

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPEAL NUMBER 18-1851

UNITED STATES OF AMERICA,
Appellee,

v.

JOSE AMAYA-VASQUEZ,
Appellant.

APPEAL FROM THE APRIL 13, 2018 JUDGMENT OF CONVICTION
AND SENTENCE ENTERED IN THE U.S. DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY AT CRIMINAL NUMBER 16-CR-00016

APPENDIX FOR THE BRIEF OF THE APPELLANT

José Luis Ongay, Esquire
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Plymouth Meeting, PA 19462
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

vs.

Docket Number

16-cr-00016-01

JOSÉ AMAYA-VASQUEZ,
Defendant.

NOTICE OF APPEAL

Please take notice that on this day, Defendant, José Vasquez-Amaya, Appeals the sentence imposed by this Honorable Court on April 13, 2018. The Defendant has CJA Counsel, as such, the filing fee has not been paid.

/s/ José Luis Ongay

José Luis Ongay

Date: April 16, 2018

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CERTIFICATE OF SERVICE

I certify that I served a copy of this Notice of Appeal on AUSA Jason M. Richardson via email at Jason.Richardson@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: April 16, 2018

(2)

000004

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

CASE NUMBER 1:16-CR-00016-NLH-1

JOSE AMAYA-VASQUEZ

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, JOSE AMAYA-VASQUEZ, was represented by JOSE LUIS ONGAY, ESQ.

On motion of the United States, the court has Dismissed Count 3 of the Indictment.

The defendant pleaded Guilty to Count 4 of the INDICTMENT on 4/17/2017 and Counts 1 and 2 of the INDICTMENT on 4/27/2017. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

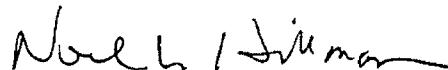
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Numbers</u>
18 U.S.C. §2201	KIDNAPPING	5/24/2015- 5/26/2015	1
18 U.S.C. §§2261(a)(2) and (b)(3)	INTERSTATE DOMESTIC VIOLENCE	5/24/2015- 5/26/2015	2
8 U.S.C. §§1326 (a) and (b)(1)	ILLEGAL RE-ENTRY INTO THE UNITED STATES OF DEPORTED ALIENS	5/26/2015	4

As pronounced on April 13, 2018, the defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of \$100.00 for each of Counts 1, 2 and 4 for a total special assessment of \$300.00, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further 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 any material change in economic circumstances.

Signed this 17th day of April, 2018.


Hon. Noel L. Hillman
U.S. District Judge

Defendant: JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

IMPRISONMENT

Ordered that the defendant, Jose Amaya-Vasquez, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 288 months on Count 1 and terms of 120 months on each of Counts 2 and 4, all to be served concurrently.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the defendant to a facility with mental health programs.

The defendant will remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

At _____ Defendant delivered on _____ To _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal



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Defendant: JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 5 years. This term consists of a term of 5 years on Count 1 and terms of 3 years on each of Counts 2 and 4, all such terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

You must submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

ALCOHOL/DRUG TESTING AND TREATMENT

You must refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and must submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you must submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You must abide by the rules of any program and must remain in treatment until satisfactorily discharged by the Court. You must alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The U.S. Probation Office will supervise your compliance with this condition.

IMMIGRATION AND CUSTOMS ENFORCEMENT - COMPLIANCE

You must comply with instructions from Immigration and Customs Enforcement to resolve any problems with your status in the United States. You must provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. You must seek proper documentation from U.S. Immigration and Customs Enforcement authorizing you to work in the United States. If deported, you must not re-enter the United States without the written permission of the Secretary of United States Department of Homeland Security. If you re-enter the United States, you must report in person to the nearest U.S. Probation Office within 48 hours.

FINANCIAL DISCLOSURE

Upon request, you must provide the U.S. Probation Office with full disclosure of your financial records, including commingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You must cooperate with the U.S. Probation Officer in the investigation of your financial dealings and must provide truthful monthly statements of your income. You must cooperate in the signing of any authorization to release information forms permitting the U.S. Probation Office access to your financial records.

Defendant: JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You must not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

SUPPORTING DEPENDENTS

If you are Court-ordered to make child support payments or to make payments to support a person caring for a child, you must make the payments and comply with the other terms of the order.

MENTAL HEALTH TREATMENT

You must undergo treatment in a mental health program approved by the U.S. Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the U.S. Probation Office, until discharged by the Court. The U.S. Probation Office will supervise your compliance with this condition.

NO CONTACT WITH VICTIMS

The defendant shall have no contact with Victim 1, M.S.D., either directly or indirectly, and shall only have contact with Victim 2, A.J.A.S., with the approval of the U.S. Probation Officer or at the direction of family court or a court of competent jurisdiction over parental rights.



Defendant: JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only --- U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant _____
Date _____

U.S. Probation Officer/Designated Witness _____
Date _____



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Defendant JOSE AMAYA-VASQUEZ
Case Number: 1:16-CR-00016-NLH-1

RESTITUTION

Ordered that the defendant shall pay restitution in the amount of \$6,100.00. Payments should be made payable to the U.S. Treasury and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to

<u>Victim Name</u>	<u>Amount</u>
M.S.D., .	\$6,100.00

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$200.00, to commence 30 days after release from confinement.

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 clerk of the court.

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPEAL, CLOSED

**U.S. District Court
District of New Jersey [LIVE] (Camden)
CRIMINAL DOCKET FOR CASE #: 1:16-cr-00016-NLH-1**

Case title: USA v. AMAYA-VASQUEZ Date Filed: 01/13/2016
Magistrate judge case number: 1:15-mj- Date Terminated: 04/17/2018
05563-KMW

Assigned to: Judge Noel L.
Hillman

Appeals court case number:
18-1851 Third Circuit

Defendant (1)

JOSE AMAYA-VASQUEZ represented by **JOSE LUIS ONGAY**
TERMINATED: 04/17/2018

527 COOPER STREET
CAMDEN, NJ 08102
(484) 681-1117
Fax: (888) 519-3449
Email: jlolaw@live.com

LEAD ATTORNEY
ATTORNEY TO BE
NOTICED
Designation: CJA
Appointment

MAGGIE F. MOY
OFFICE OF FEDERAL
PUBLIC DEFENDER
800-840 COOPER STREET
SUITE 300
CAMDEN, NJ 08102

(856) 757-5341

Email: maggie_moy@fd.org

TERMINATED: 11/02/2016

LEAD ATTORNEY

ATTORNEY TO BE

NOTICED

*Designation: Public Defender
or Community Defender
Appointment*

Pending Counts

18:2201 KIDNAPPING
(DOF 5/24/2015 to on or
about 5/26/2015)
(1)

Disposition

SENTENCE: imprisonment
288 months on Count 1 and a
terms of 120 months on each
of Counts 2 and 4, all to be
served Concurrently.

SUPERVISED RELEASE: 5
years, this term consists of 5
years on Count 1 and terms of
3 years on each of Counts 2
and 4, all such terms to run
concurrently. SPECIAL
ASSESSMENT: \$300.00.
RESTITUTION: \$ 6,100.000.
Fine Waived.

18:2261 INTERSTATE
DOMESTIC VIOLENCE
(DOF 5/24/2015 to on or
about 5/26/2015)
(2)

SENTENCE: imprisonment
288 months on Count 1 and a
terms of 120 months on each
of Counts 2 and 4, all to be
served Concurrently.

SUPERVISED RELEASE: 5
years, this term consists of 5
years on Count 1 and terms of
3 years on each of Counts 2
and 4, all such terms to run

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8:1326(a) and (b)(1)
ILLEGAL RE-ENTRY INTO
THE UNITED STATES OF
DEPORTED ALIENS (DOF
5/26/2015)
(4s)

concurrently. SPECIAL
ASSESSMENT: \$300.00.
RESTITUTION: \$ 6,100.000.
Fine Waived.

SENTENCE: imprisonment
288 months on Count 1 and a
terms of 120 months on each
of Counts 2 and 4, all to be
served Concurrently.
SUPERVISED RELEASE: 5
years, this term consists of 5
years on Count 1 and terms of
3 years on each of Counts 2
and 4, all such terms to run
concurrently. SPECIAL
ASSESSMENT: \$300.00.
RESTITUTION: \$ 6,100.000.
Fine Waived.

**Highest Offense Level
(Opening)**

Felony

Terminated Counts

18:2312
TRANSPORTATION OF
STOLEN VEHICLES (DOF
5/24/15 to on or about
5/26/2015)
(3s)

Disposition

DISMISSED.

**Highest Offense Level
(Terminated)**

Felony

13

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Complaints

18:1201.F- KIDNAPPING,,
8:1326.F- ILLEGAL RE-
ENTRY INTO THE UNITED
STATES BY AN ALIEN
AFTER REMOVAL

Disposition

Plaintiff

USA

represented by **JASON M. RICHARDSON**
OFFICE OF THE U.S.
ATTORNEY
CAMDEN FEDERAL
BUILDING
401 MARKET STREET
P.O. BOX 1427
CAMDEN, NJ 08101
(856) 757-5026
Email:
jason.richardson@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED
Designation: Assistant US
Attorney

GABRIEL JOHN VIDONI
OFFICE OF THE U.S.
ATTORNEY
DISTRICT OF NEW
JERSEY
CAMDEN FEDERAL
BUILDING U.S.
COURTHOUSE

(14)

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 401 MARKET STREET,
 4TH FLOOR
 CAMDEN, NJ 08101
 856-757-5026
 Email:
 gabriel.vidoni@usdoj.gov
 ATTORNEY TO BE
 NOTICED
*Designation: Assistant US
 Attorney*

Date Filed	#	Docket Text
10/14/2015	<u>1</u>	COMPLAINT as to JOSE AMAYA-VASQUEZ (1). (nz) [1:15-mj-05563-KMW] (Entered: 10/14/2015)
10/14/2015		Case unsealed as to JOSE AMAYA-VASQUEZ (nz) [1:15-mj-05563-KMW] (Entered: 10/15/2015)
10/16/2015	<u>3</u>	Application and Order for Writ of Habeas Corpus as to JOSE AMAYA-VASQUEZ for an Initial Appearance set for 10/26/2015 at 01:30 PM in Camden - Courtroom 5C before Magistrate Judge Karen M. Williams. Signed by Magistrate Judge Joel Schneider on 10/16/2015. (se,) [1:15-mj-05563-KMW] (Entered: 10/16/2015)
10/16/2015		Writ of Habeas Corpus Issued as to JOSE AMAYA-VASQUEZ for 10/26/2015 (se,) [1:15-mj-05563-KMW] (Entered: 10/16/2015)
10/26/2015		Arrest of JOSE AMAYA-VASQUEZ (nz) [1:15-mj-05563-KMW] (Entered: 10/27/2015)
10/26/2015	<u>5</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to JOSE AMAYA-VASQUEZ- MAGGIE F. MOY for JOSE AMAYA-VASQUEZ appointed. Signed by Magistrate Judge Karen M. Williams on

(15)

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		10/26/2015. (nz) [1:15-mj-05563-KMW] (Entered: 10/27/2015)
10/26/2015	<u>6</u>	WAIVER of Preliminary Hearing by JOSE AMAYA-VASQUEZ (nz) [1:15-mj-05563-KMW] (Entered: 10/27/2015)
10/26/2015	<u>7</u>	ORDER OF DETENTION as to JOSE AMAYA-VASQUEZ. Signed by Magistrate Judge Karen M. Williams on 10/26/2015. (nz) [1:15-mj-05563-KMW] (Entered: 10/27/2015)
10/26/2015	<u>8</u>	Minute Entry for proceedings held before Magistrate Judge Karen M. Williams:Initial Appearance, Detention Hearing, and Attorney Appointment Hearing as to JOSE AMAYA-VASQUEZ held on 10/26/2015. Ordered interpreter sworn- Spanish interpreter Irene Caramuta sworn. Defendant advised of rights, charges and penalties. Hearing on application by defendant for appointment of counsel. Financial affidavit executed and filed. Ordered application granted. Ordered Maggie Moy, Esq., AFPD appointed as counsel for defendant. Defendant waives formal reading of the complaint. Defendant waives preliminary hearing. Hearing on application of the government for detention. Defendant consents to detention. Defendant remanded to the custody of the U.S. Marshal. Orders to be entered. (CD #ECR) (nz) [1:15-mj-05563-KMW] (Entered: 10/27/2015)
11/09/2015	<u>9</u>	ORDER TO CONTINUE - Ends of Justice as to JOSE AMAYA-VASQUEZ Time excluded from 11/9/15 until 1/4/16. Signed by Magistrate Judge Karen M. Williams on 11/9/15. (sb) [1:15-mj-05563-KMW] (Entered: 11/10/2015)
01/13/2016	<u>10</u>	INDICTMENT as to JOSE AMAYA-VASQUEZ (1) count(s) 1, 2, 3, 4. (lec) (Entered: 01/14/2016)
01/13/2016		Counts added: JOSE AMAYA-VASQUEZ (1) count(s) 3,

(16)

		4, (Clerk's note: Counts mistakenly omitted when indictment was entered on 1/13/16. (lec) (Entered: 01/14/2016)
01/14/2016		Notice of Allocation and Assignment (JUDGE HILLMAN-CAMDEN) as to JOSE AMAYA-VASQUEZ. (lec) (Entered: 01/14/2016)
01/15/2016		NOTICE OF HEARING as to JOSE AMAYA-VASQUEZ Initial Appearance on Indictment set for 1/19/2016 at 1:45 PM in Camden - Courtroom 3B before Magistrate Judge Ann Marie Donio followed by an Arraignment on Indictment set for 1/19/2016 at 1:50 PM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 01/15/2016)
01/19/2016	<u>11</u>	Minute Entry for proceedings held before Magistrate Judge Ann Marie Donio:Initial Appearance as to JOSE AMAYA-VASQUEZ held on 1/19/2016; Order appointing the Federal Public Defender shall continue. Hearing on application by the Government for detention to continue as to JOSE AMAYA-VASQUEZ held on 1/19/2016. Defendant consents to continued detention. Order of Detention shall remain. Ordered defendant remanded to the custody of the U.S. Marshal for an appearance before Judge Hillman. (Court Reporter/Recorder ECR) (lec) (Entered: 01/19/2016)
01/19/2016	<u>12</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Arraignment as to JOSE AMAYA-VASQUEZ (1) Count 1,2,3,4 held on 1/19/2016, Plea entered by JOSE AMAYA-VASQUEZ; Not Guilty on counts 1,2,3,4. Ordered all motions to be filed by February 18, 2016. Ordered all responses due by February 29, 2016. Ordered all motions returnable and pretrial conference set for Friday, March 11, 2016 at 9:30 a.m. in Courtroom 3A. Ordered Trial set for 3/21/2016 09:30 AM before Judge Noel L. Hillman. Order for Discovery and Inspection

		entered. Stipulation for Protective Order executed on the record. Ordered defendant is remanded to the custody of the U.S. Marshal. (Court Reporter/Recorder Robert T. Tate) (lec) (Entered: 01/19/2016)
01/19/2016	<u>13</u>	ORDER for Discovery and Inspection as to JOSE AMAYA-VASQUEZ. Signed by Judge Noel L. Hillman on 1/19/2016. (lec) (Entered: 01/20/2016)
01/19/2016	<u>14</u>	STIPULATION FOR PROTECTIVE ORDER as to JOSE AMAYA-VASQUEZ. Signed by Judge Noel L. Hillman on 1/19/2016. (lec) (Entered: 01/20/2016)
03/04/2016	<u>15</u>	ORDER TO CONTINUE - Ends of Justice as to JOSE AMAYA-VASQUEZ; Time excluded from 3/4/2016 until 6/3/2016. ORDERED that the proceedings are continued from 2/18/16 to 4/4/16 at which time motions, if any, shall be filed; the government's response shall be filed by 4/18/16 and hearing on the motions shall be held on 5/4/2016 at 1:30 p.m. and Trial shall be set for 6/13/2016 @09:00 AM before Judge Noel L. Hillman). Signed by Judge Noel L. Hillman on 3/4/2016. (lec) (Entered: 03/07/2016)
05/09/2016	<u>16</u>	ORDER TO CONTINUE - Ends of Justice as to JOSE AMAYA-VASQUEZ; Time excluded from 5/9/16 until 10/4/16. Defendant shall file any and all pretrial motions on or before July 22, 2016; The Government shall file any response to the Defendant's pretrial motions on or before August 5, 2016; Oral argument on pretrial motions/pretrial conference shall be held on August 26, 2016 at 11:30 am. Jury Trial set for 10/4/2016 @9:30 AM before Judge Noel L. Hillman. Signed by Judge Noel L. Hillman on 5/9/16. (js) (Entered: 05/12/2016)
07/22/2016	<u>17</u>	MOTION for Extension of Time to File <i>New Scheduling Order and/or Pre-Trial Motions</i> by JOSE AMAYA-VASQUEZ. (MOY, MAGGIE) (Entered: 07/22/2016)

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07/28/2016	<u>18</u>	ORDER TO CONTINUE - Ends of Justice as to JOSE AMAYA-VASQUEZ; Time excluded from 7/28/2016 until 1/9/2017. Defendant shall file any motion and all pretrial motions on or before 10/14/16; The Government shall file a. y response on or before 10/28/16; Oral argument on pretrial motions/pretrial conference be held on 11/18/16 at 10:30 a.m. Trial shall commence on 1/9/2017 @09:30 AM before Judge Noel L. Hillman). Signed by Judge Noel L. Hillman on 7/28/2016. (lec) Modified on 8/4/2016 (lec). (Entered: 07/29/2016)
10/14/2016	<u>19</u>	Omnibus MOTION by JOSE AMAYA-VASQUEZ. (Attachments: # <u>1</u> Brief in Support)(MOY, MAGGIE) (Entered: 10/14/2016)
10/19/2016		Motion set as to JOSE AMAYA-VASQUEZ <u>19</u> Omnibus MOTION . Motion set for 11/18/2016 @10:30 AM before Judge Noel L. Hillman. (lec) (Entered: 10/19/2016)
10/19/2016		AMENDED NOTICE OF HEARING ON MOTION in case as to JOSE AMAYA-VASQUEZ <u>19</u> Omnibus MOTION :Pretrial Conference/Motion hearing set for 11/18/16 is adjourned to 12/9/16 at 11:30 AM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 10/19/2016)
10/25/2016	<u>20</u>	Letter from Hon. Noel L. Hillman to All Counsel re: Letter/Motion by defendant for appointment of new counsel. (lec) (Entered: 10/26/2016)
10/25/2016	<u>21</u>	Letter/Motion by JOSE AMAYA-VASQUEZ re: For appointment of New counsel. (Attachments: # <u>1</u> copy of envelope)(lec) (Entered: 10/26/2016)
10/28/2016	<u>22</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Motion/Status Hearing as to JOSE AMAYA-VASQUEZ held on 10/28/2016; Hearing on defendant's pro se <u>21</u> Letter/Motion for new counsel; Ordered motion granted. Sealed Ex parte Colloquy with defendant and

(19)

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		counsel; Ordered this portion of the transcript sealed. Court conducted Frye colloquy on the record pursuant to Missouri v. Frye, 132 S. Ct. 1399(2012). Ordered the Clerk to appoint CJA counsel. Status hearing with new counsel set for 11/7/2016 @ 12:30 p.m., Courtroom 3A, before Judge Noel L. Hillman. Ordered defendant remanded to custody of U.S. Marshals. (Court Reporter/Recorder Robert T. Tate) (lec) (Entered: 10/28/2016)
10/28/2016	<u>23</u>	Letter from United States requesting a hearing pursuant to Missouri v. Frye (RICHARDSON, JASON) (Entered: 10/28/2016)
11/02/2016	<u>24</u>	CJA 20 as to JOSE AMAYA-VASQUEZ: Appointment of Attorney JOSE LUIS ONGAY for JOSE AMAYA-VASQUEZ. Signed by Judge Noel L. Hillman on 11/2/16. (js) (Entered: 11/02/2016)
11/02/2016		Attorney update as to JOSE AMAYA-VASQUEZ. Attorney MAGGIE F. MOY terminated. (js) (Entered: 11/02/2016)
11/07/2016	<u>25</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: Status Hearing as to JOSE AMAYA-VASQUEZ held with newly appointed CJA counsel on 11/7/2016. Hearing on oral motion by defendant for a continuance of trial to January date. Ordered motion Granted. Continuance order to be entered. Ordered defendant is remanded to the custody of the U.S. Marshal. (Court Reporter: Robert T. Tate) (js) (Entered: 11/09/2016)
11/08/2016	<u>26</u>	ORDER TO CONTINUE - Ends of Justice as to JOSE AMAYA-VASQUEZ, Time excluded from 11/8/16 until 4/24/17. Jury Trial set for 4/24/2017 @9:30 AM before Judge Noel L. Hillman, etc. Signed by Judge Noel L. Hillman on 11/8/16. (js) (Entered: 11/09/2016)
02/19/2017	<u>27</u>	Letter (ONGAY, JOSE) (Entered: 02/19/2017)

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02/24/2017	<u>28</u>	MOTION for Discovery <i>Reciprocal</i> by USA as to JOSE AMAYA-VASQUEZ. (RICHARDSON, JASON) (Entered: 02/24/2017)
02/24/2017	<u>29</u>	BRIEF in Opposition by USA as to JOSE AMAYA-VASQUEZ re <u>28</u> MOTION for Discovery <i>Reciprocal</i> , <u>19</u> Omnibus MOTION (Attachments: # <u>1</u> Exhibit 1 - Discovery Letter)(RICHARDSON, JASON) (Entered: 02/24/2017)
03/03/2017	<u>30</u>	NOTICE OF ATTORNEY APPEARANCE GABRIEL JOHN VIDONI appearing for USA. (VIDONI, GABRIEL) (Entered: 03/03/2017)
03/03/2017	<u>31</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Motion Hearing/Pretrial Conference as to JOSE AMAYA-VASQUEZ held on 3/3/2017 re <u>28</u> MOTION for Discovery <i>Reciprocal</i> filed by USA, <u>19</u> Omnibus MOTION filed by JOSE AMAYA-VASQUEZ. Ordered motions granted in part; denied in part, Moot in part. Ordered proposed jury instructions, voir dire, verdict sheet, case specific voir dire, exhibits etc. due no later than 4/17/2017. Ordered Trial set for Monday, April 24, 2017 at 9:30 a.m. Ordered defendant is remanded to the custody of the U.S. Marshal. Order to be submitted by Government. (Court Reporter/Recorder Robert T. Tate. (lec) (Entered: 03/03/2017)
03/03/2017		Hearing set as to JOSE AMAYA-VASQUEZ: Jury Trial set for 4/24/2017 @09:30 AM before Judge Noel L. Hillman. (lec) (Entered: 03/03/2017)
03/08/2017	<u>32</u>	ORDER granting in part, denying in part, Moot in part # <u>19</u> Defendant's omnibus motion as to JOSE AMAYA-VASQUEZ (1); Granting # <u>28</u> Government's motion for reciprocal discovery. Signed by Judge Noel L. Hillman on 3/8/2017. Clerk's Note: See Order for complete text. (lec) (Entered: 03/08/2017)

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03/23/2017	<u>33</u>	ORDER requiring the United States of America to disclose to the defense the alien file of Mariela Suazo-Diaz as to JOSE AMAYA-VASQUEZ. Signed by Judge Noel L. Hillman on 3/23/2017. Clerk's Note: See Order for complete text. (lec) (Entered: 03/24/2017)
04/07/2017	<u>34</u>	MOTION in Limine <i>to admit certain evidence of uncharged physical and sexual offense, victim's statement to medical professionals, and certain text messages and exclude evidence under 412</i> by USA as to JOSE AMAYA-VASQUEZ. (RICHARDSON, JASON) (Entered: 04/07/2017)
04/07/2017	<u>35</u>	MOTION in Limine <i>Memorandum of the United States in support of its motion in liminie</i> by USA as to JOSE AMAYA-VASQUEZ. (Attachments: # <u>1</u> Exhibit Gov 613, # <u>2</u> Exhibit Gov 619, # <u>3</u> Exhibit Gov 614, # <u>4</u> Exhibit Gov 617, # <u>5</u> Exhibit Gov 618, # <u>6</u> Exhibit Gov 703, # <u>7</u> Exhibit Gov 431B, # <u>8</u> Exhibit Gov 416A, # <u>9</u> Exhibit Gov 416B, # <u>10</u> Exhibit Gov 905, # <u>11</u> Exhibit Gov 251, # <u>12</u> Exhibit Gov 151, # <u>13</u> Exhibit Gov 310, # <u>14</u> Exhibit Gov 433, # <u>15</u> Exhibit Gov 150) (RICHARDSON, JASON) (Entered: 04/07/2017)
04/10/2017		Setting Deadlines as to JOSE AMAYA-VASQUEZ, <u>34</u> MOTION in Limine <i>to admit certain evidence of uncharged physical and sexual offense, victim's statement to medical professionals, and certain text messages and exclude evidence under 412</i> . Motion set for 4/24/2017 @9:30 AM in Camden - Courtroom 3A before Judge Noel L. Hillman. (js) (Entered: 04/10/2017)
04/10/2017		NOTICE OF HEARING as to JOSE AMAYA-VASQUEZ Status/Plea Agreement Hearing set for 4/17/2017 at 1:30 PM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 04/10/2017)
04/17/2017	<u>36</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Change of Plea Hearing as to JOSE AMAYA-

(22)

		VASQUEZ held on 4/17/2017; Plea entered by JOSE AMAYA-VASQUEZ (1), Guilty to Count 4. NO ORAL OR WRITTEN PLEA AGREEMENT AS PER BOTH AUSA AND DEFENSE COUNSEL. Ordered plea accepted. Rule 11 document filed. Ordered Sentencing set for 9/8/2017 @10:30 AM before Judge Noel L. Hillman. TRIAL with JURY on remaining counts set for Monday, April 24, 2017 at 9:30 a.m., Courtroom 3A. Ordered defendant remanded to the custody of the U.S. Marshals. (Court Reporter/Recorder CAROL FARRELL) (lec) (Entered: 04/18/2017)
04/17/2017	<u>37</u>	APPLICATION for permission to enter Plea of guilty to count 4 as to JOSE AMAYA-VASQUEZ. (lec) (Entered: 04/18/2017)
04/18/2017		Jury Trial as to JOSE AMAYA-VASQUEZ on remaining counts set for 4/24/2017 @09:30 AM before Judge Noel L. Hillman, Courtroom 3A. (lec) (Entered: 04/18/2017)
04/19/2017	<u>38</u>	RESPONSE in Opposition by JOSE AMAYA-VASQUEZ re <u>35</u> MOTION in Limine <i>Memorandum of the United States in support of its motion in liminie</i> , <u>34</u> MOTION in Limine to <i>admit certain evidence of uncharged physical and sexual offense, victim's statement to medical professionals, and certain text messages and exclude evidence under 412</i> (ONGAY, JOSE) (Entered: 04/19/2017)
04/19/2017	<u>39</u>	Proposed Jury Instructions by USA as to JOSE AMAYA-VASQUEZ (RICHARDSON, JASON) (Entered: 04/19/2017)
04/19/2017	<u>40</u>	Proposed Voir Dire by USA as to JOSE AMAYA-VASQUEZ (RICHARDSON, JASON) (Entered: 04/19/2017)
04/19/2017	<u>41</u>	REQUEST FOR SPECIAL FINDINGS OF FACT <i>porposed verdict form</i> by USA as to JOSE AMAYA-

		VASQUEZ (RICHARDSON, JASON) (Entered: 04/19/2017)
04/21/2017	<u>42</u>	BRIEF in Support by USA as to JOSE AMAYA-VASQUEZ re <u>34</u> MOTION in Limine to <i>admit certain evidence of uncharged physical and sexual offense, victim's statement to medical professionals, and certain text messages and exclude evidence under 412 supplemental incidents of domestic violence and use of defendant deportation and status in the United States</i> (RICHARDSON, JASON) (Entered: 04/21/2017)
04/24/2017	<u>43</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: (TRIAL)Voir Dire begun on 4/24/2017 JOSE AMAYA-VASQUEZ (1) on Counts 1,2,3. Ordered interpreters sworn, Spanish Interpreters, Irene Caramuta and Maria Perez-Chambers, sworn. Ordered jury panel sworn; jury panel sworn. Ordered jurors drawn; jurors drawn. The Court commenced Voir dire of Jury. Ordered Jury panel excused at 4:30 p.m. Ordered defendant is remanded to custody of the U.S. Marshal. Ordered jury selection continued to Tuesday, April 25, 2017 at 11:30 a.m., Courtroom 3A. (Court Reporter/Recorder Robert T. Tate) (lec) (Entered: 04/25/2017)
04/25/2017	<u>44</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: (TRIAL)Jury Trial continued as to JOSE AMAYA-VASQUEZ held on 4/25/2017. The Court continued voir dire of jury panel. Number of Jurors:14, Number of challenges:22. Jury sworn. Ordered Jury panel excused at 3:00 p.m. Hearing on Government's <u>34</u> motion in limine to admit certain evidence; Ordered motion Granted. Ordered Jury Trial continued to Thursday, April 27, 2017 at 12:30 p.m., Courtroom 3A. Ordered defendant is remanded to custody of the U.S. Marshal. (Court Reporter/Recorder Robert T. Tate) (lec,) (Entered: 04/26/2017)

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04/25/2017	<u>45</u>	ORDER granting Government's <u>34</u> Motion in Limine for admission of certain evidence as to JOSE AMAYA-VASQUEZ (1). Signed by Judge Noel L. Hillman on 4/25/2017. (lec) (Entered: 04/26/2017)
04/27/2017	<u>47</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Jury TRIAL as to JOSE AMAYA-VASQUEZ COMPLETED on 4/27/2017. Parties reported matter resolved. Ordered Jury Discharged, Jury Discharged. Ordered defendant remanded to the custody of the U.S. Marshal. (Court Reporter/Recorder NOT ON THE RECORD) (lec) (Entered: 04/28/2017)
04/27/2017	<u>48</u>	Minute Entry for proceedings held before Judge Noel L. Hillman:Change of Plea Hearing as to JOSE AMAYA-VASQUEZ held on 4/27/2017; Plea entered by JOSE AMAYA-VASQUEZ (1), Guilty to Counts 1-2 of the four count indictment. NO ORAL OR WRITTEN PLEA AGREEMENT AS PER BOTH AUSA AND DEFENSE COUNSEL. Ordered plea accepted. Rule 11 document filed. Ordered Sentencing set for Friday, 9/8/2017 @10:30 AM before Judge Noel L. Hillman. Ordered defendant remanded to the custody of the U.S. Marshals. (Court Reporter/Recorder Robert T. Tate) (lec) (Entered: 04/28/2017)
04/27/2017	<u>49</u>	APPLICATION for permission to enter Plea of guilty as to JOSE AMAYA-VASQUEZ. (lec) (Main Document 49 replaced on 5/1/2017) (gn). (Entered: 04/28/2017)
04/28/2017	<u>46</u>	Transcript of Proceedings as to JOSE AMAYA-VASQUEZ held on APRIL 17, 2017, before Judge HILLMAN. Court Reporter/Transcriber Carol Farrell (856-318-6100). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber only. (lec) (Entered: 04/28/2017)
05/11/2017	<u>50</u>	Transcript of Proceedings as to JOSE AMAYA-VASQUEZ held on 4/25/17, before Judge Hillman. Court

		Reporter/Transcriber Bob Tate (609-462-4384). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber only. (dd,) (Entered: 05/11/2017)
05/11/2017	<u>51</u>	Transcript of Proceedings as to JOSE AMAYA-VASQUEZ held on 4/27/17, before Judge Hillman. Court Reporter/Transcriber Bob Tate (609-462-4384). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber only. (dd,) (Entered: 05/11/2017)
08/01/2017	<u>52</u>	Letter from Jose Luis Ongay (ONGAY, JOSE) (Entered: 08/01/2017)
09/07/2017		NOTICE OF HEARING as to JOSE AMAYA-VASQUEZ Sentencing reset for 10/19/2017 at 10:30 AM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 09/07/2017)
10/04/2017	<u>53</u>	Letter (ONGAY, JOSE) (Entered: 10/04/2017)
10/16/2017		AMENDED NOTICE OF HEARING as to JOSE AMAYA-VASQUEZ Sentencing reset for 1/12/2018 at 10:30 AM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 10/16/2017)
01/01/2018	<u>54</u>	Letter from Jose L. Ongay (ONGAY, JOSE) (Entered: 01/01/2018)
01/23/2018		AMENDED NOTICE OF HEARING as to JOSE AMAYA-VASQUEZ Sentencing reset for 4/13/2018 at 10:30 AM in Camden - Courtroom 3A before Judge Noel L. Hillman. (gn) (Entered: 01/23/2018)
04/04/2018	<u>55</u>	Submission Notice - Sentencing Materials have been submitted to the Court by USA as to JOSE AMAYA-VASQUEZ. (RICHARDSON, JASON) (Entered: 04/04/2018)
04/05/2018	<u>56</u>	Submission Notice - Sentencing Materials have been

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		submitted to the Court by JOSE AMAYA-VASQUEZ. (ONGAY, JOSE) (Entered: 04/05/2018)
04/13/2018	<u>58</u>	Minute Entry for proceedings held before Judge Noel L. Hillman: SENTENCE ON COUNTS 1-2, 4 OF THE FOUR COUNT INDICTMENT held on 4/13/2018 for JOSE AMAYA-VASQUEZ (1), Count(s) 1, 2, 4s, SENTENCE: imprisonment 288 months on Count 1 and a terms of 120 months on each of Counts 2 and 4, all to be served Concurrently. SUPERVISED RELEASE: 5 years, this term consists of 5 years on Count 1 and terms of 3 years on each of Counts 2 and 4, all such terms to run concurrently with special conditions imposed. Hearing on government's application to impose a special condition re: no contact with victims; Ordered that the defendant is directed to have no contact with victims in this matter unless preapproved by all relevant authorities. SPECIAL ASSESSMENT: \$300.00. RESTITUTION: \$ 6,100.00. Fine Waived; Count(s) 3s, DISMISSED. Government moves to dismiss Count 3 of the Indictment; Ordered Count 3 Dismissed. Defendant and Counsel advised of right to appeal. Ordered defendant is remanded to the custody of the U.S. Marshals. Order to be entered. (Court Reporter: Robert T. Tate) (js) (Entered: 04/18/2018)
04/16/2018	<u>57</u>	NOTICE OF APPEAL by JOSE AMAYA-VASQUEZ The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Finance notified) (ONGAY, JOSE) (Entered: 04/16/2018)
04/17/2018	<u>59</u>	JUDGMENT as to JOSE AMAYA-VASQUEZ (1), Count (s) 1, 2, 4s, SENTENCE: imprisonment 288 months on Count 1 and terms of 120 months on each of Counts 2 and 4, all to be served Concurrently. SUPERVISED RELEASE: 5 years, this term consists of 5 years on Count 1 and terms of 3 years on each of Counts 2 and 4, all such

		terms to run concurrently. SPECIAL ASSESSMENT: \$300.00. RESTITUTION: \$ 6,100.00. Fine Waived.; Count(s) 3s, DISMISSED. (Finance notified). Signed by Judge Noel L. Hillman on 4/17/18. (js) (Entered: 04/18/2018)
04/25/2018	<u>61</u>	Transcript of Proceedings as to JOSE AMAYA-VASQUEZ held on 4/17/17, before Judge Hillman. Court Reporter/Transcriber Carol Farrell (856-318-6100). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber only. (js) (Entered: 04/26/2018)
05/03/2018	<u>62</u>	Transcript of Proceedings as to JOSE AMAYA-VASQUEZ held on 4/13/18, before Judge Hillman. Court Reporter/Transcriber Bob Tate (609-462-4384). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber only. (dd,) (Entered: 05/03/2018)

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(28)

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Jose L. Ongay, Esquire
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February 2, 2018

RE: United States v. Jose Amaya-Vasquez

Dear Mr. Ongay:

Pursuant to your request, I began a psychological evaluation of Jose Amaya-Vasquez at the Federal Detention Center in Philadelphia on July 14, 2017 and September 21, 2017. It is my understanding that, in referring Mr. Amaya-Vasquez for this evaluation, you are seeking my opinion regarding the presence or absence of a psychological disorder diagnosis in him and whether there are any mitigating circumstances that the Court could consider at his penalty phase hearing.

In conducting Mr. Amaya-Vasquez's evaluation, he was administered sections of the Structured Clinical Interview for the DSM-5 Clinical Version (SCID-5-CV). I discussed a variety of materials forwarded by your office in connection with his matter with him. Mr. Amaya-Vasquez's interview was facilitated in its entirety by your interpreting from English to Spanish/Spanish to English.

Mr. Amaya-Vasquez was informed at the onset of his evaluation of my role. He was told that there was no traditional doctor patient relationship and that, as a result, the content of our conversations and the responses that she provided on the MMPI-2 were not confidential. I informed Mr. Amaya-Vasquez that he had the right to refuse to answer questions posed to him. Mr. Amaya-Vasquez was informed that I would prepare a preliminary written report of my findings which I would send to you and which would be sent to the Assistant United States Attorney.

Mr. Amaya-Vasquez acknowledged the limitations on his confidentiality and he agreed to participate in the evaluation without any apparent hesitation. He responded to each of the questions posed to him and was cooperative over the course of his evaluation.

Mr. Amaya-Vasquez's evaluation report will not provide an exegesis of his personal history and the basis of his currently pending charges as this information is documented in the records reviewed and the comprehensive Presentence Investigation Report. Rather, the following report will provide information regarding Mr. Amaya-Vasquez's evaluation results and mitigating circumstances that the Court could consider when sentencing him.

On clinical examination, Mr. Amaya-Vasquez is dressed in clean institutional clothing. He is lachrymose without being maudlin. There is a deep and, at times, inexpressible sadness about him, which presents itself over the course of his evaluation.

Mr. Amaya-Vasquez responded to all questions asked of him. He did not display any abnormal behaviors, tics, or mannerisms. His speech was coherent, relevant, and goal-directed, showing an adequate comprehension of the questions. There were no abnormalities to the rate, rhythm, or volume of his speech.

Mr. Amaya-Vasquez's affective responses revealed current evidence of anxiety and depression. There are no manifestations of mania, elation, hypomania, or inappropriate affect. He acknowledged that he ruminates about and is strongly focused on his feeling guilty and remorseful.

Thought processes revealed no evidence of looseness of associations, tangentiality, or circumstantiality. Thought content is devoid of delusions, hallucinations, ideas of reference, or other phenomena suggestive of psychosis. Mr. Amaya-Vasquez denied any current suicidal or homicidal ideation.

Mr. Amaya-Vasquez is oriented X3. He reported being right-handed. There were no obvious deficits in his immediate recall, short-term, or long-term memory.

Evaluation Results

The results of Mr. Amaya-Vasquez are valid. There is no indication that he attempted to malinger or feign a psychological disorder or that he over or underreported the status of his emotional condition.

Mr. Amaya-Vasquez is diagnosed as follows:

1. Posttraumatic Stress Disorder, by history.
2. Child Physical Abuse, by history.
3. Child Psychological Abuse, by history.
4. Dependent Personality Disorder.
5. Persistent Depressive Disorder (Dysthymia).

The DSM-5 diagnostic criteria for Dependent Personality Disorder includes "a pervasive and excessive need to be taken care of that leads to submissive and clinging behavior and fears of

separation, beginning in early adulthood and present in a variety of contexts.” Symptoms pertinent to Mr. Amaya-Vasquez include the DSM-5 criteria “goes to excessive lengths to obtain nurturance and support from others, to the point of volunteering to do things that are unpleasant; is unrealistically preoccupied with fears of being left to take care of him or herself; feels uncomfortable or helpless when alone because of exaggerated fears of being alone; has difficulty expressing disagreement with others because of fear of loss of support or approval; urgently seeks another relationship as a source of care and support when a close relationship ends.”

The DSM-5 diagnostic criteria for Persistent Depressive Disorder (Dysthymia) includes the presence in Mr. Amaya-Vasquez of a “depressed mood for most of the day, for more days than not, as indicated by either subjective account or observation by others, for at least two years.” The DSM-5 symptoms of the Disorder in him include “low-self-esteem, feelings of hopelessness, low energy and fatigue.” Exclusionary criteria present in Mr. Amaya-Vasquez include the following: symptoms of Mr. Amaya-Vasquez’s Depressive Disorder are not attributable to illegal substances nor a medical condition nor his having a history of experiencing a manic or hypomanic episode.

With regard to mitigating factors that the Court could consider when sentencing Mr. Amaya-Vasquez, I would state the following:

Childhood Antecedents

The conditions in which Mr. Amaya-Vasquez was raised constitute powerful circumstances which predisposed and made him vulnerable to experience psychological suffering, mental pain, and to develop emotional difficulties commonplace in physically and psychologically abused children and Dependent Personality Disorder. These difficulties include affective instability, intense interpersonal relationships that vacillate between extremes of idealization and devaluation, and self-destructive behavior. While these characteristics do not excuse the crimes Mr. Amaya-Vasquez committed, they nevertheless were tragic and help explain his difficulties regulating his emotions and self-destructiveness.

Mr. Amaya-Vasquez was exposed to violence not only in his home, but also in his neighborhood. These experiences resulted in his developing the view that he had essentially no haven or safety-zone anywhere. Mr. Amaya-Vasquez stated that his worry as a youngster and younger-aged teen-ager was when, not if, he would next be hurt and/or killed. These experiences also compromised his ability to develop the coping skills and psychological attributes necessary for healthy emotional functioning.

Amenability to Supervision, Treatment, and Rehabilitation

In distinction to the behavior manifested by Mr. Amaya-Vasquez prior to his being taken into custody, he demonstrated the ability to avoid further involvement with unlawful conduct after he was taken into custody. This behavior demonstrates that he has the ability to respond positively to supervision and that he does not represent a danger to the safety of inmates and staff at the

Detention Center. It is likely, given his behavior in custody to date, that these attributes would be demonstrated in other correctional facilities.

Mr. Amaya-Vasquez stated that he has no history of participating in mental health or medication treatment. This appears to be due, in part, to his feeling that involvement in treatment signifies weakness and a pox on him, these the monikers imposed upon him by his parents. He understands that, on a basic level, his behavior was unusual, desperate, and that he requires treatment. He is motivated to participate in treatment because his behavior was “bad” and hurt a lot of people, his family in particular.

Mr. Amaya-Vasquez does not become defensive when he is questioned directly about himself and the behavior which resulted in his charges. He takes responsibility for his behavior. What he did was “wrong.”

In summary, the results of Mr. Amaya-Vasquez’s evaluation support the conclusion that he is amenable to be supervised, treated, and rehabilitated. His participating in these services will reduce the likelihood of his involvement in future unlawful conduct.

Remorse

As a clinical and forensic psychologist, over the past 25-years, I have studied, observed, and testified about the central features of remorse. There is a continuum of remorse which, at one end, can be faked, like many other emotions, and manufactured. At the other end of the continuum are genuine expressions of remorse.

In my experience, the best evidence of genuine remorse is the consistent presence of features of remorse over time and across situations. What I observed during my interactions with Mr. Amaya-Vasquez and what I have seen in my experience evaluating others is that he has developed an understanding that his actions inalterably changed his life and the lives of many others. He acknowledges that he harmed his child and their child’s mother. Nothing, in his mind, can forgive him for his behavior.

Mr. Amaya-Vasquez was intermittently tearful during his evaluation when discussing the behavior which resulted in the charges. He demonstrated a desire to ask for forgiveness for his criminal conduct. In my opinion, his remorse is genuine.

Mr. Amaya-Vasquez’s s Dependent Personality Disorder

Mr. Amaya-Vasquez is diagnosed with Dependent Personality Disorder. The severity of the symptoms and behavior he manifested, because of the disorder, extends well beyond the DSM-5 diagnostic criteria for the Disorder. His Depressive Disorder amplifies symptoms of his dependency. It is reasonable to conclude that treating Mr. Amaya-Vasquez’s Depressive Disorder with medication will reduce and help him better manage the difficulties imposed upon by his Dependent Personality Disorder.

Mr. Amaya-Vasquez's dependency on his child's mother and his child is best described as pathological dependence. The wellspring from which his pathological dependency flows is an early in life fear of being abandoned and rejected. The fear over time became the basis for his inordinate sensitivity to rejection and his compulsive need to cling to Ms. Amaya-Vasquez. The dependency is so significantly and desperately felt by him that it obscured his ability to accurately read Ms. Amaya-Vasquez's signals and fear of him. While some individuals reflexively dissolve a relationship at a moment's notice, Mr. Amaya-Vasquez could not let go of her, even when he knew that his behavior was harmful to himself and others.

A signature of Mr. Amaya-Vasquez's pathological dependence is his inability to truly comprehend the separate existence and independent motivations of himself and Ms. Amaya-Vasquez. With this comes his inability to manage and control his emotions when he feels excluded and rejected by her. When he felt cared for by her, he felt safe and distracted from feeling alone and his self-hatred. He developed a pattern of insatiable, addictive, and pathological attachment to her because he was desperate, at any cost, to prevent her from leaving him.

Mr. Amaya-Vasquez participation on mental health and medication treatment will be necessary for the foreseeable future. He is eager to participate in treatment. The most immediate concern will be to lower his level of depression. In my opinion, Mr. Amaya-Vasquez involvement in mental health and medication treatment will reduce his level of risk for future unlawful conduct.

The opinions expressed in Mr. Amaya-Vasquez's report are stated within a reasonable degree of psychological certainty. I reserve the right to provide your office with a supplemental report if information instrumental to Mr. Amaya-Vasquez's matter becomes available.

Sincerely yours,

Steven Samuel, Ph.D.

SES:aj

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :
: Docket Number
V. :
: 16-CR-000016
JOSE AMAYA-VASQUEZ, :
Defendant. :
:

DEFENDANT'S SENTENCING MEMORANDUM

Now Comes Defendant through the undersigned and in support for a sentence of 180 months states the following:

I. Introduction

The Defendant, José Amaya-Vasquez, pleaded guilty to Kidnapping in violation of 18 U.S.C. § 1201(a)(1),¹ Interstate Domestic Violence in violation of 18 U.S.C. § 2261(a)(2)(b)(3),² and Illegal Re-Entry in violation of 8 U.S.C. § 1326(a) and (b)(1).³ The Pre-Sentence Investigation Report (“PSR”) concluded that the Base Offense Level is 38, that the Criminal History Category is I, and that the recommended guideline incarceration range is 235 to 293 months. PSR ¶ 159.

In determining the appropriate sentence, the Court must apply the factors outlined in 18 U.S.C. § 3553(a). The following is a discussion of these factors and other relevant matters:

¹ Kidnapping is a Class A Felony that has a maximum period of incarceration of Life and a \$250,000.00 fine.

² Interstate Domestic Violence is a Class C Felony that has a maximum period of incarceration of 10 years and a \$250,000.00 fine.

³ Illegal Re-Entry is a Class C Felony that has a maximum period of incarceration of 10 years and a \$250,000.00 fine.

(1) The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant.

The Offenses

The Defendant pleaded guilty to very serious offenses. While he pleaded guilty just before the trial started, by pleading guilty he avoided the need for the victim to testify and be subject to cross-examination.

The offenses were committed as follow: On October 22, 2015, the Defendant was removed from the United States. The Defendant re-entered the United States in November 2014, without permission from the United States Government. Several months after re-entering the United States, on May 23, 2015, the Defendant forced his former girlfriend and their daughter to leave Kansas City, Missouri towards New York. The Defendant wanted to reconcile with his former girlfriend and forced her to leave Kansas City with him. During the trip, the Defendant forced his former girlfriend to have sex with him on multiple occasions, and he also made multiple threats of violence towards her and her family.

The Defendant

The Defendant is 33 years old. He was 30 years old when he committed these offenses. He was born in Marcala, Honduras on January 1, 1985. The Defendant is an illegal alien, as such, he will be deported once he completes serving his sentence. Currently, according to the PSR, ¶ 133, on March 14, 2017, an Immigration Judge Ordered the Defendant removed from the United States. After that, the Bureau of Immigration and Customs Enforcement filed a Detainer.

In Honduras, the Defendant was raised by his parents José Cristino Amaya Benitez and Marta Alicia Vasquez. He grew up with his siblings José Heraldo Vasquez, Alicia Marleni Amaya Vasquez, Milton Misael Amaya Vasquez, Lenin Isaid Amaya Vasquez, and Yasmin Noemi Amaya Vasquez. The Defendant also had a brother, Vicente Antonio Amaya Vasquez, who died at the

age of two. The Defendant's mother blamed the Defendant for his death because when he was born, she had to stop breastfeeding his brother to feed the Defendant. The Defendant grew up in a poor environment. He lived in a one-room wooden home, without a floor, and without utilities. The entire family lived in this small home. The home did not have water, and as a result, the family had to get their water from the local water well. His family made a living working on the farm. While his family appears to own the land where the coffee was grown, the earnings from this endeavor were very small causing the family to live in poverty. The Defendant's family also raised pigs and chickens for the family's consumption. While the Defendant was not involved in gang activities, his town was infested with MS-13 gang activity from El Salvador. As a result, the Defendant frequently saw beheadings and body parts.

The Defendant stopped going to school at the age of 12 to work with his father on the farm. The Defendant does not have any other education. The Defendant's father frequently hit the Defendant with branches of coffee trees, and he frequently called the Defendant whore, lazy, dummy, and stupid. Albeit less, the mother also abused the Defendant verbally. This physical and verbal abuse went on from the age of six to the age of 15 when the Defendant left home after being hit by his father. The Defendant returned home after some time and was not hit by his father again, however, the verbal abuse continued.

The Defendant has two children. A girl with his former girlfriend who is six years old. Also, the Defendant has a son named Thomas that is nine years old with another woman. Both children live with their mothers.

The Defendant has a consistent history of employment since he was a young child into adulthood. The Defendant continued to work upon his arrival in the United States. The PSR showed consistent employment from his arrival in 2005 to his arrest in 2015. PSR ¶¶ 147 to 152.

