

No. _____

In the Supreme Court of the United States

JUAN CARLOS CASTELLANOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals for the Eighth Circuit

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 19-1219

United States of America

Plaintiff - Appellee

v.

Juan Carlos Castellanos Muratella

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: January 17, 2020

Filed: April 15, 2020

Before BENTON, GRASZ, and STRAS, Circuit Judges.

GRASZ, Circuit Judge.

Juan Carlos Castellanos Muratella (“Castellanos”) was convicted of participating in a methamphetamine-distribution conspiracy. Castellanos had previously been convicted of two felony drug crimes under Iowa Code section

124.401. The district court¹ determined these two offenses were career-offender predicate offenses and accordingly designated Castellanos as a career offender under United States Sentencing Guidelines (“Guidelines” or “U.S.S.G.”) § 4B1.1. This increased his recommended sentence from 130–162 months to 262–327 months. Castellanos appeals the district court’s career-offender designation. In addition, he argues the sentence was unreasonable because the district court did not adequately consider his long-term substance abuse problem. We affirm.

I. Background

Castellanos pled guilty to conspiracy to distribute methamphetamine under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846 after selling over fifty grams of methamphetamine to undercover officers in Marshalltown, Iowa. The presentence report explained that Castellanos had been convicted of violating Iowa Code section 124.401 — a felony drug crime — on two prior occasions. The district court counted Castellanos’s prior Iowa convictions as controlled-substance offenses under U.S.S.G. § 4B1.1. As such, Castellanos — now convicted of a federal controlled substance offense — qualified as a career offender.

Without the career-offender designation, Castellanos argues his offense level would be 27 and his criminal history level would be VI. With the career-offender designation, Castellanos’s criminal history level remains at VI, but his offense level is 34. In effect, the designation increased his recommended prison sentence from 130–162 months to 262–327 months. At sentencing, Castellanos requested a shorter-than-recommended sentence of 120 months. Ultimately, the district court sentenced him to a below-Guidelines sentence of 200 months of imprisonment, followed by five years of supervised release.

¹The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

II. Analysis

Castellanos makes two arguments on appeal. First, he argues that Iowa Code section 124.401 is not a career-offender predicate because it covers a broader range of conduct than U.S.S.G. § 4B1.2(b). Second, he contends the district court failed to consider his long-term methamphetamine addiction as a mitigating factor in determining his sentence. We address Castellanos's arguments in turn.

A. Career Offender

We review career-offender classifications *de novo*. *United States v. Boose*, 739 F.3d 1185, 1186 (8th Cir. 2014). Castellanos qualifies as a career offender if he (1) “was at least eighteen years old at the time [he] committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is . . . a controlled substance offense; and (3) [he] has at least two prior felony convictions of . . . a controlled substance offense.” U.S.S.G. § 4B1.1(a).

To qualify as a predicate offense, Iowa Code section 124.401 must not “criminalize[] more than the guidelines definition of ‘controlled substance offense.’” *United States v. Boleyn*, 929 F.3d 932, 938 (8th Cir. 2019) (quoting *United States v. Thomas*, 886 F.3d 1274, 1276 (8th Cir. 2018)). Under this categorical approach, we look “to the statutory definition of the prior offense, not the facts underlying a defendant’s prior convictions.” *Id.* at 936.

Castellanos argues Iowa Code section 124.401 covers more conduct than U.S.S.G. § 4B1.2(b)’s definition of “controlled substance offense.” Section 124.401 criminalizes acts involving both “counterfeit substance[s]” and “simulated controlled substance[s].” In contrast, the Guidelines definition of a “controlled substance offense” only includes “counterfeit substance[s],” but does not specifically mention

simulated controlled substances. U.S.S.G. § 4B1.2(b). Under Castellanos’s theory, because Iowa penalizes behavior involving simulated controlled substances and the Guidelines do not, Iowa’s law covers a broader range of conduct. And therefore, Iowa Code section 124.401 cannot serve as a predicate controlled substance offense.

But to adopt this reasoning, Castellanos implicitly asks us to disregard a prior Eighth Circuit decision. *See United States v. Brown*, 638 F.3d 816, 818–19 (8th Cir. 2011). We are not free to do so. *See Owsley v. Luebbers*, 281 F.3d 687, 690 (8th Cir. 2002) (“It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel.”). We held in *Brown* that counterfeit substances under the Guidelines include the simulated controlled substances mentioned in section 124.401.² 638 F.3d at 819. By looking at the plain meaning of the word “counterfeit,” this court noted that “if a substance is ‘made in imitation’ and ‘with an intent to deceive,’ the substance ‘is “counterfeit” for the purposes of § 4B1.2 and qualifies as a controlled substance offense under the career offender provision.’” *Id.* at 818 (quoting *United States v. Robertson*, 474 F.3d 538, 541 (8th Cir. 2007)).

We found both of these elements present in Iowa Code section 124.401. *Id.* at 819. Iowa defines a “simulated controlled substance” as something that is not, in fact, a controlled substance, but is either “expressly represented to be a controlled substance” or “is impliedly represented to be a controlled substance and because of its . . . appearance would lead a reasonable person to believe it is a controlled substance.” Iowa Code § 124.101(29). *Brown* concluded — by looking at this statutory language — “the definition of ‘simulated controlled substance’ in [the Iowa Code] contains the made-in-imitation and intent-to-deceive elements and, thus, satisfies the plain meaning of ‘counterfeit substance.’” *Brown*, 638 F.3d at 819. Because simulated controlled substances under section 124.401 are implicitly, but

²The definition considered in *Brown* has been recodified at § 124.101(29).

categorically, included in the Guidelines definition of “counterfeit substance,” Castellanos’s statute of conviction is no broader than § 4B1.2.

