

APPENDIX B

Sentencing

(February 25, 2020)

USA vs. Juarez - Sentencing - February 25, 2020

1
IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 PECOS DIVISION4
UNITED STATES OF AMERICA,) Case No. 4:19-CR-429
5 Plaintiff,)
6 vs.) COA No. 20-50148
7 FERNANDO JUAREZ,)
8 Defendant.) Alpine, Texas
) February 25, 2020
) 8:39 a.m.
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10 TRANSCRIPT OF SENTENCING
11 BEFORE THE HONORABLE DAVID COUNTS
UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 FOR THE GOVERNMENT:

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17 FOR THE DEFENDANT:

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25 Transcript produced by computer-aided transcription.

USA vs. Juarez - Sentencing - February 25, 2020

	I N D E X	PAGE
1		
2		
3		
4	Proceedings	3
5	Ruling by The Court	11
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
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20-50148.95

USA vs. Juarez - Sentencing - February 25, 2020

PROCEEDINGS

(At 8:39 a.m., proceedings commenced with the assistance of a Tarahumara interpreter, Mr. Dale Taylor)

4 (Defendant present)

THE COURT: The Court calls U.S. vs. Fernando
Juarez -- and I have Fernando Perez Juarez.

7 MS. MILLIRON: Your Honor, Perez was incorrect.
8 Somebody assigned it to him at some point, but it is just
9 Juarez.

10 THE COURT: All right. Thank you very much.

11 -- Fernando Juarez, and that's in Pecos 19-CR-429
12 today for sentencing.

13 MS. MORRISON: Monica Morrison present and on behalf
14 of the United States.

15 MS. MILLIRON: Stephanie Milliron on behalf of
16 Mr. Juarez. We're both present and ready, Your Honor.

17 THE COURT: Thank you, Ms. Milliron and Ms. Morrison.

18 || And, sir, are you Fernando Juarez?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Very good. We have an
21 official court interpreter. You're familiar with it. You're
22 getting the interpretation from. Let us know if you have any
23 difficulty.

24 Ms. Milliron, do you believe Mr. Juarez to be
25 competent?

USA vs. Juarez - Sentencing - February 25, 2020

1 MS. MILLIRON: Yes, Your Honor, I do.

2 THE COURT: And have you reviewed with him the
3 Presentence Investigation Report?

4 MS. MILLIRON: Yes, Your Honor.

5 THE COURT: Now, I'm looking at -- I received a
6 revised copy this morning from, I guess, Officer McIntyre.
7 It's dated -- the original revision was February 13th. This
8 one was February 24th, which is yesterday. I just want to make
9 sure we're all looking at the same one.

10 MS. MILLIRON: Yes, Your Honor.

11 MS. MORRISON: Yes, Your Honor.

12 THE COURT: We're good? Okay. All right. Very
13 well.

14 So, Mr. Juarez, have you reviewed this Presentence
15 Investigation Report with your lawyer?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 Ms. Milliron, are there objections or corrections to
19 the report from the defense?

20 MS. MILLIRON: Confusingly possibly, Your Honor.

21 THE COURT: Okay.

22 MS. MILLIRON: I think the government and I have gone
23 back and forth with what we're objecting about.

24 THE COURT: And I have lots of Post-it Notes and
25 markings on this one as well. Go ahead.

USA vs. Juarez - Sentencing - February 25, 2020

1 MS. MILLIRON: I can get started, I believe. In the
2 revised PSR, the recommendation for minor role was removed so
3 of course now I object to the lack --

4 THE COURT: Because you want the minor role, right?

5 MS. MILLIRON: Correct. And then I can't speak for
6 the government. I think they have their own objections.

7 THE COURT: You have objection as well?

8 MS. MORRISON: Your Honor, what I think I would say,
9 and maybe this will help clear it up. We were objecting to the
10 defendant not receiving leader, organizer.

11 THE COURT: Right.

12 MS. MORRISON: But now that the defendant is not
13 receiving minor role, we're withdrawing our objection. I think
14 that's equitable. If the defendant doesn't receive minor role,
15 the other defendants received minor role, I think it
16 accomplishes the same purpose. So at this point I have no
17 objections.

18 THE COURT: All right.

19 And, Ms. Milliron, as I read this, it appears to me
20 that Mr. Juarez -- I keep wanting to say Mr. Perez now that I
21 read that. I apologize -- it appears to me that we have one
22 person in the group -- at least one person saying he was the
23 foot guide -- that Mr. Juarez was the foot guide, which to me
24 would take him out of, you know, what we do we -- here, we
25 bend -- I think the district policy but for Del Rio appears to

USA vs. Juarez - Sentencing - February 25, 2020

1 me to be that we award minor role in these types of cases
2 typically.