Dr. Steven E. Samuel, Ph.D. (“Dr. Samuel”) examined the Defendant at counsel’s request. Dr. Samuel found the Defendant suffered from Post Traumatic Stress Disorder, Child Physical Abuse, Child Psychological Abuse, Dependent Personality Disorder, and Persistent Depressive Disorder. See a copy of Dr. Samuel’s Report attached hereto as *Exhibit “A.”* Dr. Samuel concluded that the Defendant was remorseful and amenable to treatment. He further found that treatment can reduce the risk of unlawful conduct.

(2) *The Need for the Sentence Imposed*

The overarching principle of § 3553 is that a sentence should be sufficient but not greater than necessary to address the factors outlined in § 3553. As such, the mandate is to avoid unnecessary incarceration. Here, the Court must impose a significant sentence. The question is how long the sentence should be? The U.S. Sentencing Guidelines recommend a sentence in the range of 235 to 293 months. The Defendant respectfully submits that this sentence, even in light of the serious crimes involved in this case, is greater than necessary under the circumstances of the circumstances.

Section 3553 directs the Court to consider the following factors: (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (b) to afford adequate deterrence to criminal conduct; (c) to protect the public from further crimes of the defendant; and (d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The following is a discussion of these factors:

(A) *To Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense.*

The offenses are serious, and that factor alone does merit a significant period of incarceration. However, the recommended guideline range of 235 to 293 months, under the

circumstances of the case, is longer than necessary to punish the Defendant and not necessary to reflect the seriousness of the offenses, to promote respect for the law, and provide just punishment. The seriousness of the offense can be addressed with a sentence below 235 months. A sentence of 180 months reflects the seriousness of the offense. A 180-month sentence is not a low or minor sentence. Further, to promote “respect for the law” and to provide “just punishment” the Court does not have to impose more than 180 months. A sentence of 180 months promotes respect for the law. Just punishment, under the mandate of § 3553, i.e., that the sentence should be sufficient but not greater than necessary, means a fair and necessary sentence. Similarly, a sentence of 180 months provides just punishment.

In fact, the U.S. Sentencing Commission issued a report that supports the Defendant’s position that the Court does not have to impose the recommended incarceration range. Specifically, the Report states:

Effective alternative sanctions are important options for federal, state, and local criminal justice systems. For the appropriate offenders, alternatives to incarceration can provide a substitute for costly incarceration. Ideally, alternatives also provide those offenders opportunities by diverting them from prison (or reducing time spent in prison) and into programs providing the life skills and treatment necessary to become law-abiding and productive members of society.

U. S. S. C., Alternative Sentencing in the Federal Criminal Justice System, at 2-3 (Jan. 2009), http://www.ussc.gov/general/20090206_Alternatives.pdf. Here the Defense is not citing the above Report to argue for a non-custodial sentence. The Defense is citing this Report as authority for the proposition that a Court can consider sentences below the recommended incarceration range when appropriate. Thus, if the Commission states that a Court can consider alternatives to incarceration, it follows that the Court can also consider sentences below the recommended incarceration ranges. As such, this Court can impose a sentence of 180 months and said sentence would reflect the

seriousness of the offense, promote respect for the law, and provide just punishment. Again, a sentence of 180 months is not a short sentence.

(B) To Afford Adequate Deterrence to Criminal Conduct.

Regarding general deterrence, it has been established that longer sentences do not necessarily deter others from committing crimes.⁴ In fact, the U.S. Sentencing Commission has admitted that:

[t]here is no correlation between recidivism and guidelines' offense level. Whether an offender has a low or a high guideline offense level, recidivism rates are similar. While surprising at first glance, this finding should be expected. The guidelines offense level is not intended or designed to predict recidivism.

U. S. S. C., Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, (May 2004). As such, a longer sentence will not necessarily result in more effective deterrence. However, having said this, the Defense is requesting a long sentence. A sentence of 180 months is a long sentence.

(C) To Protect the Public from Further Crimes of the Defendant.

Protecting the public from further crimes does not always require the longest periods of incarceration available. True, removing an individual from society will, while the individual is in custody, protect society from further crimes by that individual. However, there are circumstances where the Court can protect society without imposing the longest sentence available.

In applying the above two factors to this case, the Court should also consider several other factors. Specifically, the rate of recidivism for these type of offenses, the fact that the Defendant will be deported, once he completes serving his sentence, and his age, at the time of his release

⁴ See Michael Tonry, Purposes and Functions of Sentencing, 34 Crime and Justice: A review of Research 28-29 (2006); David Weisburg et al., Specific Deterrence in a Sample of Offenders Convicted of White Collar Crimes, 33 Criminology 587 (1995); Andrew von Hirsch, et al, Criminal Deterrence and Sentence Severity: An analysis of Recent (1999).

from prison. According to a recent study by the U.S. Sentencing Commission, the rate of recidivism for sexual offenses is 1.9 for rape and this rate of recidivism is significantly lower than for other offenses.⁵ Further, the circumstances surrounding these crimes, i.e., crimes involving a former girlfriend and his daughter, make it also less likely that the Defendant will commit this type of crime again. Also, since the Defendant will be deported, and since he no longer has the hopes, or the possibility of rekindling a relationship with either his former girlfriend or his daughter, the likelihood that he will re-enter the United States illegally is also eliminated. Regarding his age at the time of his release from prison, if the Court were to agree with the Defense, and sentenced the Defendant to 180 months, he will still have to serve, at least, an additional ten years before he is released from prison.⁶ That means that he will be 43 to 44 years of age at the time he is released from prison. Since older defendants have lower recidivism rates, this also supports the Defendant's position that he presents a reduced probability of recidivism.

(D) *To Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner.*

In this case, the Defendant has limited education, and according to Dr. Steven E. Samuel, he needs psychological treatment. As such, the Court should impose a sentence that addresses both concerns.

⁵ *Recidivism Among Federal Offenders: A Comprehensive Overview, March 2016*, Part Four, Recidivism by Most Serious Offenses, Figure 5, p. 17. Further, the Defendant having a criminal History Category of I, has the lowest recidivism rate according to Criminal History Categories. *Id.*, Recidivism and Criminal History, Figure 7A, p. 19.

⁶ The Defendant has served almost three years at this point, i.e., 34 months. That means that after credit for "good time" he will serve close to 13 years in custody if the Court sentences him to 15 years in prison. Counsel rounded up "good time" to two months per year. The reality is that he will get less than two months per year, so his actual sentence will be between 13 and 14 years.

(2) The Kinds of Sentences Available.

(3) This case does not involve a mandatory minimum sentence. The U.S. Sentencing Guidelines are no longer mandatory. As such, this Court has the discretion to fashion a sentence that is not greater than necessary to address the factors of § 3553(a). However, because the Defendant has been convicted of a Class A Felony, the Court cannot sentence the Defendant to a period of probation. 18 U.S.C. § 3561(a)(1) and PSR ¶ 164. The Court must also impose a period of Supervise Release of up to five years. PSR ¶¶ 161 and 162.

(4) The Kinds of Sentence and the Sentencing Range Recommended for the Offense.

The recommended guideline range is 235 to 293 months of incarceration. PSR ¶ 159. However, as argued above, and below, it is respectfully submitted that a sentence of 180 months, while lower than the recommended guideline incarceration range, addresses the factors of § 3553(a).

(5) The Need to Provide Restitution to any Victims of the Offense.

The Defendant must pay \$6,100 in restitution. PSR ¶ 174.

Other Factors to Consider

Sentence Reduction for the Plea

The Court should consider this factor as a further basis for the imposition of a sentence of 180 months or less.

The Court should consider that because of the plea, the Defendant reduced the work of the Court, the work of the Government, and reduced the Court and the Government's expenses. The Court should consider that if only a few more defendants were to exercise their right to a jury trial, there would be larger backlogs and increased costs. Thus, individuals that give up their constitutional rights and plead guilty provide a significant benefit to the criminal justice system.

In an article written by Justice Stephen G. Breyer, he argued and documented that pre-guidelines reductions for guilty pleas were larger than the reduction resulting from the three-level Base Offense Level reduction under § 3E1.1(a) & (b). See Justice Stephen G. Breyer, *The Federal Sentencing Guidelines and the Key Compromises upon Which They Rest*, 17 Hofstra L. Rev. 1 (1988). As such, this Court should consider this factor in determining the appropriate sentence.

Judicial Economy

Many courts have discussed the costs of incarceration. In *U.S. v. Chavez*, 230 F. 3d 1089 (8th Cir. 2000), the Court discussed that the guideline sentence would cost taxpayers \$836,000, and the Defendant his life. In *U.S. v. Angelos*, 345 F. Supp. 2d 1227 (D. Utah 2004), the Court stated that the cost of mandatory 61-year-sentence runs to \$1,265,000, money that could otherwise be spent on other law enforcement or social programs to reduce crime. In *U.S. v. Hughes*, 825 F. Supp. 866 (D. Minn. 1993), the Court stated that the non-rehabilitation purposes of incarceration-retribution, deterrence and incapacitation would all be more than served by far shorter sentences. Here, incarcerating the Defendant will result in similar inefficiencies. According to the PSR, ¶ 172, the annual cost to incarcerate the Defendant, without adjustment for inflation, is currently \$34,770.00. As such, incarcerating the Defendant will result in a significant cost to the Government. This costs can be reduced with a lower sentence. Further, because the Defendant will be deported, the Court can impose a shorter sentence knowing that he will not be in the United States.

Immigration Status

The Defendant will not be released upon completion of his sentence. He will be sent to an ICE Detention Center where he will await removal. There is no guarantee that he will be removed

immediately. Sometimes a Defendant must wait for several months before he is removed. Also, the Defendant will not be placed in a halfway house to serve the last six months of his sentence.

CONCLUSION

This case involves a tragic set of facts. A young man kidnapped, assaulted, and raped his also young former girlfriend to force a reconciliation. This Court has to punish the Defendant. No question about it. The question is how long his sentence should be? Or in the words of § 3553(a) how long his sentence should be to be sufficient but not longer than necessary to address the factors in § 3553? How much retribution is required? Defense Counsel has asked the Court for a sentence of 180 months. A long sentence by any standard. However, this sentence is shorter than the sentence recommended by the U.S. Sentencing Guidelines and probably lower than the sentence that will be requested by the Government. Despite the factors in § 3553(a), I ask how one truly determines what is an appropriate sentence for this case? This, even after the consideration of the 3553(a) factors, I respectfully submit, is a subjective process.

In making this judgment, the Court should consider what will be accomplished by sentencing the Defendant? Counsel respectfully submits that incarcerating the Defendant will not undo his crimes, nor will it heal the victim. Thus, any incarceration period will not help the victim. Instead, the Court is left with three factors that can be addressed through sentencing: 1) deterrence (general and individual), 2) protection of others (society and the victim),⁷ and 3) retribution. The Defendant has to be punished, so retribution is required. The question is the length of the sentence. Again, a sentence of 180 months constitutes significant punishment. Deterrence is a valid goal. The Court must send a message that this type of conduct will not be tolerated to stop others from committing this type of crime. While the Reports from the Commission, as cited above, question

⁷ This factor also includes recidivism.

the effectiveness of long sentences as an effective deterrence, that notwithstanding, as a matter of public policy, a Defendant must be punished for its crimes. It is also valid to punish the more serious crimes more severely. Further, incarceration will protect the public and the victim from criminal conduct by this defendant while he is incarcerated. The Court, however, should consider that the Commission Report cited above about the rate of recidivism shows that offenders that commit this type of sexual offenses 1.9%. Thus, society can be protected from recidivism by a 180-month sentence due to the Defendant's low recidivism rate.

In sum, it is respectfully submitted that the proper goals of punishment, i.e., retribution, deterrence, and protection of the victim and others, can be accomplished with a sentence of 180 months. This sentence is long enough to constitute strong punishment. The sentence also will send a message that this conduct will not be tolerated by society, and as such, will serve both as general and individual deterrence. This sentence is also long enough to protect society from other criminal conduct on the part of the Defendant. Finally, this sentence gives the victim peace of mind that the Defendant will not be released from custody for a long time. For the above reasons the Defendant respectfully requests that this Court impose a sentence of 180 months.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay

Date: April 5, 2018

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CERTIFICATE OF SERVICE

I certify that I served a copy of this Sentencing Memorandum upon AUSA Jason M. Richardson via email at Jason.Richardson@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: April 5, 2018



U.S. Department of Justice

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April 4, 2018

**Confidential – Not to be filed
with the Clerk's Office**

VIA HAND DELIVERY

Honorable Noel L. Hillman
United States District Judge
Camden Federal Building & U.S. Courthouse
Mitchell H. Cohen Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101

Re: United States v. Jose Amaya-Vasquez
Crim. No. 16-16 (NLH)

Dear Judge Hillman:

Defendant Jose Amaya-Vasquez is scheduled to be sentenced before Your Honor on Friday, April 13, 2018 at 10:30 a.m. On April 17, 2017, the defendant appeared before the Court and pled guilty to Count 4 of the Indictment, Criminal No. 16-16 (NLH), which charged him with illegal reentry into the United States, in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(1). On April 27, 2017, the defendant appeared before the Court and pled guilty to Count 1 and Count 2 of the Indictment, Criminal No. 16-16 (NLH). Count 1 charged the defendant with kidnapping, in violation of 18 U.S.C. § 1201(a)(1), and Count 2 charged the defendant with interstate domestic violence, in violation of 18 U.S.C. §§ 2261(a)(2) and (b)(3). There is no plea agreement between the parties and the defendant pled directly to Count 1, Count 2 and Count 4 of the Indictment. Please accept this letter brief in lieu of a more formal submission summarizing the United States' position as to the appropriate sentence to be imposed on Jose Amaya-Vasquez in this case, in light of the advisory Sentencing Guidelines regime established by the Supreme Court in United States v. Booker, 543 U.S. 220 (2005), and the Third Circuit's subsequent decisions. For the reasons set forth herein, the United States urges the Court to impose a sentence within the advisory guideline range as that would be sufficient but not greater than necessary to punish the defendant for his history of traumatizing the Victim that culminated with his kidnapping the Victim, repeatedly raping her and dragging her across country against her will.

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Background¹

The offense conduct is fully set forth in the presentence report. The defendant, Jose C. Amaya-Vasquez ("the Defendant" or "Vasquez") is a native and citizen of Honduras. On February 14, 2005, the Defendant attempted to enter the United States illegally in Texas by wading across the Rio Grande River. Upon entering the United States, the Defendant approached a United States Customs and Border Protection ("CBP") Agent and surrendered himself. The Defendant told the Agent that he was from Honduras and admitted that he knew it was illegal to enter the United States by crossing the Rio Grande River. Law enforcement officials subsequently arrested the Defendant and charged him administratively with illegal entry into the United States. During processing, a CBP officer interviewed the Defendant. After processing, a CBP officer gave the Defendant a notice to appear in Immigration Court and released him from custody. On July 13, 2005, the Defendant failed to appear as ordered, at which time an Immigration Judge entered an Order Of Removal.

In February 2010, the Victim, who is also from Honduras, illegally entered the United States along the southwest border. Once in the United States, she initially settled in New York City where she met the Defendant. Unbeknownst to them, the Victim and the Defendant were from the same area of Honduras. Eventually, they became involved in a romantic relationship. However, that relationship was rocky from the start marked with periods of domestic violence. The first incident of domestic violence occurred while the Victim was living with the Defendant in New York. At some point, the Defendant became jealous of Wilmer Lopez, the father of the Victim's three children in Honduras, who was also living in New York at the time. Lopez was friends with the Defendant and introduced them to each other. Lopez and the Victim still spoke because they worked together and shared three children.

One night the Victim received a call on her cellular telephone from Lopez. The Defendant asked to listen to the call, so the Victim answered the call on speakerphone. After listening to the phone call, the Defendant accused the Victim of having an affair with Lopez. The Defendant was so angry that he put his hands around the Victim's throat. While defending herself, the Victim kicked the wall. The landlord who lived in the adjoining apartment heard the commotion and called the police. The police responded to their apartment. The Victim told the police that nothing was wrong. That night the Defendant decided he and the Victim were leaving New York City. Shortly after the incident the two moved to Kansas City, Missouri.

Once in Kansas City, their relationship deteriorated and the Defendant became jealous and possessive. The Defendant often complained about the Victim's appearance and questioned her about who she spoke to and where she went. The Defendant accused the Victim of being promiscuous. The Defendant would sit outside the Victim's place of employment and

¹ The Background section was adopted from the Government's Motion In Limine To Admit Certain Evidence Of Defendant's Uncharged Physical And Sexual Offenses Pursuant To Federal Rules Of Evidence 413 And 404(B) The Victim's Statements Made During Her Medical Examination; And Certain Text Messages; And; Exclude Improper Evidence Of The Victim's Past Sexual Behavior. Docket Entry ("DE") 35, 42. The Government cites to the Government's exhibits ("GX") where appropriate.

watch her through the window. They argued frequently. Eventually, the Defendant started beating the Victim. Specifically, the Defendant beat the Victim after she defied him and got her nose pierced. The Victim told the Defendant that she liked the nose ring and it was her body so she was going to wear the nose ring. During the argument, the Defendant told the Victim that whores wore nose rings. The Defendant began to physically assault the Victim. The Victim fought back in an attempt to defend herself. At some point in the fight, the Defendant said "if you want to be ugly, I will make you ugly." The Defendant had scissors in his hand and attempted to cut the Victim's hair. The Victim was able to escape and run out of the apartment and down a few streets. The Defendant caught up with the Victim, removed his shirt, placed his shirt over the Victim's mouth, and placed a knife to her side in an unidentified individual's backyard shed near Topping Avenue and Smart Avenue in Kansas City, Missouri.

As the two were struggling in the shed, a neighbor's dog heard and began to bark. The homeowner exited his house and shined a flashlight. The Defendant ran. The man, who did not speak Spanish, put the Victim in his car and drove her to find a police officer. The man found a police officer in a gas station on Independence Avenue. The officer did not speak Spanish but called an officer who did. Again, the Victim did not make a police report. The police transported her to her room, helped her gather her belongings, and took her to a friend's house.

The next day the Victim went to work with bruises on her body and swollen red eyes. Her manager made her purchase a long sleeve shirt to put under her t-shirt to work because he did not want the customers to see her bruises. While in the store buying the shirt, the Defendant approached the Victim. When the Victim saw him, she told the Defendant she would call the security guard or the police if he approached her. The Defendant then left.

Thereafter, the Defendant texted and called the Victim numerous times asking her to get back together. During the conversations, the Defendant cajoled the Victim by telling her that she did not want to be a failure like her mother. Eventually, the Victim acquiesced and told the Defendant she would move back in with him.

The Defendant was good for a while. Eventually he reverted to verbally berating the Victim and escalated to beating her. During one argument in their residence, the Defendant pulled out a machete, grabbed the Victim by the hair, and threw her on a bed and beat her.

Throughout their relationship, the Defendant wanted the Victim to become pregnant with his child. Eventually, the Victim became pregnant and the Defendant was happy, for a time. While the Victim was pregnant, the Defendant's behavior changed and he stopped abusing her.

Their baby was born in July 2012. Unfortunately, after the baby was born the Defendant resumed his abusive conduct. The accusations of infidelity continued. The Defendant succeeded in isolating the Victim. The Defendant became so paranoid about who the Victim was talking to, that the Victim changed her telephone number and only spoke to the Defendant, her family and people from her job.

On June 7, 2014, the Victim complained to the Defendant that he was not doing enough around the house. At the time, the Victim had two jobs, cleaned the house, cooked for everyone, took care of their child, transported their child to and from the sitter, and did the laundry. In response to her complaints, the Defendant took the laundry to the laundromat. Since the Victim

had the day off of work she took their daughter to the St. John Park in Kansas City. When they returned home, the Defendant accused her of cheating on him. The Defendant yelled at the Victim to drop their daughter at the sitter and go to the man who wanted her. The two continued to argue. The Defendant threw a hair brush at the Victim and pushed her. After the argument, the Defendant left and the Victim called the police.

On June 7, 2014, officers with the Kansas City, Missouri Police Department (“KCPD”) arrested the Defendant and charged him with domestic assault after he threw a comb at the Victim and pushed her into a table. After his arrest, the Defendant was held in the Caldwell County, Missouri Detention Center. Still caring for the Defendant, the Victim visited the Defendant while he was in detention. Eventually, the KCPD turned the Defendant over to U.S. Immigration and Customs Enforcement (“ICE”) who ultimately removed him from the United States on July 4, 2014.

On September 9, 2014, CBP Officers arrested the Defendant after he again illegally entered the United States from Mexico by wading across the Rio Grande River near Eagle Pass, Texas. On September 12, 2014, a CBP Agent interviewed the Defendant who provided a Sworn Statement In Affidavit Form. During the interview, the Defendant stated that he: was born in Honduras; lived in Kansas City, Missouri for approximately 6 years; he last entered the United States by wading across the Rio Grande River near Eagle Pass, Texas; was deported by ICE July 2014; never applied to the Attorney General or the Secretary of the Department of Homeland Security for permission to re-enter the United States; and did not have any fear of persecution or torture upon being returned to his native country of Honduras. After processing, CBP Agents provided the Defendant with a Notice of Intent/Decision to Reinstate Prior Order of Deportation, which the Defendant signed and indicated that he did not wish to make a statement contesting the determination. On September 16, 2014, the Defendant pled guilty to a single count of illegal entry into the United States before a United States Magistrate Judge for the Western District of Texas and was sentenced to 30 days’ incarceration. On October 22, 2014, a CBP Agent again removed the Defendant from the United States. The Warrant of Removal/Deportation, which the agent presented to the Defendant, barred the Defendant from reentering the United States for a period of 20 years.

Again, the Defendant illegally returned to the United States after having been deported. Once he returned to the United States, the Defendant returned to Kansas City, Missouri and found the Victim. Feeling sorry for what had happened to the Defendant, the Victim allowed the Defendant to stay with her, their child, and her roommate in her house in Kansas City even though they were no longer involved in a romantic relationship.

On or about February 14, 2015, at approximately 12:30 a.m., the Victim returned home from work and went into the bathroom to take a shower. The Defendant knocked on the bathroom door and when the Victim did not open the door, the Defendant forced it open. The Defendant told the Victim that if she did not have sex with him then he would kill the Victim and her children in Honduras. At the time, the Defendant was holding what appeared to the Victim to be a pistol. A struggle ensued and the Defendant grabbed the Victim’s arms. The Victim was able to break free and run into the kitchen. The Defendant chased her into the kitchen and grabbed a knife. The Defendant stated, in sum and in substance, that “we’re going to have sex or

you'll never see your kids again." The Defendant was able to get the Victim, who was naked at the time, onto the floor of the kitchen and attempted to rape her.

The noise woke up their daughter. The Defendant told the Victim to take their daughter to bed. Once their daughter was asleep, the Defendant raped the Victim. After he was through, the Defendant told the Victim that if she called the police he was going to have her three children in Honduras killed.

Once the Defendant left for work, the Victim called the police and reported the rape. The police searched the Victim's residence for evidence and took pictures of the residence and the knife that the Defendant used. See GX 613 and 619. During the search of the residence, law enforcement officers found the Defendant's Honduran Birth Certificate, and a Permanent Resident Card in the name of "Christian Fernando-Amaya" which appeared to have the Defendant's picture on it. See GX 614 and 617. Officers also found a Social Security card in the name of Christian Fernando-Amaya. See GX 618. When interviewed by law enforcement officers, the Victim advised that the Permanent Resident Card and the Social Security card were the Defendant's and he used them to work.

Meanwhile, the Defendant attempted to keep the Victim from reporting the rape to the police. Specifically, the Defendant sent the Victim a text message that stated "So, you want me to give the order to/in Honduras in case it's true what you told me, right?" making yet another threat to the lives of the Victim's children still in Honduras.

The police took the Victim to the hospital where medical personnel performed a Sexual Assault Nurse Examination ("SANE") and took biological samples for a rape kit. A subsequent analysis of evidence in the rape kit by a forensic specialist with the Kansas City Police Crime Laboratory revealed the Defendant's DNA on the vaginal swabs taken from the Victim. Although the Victim reported the assault to the police, the Defendant was not arrested.

On or about February 27, 2015, near 9th Street and Jackson Avenue in Kansas City, the Defendant approached the Victim, who had just put her daughter in the car and was getting into her car herself. The Defendant opened the Victim's car door and pointed a gun at her and said, in substance and in part, that "you and I and our child are going to be together. We are going to move to a different state and start all over." The Victim told the Defendant "no" and started struggling with him to get the car door closed. The Defendant became upset and punched the Victim in the face and arms with his other hand. When the Victim tried to get away, the Defendant pulled the Victim's hair. The Victim broke the Defendant's grasp by stomping on the accelerator and driving away. As she drove away, the Victim heard what she believed was a gunshot but did not see the Defendant fire the gun. The Victim reported the incident to KCPD Officers. The officer who took the incident report took pictures of the Victim's black eye. See GX 703. Again, the Defendant was not arrested.

On or about May 7, 2015, the Victim called KCPD Officers to report that her SUV was damaged. When the police arrived, the Victim reported that she saw the Defendant - who she had sought an Adult Abuse/Stalking Ex Parte Order of Protection against but which had not been served - in the back of her residence at approximately 11:57 p.m.. After the Defendant left, the

Victim noticed damage to her vehicle's windshield. Again the Defendant was not arrested. On May 8, 2015 at approximately 7:30 a.m., the Victim sent the Defendant a picture of her damaged windshield. See GX 431 B.

