ERIN J. RADEKIN
Attorney at Law - SBN 214964
428 J Street, Suite 350
Sacramento, California 95814
Telephone: (916) 504-3931
Facsimile: (916) 447-2988

Attorney for Defendant
GABRIEL CARACHEO

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GABRIEL CARACHEO, Defendant.	2:07-CR-00248-26 WBS **UNOPPOSED REQUEST TO MODIFY BRIEFING SCHEDULE; [~~PROPOSED~~] ORDER**

Pursuant to Local Rule 144, undersigned counsel, Erin J. Radekin, respectfully requests the briefing schedule relating to defendant's possible motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(2) be modified to reflect the following deadlines:

Motion to reduce sentence	**March 24, 2016**
Government's opposition	**April 14, 2016**
Defendant's reply, if any	**April 21, 2016**

The reasons for this request is to afford the defense additional time to obtain all relevant records and await the decision of the Ninth Circuit in the case *United States v. Davis*, 776 F.3d 1088 (9th Cir. 2015).

Mr. Caracheo filed his motion to appoint counsel re: possible motion to reduce sentence on January 25, 2016. CR 1376. Undersigned counsel was

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appointed on January 28, 2016. CR 1378. Undersigned counsel has ordered, but does not yet have, all relevant records in this case.

Further, Mr. Caracheo entered his guilty plea pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). CR 826. As this Court is aware, under the current state of the law, an 11(c)(1)(C) binding plea agreement must make clear the particular Guideline range on which the defendant's sentence was based in order for the defendant to be eligible for a reduction under 18 U.S.C. § 3582(c)(2). *United States v. Austin*, 676 F.3d 924, 928 (9th Cir. 2012); *Davis*, *supra*, 776 F.3d at p. 1090. However, the Ninth Circuit granted *en banc* review of *Davis* on August 6, 2015, but has not yet issued a ruling. If the Ninth Circuit fashions a new and different rule regarding when an 11(c)(1)(C) plea agreement bars reduction under § 3582(c)(2) in *Davis*, this could make a difference in this Court's determination of whether such reduction is warranted in this case. Hence, the parties respectfully submit that this Court should await the resolution of the petition for *en banc* review in *Davis* to ascertain the law to be applied in Mr. Caracheo's case.

Assistant United States Attorney Jason Hitt has indicated he has no objection to the proposed modification.

Hence, the parties respectfully stipulate and request that this Court modify the briefing schedule as set forth above.

Dated: February 24, 2016

Respectfully submitted,

/s/ Erin J. Radekin
ERIN J. RADEKIN
Attorney for Defendant
GABRIEL CARACHEO

/ /

ORDER

Pursuant to the unopposed request, and good cause appearing therefor, it is hereby ordered that the briefing schedule relating to defendant's possible motion to reduce sentence pursuant to § 3582(c)(2) be revised to reflect the following deadlines:

Motion to reduce sentence	**March 24, 2016**
Government's opposition	**April 14, 2016**
Defendant's reply, if any	**April 21, 2016**

Dated: February 24, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE