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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

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

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 NIKISHNA POLEQUAPTEWA,
16 Defendant.

No. SA CR 16-36-CJC

STIPULATION REGARDING DEFENDANT'S
MOTION TO SUPPRESS

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19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Vibhav Mittal,
22 ("USAO") and defendant NIKISHNA POLEQUAPTEWA, by and through his
23 counsel of record, Deputy Federal Public Defender Jonathan K. Ogata,
24 hereby stipulate as follows:

25 1. On February 2, 2018, defendant filed a motion to suppress
26 the search of a laptop. (CR 33.) On May 4, 2018, the Court denied
27 the motion to suppress. (CR 39.) On November 13, 2018, defendant
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1 was convicted at trial. (CR 144.) On July 8, 2019, defendant was
2 sentenced to 27 months of imprisonment followed by two years of
3 supervised release. (CR 189.) He was also ordered to pay
4 \$53,305.03 in restitution and a \$100 special assessment. (Id.) He
5 self-surrendered on September 3, 2019. (Id.)

6 2. Defendant has completed service of his term of
7 imprisonment and began his term of supervised release on or about
8 August 9, 2021. Defendant is currently paying his restitution and
9 special assessment obligations with a goal of full payment by August
10 9, 2022.

11 3. Following sentencing, defendant appealed his conviction,
12 including the denial of the motion to suppress. On May 26, 2021,
13 the United States Court of Appeals for the Ninth Circuit ("Ninth
14 Circuit") issued a memorandum, vacating the Court's denial of the
15 motion to suppress and remanding the matter with instructions to
16 conduct a new trial only if the Court grants the suppression motion
17 on remand. On June 17, 2021, the Ninth Circuit issued its formal
18 mandate.

19 4. Pursuant to the terms of this agreement, defendant is
20 withdrawing his motion to suppress (CR 33) and not seeking any
21 further review of the issue on remand.

22 5. The USAO agrees to recommend early termination of
23 defendant's supervised release after the expiration of one year of
24 supervised release, consistent with 18 U.S.C. § 3583(e)(1),
25 provided: (1) the Court does not find defendant in violation of the
26 terms and conditions of his supervised release for his conduct in
27 the first year of his supervised release, (2) the United States
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1 Probation and Pretrial Services Office (including defendant's
2 probation officer) supports or does not object to early termination
3 after defendant completes one year of supervised release, and (3)
4 defendant has made continuous payments of his restitution and
5 special assessment obligations without any unauthorized missed
6 payments, including being compliant with the payment plan for the
7 first 12 months of defendant's supervised release term.

8 6. In light of defendant's withdrawal of his motion to
9 suppress (CR 33), the parties agree that no new trial should be
10 ordered and the conviction and sentence should be considered final.

11 7. Defendant understands that the Court and the United States
12 Probation and Pretrial Services Office are not parties to this
13 agreement and need not accept any of the USAO's recommendations or
14 the parties' agreements to early termination.

15 8. Defendant understands that even if the Court ignores any
16 recommendation by defendant or the USAO as to early termination or
17 the United States Probation and Pretrial Services Office does not
18 support or opposes early termination, defendant cannot then seek to
19 pursue his motion to suppress. Defendant understands that no one --
20 not the prosecutor, defendant's attorney, or the Court -- can make a
21 binding prediction or promise regarding whether defendant will
22 receive early termination.

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1 9. Defendant understands that, except as set forth herein,
2 there are no promises, understandings, or agreements between the
3 USAO and defendant or defendant's attorney, and that no additional
4 promise, understanding, or agreement may be entered into unless in a
5 writing signed by all parties or on the record in court.

6 IT IS SO STIPULATED.

7 Dated: August 27, 2021

TRACY L. WILKISON
Acting United States Attorney

8
9 SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

10
11 /s/ Vibhav Mittal
12 VIBHAV MITTAL
13 Assistant United States Attorney
Deputy Chief, Santa Ana Branch
Office

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
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CERTIFICATION OF DEFENDANT

I have read this stipulation in its entirety. I have had enough time to review and consider this stipulation, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this stipulation, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this stipulation. No promises, inducements, or representations of any kind have been made to me other than those contained in this stipulation. No one has threatened or forced me in any way to enter into this stipulation. I am satisfied with the representation of my attorney in this matter, and I am withdrawing the motion to suppress because I am guilty of the charge and wish to take advantage of the promises set forth in this stipulation, and not for any other reason.


NIKISHNA POLEQUAPTEWA
Defendant

8/27/21
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am NIKISHNA POLEQUAPTEWA's attorney. I have carefully and thoroughly discussed every part of this stipulation with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this stipulation. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this stipulation; no one has threatened or forced my client in any way to enter into this stipulation; and my client's decision to enter into this stipulation (including his decision to withdraw his motion to suppress) is an informed and voluntary one.

/s/ per email authorization

August 27, 2021

JONATHAN OGATA
Attorney for Defendant NIKISHNA
POLEQUAPTEWA

Date

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2 SCOTT M. GARRINGER
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[PROPOSED] ORDER RE: DEFENDANT'S
MOTION TO SUPPRESS

18 The Court has read and considered the Stipulation Regarding
19 Defendant's Motion to Suppress, filed by the parties in this matter
20 on August 27, 2021. The Court hereby finds that the Stipulation,
21 which this Court incorporates by reference into this Order,
22 demonstrates facts that support withdrawal of defendant's motion to
23 suppress (CR 33).
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1 THEREFORE, FOR GOOD CAUSE SHOWN:

2 1. Defendant's motion to suppress (CR 33) is withdrawn.

3 2. In light of defendant's withdrawal of his motion to
4 suppress (CR 33), no new trial shall be ordered and defendant's
5 conviction and sentence in this matter should be considered final.

6 IT IS SO ORDERED.

7
8 _____
9 DATE

HONORABLE CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

10 Presented by:

11 _____
12 /s/

VIBHAV MITTAL
Assistant United States Attorney