Castellanos attempts to avoid this conclusion by arguing that *Brown* is no longer binding on this court after the Supreme Court decided *Mathis v. United States*, which explained how to conduct categorical and modified-categorical tests. 136 S. Ct. 2243 (2016). But *Brown*’s holding — that counterfeit substances under the Guidelines include simulated substances under Iowa law — is unaffected by whether the presence of a simulated controlled substance is an alternative element of a section 124.401 conviction or a mere means of committing a section 124.401 offense. *Mathis* only affects cases in which the state offense of conviction is broader than its federal counterpart. *See Mathis*, 136 S. Ct. at 2248–49. Because *Brown* clearly held section 124.401 is no broader than § 4B1.2, *Mathis* does not affect its validity.

And, subsequent to *Mathis*, this court has again determined section 124.401 fits within the Guidelines definition of a controlled substance offense. *See United States v. Wadden*, 774 F. App’x 346, 347 (8th Cir. 2019) (unpublished) (“[W]e conclude that Wadden’s specific challenge to his career-offender classification lacks merit, as the specific argument he advances has been rejected by this court.”) (citing *Brown*, 638 F.3d at 818–19). In sum, when we apply the categorical test in light of *Brown*, we must conclude Iowa Code section 124.401 is no broader than U.S.S.G. § 4B1.2. Therefore, the district court correctly designated Castellanos as a career offender.

B. Reasonable Sentence

This court reviews the imposition of sentences under a “deferential abuse-of-discretion standard.” *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). When reviewing the substantive reasonableness of the sentence, this court takes “into account the totality of the circumstances, including the extent of the variance from the Guidelines range.” *Id.* (quoting *Gall v. United States*, 552 U.S. 38,

39 (2007)). “[W]here a district court has sentenced a defendant below the advisory guidelines range, it is nearly inconceivable that the court abused its discretion in not varying downward still further.” *United States v. McKanry*, 628 F.3d 1010, 1022 (8th Cir. 2011) (alteration in original) (quoting *United States v. Moore*, 581 F.3d 681, 684 (8th Cir. 2009)).

Castellanos argues the district court improperly counted his 13-year methamphetamine addiction as an aggravating factor, not a mitigating factor. But the district court did no such thing. Rather, it used Castellanos’s addiction to illustrate the seriousness of methamphetamine-dealing. The district court specifically noted that Castellanos’s “addiction is reasonable to consider” when “trying to reach a sentence that is sufficient but not greater than necessary.” It thereafter ordered a sentence five years shorter than the presumptively reasonable Guidelines range. *See Gall*, 552 U.S. at 51 (“If the sentence is within the Guidelines range, the appellate court may . . . apply a presumption of reasonableness.”). There is no indication that the district court counted his addiction against him; the generous variance suggests just the opposite. Therefore, the district court did not abuse its discretion.

III. Conclusion

The district court rightly classified Castellanos as a career offender. It also applied a substantively reasonable sentence. We therefore affirm the sentence.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Juan Carlos Castellanos Muratella

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:18-CR-00087-004

USM Number: 18657-030

Benjamin David Bergmann

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One of the Indictment filed on April 25, 2018

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section ?	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846	Conspiracy to Distribute 500 Grams or More of a Mixture and Substance Containing Methamphetamine and 50 Grams or More of Actual Methamphetamine	02/15/2018	One

 See additional count(s) on page 2

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.

 The defendant has been found not guilty on count(s)

Count(s) Two is are dismissed on the motion of the United States.

It is 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 material changes in economic circumstances.

January 24, 2019

Date of Imposition of Judgment



Signature of Judge

James E. Gritzner, Senior U.S. District Judge

Name of Judge

Title of Judge

January 24, 2019

Date

DEFENDANT: Juan Carlos Castellanos Muratella
CASE NUMBER: 4:18-CR-00087-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

200 months as to Count One of the Indictment filed on April 25, 2018.

The court makes the following recommendations to the Bureau of Prisons:

If commensurate with the defendant's security and classification needs, the defendant be placed at Federal Correctional Institution Oxford, to be close to his family in Iowa, and that he be made eligible for vocational programs and the 500-hour residential drug abuse program (RDAP).

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Juan Carlos Castellanos Muratella

Judgment Page: 3 of 7

CASE NUMBER: 4:18-CR-00087-004

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Count One of the Indictment filed on April 25, 2018.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Juan Carlos Castellanos Muratella

CASE NUMBER: 4:18-CR-00087-004

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 full-time 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.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Juan Carlos Castellanos Muratella

Judgment Page: 5 of 7

CASE NUMBER: 4:18-CR-00087-004

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Juan Carlos Castellanos Muratella
CASE NUMBER: 4:18-CR-00087-004

Judgment Page: 6 of 7

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS \$ 100.00	\$ 0.00	\$ 0.00	\$0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	\$0.00

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Juan Carlos Castellanos Muratella
CASE NUMBER: 4:18-CR-00087-004

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.

While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

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, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

----- -X
UNITED STATES OF AMERICA, :
: :
Plaintiff, : Criminal No. 4:18-87
: :
vs. :
: :
JUAN CARLOS CASTELLANOS MURATELLA, : TRANSCRIPT OF SENTENCING
: :
Defendant. :
----- -X

Second Floor Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Tuesday, January 24, 2019
9:00 a.m.

BEFORE: THE HONORABLE JAMES E. GRITZNER, Senior Judge.

APPEARANCES:

For the Plaintiff: RICHARD D. WESTPHAL, ESQ.
Assistant U.S. Attorney
U.S. Courthouse Annex, Suite 286
110 East Court Avenue
Des Moines, Iowa 50309-3899

For the Defendant: BENJAMIN D. BERGMANN, ESQ.
Parrish, Kruidenier, Dunn, Boles,
Gribble, Gentry, Brown &
Bergmann
2910 Grand Avenue
Des Moines, Iowa 50312

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 197, U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

E X H I B I T S

<u>GOVERNMENT'S EXHIBIT NUMBERS:</u>	<u>OFFERED</u>	<u>RECEIVED</u>
1 - State of Iowa trial information	9	10
2 - State of Iowa judgment and sentence	9	10
3 - State of Iowa trial information	9	10
4 - State of Iowa amended and substituted information	9	10
5 - State of Iowa judgment and sentence	9	10

1 P R O C E E D I N G S

2 (In open court, with defendant present.)

3 THE COURT: Take a seat, please.

4 Good morning.

5 We are convened in the matter of the United States
6 versus Juan Carlos Castellanos Muratella, Criminal No. 18-87,
7 for purposes of sentencing as a result of the defendant's plea
8 to Count 1, conspiracy to distribute 500 grams or more of a
9 mixture and substance containing methamphetamine and 50 grams or
10 more of actual methamphetamine.11 Mr. Castellanos, do you understand that you're here
12 now for sentencing as a result of your plea?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is your plea still guilty, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Counsel, is there any legal reason why
17 sentence could not be imposed today?18 MR. WESTPHAL: None known to the government, Your
19 Honor.20 MR. BERGMANN: No, Your Honor. We should proceed to
21 sentencing.22 THE COURT: I have reviewed the presentence
23 investigation report and related materials, the memoranda of
24 counsel, also some letters that I received on Mr. Castellanos's
25 behalf, which I have read and appreciated receiving.

1 Based upon my review of all of that material, I accept
2 the plea agreement and agree to be bound by that agreement. I
3 find the count to which the defendant pled adequately reflects
4 the seriousness of the offense behavior, and I find the plea
5 agreement is in the public interest and in the interests of
6 justice.

7 Has the government had the opportunity to review the
8 presentence investigation report?

9 MR. WESTPHAL: We have, Your Honor.

10 THE COURT: Do you find any factual error in the
11 report?

12 MR. WESTPHAL: No, Your Honor.

13 THE COURT: Mr. Bergmann, I know you have some
14 objections to conclusions, but have you had an opportunity to
15 review that report?

16 MR. BERGMANN: Yes, Your Honor. Just to make a brief
17 record, I sent a copy to him. He reviewed it. I went out to
18 the Polk County Jail with my own copy. We talked through it
19 ourselves. We made objections on a few issues, but I think just
20 the remaining issue is career offender, whether it applies or
21 not.

22 THE COURT: And those conclusions, of course, we'll
23 address shortly.

24 But, Mr. Castellanos, did you have an opportunity to
25 fully review the presentence report?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And an opportunity to talk through it with
3 Mr. Bergmann?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Bergmann, is there any factual error
6 that will be material to the sentencing today?

7 MR. BERGMANN: No, Your Honor.

8 THE COURT: All right. I'll accept the presentence
9 investigation report as factual findings for our purposes here
10 today.

11 We do have a couple of issues. I assume both are
12 still remaining, Mr. Bergmann. One had to do with calculation
13 of the criminal history with regard to paragraph 49, I believe
14 is the number, and also we had the issue of the application of
15 the career offender guideline.

16 I, of course, have read your memorandum. Anything
17 further you wish to say on those two points?

18 MR. BERGMANN: First, on the criminal history,
19 actually, Mr. Westphal I think has convinced me on that, that he
20 is probably correct on the criminal history calculation.

21 THE COURT: All right.

22 MR. BERGMANN: At the end of the day, I'm going to
23 argue for a 120-month sentence. Even with the government's
24 calculation, if I win this career offender argument, it's going
25 to be 120 to 150.

1 So in the end, I don't have as much to say about the
2 criminal history; but on the career offender, I do know that you
3 read the brief, but there's a few points I want to raise based
4 on reading the government's brief.

5 The parties agree that the categorical approach is the
6 approach to use, either the categorical or modified categorical,
7 if necessary, on this guideline, which is 4B1.1(a) and (b). We
8 argue these offenses -- and, in fact, it's true -- they are not
9 predicate offenses under the categorical approach because it's
10 overbroad. The statute 124.401 criminalizes more behavior than
11 the type that is prescribed in the sentencing guidelines.
12 Specifically, it prescribes behavior or, better put, it
13 prohibits behavior that includes either distributing or
14 possessing with intent to deliver a simulated substance.

15 Therefore, the statutes are overbroad. In the words
16 of Justice Kagan, they sweep broadly and encompass more activity
17 than what is called for in the sentencing guidelines. Based on
18 my review of our two briefs, the parties differ in these ways.
19 First on Brown II, I appreciate that citation. I had missed
20 that one. I'm glad the government brought it up. However, it
21 is inapposite. It's a pre Mathis case that does not engage in
22 the categorical approach. Though I was not smart enough to
23 Shepherdize it before, I was this morning, and it relies on the
24 analysis in U.S. v. Robertson. That's 474 F.3d 538, and that
25 analysis, based on the Illinois statute, in a 2007 case

1 similarly does not use the categorical approach. In those
2 inapposite decisions, the Eighth Circuit lumped in simulated
3 controlled substances with the term in the guidelines
4 "counterfeit controlled substances."

5 Now, I argue that that analysis is erroneous because
6 the Iowa statute also prohibits either possession with intent to
7 deliver or delivery of counterfeit substances. So we know under
8 the Iowa statute that those are two different things, and it
9 prescribes different conduct.

10 The predicate offenses are not divisible. This is
11 another issue upon which we disagree.

12 The government cites to U.S. v. Maldonado -- it's in
13 their brief -- for the proposition that the term "simulated
14 controlled substance" -- whoops, excuse me one second -- in Iowa
15 Code 124.401 is an alternative element and not a means to
16 violate the statute. And the Supreme Court has talked about
17 Justice Kagan in particular, this element versus means test.

18 So, first of all, Maldonado, too, is inapposite
19 because in that case the parties did not argue that the statute
20 is indivisible. They both agree that it was divisible. I am
21 arguing here it is indivisible. I am not agreeing to that, just
22 so that is clear.

23 Second, whether the statute in question is a simulated
24 controlled substance, which is not included under the guideline,
25 or a controlled or counterfeit substance is simply a different

1 way to violate the statute.

