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PSYCHIATRIC REPORT

EXAMINEE: JOSUE PORTILLO
INDICTMENT No.: US v. Portillo, 17-366(JB)
DATE OF BIRTH: MAY 1ST, 2001
DATE OF REPORT: JUNE 22, 2018

PURPOSE OF EVALUATION: Joseph W. Ryan, Jr., attorney for the defendant, Josue Portillo requested that I conduct a psychiatric evaluation of his client Josue Portillo, currently a 17-year-old male, was 15 years, 11 months when reportedly as a member of the MS-13 gang he participated in the April 11, 2017 murders of Justin Lüvicura, Michael Lopez, Jorge Tigre and Jefferson Villalobos. Mr. Portillo has been charged with Racketeering, Racketeering Conspiracy, Conspiracy to Murder Rival Gang Members, and the "April 11 Murders". The Government has made a motion to the Court to transfer Josue Portillo to District Court for Prosecution as an Adult.

The purpose of this evaluation is to conduct a comprehensive psychiatric assessment, provide a diagnostic impression, and to assess the following factors relevant to the standards by which transfer to adult status is considered in the interest of justice, namely (1) the juvenile's age and social background; (2) the nature of the offense alleged; (3) the nature and extent of any prior delinquency record; (4) the juvenile's present psychological maturity and intellectual development; (5) the juvenile's response to past treatment efforts and the nature of those efforts; and (6) available programs that are designed to treat the juvenile's behavior problems. See 18 U.S.C. § 5032; Nelson I, 68 F.3d at 588.

SOURCES OF INFORMATION:

- Interview with Mr. Portillo at the Suffolk County Jail on April 11, 2018, for approximately 4.5 hours. The interview was conducted in the presence of his attorney, Joseph W. Ryan, Jr., with the assistance of Spanish speaking interpreter Jose Carlos Venant.
- Review of records from the State of New York, Suffolk County Family Court, Docket G-00188-16 concerning Mr. Portillo's guardianship status, petitioning for his mother to be appointed his sole guardian.
- Review of Central Islip Union Free School District Records from September 2015–June 2017.
- Review of Community Reinvestment Report dated February 14, 2017.
- Review of Government's Motion and Memorandum of Law in Support of Motion to Transfer Josue Portillo to District Court for Prosecution as an Adult, prepared by Richard P. Donoghue, U.S. Attorney, Eastern District of New York.
- Review of Suffolk County Probation Department File.

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- Review of U.S. v. Juvenile Male, 269 F. Supp. 3d 29.
- Review of U.S. v. Juvenile Female, June 11, 2018 memorandum and order, 17-CR-362 (J.F.B.).
- Review of November 22, 2016 in U.S. District Judge Paul A. Engelmayer decision, U.S. v. C.F., 225 F. Supp. 3d 175.
- Review of various correspondences from Joseph W. Ryan, Jr.
- Telephone interview with Josue Portillo's mother, Vilma Portillo on May 16, 2018 with the assistance of Spanish-speaking interpreter Jose Carlos Venant.
- Face-to-face interview with Vilma Portillo on June 16, 2018, at the office of Joseph W. Ryan, Jr. for approximately 3.0 hours. The interview was conducted in the presence of Joseph W. Ryan, Jr. with the assistance of Spanish-speaking interpreter, Jose Carlos Venant.

CONFIDENTIALITY: Mr. Portillo was informed that the purpose of the evaluation was to provide a psychiatric assessment to his Attorney, the U.S. Attorney and the Court. Mr. Portillo understood that information about our meeting was not confidential to that extent. He understood that a treatment relationship was not being established.

