV. YEAR
DS / 30 DAYS / CS / SUSPENDED 180 DAYS
EXECUTED BASED ON HEARING OF 05-01-2013 1245
COMP: LAW: 30 DAYS DISCIPLINARY SEGREGATION SUSPENDED PENDING
180 DAYS OF CLEAR CONDUCT
FF NVGCT / 27 DAYS / CS
COMP:010 LAW:P FORFEIT 27 DAYS NON-VESTED GOOD CONDUCT TIME

REPORT NUMBER/STATUS.: 2402364 - SANCTIONED INCIDENT DATE/TIME: 01-26-2013 1300
DHO HEARING DATE/TIME: 03-13-2013 1410

FACL/CHAIRPERSON.....: SHE/CORTEZ D.

REPORT REMARKS.....: INMATE REFUSED TO SUBMIT TO HAND RESTRAINTS, DENIED
STATED HE NEEDED TO KNOW WHO HE WAS TAKING AS CELLMATE

307 REFUSING TO OBEY AN ORDER - FREQ: 1
DS / 7 DAYS / CS
COMP: LAW: TOTAL AMOUNT OF DS IS FROM 03-13-13 THROUGH
08-30-13
312 BEING INSOLENT TO STAFF MEMBER - FREQ: 1
DS / 7 DAYS / CS
COMP: LAW: TOTAL AMOUNT OF DS IS FROM 03-13-13 THROUGH
08-30-13

REPORT NUMBER/STATUS.: 2402368 - SANCTIONED INCIDENT DATE/TIME: 01-26-2013 1605
DHO HEARING DATE/TIME: 03-13-2013 1405

FACL/CHAIRPERSON.....: SHE/CORTEZ D.

REPORT REMARKS.....: REFUSED TO CHANGE CELL AFTER BEING ORDERED FOR 21 DAY
CELL ROTATION

306 REFUSING WORK/PGM ASSIGNMENT - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: 30 DAYS LOSS OF COMMISSARY PRIVILEGES FROM 06-10
THROUGH 07-09-13

G0002 MORE PAGES TO FOLLOW . . .

APPENDIX F

SETGB * INMATE DISCIPLINE DATA * 03-20-2019
 PAGE 007 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME..: MARIN-TORRES, LEONEL
 FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

 REPORT NUMBER/STATUS.: 2401173 - SANCTIONED INCIDENT DATE/TIME: 01-22-2013 1640
 DHO HEARING DATE/TIME: 03-13-2013 1355

FACL/CHAIRPERSON.....: SHE/CORTEZ D.

REPORT REMARKS.....: INMATE REFUSED TO ALLOW NEW CELLMATE TO GO INTO CELL
 STATED HE NEEDED TO KNOW WHO HE WAS TAKING AS CELLMATE

306 REFUSING WORK/PGM ASSIGNMENT - FREQ: 1
 DS / 7 DAYS / CS

COMP: LAW: TOTAL AMOUNT OF DS IS FROM 03-13-13 THROUGH
 08-30-13

 REPORT NUMBER/STATUS.: 2389493 - SANCTIONED INCIDENT DATE/TIME: 12-23-2012 1241
 DHO HEARING DATE/TIME: 03-13-2013 1340

FACL/CHAIRPERSON.....: SHE/CORTEZ D.