2 Now, in Iowa it is undisputed that jurors need not
3 reach the same conclusion to convict someone of an offense.
4 Half of them could find that the defendant delivered a simulated
5 substance, half of them could find it was a controlled
6 substance. At the end of the day, it is a conviction. If it's
7 six one way, six the other, that's a conviction. They're not
8 separate elements. If it were an element, just one disagreeing
9 with it would mean there's no conviction because there's no
10 unanimity.

11 And the Supreme Court has talked about this. And
12 we're lucky to have this case, it's Mathis, which is out of
13 Iowa. They go through this exact analysis in Mathis, and they
14 say, "Some jurors in Iowa could have found that Mr. Mathis
15 burgled a building and others could say he burgled a vehicle.
16 In the end, he gets convicted." They are simply means to
17 violate the statute. They are not alternative elements.

18 So, for those reasons, the categorical approach is the
19 approach that should be taken here. If we think of a Venn
20 diagram, Iowa Code 124.401 is out here (indicating), and I'm
21 holding my arms out shoulder width. And what the guideline
22 triggers is smaller (indicating), and I'm putting my hands like
23 by my head.

24 So the guideline says there's some activity in 124.401
25 that triggers this career offender; but under the categorical

1 approach, we're not sure if these offenses qualify. There is no
2 need to proceed to the modified categorical approach. The
3 statute is not divisible. It merely includes means to violate
4 it, not alternative elements. So proceeding to the trial
5 information, the minutes of testimony, the guilty plea, the,
6 quote/unquote, Shepard documents, is not appropriate because
7 this is not a modified categorical approach case because the
8 statute is not divisible.

9 So that's my categorical approach argument. I was
10 going to move on to my 3553(a) argument. If you want me to do
11 that now, I will, or if you want to take them issue by issue,
12 I'll do them however you want.

13 THE COURT: I think we'll get to the 3553(a) after the
14 court makes a determination of the guideline.

15 MR. BERGMANN: Sounds great, Your Honor.

16 That's what I've got.

17 THE COURT: All right. Mr. Westphal, the government's
18 view, please.

19 MR. WESTPHAL: Thank you.

20 And, first of all, although it was attached to our
21 sentencing memo, we would move for purposes of the sentencing
22 record to admit Government's Exhibits 1 through 5 as a part of
23 the sentencing record.

24 (Government Exhibits 1 through 5
25 were offered in evidence.)

1 THE COURT: Any objection to Exhibits 1 through 5?

2 MR. BERGMANN: I have no objection to their admission;
3 but based on what I just said, I don't think they get reviewed.

4 THE COURT: And I understand the point that you are
5 making. They are admitted for purposes of the record.

6 (Government Exhibits 1 through 5
7 were received in evidence.)

8 MR. WESTPHAL: The government, as noted in the
9 sentencing memo, asks this court to find that these offenses are
10 proper predicate offenses both under the categorical approach
11 and the modified categorical approach.

12 While Brown II, as I refer to it in my sentencing
13 memo, is a pre Mathis case, Mathis talks about primarily means
14 versus elements discussion. What Brown II discusses is what the
15 meaning of counterfeit is under 4B1.2. And the reasoning in
16 defining that term in Brown II is directly relevant to the issue
17 of whether or not it categorically is encompassed under 4B1.2,
18 the definition of a controlled substance. They look at the
19 plain language, and I think what's significant about Brown I and
20 Brown II is how the Eighth Circuit kind of goes through the
21 analysis and distinguishes that this Iowa controlled substance
22 offense is not a felony drug offense looking to the language on
23 the Controlled Substances Act and the federal statute. But this
24 same Iowa drug offense is a controlled substances offense under
25 the alternative definition under 4B1.2, and they look at the

1 plain language of counterfeit substance and find that it does,
2 in fact, include a simulated controlled substance. And,
3 therefore, they do find that it qualifies as a predicate
4 offense.

5 So we would ask the court to adopt that reasoning, the
6 reasoning is sound, and find that it is included under the
7 Controlled Substances Act definition categorically, it is a
8 predicate offense.

9 If the court finds that it's not categorically
10 included, based on the reasoning of Maldonado and the
11 application of that reasoning in the Evans case in the 2018
12 decision by the Eighth Circuit, the government would ask the
13 court to find that the Iowa statute is, in fact, divisible.
14 While true Mathis, although it discusses the divisibility and
15 the reasons that the Iowa statute is divisible, the parties in
16 the case did, in fact, agree that it was divisible, the issue in
17 that case was whether or not distribution and delivery would be
18 off by itself. But Evans notes -- takes that same reasoning and
19 I think clarifies it, and finds that the direct issue we're
20 talking about here, simulated controlled substance, they note
21 the first Brown decision in Evans and find that the Iowa statute
22 is divisible and there in Evans actually considering delivery --
23 state offenses for manufacturing and delivery of methamphetamine
24 under the Iowa statute, which is actually the statute for here.

25 So while Evans dealt with whether or not these were

1 serious drug offenses under 924, here we're talking about the
2 definition, I think their finding that the Iowa statute is
3 divisible, including the issue of whether or not a simulated
4 controlled substance is one of the alternative elements. That
5 reasoning, along with Maldonado, shows it is divisible.

6 Clearly, Government's Exhibits 1 through 5 show that
7 the defendant was, in fact, convicted of delivery of
8 methamphetamine, possession with intent to deliver
9 methamphetamine, which would clearly qualify as controlled
10 substance offenses under the definition of 4B1.2.

11 So either under the categorical or modified
12 categorical, we ask this court to find that these are both
13 predicate offenses and the defendant is a career offender.

14 THE COURT: All right. Thank you, Counsel.

15 I don't think it's any particular surprise that most
16 district judges would take the position that the Eighth Circuit
17 still has some work to do in this area. But based upon my
18 understanding of where we are on the law developing in this
19 area, having reviewed the memoranda and the arguments of counsel
20 today, I believe the government's argument is more consistent
21 with the state of the law.

22 Therefore, I find that the enhancement is properly
23 applied under the circumstances of this particular case.

24 The alternative argument has been fully presented to
25 me and preserved. And so you can proceed as you see fit under

1 those circumstances; but I do believe it was properly applied.

2 You've withdrawn the objection with regard to the
3 criminal history calculation.

4 Accordingly, the court finds that this case presents
5 with an offense level 34, a criminal history category VI. That
6 provides the court with a guideline sentencing range of 262 to
7 327 months.

8 For those in the courtroom that are not accustomed to
9 this process, the federal court has a guideline sentencing
10 system that takes into consideration the circumstances of the
11 particular case, compared to the criminal history of the
12 defendant, and then comes up with a guideline range that is a
13 recommended range. It is not something that the court must
14 follow. But it is a desire to try to achieve some level of
15 consistency in sentencing across the country. But we are now
16 going to be discussing whether or not the court should follow
17 that guideline range under the circumstances of this case.

18 So with that, Mr. Bergmann, I'm ready to hear from you
19 on 3553(a).

20 MR. BERGMANN: Thank you very much, Your Honor.

21 Before I proceed I would like to introduce some people
22 that are here in the courtroom.

23 We have Rosalva Ochoa is Juan Carlos's mother. We
24 have Maria Cerda is his grandmother. In her arms is Juan
25 Carlos, the 16-year-old (sic) son, also named Juan Carlos

1 Castellanos.

2 THE COURT: 16-month-old?

3 MR. BERGMANN: 16 day.

4 THE COURT: Day. I thought you said year, and I
5 thought he's very short.

6 MR. BERGMANN: Yeah, very short.

7 We also have Patricia Morales, who is a family friend
8 here, and we have Brook Harms, who is Juan Carlos's girlfriend,
9 and then we had somebody late that came in that I didn't catch.

10 MS. SALAZAR: Amalia Salazar (phonetic).

11 MR. BERGMANN: A friend?

12 MS. SALAZAR: Yes.

13 MR. BERGMANN: So they're here to support Juan Carlos.
14 It's good to see -- to put faces to this person that we see in a
15 beat just through the words of the PSI interview. Juan Carlos
16 does belong to a family. He has a family that is waiting for
17 him at the end of his term of incarceration.

18 THE COURT: And may I say, Mr. Bergmann, to these
19 folks, the fact you are here, you might assume that there are
20 always people here in support of these folks, and that's not
21 true. It's actually more common that they're here all alone.
22 So the fact that you're here is very important, and I appreciate
23 your presence, and I know how difficult this is for you.

24 Go ahead, Counsel.

25 MR. BERGMANN: Having determined that the career

1 offender guideline is appropriately applied, nevertheless, under
2 the 3553(a) factors, this is not a career offender worthy
3 offense for several reasons that are not articulated in the
4 guidelines but nevertheless are extremely important factors
5 under 3553(a).

6 First is age. Juan Carlos is 26 years old. I was
7 trying to do the math in my head what 26 times 12 is, but it's
8 not a whole heck of a lot more than 262 months. To think that
9 this offense merits that Juan Carlos should essentially spend
10 every day that he could maybe remember from here forward
11 incarcerated for delivering 55.48 grams of methamphetamine
12 really stretches the imagination.

13 Another important factor regarding age, a 3553(a)
14 factor that is not taken into account in the guidelines, is that
15 Juan Carlos has been a methamphetamine addict since he was 13
16 years old, half his young life at 26 years.

17 While we have argued and made the record on the career
18 offender and you've made the determination, the offenses show
19 that Juan Carlos is an addict. He was using a ton of meth. The
20 PSI shows three-and-a-half grams a day, which I told Juan Carlos
21 that he's lucky that he's sitting here, to be perfectly honest
22 with you. And he's been using a long, long time.

23 Being on social sites, people here, at least I'll
24 speak for myself, I had to put it in a calculator, but the 55.48
25 grams is the undisputed amount of contraband in question here

1 that was reasonably foreseeable to him comes down to 22 days'
2 worth of meth for Juan Carlos.

3 And so my suggestion, which I didn't bury the lead, is
4 120 months. That would mean that he would do essentially 165
5 days in prison for every day's worth of meth that was involved
6 in this offense. Another way to think about it is 65 days in
7 prison for each gram of meth.

8 I've said this, but I just want to make the record
9 clear, another 3553(a) factor, which is the nature and
10 circumstances of this defendant, that's not included in the
11 guideline calculation is his addiction. And were this not a
12 ten-year sentence, I would ask for less because I just don't
13 think under the 3553(a) factors we can look at a 26-year-old man
14 with a 16-day-old baby and say that there's nothing more that we
15 can do for him other than to lock him up and throw away the key.

16 We have probation services here, and whatever the
17 sentence is, he needs to be on supervised release for a
18 significant term at the end of his incarceration because he
19 needs that support to stay clean. He has a family that's
20 looking for him -- waiting for him. He has children that he
21 needs to look after the best that he can, and we can't have
22 someone like Juan Carlos abusing methamphetamine.

23 Of course, we sometimes think it goes without saying,
24 but it's worth saying, is that the reason that methamphetamine
25 is a prohibited substance in the United States is because it is

1 highly addictive. And the concept that Juan Carlos somehow has
2 a lack of morals or a lack of willpower or a lack of moral fiber
3 for, frankly, we can say for the third time, going back to using
4 meth and involving himself with 55 grams' worth of meth, it's a
5 highly addictive substance.

6 We would be more surprised if I came in and said, you
7 know what, I had a guy that came in and said he had been to
8 prison twice for meth, and he got clean all by himself. You
9 probably wouldn't believe me if I told you.