3 But if something takes someone out of that
4 mainstream, then whether it be the person is a driver, the
5 person is a guide of some kind, the person did something
6 else -- and I agree with the defense that he's not a leader,
7 organizer. I don't see -- from the evidence I see so far, I
8 can't see that he's a leader, organizer; but I do think he's
9 taken out of sort of that sweet spot where we've created this
10 minor role adjustment of -- and I believe we bend that
11 guideline, if not break it, within the district. But I don't
12 want to be different than the rest of the district.

13 But I also -- also, for example, if somebody has done
14 it before and now they're back in the same role, but they've
15 done it before, I mean, that's different than the backpacker,
16 the mule that we all -- I think we all worry about gets sort of
17 taken advantage of.

18 Your comments? I'm sorry.

19 MS. MILLIRON: I just had two, Your Honor. The first
20 was that the individual who identified Mr. Juarez was also
21 himself identified by both Mr. Juarez and the other --

22 THE COURT: As the guide?

23 MS. MILLIRON: -- the other codefendant as the guide.
24 So maybe some credibility questions as far as the
25 identification goes.

USA vs. Juarez - Sentencing - February 25, 2020

1 But my second -- when you referenced his brief
2 conviction, my argument would be that the criminal history
3 category already takes that into account for his sentencing
4 purposes. So having a prior does not necessarily mean he
5 wasn't in a minor role in this capacity and this offense.

6 THE COURT: And I've always thought that was a
7 logical argument, but we do it all the time. I mean, that's
8 sort of the answer to that. I've always thought that, Gee,
9 we're kind of double counting here, aren't we? We're really
10 not. One is a criminal history category and one is sort of, I
11 guess, trying to look in the hearts and minds of people as to
12 what they are. So I'll overrule the objection respectfully.

13 And, again, the government has withdrawn any -- if
14 they ever made an objection as to leader, organizer, but I
15 would have overruled that objection as well. And I agree that
16 we're now kind of where we are -- where we should be.

17 Are there other objections or any corrections?

18 MS. MILLIRON: No, Your Honor, I don't believe so.

19 THE COURT: You've preserved that for appeal, I
20 think.

21 Ms. Morrison, anything from the government?

22 MS. MORRISON: No, Your Honor.

23 THE COURT: You don't want to make the argument about
24 leader, organizer so I can overrule you?

25 MS. MORRISON: Your Honor, what I can say is there

USA vs. Juarez - Sentencing - February 25, 2020

1 was conflicting information based on what was initially
2 provided to Border Patrol and DEA.

3 THE COURT: Right.

4 MS. MORRISON: There were then written safety valve
5 statements, and then there were oral debriefs. And based on
6 the oral debriefs, it's the government's position that the
7 defendant would have been a leader, organizer. However, in
8 trying to be equitable, I think if the defendant doesn't
9 receive minor role, it accomplishes the same purpose. So I
10 don't have any intention of going forward with that, but just
11 so the Court is aware of why we made that argument.

12 THE COURT: I appreciate that.

13 So, Mr. Juarez, let me tell you that I have read and
14 re-read and re-read U.S. Probation Officer McIntyre's report
15 and revised report and the revision of the revised report. I
16 believe the report as revised and dated February 24th, just
17 yesterday, to be accurate.

18 I adopt it and the application of the United States
19 Sentencing Guidelines contained in the report.

20 That brings us to a total base offense level 17.

21 Criminal History Category II.

22 27 to 33 months as far as custody range. And that's
23 for Count One as well as Count Two. That's in each count, 27
24 to 33 months.

25 Three years' supervised release in each count as

USA vs. Juarez - Sentencing - February 25, 2020

1 well.

2 Ineligible for probation.

3 \$10,000 to \$2 million. That would be for each count
4 also.

5 And then \$100 mandatory special assessment in each
6 count totaling \$200.

7 Ms. Milliron, what would you have the Court consider?

8 MS. MILLIRON: Yes, Your Honor. Mr. Juarez was born
9 in Guachocci, and he grew up in the mountains out there.

10 THE COURT: I wondered how you said that.

11 MS. MILLIRON: I hope I said it right.

12 THE COURT: You said it better than I could have said
13 it.

14 MS. MILLIRON: He grew up taking care of his family's
15 goats, and they often went without food. They didn't have the
16 basic necessities. Two of his younger siblings passed away
17 while he was growing up. He still has three sisters who are
18 living. His mother used to beat him to take care of the goats
19 and things like that. It was a very hard life growing up out
20 there. And his father sometimes has work at a sawmill;
21 sometimes he doesn't have work at a sawmill. So when he
22 doesn't, Mr. Juarez has to go find work picking apples or as
23 most recently in Chihuahua trying to help his cousin build a
24 house.

