

## APPENDIX A

*United States v. Marquez-Gonzalez*,  
Nos. 20-50013 & 20-50027, unpub. op.  
(5th Cir. Aug. 19, 2020)

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 19, 2020

Lyle W. Cayce  
Clerk

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No. 20-50013  
CONSOLIDATED WITH  
No. 20-50027  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELIER ISAI MARQUEZ-GONZALEZ,

*Defendant—Appellant.*

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 4:19-CR-558-1  
USDC No. 4:19-CR-632-1

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Before KING, SMITH, and WILSON, *Circuit Judges*.

PER CURIAM:\*

Elier Isai Marquez-Gonzalez appeals his within-guidelines sentence of 21 months of imprisonment and three years of supervised release, which the

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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district court imposed following his guilty plea conviction for entry after deportation, in violation of 8 U.S.C. § 1326. He argues that his sentence was greater than necessary to meet the sentencing goals set out in 18 U.S.C. § 3553(a) and therefore unreasonable. Marquez-Gonzalez also appeals a separate revocation judgment, but raises no challenge to the revocation of his supervised release.

Pursuant to *Gall v. United States*, 552 U.S. 38, 51 (2007), we engage in a bifurcated review of the sentence imposed by the district court. *United States v. Delgado-Martinez*, 564 F.3d 750, 752 (5th Cir. 2009). First, we consider whether the district court committed a “significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range.” *Gall*, 552 U.S. at 51. If there is no error or the error is harmless, we may proceed to the second step and review the substantive reasonableness of the sentence imposed for an abuse of discretion. *Id.*; see also *Delgado-Martinez*, 564 F.3d at 751-53. A within-guidelines sentence such as Marquez-Gonzalez’s is afforded a presumption of reasonableness. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). This presumption may be rebutted only if the defendant establishes “that the sentence does not account for a factor that should receive significant weight, it gives significant weight to an irrelevant or improper factor, or it represents a clear error of judgment in balancing sentencing factors.” *Id.*

Marquez-Gonzalez has not rebutted the presumption. He contends that the district court abused its discretion in imposing a sentence at the top of the advisory range given his stated reason for illegally reentering the United States, namely the need to earn money and provide treatment for his handicapped daughter, and that the guidelines range overstated both the seriousness of his offense and his dangerousness. However, the district court heard Marquez-Gonzalez’s arguments regarding mitigation and the nature of his prior criminal convictions and sentences, and it ultimately decided to

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impose a sentence at the top of the advisory guidelines range. The district court was in the best position to evaluate Marquez-Gonzalez's history and characteristics, as well as the need for the sentence imposed to further the objectives set forth in § 3553(a), and its decision is entitled to deference. *See Gall*, 552 U.S. at 51-52.

Finally, we have previously rejected Marquez-Gonzalez's arguments regarding the nature of illegal reentry offenses and double-counting under U.S.S.G. § 2L1.2. *See United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009); *United States v. Juarez-Duarte*, 513 F.3d 204, 212 (5th Cir. 2008).

AFFIRMED.

## APPENDIX B

18 U.S.C. § 3553(a)

United States Code Annotated  
Title 18. Crimes and Criminal Procedure (Refs & Annos)  
Part II. Criminal Procedure  
Chapter 227. Sentences (Refs & Annos)  
Subchapter A. General Provisions (Refs & Annos)

18 U.S.C.A. § 3553

§ 3553. Imposition of a sentence

Effective: December 21, 2018

[Currentness](#)

**(a) Factors to be considered in imposing a sentence.**--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(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;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to [section 994\(a\)\(1\) of title 28, United States Code](#), subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

(ii) that, except as provided in [section 3742\(g\)](#), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to [section 994\(a\)\(3\) of title 28, United States Code](#), taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#));

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to [section 994\(a\)\(2\) of title 28, United States Code](#), subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and

(B) that, except as provided in [section 3742\(g\)](#), is in effect on the date the defendant is sentenced.<sup>1</sup>

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

**(b) Application of guidelines in imposing a sentence.--**

**(1) In general.**--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

**(2) Child crimes and sexual offenses.--**

(A)<sup>2</sup> **Sentencing.**--In sentencing a defendant convicted of an offense under [section 1201](#) involving a minor victim, an offense under [section 1591](#), or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under [section 994\(a\) of title 28](#), taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

**(c) Statement of reasons for imposing a sentence.**--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under [section 994\(w\)\(1\)\(B\) of title 28](#), except to the extent that the court relies upon statements received in camera in accordance with [Federal Rule of Criminal Procedure 32](#). In the event that the court relies upon statements received in camera in accordance with [Federal Rule of Criminal Procedure 32](#) the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the



order of judgment and commitment, to the Probation System and to the Sentencing Commission,,<sup>3</sup> and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

**(d) Presentence procedure for an order of notice.**--Prior to imposing an order of notice pursuant to [section 3555](#), the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

**(e) Limited authority to impose a sentence below a statutory minimum.**--Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to [section 994 of title 28, United States Code](#).