10 And so I think that that's another factor, a really
11 important factor that's not considered by the guidelines, the
12 addiction that Juan Carlos has and also his ability to get clean
13 on his own. Because of the age, because of the nature of his
14 criminal history, not counting points but the general nature of
15 it, his addiction, his likelihood of getting free of that
16 addiction without help and the family circumstances and just the
17 ton of meth that he was doing, mixed with the paltry quantity
18 and noting -- and Your Honor has these statistics; I think
19 they're in the PSI -- that the average sentence for a
20 methamphetamine case -- I think it's in the PSI and I don't have
21 it handy, but I think it's even under 120 months. But to think
22 that 262 has somehow accurately calculated the facts and
23 circumstances here doesn't meet the smell test, and I don't have
24 another word for that.

25 So, Your Honor, we ask you to consider Juan Carlos as

1 a human in total. Think about these factors that were not
2 considered in the sentencing guideline calculation and determine
3 that while under the guidelines, you determine that the career
4 offender enhancement is called for under the 3553(a), it's not a
5 career offender worthy sentence for a 26-year-old
6 methamphetamine addict.

7 So, for those reasons, Your Honor, we pray that you
8 sentence him to 120 months. 120 months is ten years in prison.
9 That meets all of the aims of the statute. It discourages other
10 people from being involved with 55 grams of meth. It encourages
11 people to stop using meth and seek the resources available to
12 them. It sends a message to Juan Carlos that he can't do this
13 anymore, and it meets with the gravity of the offense and is not
14 disparate. It's not disparate. In fact, a sentence of 262
15 months would be disparate for an offense involving 55 grams.

16 So, Your Honor, we pray, please, impose a sentence of
17 120 months.

18 Thank you.

19 THE COURT: Counsel, just a couple of questions.

20 First of all, with regard to the statistics in terms
21 of sentencing, that, of course, includes cases that do not
22 involve giving up an 851 and do not involve a criminal history
23 like this. It also involves cases with people that don't have
24 this kind of criminal history.

25 MR. BERGMANN: It certainly does, Your Honor. And, of

1 course, that could go the other way, too; but you're right, it's
2 well noted.

3 THE COURT: The other question I had is the 2013, I
4 think it was, domestic assault, do you also connect that to
5 addiction? I understand he's only 20 years old at that point in
6 time, and certainly there's a youth issue there; but do you also
7 connect that to the addiction?

8 MR. BERGMANN: Well, this is tough for me to say in
9 front of the family that's here, but domestic abuse has a family
10 element to it. It is, in some sense, a learned activity at
11 home. And I think that that is another element to it. And,
12 frankly, I'm supposed to stand up for my client, but he's also
13 in charge of what he does, whether he's using drugs at the time
14 or not. But there is definitely a family element, a learned
15 behavior from home on those issues, and using drugs as well, as
16 well as his own decisions.

17 THE COURT: All right. Thank you, Counsel.

18 Mr. Castellanos, you have the right to speak to the
19 court yourself today if you want. If there's anything you would
20 like to say, I would be glad to hear from you.

21 THE DEFENDANT: Your Honor, thank you for giving me an
22 opportunity to speak. I am here today and stand before you as a
23 man, not just a man but a human who has made mistakes. I feel
24 as if my life is over because I failed. I accept responsibility
25 for my actions. I made poor choices and bad decisions and big

1 mistakes in my life, which have led me here. It's my fault that
2 I'm here. I'm ashamed because of the things I've done right or
3 correct are being overshadowed and taken from me because of what
4 I've done wrong. I understand how serious this all is. I'm
5 here for my own fault and I won't deny that. I will bear and
6 live with my consequences. Ultimately, I will atone for my
7 mistakes. I accept the punishment of my own doing.

8 Growing up I'm not going to say that I had a rough
9 childhood. I just didn't have any type of structure. My
10 parents were too busy working hard trying to provide for me and
11 my five other siblings. Therefore, I would be out and about
12 running the streets, hanging out with the wrong people, doing
13 whatever I wanted to do, and that's how I was introduced to
14 drugs and this lifestyle. I didn't know any better. I was just
15 a kid, trying to be cool and fit in with older crowds. I was
16 negatively influenced. Ever since then I've been struggling
17 with methamphetamine addiction since the age 13. That's been my
18 life. My addiction has played a part in my life, and because of
19 it, I've haven't been able to move forward. I've been stuck in
20 my own selfish ways, in and out of trouble, not caring about
21 what I was doing or who I was hurting. I was just worried about
22 myself and my next high. I was acting completely out of
23 character.

24 My addiction took control of me. It ruined my life
25 and tore my family apart without even noticing it. I was using

1 so much meth. I was using grams a day. My attorney tells me I
2 was using about the most of any of his clients that he has had.
3 That didn't make me feel good or proud. It made me feel
4 ashamed. It also made me feel -- understand how bad of an
5 addiction I have. I risked my whole life over 50 grams of meth.
6 That's why I'm here today talking to a federal district court
7 judge, going to federal prison.

8 I have a seven-year-old daughter that I miss her very
9 much. I have a new infant baby boy that was born January 8th.
10 His name is Juan Carlos. I haven't even -- I haven't even got
11 to hold my son in my arms. It really kills me. As I've been in
12 jail, I've been in jail drying out, I think how much time I've
13 missed with my kids. They are my world. They are what I look
14 forward to. I am discouraged because of the years and the time
15 that I won't be there for them and most discouraged about all
16 the time that I could have been with my children, but instead I
17 pray and hope they won't forget about me.

18 My goal is to be a better person after all of this,
19 not just for myself but, more importantly, for my kids and
20 family. I will be a role model and father that my kids deserve
21 to have. I want to help the community and people who are stuck
22 in this vicious cycle of addiction so they won't end up in a
23 situation like mine. I don't know if I really can become a drug
24 counselor, but all the same, I want to help.

25 During my incarceration I plan to take drug treatment

1 and steps towards my rehabilitation. I will participate in as
2 much programs as possible and try to learn as much as I can. I
3 want to educate myself to be a better and healthier person. I
4 want to be a productive member of society and live a normal
5 life.