In an attempt to control or manipulate the Victim, the Defendant sent her a series of threatening text messages. For example, on May 8, 2015 at 6:15 a.m., he wrote, "Well, if you want me to cause a disaster/make a scene tomorrow at your party, don't answer me at all." At 6:38 a.m., he wrote, "Today at your daughter's birthday we will go on a shooting spree and without pointing at anybody-in the other one not to miss."² He then wrote: "we will think whether to have the shooting spree or not; we'll see what happens."

The Defendant continued to harass and threaten the Victim using text messages. On May 12, 2015, at 1:25 a.m. the Defendant pleaded with the Victim not to "take my child from me; I'll take yours and we'll be even." At 5:21 a.m., he wrote, "Look who's outside your window. Surprise again." The next day (May 13, 2015), the Defendant escalated his threats, stating "Okay we'll play. See you at the party" and he attached a photograph of a gun. See Government Exhibits 416A and B. At 2:52 a.m., the Defendant wrote "Since you are not answering me, I will visit you tonight if you want." A review of the Victim's and Defendant's telephone records show that between May 1, 2015 and May 25, 2015, the Defendant contacted the Victim at least 378 times. See GX 905.

Getting no relief from the police, the Victim decided to try to appease the Defendant by allowing him to have contact with his daughter. To protect her safety, however the Victim decided that all meetings between the Victim and Defendant would occur at a public place so that the Defendant could not assault her. In fact, the Defendant's employer accompanied the Defendant when he picked his daughter up in a parking lot. When the Defendant's employer asked the Defendant why they were meeting in the parking lot, the Defendant told his employer that the Victim did not want him to know where she was living.

On May 23, 2015, the Victim met the Defendant in the parking lot of the Burlington Coat factory in Independence, Missouri. The Defendant had their two-year-old child in his vehicle. When the Victim got into the Defendant's vehicle, he threatened her, stating in sum and substance that she had to decide that night if she wanted to live or die. The Defendant had a white-handled folding knife in his hand when he made the threat. See GX 251. The Defendant told the Victim that he was not kidding and punctured her with the knife on the right thigh. The Defendant then duct-taped the Victim's wrists and ankles so she could not escape. The Defendant threatened to kill the Victim if she screamed. A review of the Victim's cellular telephone records reveal that she attempted to call 911 while in the Burlington Coat Factory parking lot but the call only lasted one second.

Eventually, the Defendant drove the Victim and their child from the Burlington Coat Factory parking lot to an abandoned house in Kansas City. The house appeared to have no electricity or running water. The Defendant told the Victim that they needed to rest because they were going to New York and she needed to do everything he told her to do because he was the

² The Victim's older twin daughters that still live in Honduras were born on May 8th.

one who gave the orders. The Defendant told the Victim that she was here "to be his woman." The Defendant also threatened to kill the Victim's three children and her mother in Honduras.

The Defendant then removed the Victim's clothing and instructed her not to resist him. The Defendant grabbed the Victim's arms and wrists, pinning her to the floor. The Defendant again asked the Victim if she wanted to die. The Victim was scared and the Defendant raped her. The Defendant inserted his penis into the Victim's vagina and ejaculated inside of her. The Defendant did not use a condom. The Defendant told the Victim she was going to be with him until death and to get some rest because the next day they were going to New York. She began looking for her car keys to escape, but the Defendant noticed she was not sleeping and held the knife in his hand and told her to go back to sleep. Approximately 20 to 25 minutes after the first sexual assault, he sexually assaulted her again. The Victim begged him to stop. Again, the Defendant inserted his penis into her vagina and ejaculated.

When they woke up the next morning (May 24, 2015), the Victim asked the Defendant to let her go. In response, the Defendant tied up her hands with duct-tape and placed a blanket over her hands so no one could see. The Defendant then handed the Victim their child and walked the Victim to her car. The Defendant drove to work with the Victim and their child in the car. Once at work, the Defendant left the Victim in the car. The Defendant took the duct-tape off of Victim's hands after she promised she would not do anything, and then he left her in the car while he went to work. The Defendant did not allow the Victim to use her cellular telephone while he was with her. When he exited the vehicle the Victim was able to text her friend, Mycol Boja. The text message exchange was:

The Victim, at 11:50 a.m.:	3724 N Monroe.
The Victim, at 11:52 a.m.:	Bambru 2201 my car or my truck across that abandoned house on the left.
The Victim, at 11:53 a.m.:	Tied up and he injured my leg with a [folding] blade.
The Victim, at 11:54 a.m.:	Don't reply to me.
The Victim, at 11:55 a.m.:	Soon I won't have cell or charge.
The Victim:	The little girl is fine.
The Victim, at 11:56 a.m.:	The little girl is fine.
The Victim, at 11:59 a.m.:	Find my job's cell [phone number] and explain why I didn't go.
The Victim, at 12:03 p.m.:	Send that address to the police.
Borja, at 12:47 p.m.:	Are you in 3124 N Monroe?
The Victim, at 1:24 p.m.:	No.
The Victim, at 1:30 p.m.:	Don't text. [He] almost found out.
The Victim, at 1:31 p.m.:	Vanbru <i>[sic]</i> , look for my car behind the third house on both sides of the—
The Victim, at 1:32 p.m.:	--street.

See GX 150 and 151. The Victim deleted the text messages after sending them so that the Defendant would not find them. Borja took the text messages to the KCPD. Eventually, the police began tracking the Victim's cellular telephone.

Upon completion of his work, the Defendant drove the Victim and their child to his employer's house to pick up his clothes. The Defendant then drove them east out of Missouri towards New York.

On May 25, 2015, at approximately midnight, the Defendant, the Victim and the child stopped at a Motel 6 in Englewood, Ohio. The Victim put the baby to sleep and laid beside her. The Defendant then approached the Victim without any clothing on so that he could rape her. She begged him to stop. The Victim tried to keep her legs closed but the Defendant forced them open with his legs. He grabbed her wrists and pinned her down onto the bed. The Defendant penetrated the Victim's vagina with his penis and ejaculated inside of her, after which she went into the bathroom and cleaned herself up.³

Given the Defendant's increasingly violent behavior and fearing for her safety, the Victim told her co-workers that if she stopped responding to telephone calls or text messages something must be wrong.⁴ She knew the police would be looking for her so she tried to delay the Defendant by stopping in stores and stopping to eat. The Victim told the Defendant that she wanted to find a Mexican restaurant for him. She asked the Defendant if she could turn on her phone to locate a restaurant. The Defendant allowed her to do so but disabled the GPS on her cellular telephone. The Victim turned the GPS back on. After finding a restaurant and eating, the Defendant, the Victim and child left Ohio and continued traveling east toward New York.

The last stop was at the Super 8 Motel in Bellmawr, New Jersey. The Defendant checked in at the motel lobby and returned with a key to room 205. The Victim laid down next to her child after she went to sleep. The Defendant laid down in the other bed. Eventually, he got up from his bed and approached the Victim with a knife in his hand. See GX 251. The Victim told the Defendant that she would scream if he tried to have sex with her again and that she would not allow him to continue to assault her. The Defendant told her that he was giving the orders while holding the knife in his hand. He took off her clothes while she was in bed with their child. The Defendant grabbed the Victim by the wrists and kissed her breasts; he penetrated her vagina with

³ The Victim has informed law enforcement, in substance and in part, that the Defendant had some type of insertions/pellets inside his penis which hurt when he raped her. The Victim advised that each time she was raped the room was dark, so she did not see the plastic pearl inserts. However, while fighting against the Defendant while he was raping her, the Victim felt the plastic pearl inserts and described their size as approximately the size of the nail on a pinky finger. The Victim advised that the Defendant did not have the pearl inserts prior to his deportation. Upon returning to the United States in or about January of 2015, the defendant explained to the Victim that while he was incarcerated in a Mexican prison he learned about the "pellets" and had them inserted in his penis. Pursuant to a search warrant, FBI Special Agents photographed the Defendant's genitals. The photographs shows a foreign object, which looks like a piece of a beaded necklace, on the top of the Defendant's penis. See Government Exhibit 553.

⁴ Ironically, the Victim's supervisor sent her text messages on May 24, 2015 asking the Victim "You are coming today Right???" and on May 25, 2015 asking "Will u b here tomorrow???" See Exhibit 433.

his penis and ejaculated inside of her. The Victim used the bathroom after the assault and the Defendant went to his bed.

Around the time that the Victim and Defendant stopped at the Super 8 Motel in Bellmawr, a KCPD detective received information that the Victim's cellular telephone had stopped in Camden County, New Jersey and called local police departments asking that they check on the Victim. A short time later, the police knocked on the door of the motel room. Upon hearing the police, the Defendant fled the room through the bathroom ceiling. Once the Defendant was gone, the Victim opened the door for the police officers. Police officers subsequently found a white handled folding knife, GX 251, in the hotel room and duct-tape, GX 310, in the Victim's vehicle that was parked in the motel's parking lot.

On May 26, 2015, medical personnel at Cooper University Hospital conducted a SANE examination of the Victim. They collected the following specimens in the sexual assault kit: vaginal swabs, anal swabs, genital specimens, dried secretions, underwear, tank top, sweat pants, and t-shirt. The medical personnel provided the sexual assault kit to law enforcement officers who then submitted it to the New Jersey State Police DNA Laboratory. A forensic scientist with the New Jersey State Police DNA Laboratory determined that the Defendant was the major DNA contributor of samples taken from vaginal swabs and the underwear of the Victim.

On May 26, 2015, at approximately 4:13 a.m., a Bellmawr Police Officer spotted the Defendant walking towards the Dunkin Donuts on the Black Horse Pike. The officer stopped the Defendant in the parking lot. The Defendant stated he was coming from the gas station across the street and was getting a coffee. When directed by the officer to sit down on the curb, the Defendant ran behind the Dunkin Donuts through the back yard of a home into a wooded area. The officers located the Defendant approximately 25 feet up a tree. Officers then surrounded the tree and ordered the Defendant to come down. Once the Defendant came down from the tree he was placed under arrest. At the time of his arrest, the Defendant was in possession of the keys for the Victim's SUV and two cellular telephones which had the batteries removed. The Camden County Prosecutor's Office charged the Defendant with kidnapping, aggravated sexual assault, unlawful possession of a weapon, and resisting arrest. The matter was ultimately adopted for federal prosecution and subsequently resulted in the Defendant's guilty plea to Counts 1, 2, and 4 of the Indictment.

Sentencing

As Your Honor is aware, after Booker, sentencing involves a three-step process. **First**, this Court "must calculate the correct guidelines range applicable to a Defendant's particular circumstances." United States v. Cooper, 437 F.3d 324, 330 (3d Cir. 2006). The Court must calculate the advisory guideline range "precisely as [it] would have before Booker." United States v. Jackson, 467 F.3d 834, 837 (3d Cir. 2006); United States v. Grier, 475 F.3d 556, 608 (3d Cir. 2007) (en banc); United States v. King, 454 F.3d 187, 196 (3d Cir. 2006).

In the instant case, the parties agree with the guideline calculation in the Presentence Investigation Report ("PSR"). Specifically, the United States Probation Department found that Counts 1 and 2 group into a single group because the offense level is determined largely on the

same conduct. See PSR ¶ 81, U.S.S.G. §3D1.2(a). The base offense level is 32. See PSR ¶ 82. Since a dangerous weapon was used 2 levels were added. See PSR ¶ 83. Since the Victim was sexually exploited, 6 levels were added. See PSR ¶ 84. The adjusted offense level is 40. See PSR ¶ 88.⁵ The Defendant is entitled to a 2 level reduction for accepting responsibility since he plead prior to opening statements.⁶ Accordingly, the Defendant's adjusted offense level is 38. See PSR ¶ 101. The Defendant's criminal history category is I. See PSR ¶ 105. Therefore, the applicable advisory guideline range is 235 to 293 months. See PSR ¶ 159.

Second, after this Court has determined the guideline range, it must "formally rul[e] on the [departure] motions of both parties and stat[e] on the record whether [it is] granting a departure and how that departure affects the Guidelines calculation." King, 454 F.3d at 196; 18 U.S.C. § 3553(a)(5); Jackson, 467 F.3d at 838-39 & n.5.

There are no Guideline departures from the United States. We are unaware of any departures filed by the Defendant. However, the Government opposes any such variance because it is not warranted.

Third, Booker "permits the court to tailor the sentence in light of other statutory concerns," namely the factors set forth in 18 U.S.C. § 3553(a). Booker, 543 U.S. at 245; United States v. Miller, 417 F.3d 358, 364 (3d Cir. 2005). The Court must impose a sentence sufficient, but not greater than necessary, "(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the Defendant; and (D) to provide the Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2). In determining that sentence, this Court must consider "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1), "the kinds of sentences available," 18 U.S.C. § 3553(a)(3), "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), and "the need to provide restitution to any victims of the offense," 18 U.S.C. § 3553(a)(7).

⁵ Count 4 does not group with Counts 1 and 2. The base offense level for Count 4 is 8. See PSR ¶ 89. Because the Defendant engaged in criminal conduct resulting in a conviction for a felony offense after the Defendant was ordered deported, 4 levels are added. See PSR ¶ 90. Because the adjusted offense level for Court 4 is 9 or more levels less serious than the adjusted offense level for Counts 1 and 2, no additional adjustments are required. See U.S.S.G. § 3D1.4(c), PSR ¶ 71-72, 95.

⁶ Since the Court summoned potential jurors; the Court and the parties selected a jury; the Defendant filed pre-trial motions; and the Government was prepared for trial, including flying witness in from Kansas City, Missouri, this Office is not be moving for the additional one-point reduction under the Sentencing Guidelines available for defendants who plead prior to the United States' initiation of trial preparations. See U.S.S.G. § 3E1.1(b)(2).

In considering the nature and circumstances of the offense, 18 U.S.C. § 3553(a)(1), Congress has deemed these serious offenses by legislating high statutory maximum terms of imprisonment. Domestic violence and abuse are not only serious, but also, alarming and dangerous crimes, and the Defendant should be sentenced in accordance with the Sentencing Guidelines to promote respect for the law and to provide just punishment.

According to the domesticviolencestatistics.org website:

- Every 9 seconds in the US a woman is assaulted or beaten.
- Around the world, at least one in every three women has been beaten, coerced into sex or otherwise abused during her lifetime. Most often, the abuser is a member of her own family.
- Domestic violence is the leading cause of injury to women—more than car accidents, muggings, and rapes combined.
- Everyday in the US, more than three women are murdered by their husbands or boyfriends.
- Ninety-two percent of women surveyed listed reducing domestic violence and sexual assault as their top concern.
- Domestic violence victims lose nearly 8 million days of paid work per year in the US alone—the equivalent of 32,000 full-time jobs.
- Based on reports from 10 countries, between 55 percent and 95 percent of women who had been physically abused by their partners had never contacted non-governmental organizations, shelters, or the police for help.
- The costs of intimate partner violence in the US alone exceed \$5.8 billion per year: \$4.1 billion are for direct medical and health care services, while productivity losses account for nearly \$1.8 billion.

See <http://domesticviolencestatistics.org/domestic-violence-statistics/>. During a Domestic Violence Homicide Prevention Initiative announcement in Rockville, Maryland, on 13, 2013, former Attorney General Eric Holder noted:

The same week that Congress voted to reauthorize the Violence Against Women Act, at least 15 women and 4 men were killed by intimate partners. The day the vote took place, one woman was beaten to death with a baseball bat by her boyfriend. Another was shot by her husband as she left a movie theater. And yet another woman – who was five months pregnant – was also murdered by her boyfriend, who drove her body to a wooded area and burned it – all with her two young children in the car.

On average, three women are murdered every day in this country by a boyfriend, husband, or ex-husband. Experts estimate that, for every victim of domestic violence who is killed, an additional nine nearly lose their lives. And many others – including children, coworkers, neighbors, and police officers – are injured or killed while trying to stop violent acts, or simply because they’re in the wrong place at the wrong time.

See <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130313.html>.⁷

A Guidelines sentence is also supported by “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). Jose Amaya-Vasquez is a 32-year-old man who has had previous contact with the criminal justice system. Amaya-Vasquez was convicted of illegal entry into the United States in the United States District Court for the Western District of Texas. See PSR ¶ 103. The Defendant has one criminal history point and is therefore in criminal history category I. See PSR ¶ 104. He was deported from the United States in July 2014, see PSR ¶ 109, and October 2014. See PSR ¶ 103. The Defendant’s conviction for illegal re-entry after being deported has demonstrated his continued unwillingness to abide by the immigration laws of this country.

In mitigation of sentence, the Defendant presents the opinion of Dr. Steven Samuel, Ph.D. that the Defendant is suffering from Dependent Personality Disorder. Letter of Steven E. Samuel, Ph.D. dated February 2, 2018, at 2. Dr. Samuel opines that the Defendant’s

dependency on his [Victim] is best described as pathological dependence. The . . . pathological dependency flows is an early in life fear of being abandoned and rejected. The fear over time became the basis for his inordinate sensitivity to rejection and his compulsive need to cling to [the Victim]. The dependency is so significantly and desperately felt by him that it obscured his ability to accurately read [the Victim’s] signals and fear of him. While some individuals reflexively dissolve a relationship at a moment’s notice, Mr. Amaya-Vasquez could not let go of her, even when he knew that his behavior was harmful to himself and others.

See Letter of Steven E. Samuel, Ph.D. dated February 2, 2018, at 5. Defendant’s psychological history does not favor a sentence below the advisory guideline range. The Defendant’s expert does not support the conclusion that any mental condition makes the Defendant any less morally culpable for his crime and there is no expert evidence to support the conclusion that any kind of mental health treatment could ever make the Defendant less dangerous, especially to the Victim. Cf. United States v. Ferron, 357 F.3d 722, 724-26 (7th Cir.2004) (denial of downward departure for diminished capacity was proper, despite psychologist’s opinion that defendant suffered from anxiety disorder, dependent personality disorder, dysthymia, and drug and alcohol abuse, where psychologist also testified that defendant was competent, knew the difference between right and

⁷ Moreover, the Supreme Court, in upholding a firearms conviction under 18 U.S.C. § 922(g)(9), noted:

This country witnesses more than a million acts of domestic violence, and hundreds of deaths from domestic violence, each year. Domestic violence often escalates in severity over time, and the presence of a firearm increases the likelihood that it will escalate to homicide

United States v. Castleman, 134 S.Ct. 1405, 1408 (2014) (deciding that “a misdemeanor offense of having ‘intentionally or knowingly cause[d] bodily injury to’ the mother of [the Respondent’s] child” “qualifies as a ‘misdemeanor crime of domestic violence.’”).

wrong, and did not suffer from any compulsive disorder that caused her to steal); United States v. Maddox, 48 F.3d 791, 797-98 n. 10 (4th Cir.1995) (that defendant was found to be easily led, susceptible to misuse by others, and meek and cautious in demeanor, and that he possessed borderline intelligence and suffered from dependent personality disorder, did not justify downward departure from Sentencing Guidelines on theory of extreme vulnerability to victimization in prison). Noting about Amaya-Vasquez's mental health history changes what is required for just punishment and public safety, which is a sentence within the advisory guideline range.

In light of the Defendant's offenses and history, a sentence within the advisory Guideline range is needed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). A sentence within the advisory guideline range would be just punishment for the Defendant's crimes given the length and extent of his criminal activity.

The Defendant's sentence should reflect the serious need for specific deterrence for this Defendant and his abusive, both physically and mentally, behavior toward the Victim. Moreover, general deterrence is required for those who would intimidate, stalk, assault, kidnap their domestic partners. Domestic violence is a serious problem in this country and is often unreported by immigrants to the police. Domestic violence affects every community regardless of citizenship status. People who think that they can prey on illegal immigrants need to know that United States and the Court system take those offenses very seriously and that every person within the United States deserves the protection of our laws when they are victims of crimes, especially violent crimes.

Even if this Court could be sure that the Defendant will not resume his criminal activities, which it cannot, a custodial sentence is needed "to afford adequate deterrence to criminal conduct" by other. 18 U.S.C. § 3553(a)(2)(B); see United States v. Goff, 501 F.3d 250, 258, 261 (3d Cir. 2007). As already stated herein, domestic violence happens in the shadows when no one can see and it affords the abuse a cloak to hide in. In this case, the Defendant's unrelenting obsession with the victim and abuse of her was a serious problem. Thanks to the risk that the Victim's undocumented friend took by going to the Kansas City Police Department to report the kidnapping and the quick action of the Kansas City Police Department and the Bellmawr Police Department the Victim was rescued. Other potential kidnapper/rapists need to know that these crimes are treated very seriously by the criminal justice system. A lengthy custodial sentence will deliver that message.

A substantial custodial sentence is also needed "to protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(C). Jose Amaya-Vasquez tormented the Victim, making her life miserable, where she constantly lived in fear of the Defendant. As she wrote, "I was a victim of domestic violence, verbal and emotional, by defendant Jose Amaya Vasquez. This man caused great harm to my life, a lack of confidence, fear, low self-esteem. After being tormented for so long, tired and desperate, I made the decision to seek help from the police in [Kansas City] Mo, which they gave me but that was not enough to stop the fury and anger of the defendant." See PSR at ¶ 75. The Defendant's abusive conduct was not only extensive, but escalated over time and only stopped when he was arrested.

In considering “the kind of sentences available,” 18 U.S.C. § 3553(a)(3), imprisonment is certainly called for by the advisory Guideline range.

As set forth above, a Guidelines sentence is also supported by the “pertinent policy statements” in the Guidelines, 18 U.S.C. § 3553(a)(5), under which no departures are warranted.

Finally, imposition of a sentence within the advisory Guideline range best serves “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). In creating the Guidelines, “Congress ‘sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct.’” Rita, 551 U.S. at 349. Even after Booker, “uniformity remains an important goal of sentencing.” Kimbrough, 552 U.S. at 107. The Guidelines “help to ‘avoid excessive sentencing disparities,’” *id.*, because “avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges,” Gall, 552 U.S. at 54, and because most defendants are sentenced within the Guideline Ranges. Sentencing within the Guidelines range avoids “creat[ing] a potential disparity in sentence for those convicted of [the same crime] in New Jersey, and across the country, based on little, if anything, more than the luck of which judge is assigned to a particular case.” Goff, 501 F.3d at 261. Giving Jose Amaya-Vasquez a Guidelines sentence will not lead to any disparities between the Defendant and others with similar records who kidnap their former domestic partner under similar circumstances.

Accordingly, given the nature of the offense, the fact that the Defendant manipulated the Victim, stalked the Victim, intimidated the Victim, beat the Victim and ultimately kidnapped and raped the Victim, completely abandoned and disregarded his obligations as a man and father, Jose Amaya-Vasquez should be sentenced within the advisory Guidelines range, ordered to pay a \$300 special assessment, due the day of sentencing, ordered to pay restitution in the amount of \$6,100 to the Victim, see PSR ¶ 74, and place on a term of 5 years of Supervised Release on Count 1, 3 years on Count 2 and 1 year on Count 4.⁸ Additionally, once he is placed on Supervised Release, the Court should order that the Defendant stay away/have no contact with the Victim. Finally, the Government requests that the Court dismiss Count 3 as part of the Judgment of Conviction.

Thank you for your consideration.

⁸ Because of the particularly violent nature of the Defendant’s crimes and his lack of deterrence previously, which included illegally returning to the United States to commit the current violent offenses, a term of Supervised Release would provide an added measure of deterrence and protection in this case. Because Supervised Release is not ordinarily called for in cases where a defendant will be deported, the Government asks the Court to make findings in this regard at the time of sentencing. See U.S.S.G. § 5D1.1(c), App. Note 5.

Respectfully,

CRAIG CARPENITO
United States Attorney

S/Jason M. Richardson

By: JASON M. RICHARDSON
GABRIEL J. VIDONI
Assistant United States Attorneys

cc: Jose L. Ongay, Esq. (via email)
Joshua MacAvoy, Senior United States Probation Officer (via email)
Thomas A. Leakan, Supervising United States Probation Officer (via email)

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 UNITED STATES OF AMERICA, CRIMINAL NUMBER:
4 v. 16-cr-00016
5 JOSE AMAYA-VASQUEZ, Sentencing
6 Defendant.
7

8 Mitchell H. Cohen United States Courthouse
9 One John F. Gerry Plaza
10 Camden, New Jersey 08101
11 Friday, April 13, 2018

12 B E F O R E: HONORABLE NOEL L. HILLMAN
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 OFFICE OF THE UNITED STATES ATTORNEY
16 BY: JASON M. RICHARDSON, AUSA
17 GABRIEL J. VIDONI, AUSA

18 JOSE LUIS ONGAY, ESQUIRE
19 Attorney for the Defendant

20 CARLOTTA DALZIEL, Interpreter
21 BETHANY KORP-EDWARDS, Interpreter

22 NICOLE CANALES, FBI Special Agent

23 JOSE AMAYA-VASQUEZ, Defendant

24 Certified as true and correct as required by Title 28, U.S.C.,
25 Section 753

 /S/ Robert T. Tate

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1 (Defendant present.)

2 (In open court at 10:53 a.m..)

3 THE DEPUTY COURT CLERK: All rise.

4 THE COURT: Good morning. Please be seated except
5 for counsel. Our first order of business here should be to
6 swear our interpreters, and I use the plural because I
7 understand that there are two, and I'll leave it to Ms. Novoa
8 to take up that important task now.