REPORT REMARKS.....: INMATE DENIED CHARGE, OBSERVED ON VIDEO ATTACKING OTHER
 INMATE, SLICED NECK AND EAR WITH CAN LID

101 ASSAULTING WITH SERIOUS INJURY - FREQ: 1 ATI: IB4 RFP: A
 DIS GCT / 41 DAYS / CS

COMP:010 LAW:P DISALLOW 41 DAYS GOOD CONDUCT TIME
 DS / 90 DAYS / CS

COMP: LAW: TOTAL OF ALL D/S GIVEN ON 3/13 IS 171 DAYS FROM
 03-13-13 THROUGH 08-30-13

LP PHONE / 90 DAYS / CS

COMP: LAW: LOSS OF 90 DAYS OF TELEPHONE PRIVILEGES FROM
 3-13-13 THROUGH 06-10-13

MON FINE / 100.00 DOLLARS / CS / SUSPENDED 180 DAYS
 EXECUTED BASED ON HEARING OF 06-06-2013 0845

COMP: LAW: \$100 MONETARY FINE SUSPENDED PENDING 180 DAYS OF
 CLEAR CONDUCT

104 POSSESSING A DANGEROUS WEAPON - FREQ: 1

DIS GCT / 1 DAYS / CS

COMP:010 LAW:P DISALLOW 1 DAY GOOD CONDUCT TIME, ALL REMAINING
 FOR ANNIVERSARY YEAR

DS / 60 DAYS / CS

COMP: LAW: 60 DAYS DISCIPLINARY SEGREGATION TOTAL DS IS FROM
 3-13-13 THROUGH 06-10-13

FF NVGCT / 40 DAYS / CS

COMP:010 LAW:P FORFEIT 40 DAYS GOOD CONDUCT TIME

LP COMM / 90 DAYS / CS

COMP: LAW: 90 DAYS LOSS OF COMMISSARY PRIVILEGES FROM 3-13
 THROUGH 06-10-13

G0002

MORE PAGES TO FOLLOW . . .

APPENDIX F

SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 008 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

REPORT NUMBER/STATUS.: 2400887 - SANCTIONED INCIDENT DATE/TIME: 01-23-2013 1435
UDC HEARING DATE/TIME: 01-28-2013 1350
FACL/UDC/CHAIRPERSON.: SHE/UNIT 2/ANTONSON
REPORT REMARKS.....: INMATE PRESENTED AN EXTREMELY POOR ATTITUDE AND REFUSED
TO ATTEND HEARING.

306 REFUSING WORK/PGM ASSIGNMENT - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: BEGINNING 1/28/13 AND ENDING 2/26/13.
307 REFUSING TO OBEY AN ORDER - FREQ: 1
LP COMM / 30 DAYS / CC
COMP: LAW: BEGINNING 2/26/13 AND ENDING 3/27/13.

REPORT NUMBER/STATUS.: 2248584 - SANCTIONED INCIDENT DATE/TIME: 12-23-2011 0910
UDC HEARING DATE/TIME: 12-28-2011 1250
FACL/UDC/CHAIRPERSON.: SHE/UNIT 2/S. POISAL
REPORT REMARKS.....: DROPPED CODE 306, COMMITTED CODE 307 BY REFUSING TO GO TO
EDUCATION WHEN TOLD TO BY OFFICER.

307 REFUSING TO OBEY AN ORDER - FREQ: 1
LP OTHER / 90 DAYS / CS
COMP: LAW: 90 DAYS LOSS COMMISSARY STARTING ON 12-28-2011.

REPORT NUMBER/STATUS.: 2166901 - SANCTIONED INCIDENT DATE/TIME: 05-24-2011 0740
UDC HEARING DATE/TIME: 05-26-2011 0755
FACL/UDC/CHAIRPERSON.: SHE/UNIT 2/T HARPER
APPEAL CASE NUMBER(S): 641623
REPORT REMARKS.....: I/M FAILED TO REPORT FOR 0730 MAILROOM CALLOUT.
310 BEING ABSENT FROM ASSIGNMENT - FREQ: 1
LP OTHER / 90 DAYS / CS
COMP: LAW: 90 LOSS OF PREFERRED HOUSING ENDING ON 8-27-2011.

REPORT NUMBER/STATUS.: 2044160 - SANCTIONED INCIDENT DATE/TIME: 07-22-2010 1123
UDC HEARING DATE/TIME: 07-27-2010 1315
FACL/UDC/CHAIRPERSON.: SET/EB/DRINKARD
REPORT REMARKS.....: OFFICER REPEATEDLY TOLD INMATE TO TUCK IN TEE SHIRT.
307 REFUSING TO OBEY AN ORDER - FREQ: 1
LP COMM / 60 DAYS / CS
COMP: LAW: LOSS OF COMMISSARY 60 DAYS EFFECTIVE IMMEDIATELY.

REPORT NUMBER/STATUS.: 2021687 - SANCTIONED INCIDENT DATE/TIME: 05-27-2010 1245
UDC HEARING DATE/TIME: 06-02-2010 0935
FACL/UDC/CHAIRPERSON.: SET/EB/MANSOUR
REPORT REMARKS.....: I/M ADMITTED HE HAD PAPERS LAYING ALL AROUND HIS CELL.
IMPENDING SENTENCING & WAS PREPARING HIS CASE.

G0002 MORE PAGES TO FOLLOW . . .

APPENDIX F

SETGB * INMATE DISCIPLINE DATA * 03-20-2019
PAGE 009 OF 009 * CHRONOLOGICAL DISCIPLINARY RECORD * 12:38:07

REGISTER NO: 36048-086 NAME.: MARIN-TORRES, LEONEL
FUNCTION.: PRT FORMAT: CHRONO LIMIT TO ____ MOS PRIOR TO 03-20-2019

UDC HEARING DATE/TIME: 06-02-2010 0935 REPORT 2021687 CONTINUED

317 FAILING TO FOLLOW SAFETY REGS - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: LOSS OF COMMISSARY 30 DAYS EFFECTIVE IMMEDIATELY.

REPORT NUMBER/STATUS.: 1982738 - SANCTIONED INCIDENT DATE/TIME: 02-22-2010 1925

UDC HEARING DATE/TIME: 02-26-2010 0645

FACL/UDC/CHAIRPERSON.: SET/FC/MANSOUR

REPORT REMARKS.....: INMATE DENIED THE CHARGES OF POSS OF UNAUTHORIZED RADIO

305 POSSESSING UNAUTHORIZED ITEM - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: LOSS OF COMM FOR 30 DAYS

REPORT NUMBER/STATUS.: 1923800 - SANCTIONED INCIDENT DATE/TIME: 09-27-2009 1511

UDC HEARING DATE/TIME: 10-01-2009 1213

FACL/UDC/CHAIRPERSON.: SET/FC/SJODIN

REPORT REMARKS.....: INMATE ADMITTED HE ALLOWED ANOTHER INMATE TO USE HIS
PHONE ACCOUNT TO PLACE CALLS

397 PHONE ABUSE - NO CIRCUMVENTION - FREQ: 1
LP PHONE / 45 DAYS / CS
COMP: LAW: 45 DAYS LOSS OF PHONE TO BEGIN IMMEDIATELY.

G0005

TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

APPENDIX F

1 The Honorable Robert S. Lasnik
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) No. CR09-262-RSL
Plaintiff,)
v.) DEFENDANT'S REPLY:
LEONEL MARIN-TORRES,) MOTION FOR RE-SENTENCING AND
Defendant.) IMPOSITION OF A REDUCED
) SENTENCE PURSUANT TO SECTION
) 404 OF THE FIRST STEP ACT

The Government agrees that Mr. Marin-Torres is eligible for a sentence reduction under the First Step Act. The issues still in dispute are: (1) the nature/scope of the proceedings that should take place, i.e. whether a plenary sentencing hearing is required, and (2) whether this Court should, in fact, reduce Mr. Marin-Torres' sentence in light of his post-conviction conduct.

For the reasons outlined below and in Mr. Marin-Torres' original motion, a plenary sentencing hearing with his presence is required. Mr. Marin-Torres requests that he be transported back to this District for such a hearing where he can assert his right to allocation. Following such a hearing, this Court should reduce Mr. Marin-Torres' sentence because that sentence was based, in part, on a crack cocaine sentencing scheme that has since been rejected as unjust.

I. A PLENARY SENTENCING HEARING IS REQUIRED.

The Government repeatedly asserts that trial courts have "limited discretion" when resentencing a defendant who is eligible for relief under the First Step Act (FSA). See Gov't Response, p. 4, 5. However, the Government points to no language in the

APPENDIX G

DEFENDANT'S REPLY:
MOTION FOR RE-SENTENCING AND IMPOSITION
OF A REDUCED SENTENCE PURSUANT TO
SECTION 404 OF THE FIRST STEP ACT
(*Leonel Marin-Torres, CR09-262-RSL*) - 1

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

1 FSA to justify the assertion that courts have “limited discretion.” Indeed, the
 2 Government does not specifically address what limitations are in the FSA. Because the
 3 FSA does not include any limitations regarding the nature and scope of the sentencing
 4 hearing, this Court should decline to read into the FSA any such limitations.

5 The bulk of the Government’s argument is that the cases outlining the
 6 procedures in sentence reductions that occur as a result of retroactive Sentencing
 7 Guideline amendments should apply to FSA proceedings. Thus, the Government argues
 8 that any limitations in 18 U.S.C. §3582(c)(2) and U.S.S.G. §1B1.10 should apply to
 9 FSA cases. The Government’s argument lacks merit because it is contrary to the plain
 language of the FSA, as well as 18 U.S.C. §3582(c)(2).

10 Title 18 U.S.C. § 3582(c) provides that a court may modify a term of
 11 imprisonment under these scenarios:

- 12 (1) compassionate release, §3582(c)(1)(A);
- 13 (2) “to the extent otherwise expressly permitted by statute”, §3582(c)(1)(B);
- 14 (3) pursuant to Rule 35 (substantial assistance), §3582(c)(1)(B); and
- 15 (4) where a retroactive guideline amendment has been enacted, §3582(c)(2).

16 Because the FSA is a statutory mechanism to reduce a sentence, §3582(c)(2)(1)(B)
 17 (“otherwise expressly permitted by statute”) applies.

18 The Government agrees that the FSA “does not incorporate” 18 U.S.C.
 19 §3582(c)(2), but it nonetheless argues that limitations inherent in that section apply. By
 20 its plain language, 18 U.S.C. § 3582(c)(2) does not apply to proceedings under the
 21 FSA because it *only* addresses retroactive applications to the sentencing guidelines. In
 22 contrast, the FSA does not reference or require any changes in the guidelines.

23 Congress is “presumed to be familiar with the provisions of related statutes when
 24 they act” and where Congress “omits a particular provision in a related enactment, such
 25 a deliberate omission may not be ignored by a court.” *In re Talmadge*, 832 F.2d 1120,
 26 1124 (9th Cir.1987) (quotations omitted). A court cannot omit or add to the plain

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DEFENDANT’S REPLY:
 MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
 SECTION 404 OF THE FIRST STEP ACT
 (Leonel Marin-Torres, CR09-262-RSL) - 2

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 Seattle, Washington 98101
 (206) 553-1100

1 meaning of the statute. *In re Baldwin*, 70 B.R. 612, 616 (9th Cir. BAP 1987). Congress
 2 has shown that it can impose limitations to sentencing modifications by application of
 3 Guideline policy statements. It could have easily inserted such limitations into the FSA
 4 but chose not to do so. Indeed, §404(c) of the FSA includes several limitations
 5 regarding eligibility and makes clear that trial courts have discretion to deny a request
 6 for a sentence reduction so long as the court denies the request “after a complete review
 7 of the motion on the merits.” Sec. 404(c).

8 The case primarily relied upon by the Government, *Dillon v. United States*, 560
 9 U.S. 817 (2010), is not applicable because it addresses sentence reductions resulting
 10 from retroactive guideline amendments. In *Dillon*, the Court held that a trial court is
 11 bound by the policy statements in the Sentencing Guidelines, specifically U.S.S.G.
 12 §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range
 13 (Policy Statement)). The basis for the holding in *Dillon* was predicated on the fact that
 14 resentencing was taking place because the Sentencing Commission had retroactively
 15 lowered a guideline. The Court stated, “A court’s power under § 3582(c)(2) thus
 16 depends in the first instance on the Commission’s decision not to just amend the
 17 Guidelines but to make the amendment retroactive.” *Id.* at 827. Congress specifically
 18 allowed the Sentencing Commission to impose limitations on retroactive guideline
 19 changes. *Id.* (Noting the “substantial role Congress gave the Commission” with respect
 20 to sentence modifications resulting from Guideline amendments.); *see* 18 U.S.C. §
 21 3582(c)(2) (Court may reduce sentence following retroactive guideline amendment “if
 22 such a reduction is consistent with applicable policy statements issued by the
 23 Sentencing Commission.”) Sentence reductions under retroactive guideline
 24 amendments are, in fact, narrowly constrained because Congress and the Sentencing
 25 Commission explicitly imposed those limitations. As noted above, Congress could have
 26

DEFENDANT’S REPLY:
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 1601 Fifth Avenue, Suite 700
 Seattle, Washington 98101
 (206) 553-1100

1 easily imposed limitations upon FSA proceedings similar to those in 18 U.S.C. §
 2 3582(c)(2), but it chose not to do so.

3 The Government agrees that there is an “absence of any provision concerning
 4 the substantive scope of the proceeding” under the FSA. Gov’t Response, at p. 7.
 5 However, from the absence of limitations, the Government, citing *Dillon*, asks the
 6 Court to conclude that Congress intended to, in fact, create a “limited adjustment to a
 7 final sentence.” *Id.* However, as noted above, *Dillon* is inapplicable because it
 8 addressed explicit statutory and Guideline limitations to proceedings under 18 U.S.C. §
 9 3582(c)(2).

10 The Government’s argument, again, ignores basic tenants of statutory
 11 construction. “It is consistent with the general principle of statutory construction that a
 12 court should not add language to an unambiguous statute absent a manifest error in
 13 drafting or unresolvable inconsistency.” *Aronsen v. Crown Zellerbach*, 662 F.2d 584,
 14 590 (9th Cir.1981). A remedial statute, such as the FSA, “should be construed liberally,
 15 and its exceptions should be read narrowly.” *See Whisnant v. United States*, 400 F.3d
 16 1177, 1184 (9th Cir.2005) (quotations omitted). Finally, as noted above, where
 17 Congress “omits a particular provision in a related enactment, such a deliberate
 18 omission may not be ignored by a court.” *In re Talmadge*, 832 F.2d 1120, 1124 (9th
 19 Cir.1987). Thus, the Government’s observation that the FSA does not include any
 20 provision concerning the substantive scope of the proceeding supports Mr. Marin-
 21 Torres’ argument that a plenary sentencing hearing is required. Congress’ silence on the
 22 issue cannot be construed as a limitation on the scope of the hearing.

23 While the Government asserts that the sentencing inquiry under the FSA is
 24 “limited,” it also suggests that Mr. Marin-Torres’ post-sentencing conduct should be
 25 considered as part of this Court’s consideration of the §3553(a) factors. A full
 26 consideration of the §3553(a) factors suggests that a hearing is necessary. Assuming the

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DEFENDANT’S REPLY:

MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
 SECTION 404 OF THE FIRST STEP ACT
 (Leonel Marin-Torres, CR09-262-RSL) - 4

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 Seattle, Washington 98101
 (206) 553-1100

1 Court considers new information about alleged post-sentencing misconduct, Mr. Marin-
 2 Torres should have an equal opportunity to be present and personally respond to such
 3 evidence.

4 **II. THIS COURT SHOULD REDUCE MR. MARIN-TORRES'
 5 SENTENCE.**

6 **A. A sentence of 120 months would be comparable to the prior sentence in light
 7 of changes to the statute and advisory guideline range.**

8 At the 2010 sentencing hearing, Mr. Marin-Torres was subject to a 15-year
 9 mandatory minimum term as a result of the conviction for the base cocaine count (ten
 10 years) and the § 924(c) count (five years). With the application of the First Step Act, he
 11 now faces no minimum term for the cocaine offense, reducing the total minimum term
 12 to just five years.

13 Mr. Marin-Torres' guideline range also changes substantially. In 2010, this
 14 Court arrived at the following guideline calculations:

USSG § 2D.1., 9.18g of base cocaine	24
USSG § 3C1.1, obstruction of justice	+2
Total Offense Level	=26
Advisory range, CHC V	120-137 ¹ months
Total Range including the §924(c) count.	180-197 months

18 This Court ultimately imposed a guideline sentence: 132 months on the drug count,
 19 concurrent to 120 months on count 3 (felon in possession of a firearm), and 60 months
 20 on count 2 (carrying a firearm in relation to a drug trafficking offense) to run
 21 consecutive to counts 1 and 3; resulting in a total sentence of 192 months.

22 Following application of the First Step Act and guideline amendments, Mr.
 23 Marin-Torres' current guideline calculation is set forth below:

24 //

25
 26 ¹ The advisory range would be 110-137, but the 10-year mandatory minimum for the drug offense makes the low
 end of the range 120 months.

DEFENDANT'S REPLY:

MOTION FOR RE-SENTENCING AND IMPOSITION
 OF A REDUCED SENTENCE PURSUANT TO
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 1601 Fifth Avenue, Suite 700
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USSG § 2D.1., 9.18g of base cocaine	16
USSG § 3C1.1, obstruction of justice	+2
Total Offense Level	=18
Advisory range, CHC V	51-63 months
Total Range including the §924(c) count.	111-123 months

This Court should, again, impose a guideline sentence: 60 months for the §924(c) count, consecutive to 63 months for counts 1 (drug offense) and 3 (felon in possession of a firearm), resulting in a total term of 120 months.

B. This Court has authority to reconsider the entire sentencing package.

This Court has authority to change the sentence for count 3 (felon in possession of a firearm). It has been well established in the Ninth Circuit since 1989 that, when a portion of a sentence is subject to resentencing, the entire sentencing package is unbundled and the “district court has the authority to put together a new package reflecting its considered judgment as to the punishment the defendant deserved.” *United States v. Ruiz-Alvarez*, 211 F.3d 1181, 1184 (9th Cir. 2000) (internal citation and quotation marks omitted); *United States v. Avila-Anguiano*, 609 F.3d 1046, 1049 (9th Cir. 2010) (same); *see also United States v. Holzer*, 848 F.2d 822, 823 (7th Cir. 1988) (referring to “our customary practice of remanding for resentencing whenever a concurrent sentence is thrown out”). The reasoning is simple: a “district judge’s sentencing decision ordinarily concerns the entire sentencing package.” *United States v. Cureton*, 739 F.3d 1032, 1405 (7th Cir. 2014) (quotes omitted). *See also United States v. Doss*, 630 F.3d 1181, 1198 n.11 (9th Cir. 2011) (citing *Ruiz-Alvarado* for the proposition that, if a mandatory life sentence is not required on three counts, the district court may reconsider other non-mandatory life sentences on a fourth count); *United States v. Jenkins*, 884 F.2d 433, 441 (9th Cir. 1989) (permitting resentencing on two counts after vacating restitution for one).

Additionally, by statute “[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single,

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1 aggregate term of imprisonment.” 18 U.S.C. § 3584(c). This statutory rule further
 2 enforces the fact that a sentence of imprisonment is a singular sentence. Once the
 3 singular sentence of imprisonment is disturbed, all constituent parts of the sentence can
 4 be reconsidered.

5 **C. After consideration of the §3553(a) factors and the parsimony clause, a**
sentence of 123 months is sufficient to achieve the goals of sentencing.

6 The defense recognizes that the post-sentencing convictions in Oregon are
 7 troubling. However, Mr. Marin-Torres has been sufficiently punished for those offenses
 8 and he still has lengthy prison terms to serve (a total term of 147 months) upon
 9 completion of the prison term he serves for this case.

10 This Court should reduce Mr. Marin-Torres’ sentence simply because the prior
 11 statutory and guideline scheme under which was sentenced was unjust. His offense
 12 involved less than 10g of base cocaine. He was sentenced under a statutory scheme for
 13 crack cocaine offenses criticized for having no scientific basis and creating a disparate
 14 racial impact. When Congress passed the 2010 Fair Sentencing Act, it was widely
 15 accepted that the 100:1 ratio had no “penological or scientific justification,” *United*
 16 *States v. Smith*, 359 F.Supp.2d 771, 777 (E.D. Wis. 2005), and “result[ed] in a disparate
 17 impact along racial lines, with black offenders suffering significantly harsher
 18 penalties.” *United States v. Hamilton*, 428 F.Supp.2d 1253, 1258 (M.D. Fla. 2006)
 19 (footnote omitted). Congress passed the 2010 Fair Sentencing Act “[t]o restore fairness
 20 to Federal cocaine sentencing.” Pub. L. No. 111-220, 124 Stat. 2372 (2010). The
 21 sponsors “believe[d] this w[ould] decrease racial disparities and help restore confidence
 22 in the criminal justice system, especially in minority communities.” Letter from
 23 Senators Durbin and Leahy to Attorney General Eric Holder (Nov. 17, 2010).²