6 I want to take the time to apologize to the courts and
7 everyone involved for my wrongdoing. I'm not going to say that
8 I didn't know what I was doing because I did. I was
9 contributing to people's addictions. I was damaging lives,
10 including my own. I hope you find me to be honest and sincere
11 because I am. I just want to be reunited with my family and
12 kids as soon as possible one day.

13 I would also like to see if you could please make a
14 recommendation to send me to Oxford, Wisconsin. They offer a
15 lot of apprenticeship programs, like bricklayer and welding,
16 industrial welding, stationary engineering. I want to spend my
17 time learning new trades so that I can be successful one day and
18 get a career and finally move forward with my life.

19 Thank you.

20 THE COURT: Thank you, sir.

21 Mr. Westphal, the government's view, please.

22 (Defendant conferring with counsel.)

23 MR. BERGMANN: Oh, I just think that Juan Carlos
24 wanted to thank his family for being here and that it means a
25 lot to him.

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Counsel?

4 MR. WESTPHAL: Your Honor, the government is
5 recommending that the court adopt a sentence at the low end of
6 the advisory guideline range of 262 months for the defendant in
7 this case, both based on the facts, the advisory guideline
8 calculation, but also under the 3553(a) factors, the nature and
9 circumstances of this offense, certainly the history and
10 characteristics of this defendant, most significantly his
11 criminal history, the need to support deterrence and just
12 punishment, to protect the public, the nature of the defendant's
13 crime, although at this point his past crimes, and certainly to
14 avoid unwarranted sentencing disparities.

15 Defendant focuses on his age and his substance abuse
16 and the impact on his family. Certainly the impact on his
17 family is undisputed, as it normally is in these types of cases.
18 However, the defendant is here primarily after exhausting almost
19 every other alternative form of punishment for him. And he
20 rightly has earned the guideline status as a career offender.

21 While he's now age 26, his first criminal history
22 conviction, adjudication was at age 13 for a burglary. Thirteen
23 years later here he sits in federal court. He was convicted
24 twice in 2010 for delivery and possession with intent to
25 distribute, where one offense he was looking at 25 years and

1 another ten-year indeterminate sentence.

2 And certainly based on his existing offense of 50
3 grams and these offenses being prior drug felonies, he very well
4 could have faced an even more significant sentence based on his
5 criminal history and his conviction. But he did make a good
6 choice in pleading guilty under the plea agreement and got some
7 relief from that.

8 But his criminal history still I think is significant
9 in relation to the career offender. I mean, he has these two
10 prior convictions which show a history of probation revocation.
11 He originally was shown by the state court some leniency and was
12 granted suspended sentences, which were subsequently revoked.
13 And in one case he had parole revoked. On both drug felonies,
14 he had probation revoked and the original sentence imposed.
15 One, if not both, of those revocations was based on the 2013
16 domestic assault with a dangerous weapon where, according to the
17 presentence report, he drove a car, with a child in it, towards
18 a domestic partner, trying to hit her with the car. He has a
19 prior domestic assault conviction as well.

20 So his history and characteristics includes not only
21 his felony convictions, not only not taking advantage of the
22 leniency of the state courts but also crimes of violence.

23 He has obviously shown in the presentence report some
24 history of substance abuse, but it can't fully explain the fact
25 that his criminal history has continued since age 13 and his

1 acts of both drug trafficking and crimes of violence. He's been
2 through substance abuse treatment, once inpatient in 2007 and
3 again on an outpatient basis in 2017. And, granted, sometimes
4 it takes several attempts at substance abuse treatment; but he
5 has been offered these opportunities to take advantage of
6 substance abuse treatment, and he has not.

7 So here he sits as a career offender 13 years after
8 his first contact with the state criminal justice system, and
9 certainly the career offender designation is appropriate.

10 So we're asking the court to take into account the
11 guideline advisory range and also these 3553(a) factors and
12 impose a sentence of 262 months, which is sufficient but not
13 greater than necessary to meet and address these factors.

14 Thank you.

15 MR. BERGMANN: Your Honor --

16 THE COURT: Thank you, Counsel.

17 MR. BERGMANN: I'm sorry, I forgot to say one thing,
18 and I think it only fair Mr. Westphal has a chance to respond.
19 We're within spitting distance of the Iowa Supreme Court where
20 they ruled in State v. Lyle that juveniles are different, that
21 the mind becomes adult at approximately 25 years old.

22 By just looking at the schedule of criminal history
23 points, we consider here that each further act increases the
24 criminal history and tends to show a history of going back to
25 criminal ways. Here we have a 26-year-old and under that

1 category of age that I mentioned earlier. I think considering
2 his criminal history starting at 13 definitely needs to be
3 considered under the 3553(a) factors and consider that he still
4 is a young man as he sits here today.

5 THE COURT: Do you wish to respond to that,
6 Mr. Westphal?

7 MR. WESTPHAL: Well, I don't think the court would
8 apply that necessarily every 25-year-old has the same responses
9 in the track. I think there's a majority of 25-years-olds that
10 actually do not commit crimes, not two drug felonies and
11 domestic assaults. So I think his history and characteristics
12 are his, not categorized generally as to how a 25-year-old male
13 would act in the same circumstances.

14 THE COURT: With regard to the argument not so much
15 being how you measure how someone who is 26 would behave, but
16 how that impacts looking at a criminal history that starts at
17 age 13. I think maybe that's the thrust of the argument.

18 MR. WESTPHAL: Well, I think it is, but I think that
19 can go two ways. I don't think there's any scientific study
20 that can say this history in another individual that commits his
21 first crime at 13 will go this way or not. I would have to
22 surmise that there are 13-year-olds that have contact with
23 burglary charges in the juvenile system that don't have
24 subsequent convictions like the defendant, 13-year-olds in the
25 system that have substance abuse issues that don't result in the

1 same criminal conduct.

2 So I think it's a factor, okay, but it's not a
3 significant enough factor to warrant giving it any weight in
4 arriving at the final sentence.