9 Ms. Novoa.

10 THE DEPUTY COURT CLERK: Please raise your right hand
11 and place your left hand on the bible in front of you.

12 Do you solemnly swear or affirm that you will justly,
13 truly, fairly and impartially act as an interpreter in the
14 case now before the Court, so help you God?

15 MS. DALZIEL: I do.

16 MS. KORP-EDWARDS: I do.

17 THE DEPUTY COURT CLERK: Please state your name and
18 spell your last name for the record.

19 MS. DALZIEL: Carlotta Dalziel, Dalziel is
20 D-A-L-Z-I-E-L. Good morning, your Honor.

21 THE COURT: Good morning.

22 MS. KORP-EDWARDS: Bethany Korp, K-O-R-P. Good
23 morning, your Honor.

24 THE COURT: Good morning, and welcome to you both and
25 thank you for your services to the parties and to the Court.

1 All right. Let me take appearances in this matter.
2 This is the day set aside for sentencing, United States versus
3 Jose Amaya-Vasquez. For the United States.

4 MR. RICHARDSON: Good morning, your Honor. Jason
5 Richardson, Assistant United States Attorney, appearing on
6 behalf of the government.

7 MR. VIDONI: Gabriel Vidoni, Assistant United States
8 Attorney, also appearing on behalf of the government. And
9 with us at counsel table is the case agent on this matter, FBI
10 Special Agent Nicole Canales.

11 THE COURT: All right. Welcome to you both.

12 MR. ONGAY: Jose Luis Ongay, on behalf of the
13 defendant, Jose Vasquez Amaya, your Honor. Good morning.

14 THE COURT: Good morning, Mr. Ongay. Welcome to you
15 as well, sir.

16 All right. It is my practice, my habit to first review
17 the written sentencing materials that have been submitted to
18 the Court for today's proceedings to ensure that I have
19 received and reviewed the materials that the parties consider
20 important for purposes of the sentencing today. I think I
21 will begin with the United States. Mr. Richardson, Mr.
22 Vidoni?

23 MR. RICHARDSON: Yes, your Honor.

24 THE COURT: I have a written sentencing memorandum
25 from the United States dated April 4th of this year. It has a

1 series of attachments to it. There are several photographs, I
2 should say two, two of a knife, there are photographs of
3 various documents related to the defendant, including an
4 assumed name, which I took to be used by him during his time
5 in the United States and for employment purposes. There is a
6 photograph of the, and we'll have to figure out exactly how we
7 refer to them, but I'll describe her now as the adult victim
8 in this matter, a photograph of an automobile, which has
9 damage to it to the windshield, the incident described in the
10 written presentence report.

11 There is also a document which appears to be a summary,
12 I assume, prepared by law enforcement that relates to a
13 summary of communications, electronic communications between
14 the defendant and the adult victim.

15 There is also a translation -- this is Government
16 Exhibit 151. This is a transcript of text messages which I
17 believe were sent by the adult victim to a friend during the
18 course of the events that give rise to count 1, and I take the
19 last two exhibits to be items that were seized at the time of
20 the defendant's arrest. Is that an accurate summary of the
21 submissions from the United States?

22 MR. RICHARDSON: It is, your Honor.

23 THE COURT: All right. Do you have -- I have a final
24 report dated December 12th of last year, 12/12/2017. Is that
25 the report that you have?

1 MR. RICHARDSON: That is, your Honor.

2 THE COURT: Have you had a chance to review it?

3 MR. RICHARDSON: I have.

4 THE COURT: Any objections, corrections or additions

5 you would wish to bring to my attention and resolve?

6 MR. RICHARDSON: No, your Honor. All of my comments

7 were incorporated with U.S. Probation during the review

8 process.

9 THE COURT: All right. Sir, thank you.

10 MR. RICHARDSON: Thank you.

11 THE COURT: All right. Mr. Ongay, the same series of

12 questions for you. I have some written submissions from you.

13 I have a written sentencing memorandum which was conveyed to

14 the Court on April 5th of this year. It has, in addition to

15 your arguments in mitigation of sentence, a report including a

16 psychological evaluation from a clinical psychologist, Dr.

17 Samuel, and I have also received from you under separate cover

18 a series of letters written on behalf of the defendant from

19 individuals who have known him, especially as it relates to

20 his period of time in his younger period of his life in

21 Honduras. Those letters have been reviewed by the Court.

22 It also includes the CV or curriculum vitae of Dr.

23 Samuel, who is known to the Court. And today I received two

24 additional letters, also from individuals who attest to Mr.

25 Amaya's character derived from their interaction with him

1 during his youth. Does that accurately describe, sir, the
2 written materials from the defense?

3 MR. ONGAY: Yes, your Honor.

4 THE COURT: All right. Now, do you have the
5 12/12/2017 report?

6 MR. ONGAY: I do, your Honor.

7 THE COURT: And you have reviewed it?

8 MR. ONGAY: Yes, your Honor.

9 THE COURT: And reviewed it with your client?

10 MR. ONGAY: Yes, your Honor.

11 THE COURT: Any corrections, additions or objections
12 you wish to bring to my attention at this time?

13 MR. ONGAY: No, your Honor.

14 THE COURT: All right. Thank you both.

15 We will now turn to the three-step sentencing process
16 which we are familiar with after the decision of the United
17 States Supreme Court in *United States versus Booker* and *Fanfan*
18 and the subsequent decisions from our Court of Appeals that
19 directs certain procedure for the sentencing process. It is,
20 as I said, in three steps.

21 The first step is to compute, calculate and determine
22 the advisory sentencing guideline range. We do so because
23 it's one factor among many at step three for the Court to
24 consider and also represents a reference point or benchmark
25 for the Court's consideration of any departure motions as we

1 have come to know them at step two of the sentencing process,
2 as well as a reference point for determining whether or not
3 there should be any variances and the scope of those
4 variances. So, it's important that we calculate it accurately
5 even if it is an advisory factor for the Court to consider in
6 fashioning an overall sentence which furthers the statutory
7 goals.

8 Now, here the defendant entered open pleas, as I
9 recall, in two stages, and there are two groups as it relates
10 to the offenses. My recollection is that there are three
11 counts of conviction. Let's go to page 1 of the report which
12 indicates that there is an admission or guilty plea to count
13 1, count 2 and count 4. I would understand that the
14 government would move to dismiss count 3 at the conclusion of
15 the sentencing. Counts 1 and 2 group together into the group,
16 first group, and then the fourth count represents a separate
17 group to be considered by the Court.

18 So, if we turn to page 19 of our presentence report, we
19 will see that with regard to group one, that the count that
20 provides the foundation for the guidelines calculation for
21 that group is count 1. The base offense level for that
22 offense, which is the offense of kidnapping in violation of
23 18, United States Code, Section 1201, is United States
24 Sentencing Guideline 2A4.1. This calls for a base offense
25 level of 32.

1 Probation concludes that the specific offense
2 characteristic of the applicable guideline, which is 2A4.1,
3 that specific offense characteristic of (b) (3) applies in that
4 a dangerous weapon was used, and, therefore, the offense level
5 is increased two levels.

Probation also concludes next that the (b)(5) specific offense characteristic of 2A4.1 applies in that the victim was sexually exploited. This results in an increase in the offense level by six levels.

10 Probation does not add any victim-related adjustments
11 or adjustments for role in the offense or for obstruction for
12 reasons that are explained in the presentence report. And,
13 therefore, concludes at paragraph 88 that the adjusted offense
14 level for group one is a level 40.

15 The illegal re-entry count, which is count 4, as I
16 indicated, represents a separate group. This is an admission
17 by the defendant of his guilt to a violation of 8, United
18 States Code, Section 1326(a). The applicable guideline is
19 2L1.2. The applicable base offense level for that offense is
20 a level 8.

21 Probation adds four points for the specific offense
22 characteristic set forth in 2L1.2(b)(3)(D) in that the
23 defendant engaged in criminal conduct resulting in a
24 conviction for a felony offense other than illegal re-entry
25 after the defendant was ordered deported or ordered removed

1 from the United States for the first time. Therefore, the
2 offense level is increased four levels.

3 Again, Probation does not add any victim-related
4 adjustments or adjustments for role in the offense or for
5 obstruction, and calculates the adjusted offense level for
6 group two, that is, count 4, to be a level 12.

7 The guidelines then direct that the two, or the
8 multiple groups, here two, are adjusted or assessed as they
9 relate to each other. Here, because of the wide disparity
10 between the group one offense level of 40 and the group two
11 offense level of 12, one unit is calculated, and it,
12 therefore, follows that with the one level, the greater of the
13 adjusted offense levels becomes the guidelines level for these
14 groups together. Therefore, group one becomes the group that
15 is utilized for computing the advisory sentencing guideline
16 range, this is at paragraph 96, and why 97 has no increase in
17 that offense level for the second group.

18 The Probation Office then subtracts two points,
19 concluding that the defendant's plea of guilty and the plea
20 colloquy at that time represents a sufficient demonstration of
21 acceptance of responsibility to warrant two points taken off
22 the offense level of 40, resulting in a total offense level of
23 38.

24 The next step is to compute the defendant's criminal
25 history category. He has no juvenile adjudications. He has

1 one adult conviction in the United States of illegal re-entry
2 from 2014 for which he received a period of imprisonment.
3 That one point is calculated at paragraph 103. One criminal
4 history point results in a criminal history category of
5 category I. Taking those two things together, the total
6 offense level of 38 and the criminal history category of I,
7 results in an advisory guideline range of 235 months to 293
8 months.

9 Let me ask the United States whether they object to the
10 Court's adopting Probation's calculation of the advisory
11 sentencing guideline range?

12 MR. RICHARDSON: We do not object, and at this time
13 ask the Court to adopt the findings and conclusions outlined
14 by the Probation Department in the final presentence report of
15 December 12th, 2017.

16 THE COURT: All right. Mr. Ongay, any objection to
17 the Court's adoption of the presentence calculation and the
18 findings in the report?

19 MR. ONGAY: No, your Honor.

20 THE COURT: All right. The Court will accept and
21 adopt at step one the advisory sentencing guideline range, 235
22 months to 293 months, and the calculations and supporting
23 determinations made by Probation in reaching that guideline
24 range.

25 We then turn to step two of the sentencing process.

1 Here the Court considers any departure motions made by the
2 parties, and also this Court recognizes its authority to
3 depart on its own motion. I have reviewed the record in this
4 matter and the submissions of the parties and see no reason to
5 depart sua sponte. I see no departure applications as we have
6 come to know them at step two from either side and I will
7 confirm that now. Mr. Richardson, are there any departure
8 motions from the United States?

9 MR. RICHARDSON: None from the United States.

10 THE COURT: All right. Saving for you at step three
11 any arguments in mitigation of sentence that might justify a
12 variance, Mr. Ongay, do you have any departure applications at
13 step two?

14 MR. ONGAY: No, your Honor.

15 THE COURT: All right. After step two then, the
16 advisory sentencing guideline range will remain as calculated
17 at step one, and we turn then to step three of the sentencing
18 process. Here the Court will consider any arguments in
19 mitigation of sentence, to consider any additional evidence
20 that the parties may wish to submit for the Court's
21 consideration, and to invite the defendant to allocute or
22 speak to the Court if he chooses to do so, and I am prepared
23 to proceed now to that step. Do the parties have a preference
24 as to who goes first?

25 MR. RICHARDSON: Your Honor, I would request that the

1 defense goes first. I understand from Mr. Ongay that he may
2 have a witness that would be prepared to present some evidence
3 regarding Mr. Amaya, and I have some questions that I might
4 want to ask him and use that in my argument.

5 THE COURT: All right. Mr. Ongay, do you have a
6 witness?

7 MR. ONGAY: I do. I have Dr. Steven Samuel in the
8 courtroom, your Honor.

9 THE COURT: All right. So, let's begin with you
10 then, Mr. Ongay, and you may take those categories up in the
11 order you see fit. I will hear you in supplementation of your
12 written submissions to the Court in mitigation of sentence at
13 any time. You may call any witnesses you choose to do so.
14 And you will indicate to me whether or not Mr. Amaya wishes to
15 address the Court when you are ready to do so. So, you may
16 take those up, sir, in the order you see fit.

17 MR. ONGAY: I will first call Dr. Samuel to the
18 stand, your Honor.

19 THE COURT: All right. And we will put him in the
20 witness box and swear him?

21 MR. ONGAY: Yes.

22 THE COURT: All right. Dr. Samuel, if you could
23 go -- very good.

24 MR. RICHARDSON: And, your Honor, for the record, Mr.
25 Ongay and I spoke. I am not challenging Dr. Samuel's

1 qualifications. So, there is no need for Mr. Ongay to voir
2 dire him on his qualifications.

3 THE COURT: All right. Very good.

4 Doctor, if you could please approach the witness chair
5 here, sir, witness stand. My courtroom deputy will administer
6 an oath.

7 THE DEPUTY COURT CLERK: Sir, please raise your right
8 hand, place your left hand on the bible in front of you.

9 (**STEVEN E. SAMUEL, Ph.D.**, HAVING BEEN DULY SWORN OR AFFIRMED,
10 TESTIFIED AS FOLLOWS:)

11 THE WITNESS: I do.

12 THE DEPUTY COURT CLERK: Please state your name and
13 spell your last name for the record.

14 THE WITNESS: Steven, S-T-E-V-E-N, Eric Samuel,
15 S-A-M-U-E-L.

16 THE DEPUTY COURT CLERK: Thank you.

17 THE COURT: All right. Doctor, good morning.

18 THE WITNESS: Good morning.

19 THE COURT: If you could have a seat in the witness
20 chair there. Please speak slowly, clearly and loudly enough
21 for everyone to hear you. The microphone will help you
22 project your voice out. I see you have discovered our jug of
23 water.

24 THE WITNESS: I did. Thanks. Yes.

25 THE COURT: And I'll ask you to wait until after the

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1 question is asked before answering, and the counsel will
2 extend the same courtesy to you, and you may proceed, Mr.
3 Ongay, when you are ready.

4 MR. ONGAY: Your Honor, will the Court allow me to
5 conduct a direct examination from my chair?

6 THE COURT: Yes, of course.

7 MR. ONGAY: Thank you.

8 THE COURT: Oh, seated? You must be from
9 Philadelphia, sir.

10 MR. ONGAY: I am. I am now going to do it from the
11 podium.

12 THE COURT: I'll ask you to stand, but you can do it
13 from where you -- at counsel table or from the podium, your
14 choice.

15 MR. ONGAY: All right. Thank you, Judge.

16 (DIRECT EXAMINATION OF DR. SAMUEL BY MR. ONGAY:)

17 Q. Dr. Samuel, good morning.

18 A. Good morning.

19 Q. Okay. Dr. Samuel, I asked you to conduct an examination
20 of the defendant; is that correct?

21 A. That's correct.

22 Q. And can you tell me what I asked you to do in that
23 examination, please?

24 A. You asked me to evaluate him, which I did at the Federal
25 Detention Center on two occasions, one, July 14th, 2017, the

1 second time, September 21st, 2017. You asked me to evaluate
2 him with a focus on did he have a psychological disorder of
3 any type, and as a result of that evaluation, were there any
4 factors that supported the existence of mitigating
5 circumstances in his personality and his background.

6 Q. Okay. Before we go to the results, can you describe the
7 evaluation process, what you actually do, if you are
8 administering a test, et cetera?

9 A. I interviewed him in your presence. You interpreted
10 during the course of the evaluations. I'm not fluent in
11 Spanish.

12 I gave an informed consent procedure at the beginning,
13 which includes essentially saying that what we talked about
14 was non-confidential. There wasn't a traditional
15 doctor-patient relationship. He could refuse to talk to me at
16 any time he wished.

17 You were present. I typically would tell someone they
18 could have their attorney there if they liked.

19 I told him I'd write a report, which I would submit to
20 you, the government would get a copy, the judge would have a
21 look at it, also. So, before it started, I said here are some
22 guidelines for you to think about. He understood those,
23 through your kind assistance of interpreting, and said he was
24 willing to go forward, which is what he did without any
25 significant hesitation.

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1 So, the assessment is a fairly straightforward and --
2 I'm sorry.

3 Q. Before we go on.

4 MR. ONGAY: I'm sorry, your Honor, just to have a
5 complete record.

6 THE COURT: Yes.

7 MR. ONGAY: I'd like to mark this as D-1, and that
8 is, for identification purpose, the copy of the report
9 prepared by Dr. Samuel.

10 THE COURT: All right. Very good.

11 MR. ONGAY: If I may approach?

12 THE COURT: Any objection?

13 MR. RICHARDSON: I have a copy. Thank you.

14 MR. ONGAY: May I approach, your Honor?

15 THE COURT: Yes. Thank you, Mr. Ongay.

16 (DEFENDANT EXHIBIT D-1 WAS MARKED FOR IDENTIFICATION.)

17 THE COURT: Do you want this part of the CM/ECF
18 docket filed as an exhibit in the hearing as opposed to
19 submitted as -- you've submitted it as a --

20 MR. ONGAY: Correct.

21 THE COURT: -- attachment to your sentencing
22 memorandum, which I'm sure you know, under the rules of this
23 Court, is not a public document.

24 MR. ONGAY: I'd rather keep it that way.

25 THE COURT: All right.

1 MR. ONGAY: I'd just like to use it for the purposes
2 of the hearing.

3 THE COURT: All right. Very good.

4 MR. ONGAY: It's simply so that he could identify
5 what he did and confirm that that is his report.

6 THE COURT: All right. Very good. Thank you.

7 BY MR. ONGAY:

8 Q. Now, Dr. Samuel, I handed you what I marked as Exhibit
9 D-1.

10 A. Yes.

11 Q. And can you please take a quick look at it to --

12 A. This is my February 2nd, 2018 report.

13 Q. Okay. And in that report, I assume that you documented
14 your examination and the findings; is that correct?

15 A. That's right.

16 Q. Okay. Can you now tell us what do you actually do during
17 the examination and your findings?

18 A. I interviewed your client in your presence, again. I
19 went through a list of symptoms. There is an instrument, it's
20 called the semi-structured clinical interview, and that
21 interview is designed to elicit or not symptoms of
22 psychological disorders. It's a guide, a map, if you will,
23 for a clinician to follow. And so I administered sections of
24 that. It's called the SCID, S-C-I-D, dash 5 clinical version
25 or CV.

1 I reviewed sections of the memorandum that had been
2 forwarded to you and then you sent to me by the government. I
3 gave some questions from the MMPI-2, that's the Minnesota
4 Multiphasic Personality Inventory. And so that was the
5 congress, if you will, of things that I did.

6 I talked with him at length about how he was doing,
7 what his record was like in the prison, how he was feeling. I
8 went through a series of symptoms that he may or may not have
9 had. And then recorded his responses to the clinical
10 interview as well as the testing items.

11 Q. And did you make any findings, Doctor, did you make any
12 diagnosis?

13 A. I did. I had an opportunity to look at the presentence
14 investigation report after I had completed his evaluation, and
15 I think on the basis of reading that, which essentially was
16 consistent with what he had reported to me, that I had a
17 number of diagnoses that came up. Some are historical in
18 nature, meaning that they were apparent in him when he was
19 growing up. There's an issue, post-traumatic stress disorder
20 by history. That is a result of his being exposed as a kid to
21 violence, gang violence. He reported to me, I believe it was
22 also in the sentencing memorandum, that he had seen people
23 killed, people had been beheaded as a kid. This is fairly
24 traumatic. I treat children, adolescents who have seen things
25 like this, although not exactly to that extent. So, when I

1 went through the symptoms of the disorder, it was apparent to
2 me that he had the disorder as a kid at some point along the
3 way because of his exposure to that violence.

4 The second diagnosis by history was child abuse. He
5 was physically and psychologically abused. So, you get child
6 physical abuse and child psychological abuse by history,
7 meaning that as a kid he was psychologically and physically
8 abused.

9 His father, as I understand it, both in the presentence
10 memorandum and from his report directly to me, was physically
11 abusing and verbally, where his mom was more phys -- verbally,
12 excuse me, verbally abusing.

13 And I think that the effect of that upon him was at
14 some point to leave home. He left briefly when he was 15,
15 then came back I think about a month later. He had a very
16 torturous, argumentative existence with his dad, who had taken
17 him out of school. I think he went as far as the sixth grade
18 and began working at that point at his father's behest, and I
19 think the issue here is that the easier diagnoses by history,
20 what's important to understand in a person's development,
21 their personality is how does it develop, what direction does
22 it go in, and these are antecedents, if you will, that point
23 to a certain kind of suffering or not that a child and then an
24 adolescent and adult can experience. So, they are formative
25 in the sense that they were existing in the past and helped

1 form a pattern, a behavior, and then ultimately form who he is
2 today.

3 He has a dependent personality disorder. That is a
4 kind of disorder that's listed in the DSM-5 and that is a
5 disorder which, as I wrote about in the report, essentially
6 means that you have what's called an insecure attachment, a
7 bond attachment, and what that means is that you don't
8 perceive yourself essentially to be separate of someone of
9 significance to you. Typically it's a parent or a caretaker.

10 Dependent personality disorder doesn't forecast
11 criminal involvement any more than it forecasts political
12 affiliation, but it is a way of relating to people, and I
13 think that's relevant in this particular matter because he in
14 my view has blurred and did blur the distinction between
15 himself and the baby's mother. There wasn't a distinction in
16 his mind. He thought her needs were mine, and that's
17 obviously not correct.

18 So, I think he has a dependent personality disorder,
19 and he has what's called depression or dysthymia, and formally
20 it's called persistent depressive disorder. This in my
21 opinion is something that's been in and out of his personality
22 and life most of his life, I would think, certainly starting
23 as a youngster, and at varying levels of severity, and he
24 certainly was depressed when I saw him. He was on the mental
25 health unit of the facility during the times that I met with

1 him.

2 So, you've got some diagnoses by history, there's a
3 trio of them, and he has some diagnoses that are presently in
4 place, dependent personality disorder and depression.

5 Q. Now, did you also come to a conclusion after having
6 examined him and administer the tests and review the materials
7 as to whether there were any findings that could be brought to
8 the Court's attention that could be justifying mitigation in
9 the sentence?

10 A. I did. I think that it's -- the circumstances that I
11 discussed in the report are not excuses. There really is no
12 excuse for this sort of behavior. It's extremely harmful to
13 children, their mothers, to families, to society. So, my
14 focus is instead not on excusing him, but trying to understand
15 what's a derivative, where did it come from? Well, it comes
16 from a number of things.

17 You can't say logically that all kids who are abused
18 end up acting in this way. You can't say logically that all
19 children who are depressed physically, psychologically abused
20 act this way. That's not true either. You can't say that
21 children who have seen some horrible things, and lots of kids
22 have, that they act in this way. But I think it's important,
23 though, that we see that there's an accumulation problem.
24 It's not just one.

25 And so if you look at his background, you can see that

1 there's very little possibility that he's going to grow up
2 having a normal self and a normal life. That's pretty slim
3 given the circumstances under which he grew up. The fact that
4 he hadn't had any treatment during any of this is not
5 surprising, but also helps understand the durability and the
6 persistence of his symptoms.

7 So, having said that, I thought that there, as I said a
8 minute ago, there's some childhood antecedents that the Court
9 could consider, and that had to do with his growing up
10 experiences, what I described as abuse, seeing physical
11 violence. There's arguing, some at home. He's the focus of
12 some physical and also psychological abuse, if you will.

13 What happens with kids and adults and youngsters is
14 that they don't learn how to cope. They also become very
15 dependent or they become very exclusive of their parents,
16 meaning it's a binary function. They either become so
17 dependent on their parents for love, or it's like a light goes
18 on and they hate their parents. In this case there's a
19 dependency that forms, and again it starts early in life. So,
20 I think that his childhood experiences was a Petri dish, if
21 you will, for what was to come later.

22 The issue is whether he was amenable to supervision.
23 No one can say with 100 percent certainty whether a person
24 will or will not be. There's not an amenability test. So,
25 you look at the behavior of an individual when they're in

1 custody or, for that matter, when they're in society. It's
2 not been written up as far as I know at the time I saw him.

3 So, it says that for the given period of time we have
4 while he's in custody, he does not pose himself to be a
5 disciplinary problem to anybody, and you could forecast that
6 in that situation, it does not forecast itself to society in
7 that situation, a secure setting, he seems amenable. He is
8 responding positively, although I would say he's quite
9 depressed and I have some concerns about the level of his
10 depression.

11 There's no history of mental health treatment, as I
12 said, and again, you're thinking about these factors
13 cumulatively. It's not just one. And the issue is remorse.
14 There's not a test, there's not a remorse meter. I have
15 written about, thought about, talked about, interviewed people
16 for many years now, thinking about is remorse real or not?
17 Does it exist?

18 At the time this is occurring I would say there was
19 scant evidence, but more of a desperate dependent clinging
20 behavior on his part, an urgency to be with her. As I said,
21 again, I think he was unaware of the fact that they were
22 separate. His wishes were hers, her wishes were his, the two
23 were the same, and he was calling the shots.

24 I do think that remorse is on a continuum. At one end
25 there is a person who is not remorseful at all, on the other

1 end a person who is despondent and feels incredible regret. I
2 thought in the end after talking to him for the hours that I
3 did that there was remorse there. I think he feels
4 disappointed himself. He recognizes in custody that he hurt
5 his child and the baby's mother. He recognizes that his life
6 and the others and his family, extended family, and hers as
7 well, is forever changed. That's a factor of remorse or
8 remorsefulness.

9 He wants forgiveness. He asked me for forgiveness.
10 I'm not there as that entity to do so, but that's an
11 expression that he had, unsolicited from me, I didn't ask him
12 about that. And I think in the end what comes across is an
13 intermittently tearful person who is depressed. He's been
14 depressed well before this. He can't have access to her.
15 He's cut off. It's like an addiction. Descriptively, he's
16 cut off from seeing her, he's depressed, and he says nothing
17 can forgive me for what I did.

18 So, he's got the reality testing within the confines of
19 the structure of the prison, and then again there's the issue
20 of his dependent personality, and people with dependent
21 personalities don't necessarily get arrested more often, but
22 in this particular case, I think his dependent personality
23 characteristics made him more vulnerable.

24 And again, you see that in the condition he is in prior
25 to his arrest, he literally can't see the distinction between

1 himself and her. What he wants is what she wants, and he has
2 a fantasy solution, like a child. A child says, well, if it
3 snows today, my mother will love me. He has a fantasy
4 solution that if he takes her, you can see how dependency, his
5 depression distorts thinking, if I take her to New York, we'll
6 all get back together again. That's how out of balance it is,
7 and I think how significant was his troubling, troubles at the
8 time. So, I thought those were circumstances.

9 And finally is the issue of mental health. Does the
10 prison system offer mental health treatment? Yes, it does.
11 He could benefit from that. And I think that if he gets in
12 treatment and he participates in treatment, then his level of
13 risk at this point is high, if his participation in treatment
14 is evident, genuine, consistent, it reduces his level of risk
15 while he's in custody.

16 So, I think that that's something else to consider,
17 too, because he is saying to me, I need help, I did very,
18 very, very bad things. I can't believe what I did. I've got
19 to fix this. I want to fix this. And so to me there is some
20 sense, as opposed to someone who says, well, I'm fine, it's
21 all her fault, that's the last thing he said. So, I think
22 there is a sense of forgiveness and also I need treatment.
23 And so that's a good prognosticator, if you will, for someone
24 benefiting from treatment.

25 Q. And, Dr. Samuel, last, are you making these findings,

1 would you state that these findings are within a reasonable
2 degree of psychological/medical certainty?

3 A. Psychological certainty, yes, I do.

4 MR. ONGAY: I have nothing further.

5 THE COURT: All right. Thank you, Mr. Ongay.

6 Cross-examination?

7 MR. RICHARDSON: Yes, your Honor. Thank you.

8 (CROSS EXAMINATION OF DR. SAMUEL BY MR. RICHARDSON:)

9 Q. Good morning, Dr. Samuel.

10 A. Good morning.

11 Q. My name is Jason Richardson. I'm the Assistant United
12 States Attorney, one of the two working on this case, and I
13 have a few questions for you. Okay?

14 A. Sounds fine. Sure.

15 Q. I want to start sort of slightly off topic. I received
16 your very impressive CV, and one of the articles that my
17 colleague noted was something you wrote with Gail Greenspan on
18 self-cutting after rape. Do you recall that article, sir?

19 A. I sure do. I recall it because it was the first article
20 I think I had written after I had joined the hospital. We
21 were in emergency rooms evaluating women who had been raped,
22 cut themselves, and we submitted it as a brief report.

23 Q. And you would agree with me then that you have spoken
24 with numerous women who are survivors of rape?

25 A. Hundreds, yes.

1 Q. And you would further agree with me, Doctor, that that is
2 a traumatic experience, just one time?

3 A. Yes, it is.

4 Q. And if it's something that occurs multiple times, the
5 trauma increases exponentially?

6 A. I disagree with exponentially, but I agree with it is
7 significantly traumatic and often life changing and often
8 haunting forever.

9 Q. I agree with you. That's where my next question is.

10 A. Yes.

11 Q. This is something that the victim relives over and over
12 and over?

13 A. It does, yes, the answer is yes, and so the issue then is
14 can a person be helped with treatment, treatment can help, but
15 certainly it is a horrific, significantly traumatic experience
16 for a woman.

17 Q. And there are various triggers that remind the victim or
18 survivor of the incident and it could come out of the blue?

19 A. That's right. That's a symptom of, it's called rape
20 trauma syndrome or posttraumatic stress disorder triggers
21 environmentally but also in an individual's mind.

22 Q. So, if, for example, the victim sees a photograph, that
23 may actually trigger memories of the traumatic experience and
24 cause them to relive that encounter?

25 A. That's right, it's possible.

1 Q. Let's turn our attention back to your evaluation of the
2 defendant. Approximately how long did you spend with Mr.
3 Amaya?

4 A. Oh, three, three and a half hours, something like that,
5 altogether.

6 Q. And the interview was you were asking questions in
7 English, his, Mr. Amaya's answers were being translated for
8 you?

9 A. Yes.

10 Q. And you would agree with me, Doctor, that part of being a
11 psychologist is learning how to read social clues, social
12 cues, body language, inflection when evaluating a person;
13 would you not?

14 A. I agree with that.

15 Q. And it is difficult to read those cues and pick up
16 subliminal or non-verbal cues when it is a language that is
17 being translated from English to Spanish?

18 A. It makes it more difficult, I would agree with that.

19 Q. You found Mr. Amaya knows right from wrong?

20 A. Yes, he does.

21 Q. And he knows how to treat people. He is respectful. He
22 was respectful to you.

23 A. I would say he knows how to treat people differentially.
24 He was respectful to myself, to his attorney. He's respectful
25 today. With respect to the current offenses, I would not

1 characterize that as respectful, but he generally has the
2 ability to do so and demonstrates that at the correctional
3 center.

4 Q. So, you wouldn't -- when you make that distinction with
5 the victim, it was an obsession with the defendant, was it
6 not?

7 A. It was, that's a good way of putting it, Jason, yeah.

8 Q. And, in fact, he believed that the victim was his object
9 to control?

10 A. I agree with that.

11 Q. He further believed that the victim was someone that he
12 could do with whatever he wanted?

13 A. That's what he said, yes.

14 Q. I'd like to turn to the dependent personality disorder,
15 if I can, for a minute, and I want to talk about your report
16 that with this dependency order -- or, excuse me, with this
17 diagnosis, the person really fixates on their object. Is that
18 fair to say?

19 A. It's fair to say. Like an example would be a child who
20 wakes up at night and fixates on a night light or a blanket.
21 It's that kind of an image, just like that. That's right,
22 it's a fixation, it's a scrutinizing, an exquisite sensitivity
23 to the presence or the loss of the person.

24 Q. And with that, when you talk about the childhood
25 antecedents, you talked about idealization and devaluation and

1 self-destructive behavior. Do you recall that in your report?

2 A. Yes, I do.

3 Q. And idealization means what, Doctor?

4 A. Idealization is a, first of all, it's a distortion of
5 reality, those we idealize, put on a pedestal, are no longer
6 real objects. Idealization means that, it's a black and white
7 chiaroscuro, it's a term for describing Rembrandt's paintings,
8 black and white. Chiaroscuro is a term which contrasts black
9 and white. Idealization is the complete utter belief that
10 something or someone is perfect, and its opposite is
11 devaluation.

12 And so when he is growing up, there's an alteration
13 between you're a good guy, you got out of school, you're doing
14 the farm tours, and you're stupid, you're unintelligent, you
15 don't look good, you're a bad boy, and I'm going to hit you.
16 So, there is this alternating back and forth between the two.
17 It confuses the kid's personality, their growth, and so as an
18 adult, this is how they treat others.

19 Q. And that obviously is my next question, this passes into
20 adulthood, correct?

21 A. It can, and in this case it did. The early attachments,
22 the early relationships we have typically inform what our
23 relationships are like later, right.

24 Q. So, it's learned behavior that is continued and it's
25 imprinted. By the time he is an adult, the behavior is not

1 going to change?

2 A. I disagree with that. It's imprinted, that's true, but
3 not changing is not accurate, but it certainly has not changed
4 so far in his case. It can change with help.

5 Q. So, in this case, if he idealized the victim, she was
6 perfect for him, but then in the same vein he devalued her by
7 causing her -- calling her names and abusing her?

8 A. That's right. The devaluing was a way of saying -- way
9 of controlling and a way of saying I must maintain an
10 idealized image of you, and devaluing her, he hurt her, and he
11 alternates back and forth between good and bad, all good, all
12 bad.

13 Q. So, you talk about in your report the pathological
14 dependence that the defendant had on the victim, and am I
15 right that in layman's terms that means he had to be with her
16 no matter what?

17 A. That's right. It wasn't enough to think of her. He had
18 to -- the word you used before is a good one, he had to
19 control and be with her literally, like I have to see you in
20 my eyes.

21 Q. And so you talked about at the end of your direct
22 examination that in the defendant's mind he was going to take
23 her and the child to New York and they were going to be a
24 family, correct?

25 A. That was the fantasy that he had.

1 Q. And if she didn't want to go, was the natural conclusion
2 to that fantasy that if he couldn't possess her, nobody else
3 could?

4 A. Yes.

5 Q. So, he would have killed her?

6 A. I have no idea whether he would have killed her. I would
7 say that the natural trajectory of that is you are mine and
8 mine only and we're going to go to New York and this is what
9 we're going to do. Whether he would have killed her is
10 nothing I can comment upon.

11 Q. And if I can't have you, then nobody else can either?

12 A. So I will control you. And you can think of it in
13 another way descriptively, people will say you must remain at
14 home or you must do this and nothing else in your life.
15 That's really where he was heading with this.

16 Q. So, along those veins, you're talking about learned
17 behavior and imprinting earlier, that you talked about the
18 defendant's father would be physically abusive and also berate
19 him, call him a whore, lazy, dummy, and stupid. Is that
20 behavior that he picked up and then would continue on with the
21 victim at times?

22 A. I believe that's true.

23 Q. What documents, Doctor, besides the presentence report
24 did you review?

25 A. A motion which had been submitted by the government, and

1 that was before I wrote the report. Mr. Ongay had brought
2 that to the interview room.

3 Q. Right. Okay. I'm with you. So, it was the pretrial --
4 it was the pretrial motions interview regarding 404(b)
5 information?

6 A. I don't know the numbers, but it's the pretrial, yes.

7 Q. Okay. So, let's talk about Mr. Amaya's behavior for a
8 minute. And with this obsession, you would agree with me that
9 it has escalated over time?

10 A. Yes.

11 Q. And it's repetitive in nature?

12 A. Yes.

13 Q. And so it started back shortly after they got together,
14 the defendant and the victim, when the defendant held a knife
15 to the victim?

16 A. Yes.

17 Q. They move from New York. They go to Kansas City. He
18 pulls a machete on her?

19 A. That's right, that's what I read, yes.

20 Q. And it's all of -- all of that is behavior, it's going to
21 his dependent personality, it's going to him wanting to
22 control the victim?

23 A. Those characterizations help explain, they don't excuse,
24 they help explain why would somebody do this, that's right.

25 Q. And so then the victim finally has enough. He throws a

1 hairbrush at her.

2 A. Yes.

3 Q. Did you read that?

4 A. I did.

5 Q. At that point the defendant is arrested and deported.

6 Several months later he comes back.

7 A. I read this, yes.

8 Q. And when he comes back, he's still fixated on her,
9 correct?

10 A. That's the pathological part of dependency, if you will.

11 Even in the most salient of anger, argumentativeness, if

12 you've got this kind of fixation, without help it does not go
13 away.

14 Q. Right. And so when he came back, when he snuck back into
15 the country, his goal was to find her?

16 A. That's right, that's right.

17 Q. When she rebuffed him again, he resorted to physical
18 violence to rape her?

19 A. These are all again characterizations of someone with a
20 pathological dependency, that's right.

21 Q. But it's violent behavior towards her when she rebuffed
22 him, that he is going to take whatever he wants, and this
23 first part was at point of knife?

24 A. That's right.

25 Q. Are you aware, Doctor, that when, after that first

1 incident, that he would come to her house at night and look
2 for her?

3 A. Yes, I was aware of that.

4 Q. Are you aware that he damaged her property?

5 A. Yes, I was aware of that. You must be mine, you must be
6 mine, nothing is going to get in the way, nothing solves my
7 upset except when you're with me. That's what we're talking
8 about.

9 Q. And would it surprise you, Doctor, or did you have an
10 opportunity to review the amount of times that the defendant
11 contacted the victim over the period of February '15 to May of
12 '15?

13 A. That is descriptively the, quote, addictive aspect of
14 this, that's right, unrequited, I can't stop, that's right.

15 Q. And it's escalating. It was 126 contacts in March, 101
16 in April, and May, there were 378 contacts telephonically,
17 either text or phone call.

18 A. Yeah. What we're getting at here also is something
19 called intermittent reinforcement, which means that every once
20 in a while when I get together with someone that doesn't want
21 to be with me, they might feel helpless, which I think is true
22 in this matter, and I am by no means disparaging her, and
23 every once in a while we get together, it's, quote, okay. And
24 so that reinforces this fellow into thinking, well, I guess if
25 it's okay, I can try again. So, that's a part of the picture,

1 also. No blame whatsoever.

2 Q. But you point out in your report that he couldn't
3 understand, he couldn't separate it.

4 A. Yeah.

5 Q. But she was telling him no.

6 A. That's right. That's the, quote, reality distorting
7 element of this, is that it is so strong of a need that
8 nothing gets in the way.

9 Q. Doctor, are you aware that Mr. Amaya approached the
10 victim on the streets in Kansas City and attempted to take her
11 and her daughter from the street?

12 A. I was aware of that.

13 Q. Are you aware that he punched her in the face, causing a
14 black eye?

15 A. I was aware of that.

16 Q. Are you aware that after each and every incident, she
17 went to the police seeking help?

18 A. I read that, yeah. Yes, I did.

19 Q. And he wouldn't -- so, it's your testimony that he didn't
20 understand that you don't show love by punching somebody in
21 the face?

22 A. I think he didn't understand, using your language,
23 because of how his personality is made. I think he
24 understands it logically, but I don't think his emotions
25 helped him correct that.

1 Q. And I think you testified on direct that that is
2 something that he learned and has continued from childhood to
3 now?

4 A. I agree.

5 Q. And that's something that's very hard to change?

6 A. Violence begets violence, doesn't it?

7 Q. Do you have an opinion whether the two-year-old was
8 traumatized seeing her mother raped?

9 A. I didn't see the baby, but it would be hard to imagine
10 that the baby was not.

11 Q. So, in addition to the violence that he inflicted on the
12 victim, he further traumatized his own child?

13 A. I think that's a reasonable supposition, yes.

14 Q. And then when all else failed, the defendant was smart
15 enough and calculating enough to use the child as a bargaining
16 chip to get the victim to do what he wanted.

17 A. That's the desperation we're talking about, that's right.

18 Q. And did you happen to review the fact that when the
19 victim was recovered, we got a knife that was used?

20 A. I read that there was a knife and it was recovered, yes.

21 Q. And there was duct tape?

22 A. I read that, yes, I did.

23 Q. And isn't that an escalation of behavior, that he is
24 going to keep the object of his affection close or nobody else
25 is going to have her?

1 A. That's why you call it a disorder, psychological
2 disorder. That's why you give it that label.

3 Q. And he still suffers from that psychological disorder
4 now?

5 A. Yes, he does.

6 Q. Does everybody who suffers from this diagnosis rape, beat
7 and abuse the person who is the fixation of their obsession?

8 A. No. That's what I was saying in the beginning, I've
9 spent many years studying predatorial, stalking behavior, and
10 what I said at the beginning I think is accurate in that it is
11 not one factor, it's a cumulation of factors. The answer is
12 no, not every person who goes through these things behaves
13 this way. It's an inordinate congress of behaviors, a perfect
14 storm, descriptively, they get together and they cause these
15 sorts of problems, but not all kids who were treated this way
16 do this sort of thing, no.

17 Q. So, he is an outlier at the far end of the continuum that
18 you talked about earlier?

19 A. Correct.

20 Q. And that makes him more violent and dangerous to the
21 victim?

22 A. It made him more violent and dangerous to her, that's
23 right.

24 MR. RICHARDSON: Thank you, Doctor. I don't have any
25 further questions.

SAMUEL - THE COURT

1 THE COURT: All right. Mr. Ongay.

2 MR. ONGAY: Just one question.

3 (RDIRECT EXAMINATION OF DR. SAMUEL BY MR. ONGAY:)

4 Q. Now, Doctor, having gone over all those events and the
5 history of the defendant, are you still of the opinion that
6 with treatment these issues can be addressed and improved?

7 A. Yes, I am.

8 MR. ONGAY: Thank you.

9 THE COURT: All right. I have a couple of questions
10 and I'll allow counsel an opportunity to follow up.

11 Doctor, early in your report you have a paragraph that
12 begins Evaluation Results, and you have five separate
13 diagnoses or disorders, correct?

14 THE WITNESS: Yes, that's right, Judge.

15 THE COURT: And am I correct in assuming that these
16 in some sense, perhaps actually in the order that they are
17 arranged, build on each other or are predicates for each
18 other?

19 THE WITNESS: That's well said, they build on one
20 another, although looking at it now, that wasn't consciously
21 intentional, but they all form a collection of things they
22 build on and cause vulnerabilities that emerge later in life.
23 The more of those together, the more vulnerabilities.

24 THE COURT: And to some extent, consistent with that,
25 to some extent the diagnoses of dependent personality disorder

SAMUEL - THE COURT

1 and persistent depressive disorder are based on your
2 assessment of him suffering from the first three diagnoses?

3 THE WITNESS: He did suffer from them. That's why it
4 says by history. So, I think there is, the triad of those
5 experiences in him now are the predicates for dependent
6 personality and dysthymia, that's right.

7 THE COURT: And as I read this and from the report,
8 the first three diagnoses are, as you indicate, by history.

9 THE WITNESS: That's right.

10 THE COURT: And I take that to mean that the factual
11 basis for those, that your evaluation is dependent upon
12 exclusively from what the defendant tells you.

13 THE WITNESS: That's true. It's not quite as
14 enigmatic as that, but the source of information is the
15 defendant and the presentence investigation and that's
16 predicated on what was recorded then by the defendant, and
17 then you have the issue of individual experience of evaluating
18 people, and you're thinking about these things that are being
19 said to you and you say, does posttraumatic stress disorder
20 make any sense? It might. Child abuse? It might. Would a
21 person make up this stuff? It's possible that they might.

22 So, I'm thinking about that and I typically would say
23 in this report if I had these diagnoses, you know, this
24 doesn't hang together, I would typically say that. So, the
25 source of information is limited to this individual, and he

SAMUEL - THE COURT

1 tells myself and the presentence investigator essentially the
2 same thing.

3 THE COURT: I'm not suggesting you don't apply your
4 own independent view of it based on your own experience and
5 training, but the underlying facts come from him.

6 THE WITNESS: That's right.

7 THE COURT: All right. And stated differently, there
8 is nothing that you have seen in the record here or provided
9 with that would represent objective corroboration of his
10 self-reporting of abuse by his parents and the things that he
11 saw?

12 THE WITNESS: That's correct. All you got again is a
13 distillate of that, and there's no question that he's got
14 these two other disorders. Where do they come from? That's a
15 matter of one making conclusions about someone based on
16 experience. There's nothing in the record that says when he
17 was five, it was reported that, and here it is right here, he
18 went to a clinic. But if you will, respectfully so, this is a
19 guy that lived in a two-room wood house, I guess, went out to
20 get water. That was the last thing, unfortunately, on
21 anybody's mind. So, it's not in the record, and in my
22 experience in evaluating individuals like this fellow, they
23 don't go -- mental health treatment is on the moon.

24 THE COURT: All right. Fair enough. But we do have
25 the presentence report.

SAMUEL - THE COURT

1 THE WITNESS: Yes, we do.

2 THE COURT: And I have some other materials that I
3 don't know that you've seen, but if we -- you testified that
4 you reviewed the presentence report and utilized that to some
5 extent in evaluating the self-reporting by the defendant and
6 reaching your assessment, for example, of posttraumatic stress
7 syndrome and so forth.

8 THE WITNESS: Yes, I did.

9 THE COURT: At page 115 of the report, it says
10 that -- it describes the defendant's parents having a happy
11 marriage, although they sometimes argued with each other, and
12 that sounds like most marriages to me, or many marriages,
13 correct?

14 THE WITNESS: I won't refuse to answer that question,
15 but yes.

16 THE COURT: All right. And he goes on to say that
17 when they did engage in arguments, that the parents were
18 thoughtful and, this is my characterization, thoughtful enough
19 and protective enough to send the kids outside so they
20 wouldn't hear the arguments.

21 THE WITNESS: Here we're getting into an interesting
22 thing. I saw and recall this --

23 THE COURT: Let me ask my question.

24 THE WITNESS: Yes, please.

25 THE COURT: That suggests to me parents who are --

SAMUEL - THE COURT

1 that's inconsistent in my view with the notion of abuse by the
2 parents. That's to some extent consistent with a notion of
3 protecting the emotional wellbeing of their children.

4 Correct?

5 THE WITNESS: Yes, except when I'm alone with my son
6 and nobody is around, and if I've got a beef with him or if my
7 dad or my uncle had a beef with me, I'm taking him downtown,
8 if you will. So, when they're together, there's an image of
9 protectiveness, security, we're abidingly loving one another,
10 but there's another story to be told, not always, but the
11 story is one of mock, mocking and harm. And so nobody talks
12 about it. Like sexual abuse, they don't talk about it. But
13 it is possible. And I picked up that point myself. It did
14 seem to be a contradiction initially.

15 THE COURT: All right. Similarly, the report
16 indicates at 116 that the father went so far as to, in light
17 of this violence, which I think we can all assume gang
18 violence was probably a reality in that part of Honduras
19 during those times, but he went so far as to prohibit his
20 children from leaving the property so as to shield them from
21 the kinds of things that could cause the disorder that you
22 describe, correct?

23 THE WITNESS: It would be a contributor, among many,
24 and he tried in that expression to protect his children,
25 certainly as best as he could. I've been in Honduras and I've

SAMUEL - THE COURT

1 been in situations there which are discussed here, and I would
2 say it sounds like from the writing that the dad was trying to
3 protect the kids from that as best as he could.

4 THE COURT: Again, consistent with trying to protect
5 the emotional wellbeing of his child?

6 THE WITNESS: Right. So, we live in a lousy
7 neighborhood, don't go outside. Was that a gunshot, Dad?
8 It's okay, you're inside. Did I hear somebody yell? It's
9 okay, you're inside. So, you've got these two competing
10 stimulants, if you will, and I agree the dad is again
11 portrayed of being protective of his boy.

12 THE COURT: Maybe this is my own ignorance, but I
13 would think that if someone had suffered such emotional and
14 physical abuse by their parents at a young age sufficient to
15 justify a diagnosis of posttraumatic stress syndrome, that
16 they would continue to have a difficult relationship with
17 those same parents to the level of at least some level of
18 resentment, distrust, and even condemnation of their conduct.

19 THE WITNESS: It's well said. I think this is
20 getting to this bifurcation, if you will, black and white,
21 that I think he's, as with the victim here, he's got the
22 parents in the, quote, good side. Now that things have moved
23 forward, now they're good. But I can tell you they were not
24 good before. So, a symptom of health, the sign of health is
25 ambiguity, to understand the gray of things, and I think he

—SAMUEL — THE COURT—

1 thinks in black and white terms. So, you would expect a
2 person with a better formed personality or profile to say, I'm
3 really mad at them, but I'm trying to get along. It's yes or
4 no.

5 So, you would expect someone mistreated this way to say
6 I never want to see them again, I truly hate them as
7 individuals, but he can't tolerate that. It's got to be one
8 or the other. And in his position now, incarcerated, he's
9 looking for anything that's going to move, that will help him
10 in any way possible. So, he flips to, okay, I can call them,
11 they're all right. Well, they weren't that bad. And you can
12 say the same person, did they not do these bad things? Yes,
13 they did, but, you know, I think about them now in a very
14 positive way.

15 So, I don't think there's a contradiction. I think
16 it's how his mind organizes what happened to him. It's good
17 or bad. He's not able to tolerate the ambiguity. That's just
18 how he's formed.

19 THE COURT: Well, I just kind of have a difficulty
20 with that.

21 THE WITNESS: Okay.

22 THE COURT: Well, the report indicates that -- you've
23 read the report. He maintains a close relationship with his
24 parents and holds no grudges for the abuse he suffered as a
25 child.

SAMUEL - THE COURT

1 THE WITNESS: I read that. I find that -- I'm sorry,
2 go ahead.

3 THE COURT: So, how -- if this is based entirely on
4 self-reporting, how do you accept -- how do you distinguish
5 between those things that you self-report, that he
6 self-reports as believable to you and those things which are
7 not believable to you? Isn't it entirely possible that he's
8 accurately describing his current relationship with his
9 parents which actually is a sign of good mental health?

10 THE WITNESS: In this instance it could be. I think
11 it's how he perceives it to be, it's how he perceives the
12 reality to be. And in that discussion, he said yeah, I think
13 things were okay. But I would think that there's another part
14 of this story that's not being told that comes out when he
15 gets some help.