25 He has a 3-year-old daughter and he also helps his --

USA vs. Juarez - Sentencing - February 25, 2020

1 his parents took in an 11-year-old boy. It sounds like an
2 adoption-type situation with this 11-year-old boy. So he's
3 helping to raise him as well. He's just sad and wants to go
4 home to his family at this point. And his plans are to go
5 visit them, reunite with after this, and go back and see if he
6 can get more work because it is a difficult life to live. He
7 has no education at all, none.

8 So in this case, Your Honor, he's a Level 17. I am
9 asking the Court to consider the bottom end of the guideline
10 range considering everything that's gone into this case.

11 THE COURT: Thank you.

12 Mr. Juarez, what would you like to say, sir? You're
13 30 years old, right?

14 I'm sorry.

15 MS. MILLIRON: May I just add something, Your Honor?

16 THE COURT: Oh, of course.

17 MS. MILLIRON: He doesn't know his actual birthday.
18 We think he's 33. Nobody knows.

19 THE COURT: Okay. I saw a guy yesterday who claimed
20 to be 33. When I asked him what year he was born, you know, he
21 was right on it. I would have sworn he was 53, but I don't
22 know.

23 Did y'all see him? The marshals were looking.

24 I mean, he swears, though. I don't have any doubt.

25 Mr. Juarez, you look maybe 33 to me, but it says here

USA vs. Juarez - Sentencing - February 25, 2020

1 you're 30. So you think it is about that. What would you like
2 to say?

3 THE DEFENDANT: I don't really know what my age.

4 THE COURT: Okay. What would you like to say about
5 this case or your family or -- anything?

6 THE DEFENDANT: I will never do this again.

7 THE COURT: Thank you. Now, you did it before, and
8 there is reason to believe that you will not do it again?

9 THE DEFENDANT: No more.

10 THE COURT: All right.

11 Ms. Morrison?

12 MS. MORRISON: Your Honor, the government is going to
13 ask for the high-end of the guidelines on this case. The
14 defendant has done it before. He wasn't deterred last time. I
15 think the only thing that might deter him is a longer sentence.
16 He needs to know he can't bring drugs back into the United
17 States.

18 THE COURT: And you received, it looks like,
19 114 days.

20 MS. MILLIRON: Probated for a year, Your Honor.

21 THE COURT: Oh, it was. Okay.

22 The Court does not depart from the recommended
23 sentence.

24 Pursuant to the Sentencing Reform Act of 1984, which
25 I have considered in an advisory capacity, and the sentencing

USA vs. Juarez - Sentencing - February 25, 2020

1 factors set forth in 18 U.S.C., Section 3553(a), which I have
2 considered in arriving at a reasonable sentence, I find the
3 guideline range in this case to be fair and reasonable.

4 The defendant is placed in the custody of the United
5 States Bureau of Prisons to serve a term of imprisonment of
6 33 months. That's for Count One as well as Count Two. Those
7 sentences to run concurrently.

8 Upon release from the Bureau of Prisons, you are
9 placed on supervised release to serve a term of three years for
10 Count One; three years, for Count Two. Those to run
11 concurrently as well.

12 The standard and mandatory conditions of supervision
13 are imposed, which include the conditions that the defendant
14 shall not commit another federal, state, or local crime during
15 the term of supervision.

16 And if the defendant is excluded, deported, or
17 removed upon release, the term of supervision shall be
18 nonreporting. The defendant shall not illegally reenter the
19 United States.

20 Should the defendant lawfully reenter the United
21 States during the term of supervised release, the defendant
22 shall immediately report to the nearest U.S. Probation Office.

23 There is no fine imposed. The Court finding that the
24 defendant is unable to pay a fine.

25 And there is a \$100 mandatory special assessment in

USA vs. Juarez - Sentencing - February 25, 2020

1 each count totaling \$200 that you are required to pay to the
2 Victims of -- well, the Crime Victims Fund, is what it is,
3 pursuant to the Victims of Crime Act.

4 Your Presentence Report will be sealed.

5 You have the right to appeal your conviction and your
6 sentence, assuming you have not given up that right. You must
7 file Notice of Appeal in writing within 14 days of the entry of
8 this judgment. If you are unable to afford an attorney or the
9 transcript of the record of the case on appeal, those will be
10 provided at no expense to you, Mr. Juarez.