5 THE COURT: All right. Thank you, Counsel.

6 Pursuant to the provisions of Title 18, United States
7 Code, Section 3553, in determining the sentence that is
8 appropriate, the court considers the nature and circumstances of
9 the offense and the history and characteristics of the
10 defendant. I have considered all of the factors under Section
11 3553(a), although it will not be necessary to go through all of
12 them in the process of explaining the sentence.

13 Mr. Castellanos, of course, this all starts with the
14 seriousness of the offense. One of the great ironies that I
15 confront in these cases -- and I have seen a lot of meth cases
16 over the years -- is you know how serious it is because you know
17 what it's done to you, and yet you were involved in making it
18 available to others. And so it is an extremely serious matter.
19 This stuff is horrible poison. It is amazingly addictive. I
20 understand that argument completely. I've had people serve ten
21 years in prison and come out and they're doing it again in the
22 first month. So I understand the strength of this addiction and
23 I understand how serious this matter is.

24 Anything I do today is probably going to deal with
25 adequate deterrence to the conduct of others who might be

1 considering being involved in this sort of thing.

2 I do have to be concerned about protecting the public
3 from further crimes that you might commit, and you are dealing
4 now with more than you've ever had to deal with before, and that
5 may change you; but the court does have to take into
6 consideration this unfortunate criminal history, which includes
7 some violent behavior, as well as the drug-related behavior.

8 The court does need to be concerned about avoiding
9 unwarranted sentencing disparity among defendants with similar
10 records who have been found guilty of similar conduct; but the
11 court does sentence each individual individually.

12 This case does involve some somewhat unique factors.
13 I frequently see people with addictions. Usually they are older
14 than you are and it's been going on for a longer period of time.
15 It is almost always severe.

16 The particular circumstances of this case are somewhat
17 mitigating in respect to the application of the career offender
18 guideline so that the career offender hits you pretty hard for
19 what was going on in this particular case.

20 I think taking your age into consideration is
21 reasonable, given the fact that some of your criminal history
22 goes back to a very young period of time. And I think your
23 addiction is reasonable to consider all of the circumstances of
24 this case in the process of trying to reach a sentence that is
25 sufficient but not greater than necessary.

1 I believe under the circumstances of this case that a
2 variance is reasonable but a relatively modest variance in terms
3 of the kinds of sentences that are available for these
4 circumstances and recognizing the seriousness of the offense.

5 Accordingly, I will vary but not quite as much as
6 Mr. Bergmann has argued; but I do think some variance is
7 appropriate.

8 Will the defendant please rise.

9 Based upon the court's review of the criteria set
10 forth in Title 18, United States Code, Section 3553 and the
11 unique circumstances of this case, it is the judgment of the
12 court that the defendant Juan Carlos Castellanos Muratella is
13 hereby sentenced to the custody of the Bureau of Prisons for a
14 term of 200 months on Count 1 of the indictment.

15 Upon release from imprisonment, you'll be placed on
16 supervised release for a term of five years. Within 72 hours of
17 release from the custody of the Bureau of Prisons, you are to
18 report in person to the probation office in the district to
19 which you have been released.

20 While you're on supervised release, you're not to
21 commit another federal, state, or local crime. You'll be
22 prohibited from possessing a firearm or other destructive
23 device, and you shall not possess an illegal controlled
24 substances.

25 You'll have to abide by the standard conditions of

1 supervised release, plus the following special conditions:

2 You must participate in a cognitive behavioral
3 treatment program.

4 You must participate in a program of testing and/or
5 treatment for substance abuse as directed by the probation
6 officer until you are released from the program by the probation
7 office.

8 You must submit to a mental health evaluation and, if
9 treatment is recommended, participate in an approved treatment
10 program.

11 And you will submit to a search of your person,
12 property, residence, adjacent structures, office, vehicle,
13 papers, computers, and other electronic communications or data
14 storage devices or media, conducted by a U.S. probation officer,
15 with or without the support of law enforcement, including the
16 United States Marshals Service.

17 The court finds that you're not able to pay a fine.
18 You are ordered to pay a \$100 special assessment to the Victims
19 Assistance Fund, which will be due immediately and payable
20 without interest to the U.S. Clerk of Court for the Southern
21 District of Iowa.

22 You may be seated, sir.

23 Do we have Count 2 to dismiss, Counsel?

24 MR. WESTPHAL: We would move to dismiss Count 2.

25 THE COURT: Count 2 is dismissed.

1 You have retained the right, Mr. Castellanos, to
2 appeal. You need to do so -- to appeal the sentence, you need
3 to do so within 14 days of the entry of judgment, and I
4 anticipate that it will be entered yet today.

5 I will recommend that you be considered for placement
6 at Oxford, Wisconsin, both for purposes of the programs there
7 but also to be reasonably close for connection with your family
8 and support.

9 Any further recommendations, Mr. Bergmann?

10 (Counsel conferring with defendant.)

11 MR. BERGMANN: No, Your Honor.

12 THE COURT: All right. Anything further from the
13 government?

14 MR. WESTPHAL: No, Your Honor.

15 THE COURT: Mr. Bergmann?

16 MR. BERGMANN: Nothing further.

17 THE COURT: Thank you.

18 Court is in recess.

19 (Proceedings concluded at 9:42 a.m.)

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1 C E R T I F I C A T E

2 I, Terri L. Martin, a Certified Shorthand Reporter of
3 the State of Iowa and Certified Realtime Reporter, in and for
4 the Southern District of Iowa, do hereby certify, pursuant to
5 Title 28, United States Code, Section 753, that the foregoing is
6 a true and correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter at the time and
8 place indicated and that the transcript page format is in
9 conformance with the regulations of the Judicial Conference of
10 the United States.

11 Dated at Des Moines, Iowa, this 15th day of February,
12 2019.

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/s/ Terri L. Martin

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Terri L. Martin, CSR, RPR, CRR
Federal Official Court Reporter

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