24 However, the 2010 Fair Sentencing Act did not provide relief for defendants like
 25 Mr. Marin-Torres who were sentenced before its enactment. Congress passed Section
 26 404 of the FSA specifically to rectify this injustice, and this Court should conduct “a

²Available at [http://www.fdic.gov/policy_law/fair-sentencing-act-as-holder-letter-111710\[1\].pdf](http://www.fdic.gov/policy_law/fair-sentencing-act-as-holder-letter-111710[1].pdf).

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1 complete review of the motion on the merits" to determine whether, and to what extent,
 2 a reduced sentence should be imposed. *See* §404(c).

3 The changes in the statute and guidelines reflect the opinion of Congress and the
 4 Sentencing Commission that the offense conduct is not as serious as previously
 5 considered. Congress has given courts an opportunity to reconsider such sentences and
 6 this Court should take opportunity to reconsider the seriousness of the offense in light
 of the existing guidelines and statute.

7 A sentence reduction would also not put the public at risk. Mr. Marin-Torres is
 8 currently 49 years old. If the Court follows the defense recommendation and reduces
 9 the 192-month sentence to 120 months, Mr. Marin-Torres still would not be released
 10 until he is nearly 60 years old. Studies have consistently shown that recidivism declines
 11 with age, particularly as offenders reach their 60's. "The decline in offending holds
 12 relatively constant for even persistent offenders and the relationship between age and
 13 criminal offending has been found to hold over time and throughout different cultures."
 14 Collins, *Onsent and Desistance in Criminal Careers: Neurobiology and the Age-Crime*
 15 *Relationship*, Jounal of Offender Rehabilitation, Vol. 39 (3), (2004), pp1-19, at p. 1.

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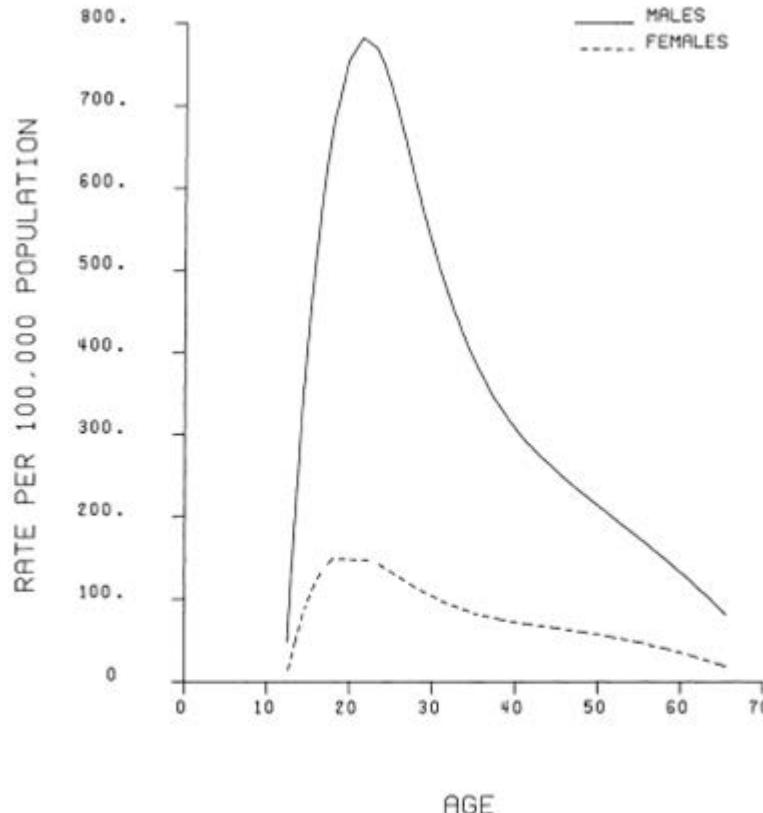


FIG. 1.—Criminal offenders in England and Wales, 1842, 1843, 1844, by age and sex.
Rates per 100,000 population. (Source of data. Neison [1857, pp. 303-4].)