16 THE COURT: All right. Fair enough.

17 If one had suffered child abuse to the extent of having
18 the conditions that you describe, would it be reasonable to
19 assume that some outward manifestations, acting out of some
20 kind, personality distortions would occur during the time that
21 the abuse was happening?

22 THE WITNESS: It's possible and very likely,
23 particularly if you see kids who stay in school, he didn't,
24 but you see kids being thrown out of school, fighting. This
25 guy, there's a barrier around him in life. He's on this farm.

SAMUEL - THE COURT

1 He can't go. He has to stay there. But if the kid was in
2 school in a public forum, you'd see acting out.

3 What you see later, though, is he despises the notion
4 that I can't come to the United States because the United
5 States is a breast, that's where I'm going to get everything.

6 He keeps going back and back. That's an example of a person
7 who doesn't value those particular prescriptions, if you will.
8 So, you would see it in a kid. Where would it be? The kid
9 was in school. They would fight and get into trouble, so on.

10 You don't see that because he wasn't in school and I don't
11 have any school records.

12 And again, it's again how do people deal with these
13 sort of problems? So, not all kids who are treated this way
14 end up getting into fights. Some of them hurt themselves.
15 And he is an epitome of someone who is self-destructive. He
16 keeps coming back even though he knows he is going to get into
17 trouble. That's not what I think you and I would agree is a
18 normal kind of behavior. That's self-destructive.

19 THE COURT: Well, maybe not in school, but in his
20 relationship with his peers you might expect to see some
21 antisocial behavior of some kind, correct?

22 THE WITNESS: True, unless they were all antisocial,
23 and I don't know very much at all about his relationship with
24 his peers. What I really know is about his relationship with
25 the victim.

SAMUEL - THE COURT

1 THE COURT: Well, the reason I mention this, and
2 these letters are dated after your report, but I received a
3 series of letters from what appear to be childhood friends of
4 the defendant.

5 THE WITNESS: Um-hmm.

6 THE COURT: Including one from his mother, and they
7 are consistent in I think what may be important ways. And
8 I'll quote from some of them. This is from Mr. Cano. "I
9 studied with the defendant during our childhood. He never had
10 problems and was very polite and grew up in an honest and hard
11 working family. When he became a young man, he decided to go
12 to the United States to work. He did not leave because any
13 vices or problems."

14 Similarly, a letter says, "I state I personally know
15 Jose Cristino Amaya. I have observed his and his family's
16 good conduct since he was a child."

17 Similarly, from Mr. Yanes, "I have known Jose Cristino
18 Amaya since he was a child, that he grew up in this community,
19 that he was known as a hard working young man. He does not
20 have any prior criminal history and did not commit any crimes
21 until the day he left Honduras. I hope you consider my
22 testimony because this young man is known as a person of good
23 character."

24 His mother writes, "He studied at the same time as his
25 work. He behaved well, was dedicated to his work, was very

1 responsible in everything. He never had any problems while
2 here with anyone."

3 I can go on and on. There's others, these letters all
4 relaying someone who --

5 THE WITNESS: Glowing.

6 THE COURT: -- appears to be a young man, respected
7 in his community, loved by his family and those he played
8 soccer with and interacted in the community. That doesn't
9 sound to me to be consistent with someone who -- now, I
10 understand there are public lives, private lives, and secret
11 lives, and so when he went home and with his father alone,
12 perhaps, maybe, maybe not so much perhaps, perhaps he was the
13 subject of verbal abuse and corporal punishment and the kinds
14 of things that might be consistent with that community at that
15 time, but in these letters the suggestion is not made to me
16 that he had a troubled youth. It's quite the opposite.

17 THE WITNESS: Quite the opposite. Well, I would say
18 this, myself personally, since we're talking about it, and I
19 enjoy this, is that what is the probative value? If I say
20 something negative, I'm damned. If I say something positive,
21 I'm damned, because it will be unbelievable. And then what is
22 a person to say if you're a mom or a friend? Would you say
23 he's a scoundrel and comes from a hard scrabble life and he's
24 a no good this and that? Well, you wouldn't even show it to
25 the Court. So, what is a person to say? I guess they're

SAMUEL - THE COURT

1 supposed to say positive things. And if they don't say
2 positive things, well, then you're damned just as well, if you
3 will.

4 So, I understand the conflict you have, because on the
5 one hand he's got all these problems, and everybody has said
6 this is the best guy I've ever seen, he's terrific. To me
7 that's impossible. And if you don't have it, then you're in
8 bad shape, and if you do have it, you say, well, how can that
9 be true? That's a tough position to be in.

10 THE COURT: It is. But I can tell you that I've had
11 a brother testify at a sentencing for his -- for the defendant
12 and for the first time publicly acknowledged -- first time
13 acknowledged at all and, therefore, did it publicly, that he
14 had been sexually abused by his father, and people say things
15 in letters to me that are important, and I assume them to be
16 truthful.

17 Now, you're right, there is a bias towards saying good
18 things, and I agree with that. But I would just -- I would
19 just ask, I guess, a simple question: You did not review any
20 of these letters or see any of these letters in formulating
21 your opinion?

22 THE WITNESS: I did not. I didn't. I knew of them,
23 but I didn't see them and nor did I review them before today
24 nor before I wrote my report.

25 THE COURT: All right. And you would ask me to look

1 through the lens of we would expect them to say good things?

2 THE WITNESS: I give people who wrote the letters
3 credit, and I would look through that lens exactly. It's a
4 retrospective lens and I'm not doubting what they are saying
5 necessarily, but I would expect them to say good things.

6 There's a problem here that you have, it seems to me, if you
7 will, please, and that is, you've got some contradictions.

8 From me as a psychologist, how can you have these severe --
9 these are not just everyday run of the mill problems. These
10 are extremely significant. Where does such extreme pathology
11 come from? It does not come from mom and dad sitting around
12 the campfire or being in a house loving one another.

13 Violence begets violence. Hatred of children brings
14 out hatred in adults. It had to come from somewhere. And
15 that's what I'm left with. I'm left with a conundrum, if you
16 will, but there's no question the kind of behavior you are
17 seeing here is extreme. This is the kind of behavior I've
18 been studying in predatory sexual offenders, predatory
19 violence. I study the patterns. And to say that there's a
20 gray environment, everything is fine, and then to have this,
21 there's a disconnect in my mind.

22 THE COURT: All right. Thank you, Doctor.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: Before you -- I have asked some
25 questions. So, it would be appropriate for me to ask counsel

1 to each have an opportunity to follow up on mine. I apologize
2 for the back and forth, Doctor.

3 Mr. Richardson.

4 MR. RICHARDSON: Thank you, your Honor.

5 (RECROSS EXAMINATION OF DR. SAMUEL BY MR. RICHARDSON:)

6 Q. Doctor, I want to pick up right where you left off with
7 violence begetting violence and this is extreme conduct and
8 predatorial behavior. In your opinion, could the victim have
9 done anything differently to prevent the defendant's actions?
10 I mean, she said no. She called the police. She reported it.
11 She told him no. Is there anything that she could have done
12 to not wind up here today?

13 A. No.

14 MR. RICHARDSON: Thank you.

15 THE COURT: All right. Mr. Ongay?

16 MR. ONGAY: I don't have any questions.

17 THE COURT: All right. Doctor, you may step down.
18 Thank you, sir.

19 THE WITNESS: Thanks, Judge.

20 (Witness excused.)

21 THE COURT: All right. Mr. Ongay, how would you like
22 to proceed from here, sir?

23 MR. ONGAY: Your Honor, I would like to, at this
24 point, to offer the opportunity to my client to address the
25 Court.

1 THE COURT: Yes.

2 MR. ONGAY: And I assume he will do it from here.

3 THE COURT: Yes. Mr. Amaya, it's now the afternoon.

4 Good afternoon, sir.

5 THE DEFENDANT: Good afternoon.

6 THE COURT: I'm happy to hear anything you wish to
7 bring to my attention.

8 THE DEFENDANT: Thank you, your Honor. Thank you for
9 giving me the chance to address you today. I ask you to
10 permit me ask you to apologize -- for me to apologize for all
11 the harm, psychological and physical, I caused the victim, for
12 not having been a proper father to my family. I know that
13 these words will not remedy anything that I have caused, the
14 harm I have caused, but I hope that one day I might be
15 forgiven. That is all, that is all. Thank you.

16 THE COURT: All right. Sir, thank you.

17 All right. Mr. Ongay, anything else you wish to bring
18 to my attention?

19 MR. ONGAY: No, your Honor. I believe that
20 everything that needed to be presented to the Court has been
21 presented through the witnesses and through the memorandum. I
22 will not have anything to add of substance that I already did
23 not state in the memorandum, your Honor.

24 THE COURT: All right. And I don't want to -- I want
25 to make sure that I have acknowledged each of the arguments

1 you make in mitigation of sentence. I appreciate your
2 brevity. Your sentencing memorandum is always helpful to the
3 Court and I have read it. But you have made at least these
4 arguments and let me make sure that I have appreciated each
5 and every one of them.

6 One is that he will likely be deported after any term
7 of incarceration, and that represents a somewhat prolonged
8 period of detention. Correct? You ask the Court to consider
9 his upbringing, especially as it relates to the diagnosis of
10 Dr. Samuel. A long period of incarceration will render him --
11 he's already 33, I believe, and even at the recommended
12 sentence that you have proposed, he will be at the point where
13 certain statistics demonstrate that recidivism risk is lower
14 for those as they advance in age. You have asked me to
15 consider that there is a rate of recidivism for those
16 convicted of rape that is below the average for other violent
17 crimes.

18 You have asked me to consider the letters written on
19 his behalf, and I should acknowledge that the two most recent
20 ones were individuals who knew him also while living in the
21 United States. And I would say overall, you asked the
22 question, which is always appropriate to ask, indeed necessary
23 for me to consider under the statutory factors, is that to
24 impose a sentence that's sufficient but not greater than
25 necessary to advance the statutory factors, especially as it

1 relates to general and specific deterrence, and that is
2 perhaps more art than it is science. I appreciate your
3 arguments in that regard.

4 Are there any other particular things that you wish me
5 to take into consideration that I have failed to articulate
6 here?

7 MR. ONGAY: No, your Honor.

8 THE COURT: All right. Thank you, Mr. Ongay.

9 All right. Do I understand that there will be
10 testimony offered by the United States?

11 MR. RICHARDSON: Your Honor, I would need just a
12 minute or two. The victim is present in court. I have
13 explained her rights under the law that she can address the
14 Court and give a victim impact statement. There was a written
15 submission that was included in the presentence report. I
16 need to confirm with her for a moment to see if she would like
17 to address your Honor.

18 THE COURT: All right. I was going to suggest a
19 short break, perhaps a 10-minute break.

20 MR. RICHARDSON: Thank you, your Honor.

21 THE COURT: And then I will hear from the United
22 States.

23 MR. RICHARDSON: Thank you.

24 THE COURT: All right. Thank you all for your
25 patience. The record should reflect that the reason for the

1 two interpreters is that the victim in this matter has been
2 receiving simultaneous translation as well so that she is
3 aware of all the proceedings here. So, thank you for that.
4 This matter will be adjourned for 10 minutes while the United
5 States assesses how they wish to move forward.

6 MR. ONGAY: Your Honor, if I may, before the Court
7 leaves the bench.

8 THE COURT: Yes, Mr. Ongay.

9 MR. ONGAY: I would like to, if there is no problem,
10 me releasing Dr. Samuel. He has to take a plane.

11 THE COURT: Yes, I've had my opportunity to ask some
12 questions of him. Each side has. I see no reason for him to
13 stay here, unless somebody feels differently.

14 MR. RICHARDSON: I have no objection, your Honor.
15 Thank you.

16 THE COURT: All right, Mr. Ongay.

17 MR. ONGAY: Thank you, your Honor.

18 THE DEPUTY COURT CLERK: All rise.

19 (Recess at 12:13 p.m..)

20 (In open court at 12:27 p.m..)

21 THE DEPUTY COURT CLERK: All rise.

22 THE COURT: All right. Please be seated. Thank you.

23 All right. Mr. Richardson, how would you like to
24 proceed, sir?

25 MR. RICHARDSON: Thank you, your Honor. Thank you

1 for the opportunity. I have had an opportunity to discuss the
2 matter with the victim. She has elected not to address your
3 Honor, knowing that you received her victim impact statement
4 and request for restitution. So, therefore, I would just make
5 some argument on behalf of the government.

6 THE COURT: All right. I'll hear you now, sir.

7 Thank you.

8 MR. RICHARDSON: Mr. Ongay in his excellent
9 sentencing memo posed the question for the Court, which the
10 Court is aware, sufficient but not greater than necessary,
11 what is the sentence? How do you determine that? And I want
12 to highlight a few things that I discuss in my sentencing memo
13 to your Honor, but from a different lens.

14 Domestic violence happens behind closed doors. It is
15 usually one on one, his word versus her word, and when you
16 have an obsession like this, it's done through fear, coercion,
17 abuse.

18 This victim was strong. This victim stood up for
19 herself, stood up for herself when she had enough. And when
20 the defendant way back when threw the comb or the brush at
21 her, she called the police. She stood up. She said I will
22 not be victimized. And the defendant was deported. The
23 defendant was ordered removed from the United States because
24 he failed to appear before another judge who gave him the
25 opportunity to be heard. He didn't avail himself of that, and

1 he was removed from this country.

2 He was given a period of time that he was not allowed
3 to return, but yet he thumbed his nose at our laws and he came
4 back. And the obsession kicked in again. The obsession meant
5 I need the victim. She is mine. And Dr. Samuel I think put
6 that out there, that she was an object to him. She was his.

7 And they get to Kansas -- he gets back to Kansas City
8 and he rapes her on February 14th. Again, she stands up for
9 herself and she reports it. She goes to the police. And
10 unfortunately, the defendant wasn't arrested for that.

11 The pattern of behavior escalates. He, the defendant,
12 approaches her on the street in Kansas City, and he tries to
13 take her and their daughter. And at the time he punches her
14 in the face, you have a copy of that exhibit which was
15 attached during my sentencing memo, because nothing says I
16 love you like a good sock in the eye. And yet she was strong
17 enough and she reported it to the police.

18 He still couldn't take no for an answer. She moved and
19 she hid from -- her whereabouts from the defendant. When he
20 eventually finds her and where she was living in May of 2014,
21 he throws an object through her windshield, and you have a
22 picture of that, all escalating behavior of the harassment and
23 intimidation that this defendant engaged in over a period of
24 time.

25 I discussed the phone calls. One of the things I

1 failed to talk about in the chart that is provided as an
2 exhibit for your Honor, the defendant was smart. When she
3 stopped picking up his calls, her calls -- excuse me, when she
4 stopped picking up his calls, she started blocking his number
5 so that it would force her not to know who was picking up,
6 which means he knew she didn't want to talk to him and would
7 not pick it up any other way.

8 All of this came to a head Memorial Day weekend when
9 the victim had enough of the harassment, because the police
10 hadn't done anything. She had a temporary restraining order
11 that was never served by the authorities in Kansas City. So,
12 she decided to engage in a little self-help.

13 And what she thought, because she was smart, she
14 thought I will be okay if I make a meeting with the defendant
15 in a public place. Let him see his daughter, and I can pick
16 her up in a public place and be safe. But that didn't happen.
17 She was greeted by the defendant. He pulled a knife on her.
18 He tied her up with duct tape. He took her to an abandoned
19 house that had no electricity, no running water, holes in the
20 floors, and he proceeded to rape her. He raped her not once
21 but twice that night.

22 The next morning, they wake up. He has to go get some
23 money from his employer. He decides to duct tape her so she's
24 carrying their two-year-old daughter out of the house in duct
25 tape.

1 After the defendant picks up money from his employer
2 and while he was doing that, the victim, being smart, was able
3 to get her cell phone, and she texted a friend that she needed
4 help, and she was smart enough to delete those texts so the
5 defendant wouldn't see them.

6 They then left and started their journey across
7 country. They get to Ohio. He rapes her again. While
8 they're traveling, that friend, who I would note was an
9 undocumented person in the country, takes a chance and goes to
10 the police and says, something is wrong and I need help.

11 And there was a detective in Kansas City who realized
12 the pattern of behavior, the escalating violence, that this
13 was a real event, this was something serious and something bad
14 were going to happen if law enforcement did not intervene.
15 That detective was able to track the cell phone of the victim.
16 That tracking led to the police in Bellmawr locating the
17 victim's SUV here in New Jersey.

18 Police go up and knock on the door. While they are
19 knocking on the door, this defendant is raping the victim
20 again. He is smart enough to realize that he is in trouble.
21 He goes up through the drop ceiling, across to the adjacent
22 room, and out the door.

23 Police officers see him several hours later. They find
24 him in a wooded area up a tree. When he eventually comes down
25 and surrenders, he has the victim's keys to her SUV on his

1 person as well as two cell phones with the battery pulled out.
2 Cold and calculating. Inside the SUV was a bag of duct tape.
3 The same duct tape that he used to tie her up in Kansas City
4 traveled with them all the way here.

5 There is nothing about the defendant's prior history
6 that the Court is aware of that would indicate he is going to
7 stop, that he is going to follow the law. He came into the
8 country, had an opportunity to see a judge and plead his case
9 on why he should stay, he didn't do it. He was deported after
10 being convicted. He still came back. He rapes and abuses the
11 victim, he traumatized their daughter by raping the victim in
12 front of the daughter in an abandoned house, and here we are.

13 Dr. Samuel I thought testified truthfully and
14 accurately about the daughter being traumatized and about the
15 fact that violence begets violence and predatory behavior.
16 Because the defendant manipulated and controlled and abused
17 this victim, a sentence at the top end of the guideline range
18 is what this case calls out for.

19 And Mr. Ongay posits about punishment, and I understand
20 his position and why he would say that, but there is a level
21 of punishment that is also required to keep this victim safe,
22 and Dr. Samuel unfortunately said this defendant learned this
23 behavior, it's imprinted on his personality, he is not going
24 to change, and so to make -- to keep the victim safe, this
25 defendant needs to be incapacitated as long as possible.

1 One of the reasons that Mr. Ongay posits for a
2 reduction in his sentence, and I understand it in certain
3 circumstances but not in this one, is the deportation. This
4 defendant has shown that he will continually come back, and if
5 the victim remains the object of his obsession, then she will
6 always have to look over her shoulder if and when he gets out
7 of prison.

8 Your Honor, I would also ask for supervised release as
9 a further deterrent, and I understand the circuit disfavors
10 supervised release in cases with people who will get
11 ultimately deported, but in this case it's warranted. If he
12 is back in the country and if he is found in the country, and
13 having been on this Court's supervision, and if he approaches
14 the victim, that we will have a mechanism to incapacitate him
15 further.

16 I would also order as part of that supervision that the
17 defendant be refrained from contacting the victim, having no
18 communication directly or indirectly, and if he does, that
19 would be a violation of any type of supervised release.

20 I would further ask for the \$6,100 in restitution to
21 the victim for the damage that he inflicted, along with the
22 five years of supervised release, your Honor.

23 THE COURT: All right.

24 MR. RICHARDSON: Thank you.

25 THE COURT: Thank you, Mr. Richardson.

1 Mr. Ongay, a final word?

2 MR. ONGAY: Yes, your Honor, very briefly. There is
3 no question that the events in this case are unbelievably
4 tragic and that the person who paid and endured was the
5 victim. However, I stand by my recommendation to the Court.
6 There is a question as to how much is sufficient to accomplish
7 those goals set out in 3553(a).

8 I also submit that the testimony of Dr. Samuel was
9 quite credible. He did not mince words. He did not try to
10 somehow make my client's behavior more acceptable or less
11 offensive, and the remarks he talked about and that my
12 colleague just quoted, he did say that. However, he was also
13 equally clear and without hesitation that in his opinion,
14 there were factors that, based on my client's childhood,
15 contributed to his conduct, and he was also clear that he
16 could be treated and that he could be -- that the chances, to
17 quote his language, actually the risk for further unlawful
18 conduct will be reduced. That's the language he used in his
19 report. And he did not hesitate on that when questioned by
20 the government or when questioned by me or by the Court.

21 So, while Dr. Samuel, the government is correct in
22 considering Dr. Samuel's testimony, the Court should consider
23 the totality of Dr. Samuel's testimony, and I submit that the
24 sentence I recommended, in light of the totality of the
25 circumstances and my client's current status, in particular,

1 psychological status, is appropriate. I don't have anything
2 else.

3 THE COURT: Mr. Ongay, if I could just address you on
4 that one point, because I've been struggling with that a
5 little bit. Dr. Samuel's conclusion is clear. It was the
6 focus of your last question. I think it is appropriate for
7 the Court to consider his opinion that the defendant suffers
8 from a substantial diagnosed personality disorder associated
9 with obsession or obsessive behavior.

10 Supervised release, the government has asked me to
11 impose it, but in an ordinary course of supervised release,
12 one could impose special conditions of mental health treatment
13 and the Court would be -- it would be appropriate for the
14 Court to consider a variance in his sentence coupled with a
15 period of intensive supervision under the theory that the risk
16 of recidivism or a risk of the repeat of similar conduct could
17 be minimized or reduced through comprehensive mental health
18 treatment.

19 That doesn't appear to me to be a real option in this
20 case. He will not be under the -- it is very likely that he
21 would be deported at the end of any term of supervision, and
22 there's no mechanism by which this Court could ensure or put
23 in place mental health treatment post-incarceration as I might
24 be able to do for someone who was not here illegally.

25 And so it seems to me that of greater concern to this

1 Court would be the issue of what period of time, in the
2 absence of such treatment, which I have no guarantee will
3 occur, would be appropriate to incapacitate the defendant who,
4 in the absence of such treatment, represents a substantial and
5 continuing risk to this victim and others?

6 If anything, if he receives mental health treatment
7 while incarcerated, and that treatment takes some time, it
8 would suggest perhaps even a longer period of incarceration.
9 I'm not sure how, even if I accept what Dr. Samuel says, that
10 should inform my judgment about a variance.

11 MR. ONGAY: Well, your Honor, this may be ignorance
12 on my part, but I was under the impression that the Bureau of
13 Prisons, for example, in FCI Butner, has facilities that they
14 provide plenty of services. I have had clients that have to
15 have -- have gone down to Butner to see them that have been
16 treated at the pretrial stage for mental illness.

17 THE COURT: So, if he receives mental health
18 treatment while incarcerated --

19 MR. ONGAY: That is correct.

20 THE COURT: -- and it is effective, it may ultimately
21 reduce the risk of recidivism through the -- that, in the view
22 of Dr. Samuel, was at least in part some cause of the crimes
23 in this case.

24 MR. ONGAY: That is precisely the point, your Honor.

25 THE COURT: All right.

1 MR. ONGAY: So, my request would have been, which I
2 didn't really make it, but it would have been, it is that as
3 part of the sentence, the Court requires the defendant to be
4 evaluated. Obviously, the Bureau of Prisons is not going to
5 accept Dr. Samuel's diagnosis, but at the very least be
6 evaluated and be directed to follow the advice -- the
7 defendant be required to participate in the treatment
8 determined that is necessary in this case.

9 THE COURT: All right. Any objection to that, the
10 Court making that recommendation, Mr. Richardson?

11 MR. RICHARDSON: No, your Honor.

12 THE COURT: All right. Anything else from the United
13 States?

14 MR. RICHARDSON: No, your Honor.

15 THE COURT: Anything else from the defense?

16 MR. ONGAY: No, your Honor.

17 THE COURT: All right. Thank you both. I am going
18 to take a short recess to consult with Probation on the final
19 language and to contemplate the arguments of counsel and the
20 submissions. I appreciate your patience for just a little bit
21 longer.

22 THE DEPUTY COURT CLERK: All rise.

23 (Recess at 12:45 p.m..)

24 (In open court at 12:51 p.m..)

25 THE DEPUTY COURT CLERK: All rise.

1 THE COURT: All right. Thank you. Please be seated.

2 It is now the task of this Court to impose a sentence
3 that's sufficient but not greater than necessary to advance
4 certain statutory goals that Congress has set forth in 18,
5 United States Code, Section 3553.

6 In determining the appropriate sentence, again, one
7 that's sufficient but not greater than necessary, the Court
8 should impose a sentence that reflects the seriousness of the
9 offense; that promotes respect for the law and provides just
10 punishment; that affords adequate deterrence to criminal
11 conduct, which I take as an articulation of the longstanding
12 goal of the criminal law to deter others, general deterrence;
13 to protect the public from further crimes of the defendant, an
14 articulation of the general concept of specific deterrence,
15 that is, a sentence, as we have mentioned here, that would be
16 sufficient and appropriate to incapacitate the defendant and
17 also to act as specific deterrence to any future criminal
18 conduct; and, as is applicable in this case, to consider a
19 sentence that provides the defendant with needed educational
20 or vocational training, medical care or other correctional
21 treatment in the most effective manner.

22 In assessing these statutory goals, the Court should
23 consider the nature and circumstances of the offense, and the
24 history and characteristics of the defendant, the kinds of
25 sentences made available for the counts of conviction, the

1 advisory sentencing guidelines, the policy statements that
2 accompany them, both of which I am free to disregard if I find
3 them lacking in empirical data or rational support.