11 Ms. Milliron, anything further on behalf of
12 Mr. Juarez?

13 MS. MILLIRON: Yes, Your Honor. We object to the
14 procedural and substantive reasonableness of the sentence.

15 THE COURT: Thank you.

16 Ms. Morrison?

17 MS. MORRISON: Nothing further, Your Honor.

18 THE COURT: Mr. Juarez, I wish you the very best, you
19 and your family. Good luck to you. I remand you to the
20 custody of the United States Marshals to serve your sentence.

21 And I will tell you we welcome you back here if you
22 can come back legally. But even if you come back illegally,
23 don't bring marijuana with you or any other controlled
24 substances. I beg you not to do anything that's illegal; but
25 if you do, at least don't do that. Thank you.

USA vs. Juarez - Sentencing - February 25, 2020

1 MS. MILLIRON: Thank you, Your Honor.

2 THE COURT: Thank you, Ms. Milliron.

3 (Recess from 8:52 a.m. to 10:37 a.m.)

4 THE COURT: The Court recalls U.S. vs. Fernando
5 Juarez in Pecos 19-CR-429.

6 MS. MORRISON: Monica Morrison present on behalf of
7 the United States.

8 MS. MILLIRON: Stephanie Milliron on behalf of
9 Mr. Juarez. We are present and ready, Your Honor.

10 THE COURT: Thank you very much.

11 And, Mr. Juarez, you're the same Fernando Juarez that
12 I sentenced 30 or 40 minutes ago, an hour ago, something like
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: The same thing goes. We've got an
16 official court interpreter. Let us know if you have any
17 difficulty with him or your headphones.

18 I was notified, Ms. Milliron, you had an additional
19 objection possibly?

20 MS. MILLIRON: Yes, Your Honor.

21 THE COURT: Go right ahead.

22 MS. MILLIRON: My I proceed?

23 THE COURT: Of course.

24 MS. MILLIRON: Well, first, I just want to say
25 everybody in this courtroom is here patiently and kindly

USA vs. Juarez - Sentencing - February 25, 2020

1 accommodating this recall. So I am grateful for that.

2 THE COURT: Oh, of course.

3 MS. MILLIRON: I made a mistake and I did not argue
4 the safety valve adjustment in Mr. Juarez's case.

5 THE COURT: Okay.

6 MS. MILLIRON: Based off of miscalculate, I thought
7 it had been awarded, and I was incorrect. We submitted it
8 yesterday, and he is eligible under the First Step Act. So I
9 did want to put that in front of the Court for the Court's
10 consideration.

11 MS. MORRISON: And, Your Honor, I just want to make
12 it clear we are objecting to safety valve. It is our position
13 that the defendant is not eligible because he's the guide. And
14 so I let probation know that he hadn't provided a safety valve
15 statement; but even if he did, it would be our position that he
16 would be ineligible.

17 Ms. Milliron forwarded one to me. I spoke with her
18 yesterday about this because I didn't want her to be surprised
19 in court. Because we believed him to be the guide, we don't
20 think he's eligible, and we are not going to agree to safety
21 valve.

22 THE COURT: Officer McIntyre.

23 (Off-the-record sidebar discussion)

24 THE COURT: All right. Remind me now, Ms. Morrison,
25 we talked earlier today, and we had a few other sentencing. I

USA vs. Juarez - Sentencing - February 25, 2020

1 just want to make sure I'm clear. I believe the government was
2 going to -- would have asked for organizer, leader; but as a
3 sense of fairness and equity, I think, determined that since he
4 was receiving two levels upward adjustment for the minor
5 role -- for not being minor role, I guess. I don't know.

6 MS. MORRISON: So, yes, since he didn't get minor
7 role, we thought that was fair. Since the codefendants had
8 gotten minor role, we thought that had been taken into
9 consideration. So we didn't have any other issues with that.

10 THE COURT: And your concern with safety valve is
11 that you do believe he's a leader, organizer even though you've
12 not requested it.

13 MS. MORRISON: Yes. And I think the whole point of
14 this -- I mean, we didn't just take the other codefendants'
15 statements at face value. We looked at what they said to
16 Border Patrol and DEA. They provided written safety valve
17 statements, and then we took an additional step. We said for
18 them to qualify for safety valve, they had to orally debrief
19 because we had some questions. And based on the statements
20 they made during those debriefs for which I was present, I do
21 believe the defendant is the guide in this case.

22 So I don't think he should receive safety valve. I
23 don't think the statements he's provided are truthful. So I
24 don't think it's appropriate for him to receive safety valve.