Hirschi, T., and Gottfredson, M., *Age and the Explanation of Crime*, American Journal of Sociology, Vol.89, No. 3, 552-84 (1983), at p. 556. Consistent with research showing a strong association between age and a decline in recidivism, Mr. Marin-Torres' risk of recidivism will be very low by the time he is released from custody.

III. CONCLUSION

The Government agrees that Mr. Marin-Torres is at least eligible for a sentence reduction under the FSA. Congress has now granted the Court broad discretion to reduce sentences imposed under the excessively harsh penalty structure which existed at the time of Mr. Marin-Torres' sentencing. The reduced statutory penalties and guideline range demonstrate that the offense conduct in this case was not as serious as once thought. Therefore, Mr. Marin-Torres respectfully asks that the Court schedule a

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1 re-sentencing hearing at the next reasonably available date and order that his presence is
2 required.

3 DATED this 15th day of April, 2019.

4 Respectfully submitted,

5 *s/ Dennis Carroll*
6 Assistant Federal Public Defender
7 Attorney for Leonel Marin-Torres
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CERTIFICATE OF SERVICE

I certify that on April 15, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/ *Alma R Coria*
Senior Legal Assistant

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UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA

V.

LEONEL MARIN-TORRES

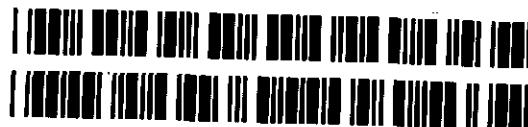
JUDGMENT IN A CRIMINAL CASE

Case Number: 2:09CR00262RSL-001

USM Number: 36048-086

Leonel Marin-Torres (Pro Se)

Defendant's Attorney



09-CR-00262-CVSHT

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) 1, 2, and 3 of the First Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)	Possession of Cocaine Base in the Form of Crack Cocaine With Intent to Distribute	03/25/2009	1
18 U.S.C. § 924(c)(1)(A)(i)	Carrying a Firearm During and in Relation to a Drug Trafficking Crime	03/25/2009	2
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm	03/25/2009	3

The defendant is sentenced as provided in pages 2 through 6 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) _____ 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.

Carl A. Colasurdo/Darwin P. Roberts, Assistant United States Attorneys

May 28, 2010

Date of Imposition of Judgment

Signature of Judge

The Honorable Robert S. Lasnik

Date

DEFENDANT: LEONEL MARIN-TORRES
CASE NUMBER: 2:09CR00262RSL-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 192 months

120 months on Ct 3 (felony in Possession) & 132 months on
at 1 (Poss. Crim. Possession of Intent to Distribute) w/ each to run

The court makes the following recommendations to the Bureau of Prisons: concurrent w/ each other
for a total of 132 months, plus
6 months on Ct 2 (Carrying
firearm during and in relation to
a drug trafficking crime) which
shall run consecutively to the
132 months imposed on Ct 1 + 3,
for a total
term of confinement of 192 months.

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 _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LEONEL MARIN-TORRES
CASE NUMBER: 2:09CR00262RSL-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 8 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 and/or alcohol test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

- 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 register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (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: LEONEL MARIN-TORRES
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. Probation Officer.

The defendant shall submit his/her person, residence, office, safety deposit box, storage unit, property, or vehicle to a search, conducted by a U.S. Probation Officer or any other law enforcement officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation; the defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.

The defendant shall provide his or her probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's Federal Income Tax Returns.

DEFENDANT: LEONEL MARIN-TORRES
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CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300	\$ Waived	\$ N/A

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>
	N/A	N/A	
TOTALS	\$ _____ 0	\$ _____ 0	

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:

The court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived

* 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: LEONEL MARIN-TORRES
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SCHEDULE OF PAYMENTS

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

PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.

During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.

During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.

During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

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 United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

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 and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court

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

Firearm & other confidential seized by the police

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.