4 I am to impose a sentence that avoids unwarranted
5 sentencing disparity among defendants with similar records
6 found guilty of similar conduct, relevant here in light of the
7 defense argument relating to the recidivism rate for those
8 accused of rape. And the need to provide restitution to any
9 victims of the offense, and here there is a request for
10 restitution which is documented in the presentence report and
11 amounts to a loss of property and income during the time of
12 the traumatic victimization of the adult victim in this
13 matter.

14 I start, because I think it is appropriate in this
15 case -- well, let me articulate again the reasons that have
16 been argued in mitigation of sentence, although I will return
17 to this a little bit in addressing the opinion of Dr. Samuel.
18 It is the case, in cases of this kind, that a defendant who
19 has been here illegally, that it is the case in all likelihood
20 that the defendant will be subject, after the term of the
21 incarceration this Court will impose, subject to detention,
22 deportation, and removal, and that the detention portion of
23 that will have the effect of lengthening the period of time of
24 the defendant's incarceration. It's something that I have in
25 the past taken into consideration and will take to some extent

1 into consideration here.

2 I'm asked to consider the defendant's age now and the
3 age upon the release of any sentence the Court might impose.

4 Statistics do demonstrate that recidivism risk decreases with
5 the age of the defendant. As I mentioned, I am asked to
6 consider the recidivism rates for those convicted of rape.
7 Here we have a combination of kidnapping and interstate
8 domestic violence and offense conduct that includes rape.

9 I am asked to consider the letters that were submitted
10 and the opinion of Dr. Samuel, which relates to his
11 professional view that the defendant suffers from psychiatric
12 maladies which are amenable to treatment and rehabilitation,
13 which he views or asks the Court to consider should be a
14 factor in assessing risk of recidivism. I have considered and
15 will consider all of those arguments here today, including Dr.
16 Samuel's opinion.

17 On the other side of the ledger, if you will, I want to
18 first speak to the nature and circumstances of the offense.
19 And to some extent this relates to the statutory factor of the
20 seriousness of the offense, and there are a couple of things
21 here. One is the recitation of the abuse suffered by the
22 adult victim and the child victim in this matter, which is,
23 any particular incident would be in and of itself horrendous,
24 even more pronounced here because of its occurring over a
25 substantial period of time and involving a wide range of

1 physical and emotional abuse and violence, at times escalating
2 and ultimately escalating into the crimes which brings the
3 defendant before me. And let me try to articulate that in
4 different terms.

5 This is a -- let me focus first on the physical and
6 mental abuse. It really ranges across the whole gamut and
7 range of despicable violent conduct. We have choking of the
8 victim. We have the use of, as was mentioned, fists, hair
9 pulling, the use of weapons of various kinds. There is at
10 times a gun that was displayed, a knife, knives, multiple
11 knives. There was the one seized at the arrest, the others
12 involving other uses of a knife to threaten both during the
13 kidnapping and in earlier domestic violence events. You have
14 the use of restraints. You have not only the threat of the
15 use of a knife but the actual use of a knife during the
16 three-day horrific trip across the United States, a stabbing
17 of the victim's, adult victim's thigh.

18 And then you have the sexual abuse, which not only
19 occurred over a period of years, over time, but involved
20 physical pain and, as was mentioned on at least two occasions
21 that I can think of, multiple rapes within a short period of
22 time, that is, on the same morning or evening. And the
23 description of these events are painful to hear and not to
24 describe how painful they must have been to endure. As was
25 mentioned, this involved attempts at resisting, physical, by

1 word and deed, and that resistance overcome.

2 So, we have here physical violence of the worst kind,
3 and physical violence that the existence of which I think made
4 much more credible another aspect of this, and this was the
5 verbal abuse, the threatening, the acts of threats which
6 occurred over the course of time. And these are threats not
7 only to the victim, adult victim, but verbal and threatened
8 abuse to the adult victim's other children in another country
9 sufficient enough or concerning enough, in light of the
10 defendant's ties back to Honduras, to cause the adult victim
11 to cancel a party that was scheduled for those children.

12 There was a threat to harm the child they share
13 together, most particularly in the three-day events arising
14 out of the kidnapping. These threats to children, whatever
15 obsession the defendant may have had with the adult victim,
16 it's hard to understand and reconcile his use of threats to
17 children to coerce conduct or loyalty that he apparently
18 craved.

19 So, this violence continued over a substantial period
20 of time, involved any number of different versions of it, and
21 escalated to the point of using weapons and restraints to
22 forcibly remove the victim from her home where she lived, take
23 her car, and drive her against her will across the country.
24 And accompanied with this, again, these threats of violence
25 are credible because she suffered herself violence and

1 stalking behavior and damage to her property and physical
2 restraints. It would be irrational not to believe that those
3 threats were credible and represented a real threat of
4 ultimate harm to herself or others. She had experienced it
5 herself and would have believed those threats to be credible.
6 That makes this level of terror that much more pronounced.

7 The defendant fled from the police when confronted, and
8 at other times fled when there were incidents of domestic
9 violence involving the adult victim, and just the mere
10 transportation across the country, as Dr. Samuel recognized in
11 and of itself would have represented psychological abuse and
12 the risk of physical abuse or harm to the defendant's own
13 daughter.

14 He also demonstrates a lack of respect for the law. He
15 has been deported twice and is here, despite those orders, and
16 none of the other actions taken by the adult victim here had
17 the effect of deterring his conduct. He was not deterred by
18 reports to the police. He was not deterred by the
19 deportation, his arrest and deportation by local authorities
20 in Missouri. He was not deterred by a restraining order that
21 was obtained. In my view, the nature and the circumstances of
22 the offense here suggest to me that a lengthy period of
23 incarceration is necessary to protect the public from this
24 particular defendant.

25 Now, I would be remiss if I did not consider his

1 history and characteristics to the extent that they suggest
2 that he may be subject to rehabilitation. Dr. Samuel believes
3 that. Others have written on his behalf, and I credit what
4 they have said in their letters to me. And that there have
5 been at times, certainly at the time that the child was born
6 and thereafter, that he demonstrated some ability to not
7 engage in illegal abusive conduct. My view of that is that
8 that should be assessed by this Court in imposing a sentence
9 slightly below what the guidelines might -- what the other
10 factors might otherwise suggest.

11 So, I believe that through some rehabilitation within
12 the Bureau of Prisons, that the risk of recidivism may be
13 reduced in some respects, and that to the extent that he's
14 demonstrated good conduct and good behavior in the past and is
15 capable of it, that he may one day recognize how horrible his
16 conduct has been, how serious it has been, and indeed how much
17 harm he has caused to his daughter and her mother.

18 Mr. Amaya offered his regrets and apologies, in part to
19 the Court and others, and ultimately offered it to the victim.
20 I hope in ways that I can't adequately describe that there's
21 some truth to that. If he owes apologies to anyone, it's to
22 her, to the victim, the adult victim, and their child.

23 There's certainly an element of general deterrence
24 here. This conduct, as I have described it, is so horrendous,
25 so despicable, so contrary to proper conduct within a

1 civilized society, that others viewing this sentence should
2 recognize that if you violently attack someone who has had a
3 domestic relationship with you in the past and drag them
4 across several states under the threat of violence, that there
5 will be a substantial price to pay for that.

6 In terms of medical care or other correctional
7 treatment, I will make a recommendation of an evaluation by
8 the Bureau of Prisons and, if appropriate, treatment within
9 the Bureau of Prisons system. I have slightly, I will
10 slightly vary down from the maximum guideline range in
11 recognition of the potential for rehabilitation in light of
12 the defendant's age, the risk of recidivism attached to
13 offenses of this kind, and the prospect of additional
14 detention while awaiting deportation. My primary focus here,
15 however, is to impose a sentence that reflects the seriousness
16 of the offense and that provides just punishment for what I
17 think even the defendant would acknowledge is a horrible
18 crime, series of crimes over the course in time.

19 I also must acknowledge and recognize here the
20 statement of the victim, the adult victim in this case who,
21 even through a translation, I think articulated what the Court
22 considers the most effective, the most important factor in
23 imposing this sentence, and I won't repeat everything that she
24 wrote. It's in the presentence report. The parties are aware
25 of it. My repeating it may only have the unintended effect of

1 reminding her more of what she's gone through, but I'll end
2 with the conclusion that she offered to me and to us.

3 "With gratitude for the time you take to read my letter
4 and the time you have taken to handle this case up to its
5 culmination with a considerable sentence, I as a victim demand
6 justice because the defendant, Jose C. Amaya-Vasquez, is not a
7 person who can be trusted to live in the midst of society. In
8 the interest of justice and the safety of our community and
9 especially my safety and that of my family, I ask that justice
10 be done."

11 And I view that as sincere and important for me to take
12 into consideration here in that I believe the risk of
13 recidivism here is especially high and there is indeed a need
14 to recognize the seriousness of this offense, to protect the
15 community, and protect the victims in this matter by imposing
16 a lengthy period of incarceration. For that reason, I intend
17 to impose a sentence of 288 months. To the extent I chose not
18 to impose a sentence higher, it's because of the reasons that
19 were articulated previously on the record in mitigation of
20 sentence. I will impose a sentence that includes supervised
21 release of five years, restitution of \$6,100, and in light of
22 the three counts of conviction, a special assessment of \$300.

23 Let me ask the United States whether they know of any
24 legal reason why I can't impose the sentence I have described?

25 MR. RICHARDSON: No, I know of no legal reason, your

1 Honor.

2 THE COURT: Mr. Ongay?

3 MR. ONGAY: No, your Honor, no legal reason.

4 THE COURT: All right. Mr. Amaya, I ask that you
5 please rise, sir.

6 Pursuant to the Sentencing Reform Act of 1984, it is
7 the judgment of this Court that you, Jose Amaya-Vasquez, are
8 hereby committed to the custody of the Bureau of Prisons to be
9 imprisoned for a term of 288 months on count 1, and terms of
10 120 months on each of counts 2 and 4, all to be served
11 concurrently.

12 Upon release from imprisonment, you will be placed on
13 supervised release for a term of five years. This term
14 consists of a term of five years on count 1 and terms of three
15 years on each of counts 2 and 4, all such terms to run
16 concurrently.

17 Within 72 hours of release from custody, you must
18 report in person to the Probation Office in the district to
19 which you are released.

20 While on supervised release, you must not commit
21 another federal, state or local crime, must not possess a
22 firearm or other dangerous device, must not possess an illegal
23 controlled substance, and must comply with the other mandatory
24 and standard conditions that have been adopted by this Court.

25 You must submit to one drug test within 15 days of

1 commencement of supervision, and at least two tests thereafter
2 as determined by the probation officer.

3 I intend to impose certain special conditions as a
4 condition of your supervision. In imposing these special
5 conditions, I have considered the 3553(a) factors and find
6 that these conditions involve no greater deprivation of
7 liberty than is reasonably necessary is to advance those
8 statutory goals.

9 In particular, I will impose the following special
10 conditions: Mental health treatment. You must undergo
11 treatment in a mental health program approved by the U.S.
12 Probation Office until discharged by the Court and, as
13 necessary, said treatment may also encompass treatment for
14 gambling, domestic violence, anger management, or sex offense
15 specific treatment, as approved by the U.S. Probation Office
16 until discharged by the Court. The Probation Office will
17 supervise your compliance with this condition. I will make a
18 recommendation at the end consistent with that special
19 condition.

20 Second, you must refrain from the illegal possession
21 and use of drugs, including prescription medication not
22 prescribed in your name, and the use of alcohol, and must
23 submit to urinalysis or other forms of testing to ensure
24 compliance.

25 It is further ordered that you must submit to

1 evaluation and treatment on an outpatient or inpatient basis
2 as approved by the U.S. Probation Office. You must abide by
3 the rules of any program and must remain in treatment until
4 satisfactorily discharged by the Court. You must alert all
5 medical professionals of any prior substance abuse history,
6 including any prior history of prescription drug abuse. And
7 the U.S. Probation Office will supervise your compliance with
8 this condition. I note that there are recitations,
9 self-reporting in the presentence report for prior use of
10 controlled substances.

11 You are prohibited from incurring any new credit
12 charges, opening additional lines of credit, or incurring any
13 new monetary loan, obligation or debt by whatever name known
14 without the approval of the U.S. Probation Office. You must
15 not encumber or liquidate interest in any assets unless it is
16 in direct service of the special assessment and restitution
17 obligation and otherwise has the express approval of the
18 Court.

19 Upon request, you must provide the U.S. Probation
20 Office with full disclosure of your financial records,
21 including commingled income, expenses, assets and liabilities,
22 to include yearly tax returns. With the exception of the
23 financial accounts reported and noted within the presentence
24 report, you are prohibited from maintaining or opening any
25 additional individual or joint checking, savings or other

1 financial accounts for either business or personal purposes
2 without the knowledge and approval of the U.S. Probation
3 Office.

4 You must cooperate with the U.S. Probation Office in
5 the investigation of your financial dealings and must provide
6 truthful monthly statements of your income. You must
7 cooperate in the signing of any authorization to release
8 information forms permitting the U.S. Probation Office access
9 to your financial records.

10 You must comply with instructions from Immigration and
11 Customs Enforcement to resolve any problems with your status
12 in the United States. You must provide truthful information
13 and abide by the rules and regulations of Immigration and
14 Customs Enforcement. You must seek proper documentation from
15 U.S. Immigration and Customs Enforcement authorizing you to
16 work in the United States.

17 If deported, you must not re-enter the United States
18 without the written permission of the secretary of the United
19 States Department of Homeland Security. If you enter the
20 United States, you must report in person to the nearest U.S.
21 Probation Office within 48 hours.

22 The United States has asked and I will impose a special
23 condition that the defendant not have any contact with the
24 victims, the two victims in this matter, the adult and
25 juvenile victim, unless such contact has been pre-approved by

1 all relevant authorities. I do not have that particular
2 language here before me, Mr. Richardson. Can I ask you to
3 prepare such language or consult with Probation about that
4 language? Run it by Mr. Ongay to make sure he believes that
5 it's not objectionable from a legal perspective on his end,
6 and I will include it in the judgment.

7 MR. RICHARDSON: Yes, your Honor.

8 THE COURT: Similarly, if you are court ordered, Mr.
9 Amaya, to make child support payments or to make payments in
10 support of a person caring for a child, you must make those
11 payments and comply with the other terms of the order.

12 It is further ordered that the defendant pay
13 restitution in the amount of \$6,100. Payments should be made
14 payable to the United States Treasury and forwarded to the
15 Clerk of the Court in Trenton, New Jersey, for distribution to
16 the adult victim here, who I will refer to by initials MSD.
17 This restitution is due immediately.

18 It's recommended that the defendant participate in the
19 Bureau of Prisons Inmate Financial Responsibility Program. If
20 you participate in that program, the restitution will be paid
21 from those funds at a rate equivalent to \$25 every three
22 months. In the event the entire restitution is not paid prior
23 to the commencement of supervision, you must satisfy the
24 amount due in monthly installments of no less than \$200 to
25 commence 30 days after release from confinement.

1 You must notify the United States Attorney for this
2 district within 30 days of any change in mailing or residence
3 address that occurs while any portion of the restitution
4 remains unpaid.

5 In light of the defendant's work history, income level,
6 and the amount of restitution I have imposed, it would seem
7 counterproductive to impose a fine. I will, therefore, waive
8 a fine in this case. Any income the defendant has or has
9 available or assets available to him should be paid first to
10 the victim in the amount of the restitution I have ordered.

11 It is, however, ordered that the defendant pay the
12 United States a total special assessment of \$300 which is due
13 immediately.

14 I wish to advise you, sir, of your right to appeal your
15 conviction and the sentence in this matter pursuant to 18,
16 United States Code, Section 3742, subject to any preexisting
17 appellate waiver that may limit that right. If you are unable
18 to pay the cost of filing a notice of appeal, you may request
19 the Clerk of the Court to file a notice of appeal on your
20 behalf, and it must be done within 14 days.

21 Is there any request for forfeiture in this matter, Mr.
22 Richardson?

23 MR. RICHARDSON: No, your Honor.

24 THE COURT: All right. No forfeiture will be
25 ordered.

1 Mr. Ongay has made a request, the United States has not
2 objected, in light of Dr. Samuel's evaluation, which the
3 Bureau of Prisons will receive and consider as part of its own
4 evaluation, I am going to recommend that the Bureau of Prisons
5 evaluate the defendant's mental health and determine what
6 mental health services, treatment, programs, and other mental
7 rehabilitation services may be available within the Bureau of
8 Prisons, including any specialized facilities such as
9 Rochester, Minnesota, or Butner, or others, to determine
10 whether or not, in the view of the Bureau of Prisons, a matter
11 I leave to their discretion under the law, he should receive
12 psychological treatment and counseling.

13 That's a recommendation, Mr. Amaya. This Court has no
14 determination over what the Bureau of Prisons ultimately
15 decides should be the place of serving your sentence and what
16 programs may be available to you given all of the relevant
17 circumstances.

18 All right. I'll look for the language about
19 restraining the defendant from any contact with the victims in
20 this matter while on a period of supervised release. The
21 United States would move to dismiss count 3?

22 MR. RICHARDSON: Yes, your Honor.

23 THE COURT: No objection, I assume, Mr. Ongay?

24 MR. ONGAY: No, your Honor.

25 THE COURT: Is there anything else the United States

1 asks me to do or to consider at this time?

2 MR. RICHARDSON: One observation, one question. The
3 question is, did you waive interest on the restitution amount,
4 or was that your plan or not?

5 THE COURT: I would be inclined, to the extent the
6 law allows for interest for restitution, I would not waive it
7 in this case. Mr. Ongay, do you wish to be heard on that?

8 MR. ONGAY: No, your Honor.

9 THE COURT: All right. The judgment will reflect
10 that that will, to the extent the law allows for the
11 computation, calculation and addition of interest to the
12 restitution amount, it should be applied while any outstanding
13 amount of the restitution is still due.

14 MR. RICHARDSON: Thank you, your Honor. And your
15 finding, specifically due to the violent nature and to protect
16 the victim, that supervised release is required in this case?

17 THE COURT: Yes, I make that finding. As you have
18 noted, the Third Circuit has discouraged supervised release or
19 questioned its applicability. In this case, Mr. Amaya has
20 demonstrated both his willingness and ability to cross the
21 border, and at least the second entry into the United States
22 resulted in him seeking out the adult victim in this case as
23 well as the juvenile victim for the purposes of attempting to
24 establish a relationship which, under the orders of this
25 Court, will be prohibited unless approved by an appropriate

1 authority.

2 The risk here of attempts to contact the victims here
3 is substantial, real and meaningful, and to the extent that
4 this Court's imposition of supervised release will act as a
5 deterrent and/or a mechanism for an appropriate remedy, I
6 believe it is appropriate under these circumstances.

7 Anything else in that regard?

8 MR. RICHARDSON: One other issue, your Honor. The no
9 contact provision I will work with Mr. Ongay. Because, to my
10 knowledge, the defendant's parental rights have not been
11 terminated, I'm not sure whether you can order him to have no
12 contact with the minor victim. I would just work with Mr.
13 Ongay to say that any contact would have to be done through
14 the appropriate authorities, whatever Family Court would be.

15 THE COURT: And I tried to articulate that, and if I
16 failed to do so clearly enough, I apologize. There are two
17 things that I think Mr. Amaya needs to understand and should
18 be contemplated within this. One is that any order this Court
19 enters that's appropriate barring his contact with any other
20 individuals does not supersede any orders imposed by other
21 courts, but it should be so limited as to not bar, absent some
22 other reason, which I can't articulate now, what would
23 otherwise be lawful conduct approved by a court of competent
24 jurisdiction. So, my orders would be, it doesn't supersede
25 any other lawful orders by any court issued by any other

1 sovereign, is in addition to those, but is not intended to be
2 any broader than those imposed by those courts of competent
3 jurisdiction. I hope that's clear.

4 MR. RICHARDSON: Thank you, your Honor.

5 MR. ONGAY: That is fine.

6 THE COURT: All right. Anything else from the United
7 States?

8 MR. RICHARDSON: I believe that covers it, your
9 Honor. Thank you.

10 THE COURT: Mr. Ongay?

11 MR. ONGAY: Your Honor, just a recommendation that he
12 be incarcerated, he has most of his relatives are in Missouri,
13 in Kansas City, so a prison near that area, he has requested
14 the Court to consider recommending.

15 THE COURT: All right. My only question is how
16 should that -- what's the interplay between that and any
17 psychological evaluation. If he is deemed suitable for
18 treatment, it may not be available in a facility near Kansas
19 City.

20 MR. ONGAY: That should take precedence, the
21 treatment.

22 THE COURT: All right.

23 MR. ONGAY: In the order.

24 THE COURT: So, perhaps the language should be
25 drafted in a way that suggests that he should receive any --

1 that he should be designated to a facility that has the
2 treatment facilities appropriate for him that's nearest to his
3 home address.

4 MR. ONGAY: That is fine, Judge.

5 THE COURT: So, if they determine that he needs no
6 specialized services, then he would go potentially to the
7 Kansas City area. Any objection to that?

8 MR. RICHARDSON: With the caveat that the defendant
9 doesn't reach out and try and contact the victim either
10 directly or indirectly while he's incarcerated. That is our
11 concern. He shows a penchant for reaching out for her, and I
12 don't want him to think he gets back to the Kansas City area
13 and that's all of a sudden license to start harassing her.

14 MR. ONGAY: I believe the Court's order already
15 addressed that issue.

16 THE COURT: There would be a separate provision in
17 the terms of supervised release that would bar contact.

18 MR. ONGAY: I don't have an objection, because I had
19 discussed this with my client, and he will not object to
20 language that he cannot have contact with the victim while
21 incarcerated.

22 THE COURT: All right. Well, the issue is whether or
23 not being in that area would facilitate efforts to contact the
24 victim indirectly through acquaintances, friends and family
25 members. I would not want to facilitate that inadvertently.

1 Normally, normally it's my practice to make a
2 recommendation of a facility near the defendant's home address
3 because that may facilitate rehabilitation, allow for family
4 contacts, which are positive for both the family members and
5 for the defendant, and help in re-entry and other important
6 issues.

7 In this case I don't have any similar -- there are two
8 letters from people who know him there, but I don't have the
9 same level of confidence that within that area are
10 relationships so profoundly positive that they outweigh the
11 risk that being at that facility might actually be
12 counterproductive.

13 So, I am not going to make a recommendation in this
14 case and I am going to leave it to the Bureau of Prisons. I
15 made a recommendation about mental health. It seems to me
16 that that was part and parcel of the presentation here. It
17 would be consistent with Dr. Samuel's diagnosis. I think that
18 where he serves his sentence after that mental health
19 evaluation ought to be left in this case to the sound
20 discretion of the Bureau of Prisons.

21 I would say, Mr. Ongay, that I appreciate the
22 recommendation. I decline within my discretion to make that
23 under the circumstances of this case.

24 MR. ONGAY: Understood, your Honor.

25 THE COURT: All right. Anything else from the United

1 States?

2 MR. RICHARDSON: No, your Honor. Thank you.

3 THE COURT: Anything else, Mr. Ongay?

4 MR. ONGAY: No, your Honor.

5 THE COURT: All right. This matter is concluded. I
6 will look for the additional language. The judgment of
7 conviction will be entered in short order. I will delay the
8 entry of that while I await the additional language regarding
9 restraints on contacts with victims. Thank you all for your
10 patience and thoughtful consideration of the important issues
11 here.

12 Mr. Amaya, you will have a substantial period of time
13 to reflect on your conduct. To the extent that it's a product
14 of things that have happened in your past, I hope you will
15 address that through appropriate medical professionals so that
16 you will have the ability to think long and hard about what
17 happened here and that you will make every effort to make the
18 changes in your own life that will make sure that those who
19 you encounter are safe and are treated with the same respect
20 and dignity that you are entitled to. I wish you good luck in
21 the future.

22 This matter is concluded. I wish you all a good rest
23 of the day.

24 THE DEFENDANT: Thank you.

25 THE DEPUTY COURT CLERK: All rise.

1 (Proceedings concluded at 1:31 p.m..)

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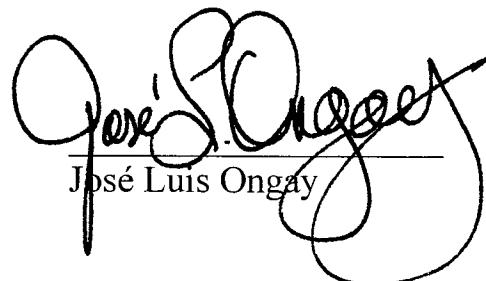
CERTIFICATE OF SERVICE

Service on the Assistant United States Attorney

I, José Luis Ongay, hereby certify that two copies of the Appendix for the Brief of the Appellant has been served upon Assistant United States Attorney Mark E. Coyne at 970 Broad Street, Suite 700, Newark, N.J. 07101.

Service on Mr. José Amaya-Vasquez

I also certify that I served Mr. José Amaya-Vasquez, 42949-380 a copy of the Appendix for the Brief of the Appellant via first class mail to Jose Amaya-Vasquez, Berlin, Federal Correctional Institution, P.O. Box 9000, Berlin, N.H. 03570.



A handwritten signature in black ink, appearing to read "José Luis Ongay". Below the signature, the name "José Luis Ongay" is printed in a smaller, standard font.

Date: August 3, 2018