BACKGROUND: Mr. Portillo was born in Lolotiquillo, a small town in El Salvador. He describes the community he grew up in as predominantly rural, with a small population. His parents were unmarried, and his father left before Mr. Portillo was born. Mr. Portillo has never met his father or had any form of communication with him. Mr. Portillo has one older sister and one younger sister. When Mr. Portillo was 3 years old, his mother emigrated to the United States in search of better job opportunities. She left Mr. Portillo and his older sister in the care of his maternal grandmother, who supported them by farming and selling a blood supplement made from roots. Between the ages of 3 and 14, Mr. Portillo did not see his mother, although they occasionally spoke over the phone. However, he reports that those conversations were relatively infrequent and brief, as he felt "embarrassed" by talking to her too long.

Vilma Portillo reports to this examiner at the June 6, 2018 interview, that she gave birth to Josue at the age of 23. Three years earlier, she had given birth to Josue's sister, Cyndy. Neither Josue or Cyndy had relationships with their fathers. Vilma Portillo reports that Josue's father abandoned her while she was three months pregnant. Vilma Portillo reports that she entrusted the child-rearing duties of her two children to her then 60+ year-old mother, Angella.

Vilma Portillo reports that she grew up in poverty. Her mother worked selling prepared hot foods and washing clothes. Her father died when she was two years old. Vilma attended school until the third grade. She says she can read a little bit of Spanish. After leaving school, she went to work. By the time she entered her teenage years, she traveled to a nearby town to work as a house cleaner. When Josue was 3-year-old and Cindy 5, Ms. Portillo left San Salvador and came to America. Her mother, Angella, was 68 years old at that time and took over total child-rearing responsibilities. Angella also sold a root infused product in the local economy, which was supposed to help with anemia.

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Vilma Portillo reports that when she arrived in the United States, she maintained contact with her children and her mother by telephone. It appears that Ms. Portillo's mother, Angella was competent and in a good state of health to parent her grandchildren. She enforced rules and was concerned about the children being exposed to negative influences and gang violence. She attended church services and brought the children with her.

Vilma Portillo reports that initially her son Josue was well behaved with his grandmother. He did not evidence early childhood oppositional defiant behaviors. He did not evidence antisocial behaviors. He followed his grandmother's directions, attended school, did well and went to Sunday church services with his grandmother and sister.

However, Vilma Portillo reports that about the age of 8, Josue was evidencing more defiant behaviors. She says her mother became concerned because he would go off with his friends who smoked cigarettes and marijuana and they seemed to have some influence over him. By his early teenage years, Josue had become more defiant of his grandmother. She knew that he was smoking marijuana. She knew that he was spending time at the soccer fields with unsavory characters.

Vilma Portillo reports that she and her mother grew increasingly concerned that Josue would end his hopes for the future and fall prey to the influences of the gang and drug culture in El Salvador. When he was 14 years old, Vilma Portillo made arrangements for Josue to come to America. Cindy remained in El Salvador with her grandmother. She continued in school and has thrived under her grandmother's parenting. Cindy has graduated high school and is planning to attend college in San Miguel, El Salvador.

Josue Portillo reported that as a child he had no history of social or behavioral difficulties. He got along well with his peers and received passing grades in his El Salvador school. He played soccer on an almost daily basis and describes this has his favorite activity.

When Mr. Portillo was 12, he says he began smoking cigarettes. He also reports that he smoked marijuana. However, he denied using marijuana regularly before coming to the U.S., in part because marijuana was not readily available to him. He also reported trying alcohol around this age but denied regular use.

When Mr. Portillo was 12, gang members started to arrive in his El Salvador community. He stated they were readily apparent because of their apparel. He identified them as members of the MS-13 gang and stated that prior to their arrival there had been no gang activity in the area that he was aware of; and that there were no other gangs, either before or after MS-13 arrived. The gang members would frequently come to the field where Mr. Portillo played soccer, and he sometimes spoke or exchanged cigarettes with them. However, he denied having any official involvement with MS-13 while in El Salvador.

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After the arrival of the gangs, the area where Mr. Portillo lived became more violent. People started disappearing from the community, including someone associated with Mr. Portillo's soccer league. His cousin's husband was also killed by gang members. In addition, there were frequent altercations between the gang and the police, and Mr. