

1 PHILLIP A. TALBERT
Acting United States Attorney
2 TODD A. PICKLES
Assistant United States Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700
Facsimile: (916) 554-2900
5

6 Attorneys for Plaintiff
United States of America
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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 ANDREW KIMURA,
14 Defendant.
15

CASE NO. 2:15-CR-00161 GEB
UNITED STATES'S SENTENCING
MEMORANDUM
DATE: August 12, 2016
TIME: 9:00 a.m.
COURT: Hon. Garland E. Burrell, Jr.

16
17 The United States hereby submits its sentencing memorandum. For the reasons set for below,
18 the United States recommends the Court sentence defendant Andrew Kimura to 46 months of
19 imprisonment and to pay a fine of \$7,500 but with no restitution ordered.

20 **I. UNITED STATES'S SENTENCING RECOMMENDATION**

21 The Probation Officer has correctly calculated the advisory Sentencing Guidelines as a total
22 offense level of 21 with a criminal history category of II, for an advisory range of 41 to 51 months'
23 imprisonment. *See* PSR, 24-43. This includes the calculation of over \$80,000 in bribes paid by
24 numerous individuals to Kimura and others involved in the conspiracies to provide commercial and
25 general California driver licenses (CDL) to people who had not taken or passed the written or driving
26 portions of the examinations.

27 Having correctly determined the total offense level is 21 with a criminal history category of II,
28 the Probation Officer nonetheless recommends a departure under U.S.S.G. § 4A1.3(b)(1) on the basis

1 that Kimura's criminal history category II over-represents the seriousness of his criminal history. The
2 Probation Officer posits a criminal history I is more appropriate, and recommends a sentence of 37
3 months, which would be the low-end under that category. The United States respectfully disagrees.

4 In 2013, Kimura was arrested for reckless driving on a highway, which is a misdemeanor. Other
5 equally serious charges, including illegal street racing, were dismissed. As a result of the conviction, he
6 was sentenced to 36 months' probation beginning in 2014. *See* PSR ¶ 39. Yet, as the factual basis and
7 the evidence show, at the very same time that the state court was sentencing Kimura to probation he was
8 already involved in the illegal conspiracy to commit bribery and identity fraud (which began in 2013),
9 and he continued it until his arrest in 2015. For this reason, two points were added to his criminal
10 history because part of the offense conduct occurred while Kimura was on probation. *See* U.S.S.G.
11 § 4A1.1(d). This is not a situation that warrants a downward departure under U.S.S.G. § 4A1.3, which
12 applies only if "reliable information indicates that the defendant's criminal history category substantially
13 over-represents the seriousness of the defendant's criminal history category or the likelihood that the
14 defendant will commit other crimes." U.S.S.G. § 4A1.3(b)(1).

15 In particular, the commentary for downward departures under § 4A1.3 states that a criminal
16 history category I is meant for a "first time offender with the lowest risk of recidivism." *Id.*, Appl. Note
17 3. Kimura is not a "first time offender" and the fact that he so readily continued to engage in criminal
18 conduct despite his state conviction demonstrates he has a higher risk of recidivism than others. Indeed,
19 the whole reason the Guidelines add points to the criminal history score when a person commits a crime
20 while on probation is to recognize that the such a person demonstrates a higher risk of recidivism as
21 their prior experience with the criminal justice system was insufficient to correct their conduct. A
22 downward departure to a criminal history category I is not warranted for Kimura.

23 Moreover, even if the Court finds that a criminal history category I more appropriately applies to
24 Kimura, the Court should nonetheless sentence him to 46 months imprisonment. The Guidelines
25 themselves recognize that an upward departure may be applicable to bribery schemes which endanger
26 the public safety. *See* U.S.S.G. § 2C1.1, Appl. Note 7. Driving a motor vehicle is inherently dangerous.
27 This is precisely why California and every other state requires every driver to prove they have a basic
28 understanding of the rules of the road and an ability to safely operate a vehicle. The State accomplishes

1 this task through the Department of Motor Vehicles (DMV), which requires all drivers to pass both a
2 written and behind-the-wheel driving examination. The public relies on the fact that the DMV is
3 fulfilling its mission whenever it takes to the road. Kimura circumvented this process and placed the
4 public safety in peril as gave or helped to give unqualified drivers licenses to operate tractor-trailer
5 trucks and other vehicles on California (and by extension the nation's) roads and highways. Fortunately,
6 the United States is not aware of any fatalities or serious injuries directly attributable to Kimura's
7 provision of illegal CDLs based on information presently known to the DMV. Nonetheless, Kimura's
8 crime unquestionably jeopardized the public's safety.

9 Similarly, the factors under 18 U.S.C. § 3553(a) support a 46-month sentence. Both the nature
10 and circumstances of this case and the history and characteristics of Kimura demonstrate the need for a
11 significant sentence. In particular, as just explained, this is a very serious offense. Kimura abused the
12 position he was placed in by the DMV to ensure that only properly trained and qualified drivers be
13 permitted to operate vehicles, particularly commercial vehicles, on the public roads. Instead, motivated
14 by greed, he endangered the public safety to earn tens of thousands of dollars for himself and his co-
15 conspirators. Further, unlike many defendants that come before this Court, Kimura was not raised in an
16 abusive home or exposed to criminal conduct at an early age. Instead, he was raised in what he
17 describes as a loving, supportive environment. He also has no history of substance abuse or mental
18 health issues. Kimura's very serious criminal conduct was the solely result of his deliberate choices.

19 Moreover, Kimura's conduct cannot be considered aberrant. His conduct occurred when he was
20 27, and continued for two years. His misdemeanor conviction for reckless driving was not a wakeup
21 call and he did not use his experience on state probation to change course. Instead, he continued in his
22 criminal conspiracy. Thus, there is a strong need to promote respect for the law with respect to Kimura.
23 Further, it is also extremely important that the other DMV employees who may be tempted to engage in
24 similar criminal conduct for personal gain, and thereby endanger the safety of the public, be deterred. In
25 consideration of all of the facts of this case, and the factors under 18 U.S.C. § 3553(a), the Court should
26 sentence Kimura to 46 months' imprisonment. The United States also supports the imposition of a term
27 of supervised release of two (2) years with the conditions as set forth on pages 16 and 17.

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V. DISMISSAL OF REMAINING CHARGES

At the time of sentencing, the United States will orally move to dismiss the remaining counts in the indictment as to Kimura.

Dated: August 5, 2016

PHILLIP A. TALBERT
Acting United States Attorney

By: /s/ Todd A. Pickles
TODD A. PICKLES
Assistant United States Attorney