



1 to Def.'s Mot. Dismiss ("Opp'n"), Ex. 1 (Nov. 5, 2025). During trial, the Defendant presented  
2 evidence of his voluntary intoxication, and an instruction on that defense was submitted to the  
3 jury for consideration. On June 4, 2025, the jury found the Defendant guilty of count two, which  
4 alleged that he "intentionally engage[d] in sexual contact with another, to wit: by touching the  
5 buttock of . . . a minor under fourteen (14) years of age." Indictment at 2.  
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7 The initial sentencing date was rescheduled at the request of the Defendant. Sentencing  
8 Hr'g Mins. 2:13:13–2:14:00 P.M. (Sep. 4, 2025). On November 5, 2025, one day before the  
9 rescheduled sentencing hearing, the Defendant filed a Motion to Dismiss. The People filed an  
10 Opposition the same day. The matter was continued to November 20, 2025, at which time the  
11 court heard argument on the Motion to Dismiss. The Defendant is scheduled to be sentenced on  
12 March 12, 2026. He faces a prison term of 5–20 years for the charge of Second Degree Criminal  
13 Sexual Conduct.  
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15 **A. Defendant's Motion to Dismiss**  
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17 Defendant, a citizen of the Federated States of Micronesia ("FSM"), argues that he was  
18 discriminated against on the basis of his race and that this violation of his rights amounted to  
19 prosecutorial misconduct. *See generally* Mot. Dismiss; Prosecutorial Misconduct ("Mot.  
20 Dismiss"). He supports this allegation by comparing his case to two other Criminal Sexual  
21 Conduct prosecutions, one committed by a Chamorro defendant, Dominic Leon Guerrero, and  
22 one committed by a Filipino defendant, Edward Sicat—both of whom, Defendant claims, belong  
23 to a "preferred ethnic group." Mot. Dismiss at 2. Defendant stated that Sicat was charged with  
24 Criminal Sexual Conduct involving three minors, and that he has since left Guam after signing a  
25 plea deal that mandated he not return to the United States in lieu of serving a custodial sentence.  
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27 *Id.* at 1. Defendant next turns to the charges against Leon Guerrero, a teacher who he states was  
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1 charged with Criminal Sexual Conduct against a minor in his care. *Id.* at 2. Leon Guerrero signed  
2 a plea deal with the People and faces a prison term of up to three years. *Id.*

3 Defendant's Motion to Dismiss rests on his claims about those two cases, which he argues  
4 provide enough circumstantial evidence for the court to find misconduct on the part of the  
5 Attorney General of Guam and the Assistant Attorney General assigned to this case. *Id.* He  
6 considers the conduct of the defendants discussed above to be "much more serious" than his own.  
7 *Id.* at 1–2. He also argues that he was less culpable because he committed the offense when he  
8 was "insensate with drink," and goes a step further by claiming that no rational trier of fact could  
9 have concluded that the touching was done for the purpose of sexual arousal or gratification, as  
10 required by the statute. *Id.* at 2; *see also* 9 G.C.A. §§ 25.10(a)(9), 25.20(a).

11 The People argue that Defendant failed to establish prosecutorial misconduct on the basis  
12 of plea bargaining. Opp'n at 3–4. They provided email exchanges between the prosecutor and  
13 Defendant's counsel showing that Defendant was offered, but rejected, a plea deal including a  
14 range of zero to two years imprisonment. *Id.* Ex. 1. The People also cite Criminal Sexual Conduct  
15 cases in front of this court where they requested life sentences for Chamorro and Filipino  
16 defendants. *Id.* at 2. This evidence, the People argue, shows that racial discrimination did not  
17 factor into the prosecutor's charging decision or plea negotiation strategy. *Id.* at 2–4.

## 18 DISCUSSION

19 Prosecution is a "special province of the Executive," and a claim of selective prosecution  
20 invokes separation of powers concerns because it requires the court to exercise judicial power  
21 over matters within the control of the Executive. *United States v. Armstrong*, 517 U.S. 456, 464  
22 (1996) (internal quotation marks omitted); *accord United States v. Wilson*, 123 F.4th 1021, 1027  
23 (9th Cir. 2024). Prosecutors are entitled to broad discretion to enforce criminal laws. *Armstrong*,

1 517 U.S. at 464. Similarly, their decisions are afforded a presumption of constitutionality, which  
2 can only be overcome by “clear evidence to the contrary.” *Id.* at 464–65. This presumption exists  
3 so that courts do not “unnecessarily impair the performance of a core executive . . . function.” *Id.*  
4 at 465. One way prosecutors exercise this discretion is through plea bargaining.