**(f) Limitation on applicability of statutory minimums in certain cases.**--Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act ([21 U.S.C. 841, 844, 846](#)), section 1010 or 1013 of the Controlled Substances Import and Export Act ([21 U.S.C. 960, 963](#)), or [section 70503 or 70506 of title 46](#), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under [section 994 of title 28](#) without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

- (1) the defendant does not have--
  - (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
  - (B) a prior 3-point offense, as determined under the sentencing guidelines; and
  - (C) a prior 2-point violent offense, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

**(g) Definition of violent offense.**--As used in this section, the term “violent offense” means a crime of violence, as defined in [section 16](#), that is punishable by imprisonment.

#### CREDIT(S)

(Added [Pub.L. 98-473, Title II, § 212\(a\)\(2\)](#), Oct. 12, 1984, 98 Stat. 1989; amended [Pub.L. 99-570, Title I, § 1007\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-7; [Pub.L. 99-646, §§ 8\(a\), 9\(a\), 80\(a\), 81\(a\)](#), Nov. 10, 1986, 100 Stat. 3593, 3619; [Pub.L. 100-182, §§ 3, 16\(a\), 17](#), Dec. 7, 1987, 101 Stat. 1266, 1269, 1270; [Pub.L. 100-690, Title VII, § 7102](#), Nov. 18, 1988, 102 Stat. 4416; [Pub.L. 103-322, Title VIII, § 80001\(a\), Title XXVIII, § 280001](#), Sept. 13, 1994, 108 Stat. 1985, 2095; [Pub.L. 104-294, Title VI, § 601\(b\)\(5\), \(6\), \(h\)](#), Oct. 11, 1996, 110 Stat. 3499, 3500; [Pub.L. 107-273, Div. B, Title IV, § 4002\(a\)\(8\)](#), Nov. 2, 2002, 116 Stat. 1807; [Pub.L. 108-21, Title IV, § 401\(a\), \(c\), \(j\)\(5\)](#), Apr. 30, 2003, 117 Stat. 667, 669, 673; [Pub.L. 111-174, § 4](#), May 27, 2010, 124 Stat. 1216; [Pub.L. 115-391, Title IV, § 402\(a\)](#), Dec. 21, 2018, 132 Stat. 5221.)

#### VALIDITY

<Mandatory aspect of subsec. (b)(1) of this section held unconstitutional by [United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 \(2005\)](#). >

[Notes of Decisions \(2810\)](#)

#### Footnotes

- 1 So in original. The period probably should be a semicolon.
  - 2 So in original. No subpar. (B) has been enacted.
  - 3 So in original. The second comma probably should not appear.
- 18 U.S.C.A. § 3553, 18 USCA § 3553  
Current through P.L. 116-149.

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## APPENDIX C

U.S.S.G. §2L1.2 (2018)

United States Code Annotated  
Federal Sentencing Guidelines (Refs & Annos)  
Chapter Two. Offense Conduct (Refs & Annos)  
Part L. Offenses Involving Immigration, Naturalization, and Passports  
1. Immigration

USSG, § 2L1.2, 18 U.S.C.A.

§ 2L1.2. Unlawfully Entering or Remaining in the United States

Currentness

**(a)** Base Offense Level: 8

**(b)** Specific Offense Characteristics

**(1)** (Apply the Greater) If the defendant committed the instant offense after sustaining--

**(A)** a conviction for a felony that is an illegal reentry offense, increase by 4 levels; or

**(B)** two or more convictions for misdemeanors under 8 U.S.C. § 1325(a), increase by 2 levels.

**(2)** (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in--

**(A)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

**(B)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

**(C)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

**(D)** a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

**(E)** three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

**(3)** (Apply the Greatest) If, after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in--

**(A)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

**(B)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

**(C)** a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

**(D)** a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

**(E)** three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

#### **CREDIT(S)**

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1991; November 1, 1995; November 1, 1997; November 1, 2001; November 1, 2002; November 1, 2003; November 1, 2007; November 1, 2008; November 1, 2010; November 1, 2011; November 1, 2012; November 1, 2014; November 1, 2015; November 1, 2016; November 1, 2018.)