25 But I didn't want Ms. Milliron to be surprised since

USA vs. Juarez - Sentencing - February 25, 2020

1 she took the step of obtaining the statement. We had an
2 interpreter be here. I wanted her to be able to prepare her
3 client for that.

4 THE COURT: Thank you, Ms. Morrison.

5 So, Ms. Milliron, the government believes that your
6 client gave false information -- gave a misleading statement --
7 safety valve statement. How do you respond to that?

8 MS. MILLIRON: That's the first time I'm hearing that
9 it's a misleading or false type of statement, Your Honor.
10 Obviously, I don't believe it is false or misleading.

11 THE COURT: Well, the government would be in the best
12 position to know that likely than you.

13 MS. MILLIRON: Having been privy at least --
14 obviously, I wasn't there during the debriefs. So I don't know
15 what was said. But I haven't heard any facts about what was
16 actually said aside from it's based on her recollections from
17 what was said. So the only information I can go off of are the
18 initial interviews and then the safety valve statements that
19 were made later.

20 I don't think that there is any question that
21 Mr. Villalobos has consistently made statements against my
22 client. However, Mr. Fierro has consistently made statements
23 in his own sworn statement clearly identifying Mr. Villalobos
24 as the guide. He said, Mr. Villalobos was guiding us. That's
25 in his written safety valve statement.

USA vs. Juarez - Sentencing - February 25, 2020

1 THE COURT: Again, as far as you know. The
2 government, again, is in a better position because they've now
3 debriefed a couple of these people, right?

4 MS. MORRISON: Yes, Your Honor, both of them. And I
5 was present for both of those.

6 THE COURT: Villalobos and Fierro.

7 MS. MORRISON: Yes.

8 MS. MILLIRON: Yes, Your Honor, I understand that. I
9 can't argue against that because obviously not being present
10 and having no other facts, I'm powerless to argue facts that
11 aren't in front of me.

12 THE COURT: All right. Based upon everything that I
13 have heard, then I'll overrule the objection and not award
14 Mr. Juarez safety valve based upon that -- again, for the
15 record, let me state that the government has foregone seeking
16 leader, organizer, upward adjustment simply because of the
17 Court's ruling on the minor role. And I think they shouldn't
18 be penalized for that just because they were trying to be fair
19 and equitable.

20 What I will also say is they are in the best position
21 to know if Mr. Juarez is safety valve -- quote/unquote, safety
22 valve's statement is true. The Court is not -- from the --
23 from what I've been told, I certainly believe the attorneys are
24 telling me what they know and what they're able to tell me.
25 And so I'll overrule the objection.

USA vs. Juarez - Sentencing - February 25, 2020

1 The sentence of 33 months in Bureau of Prisons
2 followed by three years' supervised release on both counts to
3 run concurrently and \$200 mandatory special assessment, that
4 will, of course, stand. You've preserved that as well as I
5 think your other objection.

6 Did you have another objection on this case?

7 MS. MILLIRON: I don't remember, Your Honor.

8 THE COURT: I don't remember either. I'm sorry.

9 MS. MORRISON: Her only objection was to minor role.

10 MS. MILLIRON: Right.

11 THE COURT: That's right.

12 All right. So anything further we need to take up
13 then today, Ms. Milliron?

14 MS. MILLIRON: From me, Your Honor, just to reurge my
15 previous objection to the procedural and substantive
16 reasonableness.

17 THE COURT: Absolutely.

18 Mr. Juarez, do you understand what we've done?

19 THE DEFENDANT: Yes.

20 THE COURT: It sounds like he said "no," but he said
21 it in Tarahumara. Okay.

22 THE INTERPRETER: (Speaking Tarahumara language.)

23 THE COURT: Okay.

24 Ms. Morrison, anything further from the government?

25 MS. MORRISON: No, Your Honor.

USA vs. Juarez - Sentencing - February 25, 2020

1 THE COURT: All right. Thank you.

2 Mr. Juarez, I remand you to the custody of the United
3 States Marshals to serve your sentence. Good luck.

4 And thank you, Ms. Milliron.

5 MS. MILLIRON: Thank you for hearing us, Your Honor.

6 THE COURT: Thank you.

7 (Proceedings concluded at 10:49 a.m.)

8 * * * * *

9 C E R T I F I C A T E

10
11 I, ANN M. RECORD, United States Court Reporter for
12 the United States District Court in and for the Western
13 District of Texas, hereby certify that the above and
14 foregoing contains a true and correct transcript of the
15 proceedings in the above-entitled and numbered cause.

16 WITNESS MY HAND on this 14th day of April, 2020.

17

18

19

/s/Ann M. Record

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