6 In order to challenge a prosecutor’s plea bargaining or charging decision, [a defendant]  
7 must establish a prima facie case of invidious discrimination, by showing that (1) others  
8 similarly situated to him were not prosecuted or were given more favorable plea bargains;  
9 and (2) his prosecution was based on an impermissible motive, i.e. a discriminatory  
10 purpose or intent.

11 *United States v. Estrada-Plata*, 57 F.3d 757, 760 (9th Cir. 1995). This standard is intended  
12 to be a demanding one. *Armstrong*, 517 U.S. at 463.

13 Defendant does not apply this standard to the facts of his case—in fact, he fails to cite any  
14 law in support of his position. *See generally* Mot. Dismiss. Instead, he makes a broad claim that  
15 the Office of the Attorney General and the prosecutor assigned to his case “routinely take hammer  
16 and tong to individuals who hail from the Freely Associated States of Micronesia but show no  
17 such zeal for those who are not.” Mtn. Dismiss at 2. He argues that “the circumstantial evidence  
18 overwhelmingly suggests improper consideration of race and ethnic origin.” *Id.* But, as discussed  
19 below, the only evidence he offers is uncited claims about two other Criminal Sexual Conduct  
20 cases. While it is true that statistical evidence can satisfy the first prong of the *Estrada-Plata* test,  
21 the control group in this case is far too small to show that defendants from the FSM are treated  
22 differently than those who are not. *See United States v. Redondo-Lemos*, 955 F.2d 1296, 1301  
23 (9th Cir. 1992) (“At a threshold level, whether or not there is a significant disparity in the  
24 treatment of classes of defendants can normally be determined on the basis of statistical evidence,  
25 without reference to the underlying facts of individual cases.”), *abrogated on other grounds by*,  
26 *United States v. Armstrong*, 48 F.3d 1508 (9th Cir. 1995), *rev’d*, 517 U.S. 456 (1996). He cannot  
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1 prevail on a claim of discriminatory prosecution without asserting any facts to support his  
2 allegations.

3 **A. The Defendant failed to identify a similarly situated control group.**

4 The first prong of the *Estrada-Plata* test requires Defendant to show that “others similarly  
5 situated to him were not prosecuted or were given more favorable plea bargains.” *Estrada-Plata*,  
6 57 F.3d at 760. In other words, he must demonstrate that the prosecutor’s decision had a  
7 discriminatory effect.  
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9 The first step in demonstrating a discriminatory effect is identifying a control group—  
10 here, Leon Guerrero and Sicat—which “must be the same as the defendant in all relevant  
11 respects.” *Wilson*, 123 F.4th at 1029 (citation modified). The purpose of the control group is to  
12 isolate a single factor that explains the difference between the defendant’s expected outcome and  
13 his actual outcome. *United States v. Aguilar*, 883 F.2d 662, 706 (9th Cir. 1989), *superseded by*  
14 *statute on other grounds*. An appropriate control group is composed of people who committed  
15 the same conduct as the defendant and either were not prosecuted or received a more favorable  
16 plea offer. *Id.* at 706 (“Absent a similarly situated control group, the government’s prosecution of  
17 a defendant exercising his constitutional rights proves nothing.”). Defendant offers no such  
18 comparison here; in fact, he argues that he is dissimilar to the control group because his conduct  
19 is less severe. *See generally* Mot. Dismiss. To successfully isolate race as the factor that  
20 determined his outcome, Defendant must compare himself to others he claims are equally—not  
21 more—culpable. *Id.* Furthermore, the control group includes solely defendants that entered into  
22 plea deals with the People—a factor that is likely to explain, at least in part, the lower sentences  
23 those defendants face.  
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28 Defendant provides few details about the cases in the control group. He alleges only that  
Sicat “knowingly committed acts of sexual assault against three young boys” and that Leon

1 Guerrero “committed a forceable sexual assault upon a young man then in his care.” Mot. Dismiss  
2 at 1, 2. These descriptions are too vague to meaningfully analyze. Guam law does not define  
3 “sexual assault”; rather, Chapter 25 of Title 9 establishes four degrees of Criminal Sexual  
4 Conduct, each of which can be committed several ways. Defendant does not use terms with legal  
5 significance to explain how either Leon Guerrero or Sicat committed Criminal Sexual Conduct.  
6 Nor does he mention the exact crimes they were convicted of. The People’s Opposition explains  
7 that Leon Guerrero pled guilty to Fourth Degree CSC but does not provide the exact offense Sicat  
8 pled guilty to.  
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11 In sum, one member of the control group was convicted of a less serious offense than  
12 Defendant, and the other was convicted of an unspecified offense. Defendant provides no details  
13 about the conduct of either. By failing to assert even basic information, such as offense conduct  
14 and crime of conviction, Defendant’s showing falls far short of what is necessary to establish that  
15 he is similarly situated to anyone in the control group.  
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17 **B. Defendant was not treated less favorably than the control group defendants.**

18 Even if Defendant was similarly situated to Leon Guerrero and Sicat, he still failed to  
19 establish that he was treated less favorably. He alleges that Leon Guerrero, who pled guilty to  
20 Fourth Degree Criminal Sexual Conduct, was given a more favorable plea offer because Leon  
21 Guerrero’s maximum term of incarceration under the offer is three years. Mot. Dismiss at 2;  
22 *accord* Opp’n at 2. Defendant was offered a term of zero to two years if he plead guilty to the  
23 same offense. Opp’n, Ex. 1 at 1. He chose to reject the offer, however, and was subsequently  
24 convicted of Second Degree Criminal Sexual Conduct, for which he now faces a prison term of  
25 five to twenty years. Had he not rejected the offer, he would be facing a shorter term of  
26 incarceration than Leon Guerrero after being convicted of the same crime. He accordingly failed  
27 to show that he was treated less favorably than Leon Guerrero.  
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1 Neither is it clear that Defendant's offer was less favorable than the offer accepted by  
2 Sicat, who was not sentenced to a term of imprisonment on the condition that he leave Guam and  
3 not return to any U.S. jurisdiction. If he does re-enter the United States, he will face a life sentence  
4 plus 100 years. Opp'n at 2. There is no evidence that this kind of plea was offered to Defendant,  
5 but that fact alone does not establish less favorable treatment. While Sicat did not serve a custodial  
6 sentence, he has been deprived of the ability to re-enter the United States. Defendant does not  
7 claim that he would have preferred to be permanently removed from the country rather than face  
8 up to two years in prison.  
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11 **C. The case against Defendant was not motivated by discriminatory intent.**

12 Defendant similarly failed to allege any facts to show that the prosecutor was motivated  
13 by a discriminatory purpose. "It is not enough for the court to be convinced that the prosecutor's  
14 enforcement decisions have a discriminatory effect; it must also find that the prosecutor was  
15 motivated by a discriminatory purpose *in the very case before it.*" *Redondo-Lemos*, 955 F.2d at  
16 1301 (emphasis added). Under this prong, the court must determine whether a defendant was  
17 singled out for prosecution because of improper motivation. It does not consider evidence of other  
18 prosecutions—evidence of discriminatory motive must be shown by the conduct of the prosecutor  
19 in the specific case under review. Defendant makes no such showing here. He claims that he  
20 would not have been prosecuted but for "an irrational charge by a racist prosecutor urged on by  
21 an equally racist Attorney General," but fails to present any evidence of discriminatory motive in  
22 this case. The People, in contrast, provided the email exchanges between the prosecutor and  
23 Defendant's attorney in the plea bargaining process. *See generally* Opp'n, Ex. 1. Far from  
24 showing discriminatory motivation, the discussion shows a reasonable offer to plead to a lesser  
25 included offense. *Id.*, Ex. 1 at 1. Defendant countered the People's initial offer by suggesting a  
26 lower term if he plead to misdemeanor assault. *Id.* This offer was rejected because, as the  
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1 prosecutor explained in her email, she would only accept a plea for a sex offense because the  
2 victim was still in fear. *Id.*, Ex. 1 at 1-2. The email exchanges between the prosecutor and  
3 Defendant's counsel make no mention of race or country of citizenship, and the People's reason  
4 for rejecting the counteroffer is reasonable. *See generally id.*, Ex. 1. No evidence was provided to  
5 the court to indicate that the prosecution against Defendant was the product of a constitutionally  
6 impermissible motive. Absent this evidence, the Defendant fails to establish the second prong of  
7 selective prosecution.  
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10 **CONCLUSION**

11 For the reasons set forth above, the court hereby **DENIES** the Defendant's Motion to  
12 Dismiss. His sentencing for the offense he was found guilty of will proceed as scheduled.  
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16 SO ORDERED this FEB 24 2026.

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21 **HONORABLE ALBERTO E. TOLENTINO**  
22 Judge, Superior Court of Guam

23 **SERVICE VIA E-MAIL**

24 I acknowledge that an electronic  
25 copy of the original was e-mailed to:

26 AG's T. Fisher

27 FEB 24 2026  
Date: 11:49am

28 Evan L. Topasna  
Deputy Clerk, Superior Court of Guam