#### **COMMENTARY**

<**Statutory Provisions:** [8 U.S.C. § 1253](#), [§ 1325\(a\)](#) (second or subsequent offense only), [§ 1326](#). For additional statutory provision(s), see Appendix A (Statutory Index).>

#### **<Application Notes>**

##### **<1. In General.-->**

<**(A) “Ordered Deported or Ordered Removed from the United States for the First Time”**--For purposes of this guideline, a defendant shall be considered “ordered deported or ordered removed from the United States” if the defendant was ordered deported or ordered removed from the United States based on a final order of exclusion, deportation, or removal, regardless of whether the order was in response to a conviction. “For the first time” refers to the first time the defendant was ever the subject of such an order.>

<**(B) Offenses Committed Prior to Age Eighteen**--Subsections (b)(1), (b)(2), and (b)(3) do not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.>

##### **<2. Definitions.--For purposes of this guideline:>**

<“Crime of violence” means any of the following offenses under federal, state, or local law: murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c), or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another. “Forcible sex offense” includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. § 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States. “Extortion” is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.>

<“Drug trafficking offense” means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.>

<“Felony” means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.>

<“Illegal reentry offense” means (A) an offense under 8 U.S.C. § 1253 or § 1326, or (B) a second or subsequent offense under 8 U.S.C. § 1325(a).>

<“Misdemeanor” means any federal, state, or local offense punishable by a term of imprisonment of one year or less.>

<“Sentence imposed” has the meaning given the term “sentence of imprisonment” in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History). The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.>

**<3. Criminal History Points.--**For purposes of applying subsections (b)(1), (b)(2), and (b)(3), use only those convictions that receive criminal history points under § 4A1.1(a), (b), or (c). In addition, for purposes of subsections (b)(1)(B), (b)(2)(E), and (b)(3)(E), use only those convictions that are counted separately under § 4A1.2(a)(2).>

<A conviction taken into account under subsection (b)(1), (b)(2), or (b)(3) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).>

**<4. Cases in Which Sentences for An Illegal Reentry Offense and Another Felony Offense were Imposed at the Same Time.--**There may be cases in which the sentences for an illegal reentry offense and another felony offense were imposed at the same time and treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). In such a case, use the illegal reentry offense in determining the appropriate enhancement under subsection (b)(1), if it independently would have received criminal history points. In addition, use the prior sentence for the other felony offense in determining the appropriate enhancement under subsection (b)(2) or (b)(3), as appropriate, if it independently would have received criminal history points.>

**<5. Cases in Which the Criminal Conduct Underlying a Prior Conviction Occurred Both Before and After the Defendant Was First Ordered Deported or Ordered Removed.--**There may be cases in which the criminal conduct underlying a prior conviction occurred both before and after the defendant was ordered deported or ordered removed from the United States for the first time. For purposes of subsections (b)(2) and (b)(3), count such a conviction only under subsection (b)(2).>

**<6. Departure Based on Seriousness of a Prior Offense.--**There may be cases in which the offense level provided by an enhancement in subsection (b)(2) or (b)(3) substantially understates or overstates the seriousness of the conduct underlying the prior offense, because (A) the length of the sentence imposed does not reflect the seriousness of the prior offense; (B) the prior conviction is too remote to receive criminal history points (see § 4A1.2(e)); or (C) the time actually served was substantially less than the length of the sentence imposed for the prior offense. In such a case, a departure may be warranted.>

**<7. Departure Based on Time Served in State Custody.--**In a case in which the defendant is located by immigration authorities while the defendant is serving time in state custody, whether pre- or post-conviction, for a state offense, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). See § 5G1.3(a). In such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody, from the time immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.>

<Such a departure should be considered only in cases where the departure is not likely to increase the risk to the public from further crimes of the defendant. In determining whether such a departure is appropriate, the court should consider, among other things, (A) whether the defendant engaged in additional criminal activity after illegally reentering the United States; (B) the seriousness of any such additional criminal activity, including (1) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon (or induced another person to do so) in connection with the criminal activity, (2) whether the criminal activity resulted in death or serious bodily injury to any person, and (3) whether the defendant was an organizer, leader, manager, or supervisor of others in the criminal activity; and (C) the seriousness of the defendant's other criminal history.>

**<8. Departure Based on Cultural Assimilation.--**There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant's illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.>

<In determining whether such a departure is appropriate, the court should consider, among other things, (1) the age in childhood at which the defendant began residing continuously in the United States, (2) whether and for how long the defendant attended school in the United States, (3) the duration of the defendant's continued residence in the United States, (4) the duration of the defendant's presence outside the United States, (5) the nature and extent of the defendant's familial and cultural ties inside the United States, and the nature and extent of such ties outside the United States, (6) the seriousness of the defendant's criminal history, and (7) whether the defendant engaged in additional criminal activity after illegally reentering the United States.>

#### [Notes of Decisions \(543\)](#)

Federal Sentencing Guidelines, § 2L1.2, 18 U.S.C.A., FSG § 2L1.2  
As amended to 3-16-20.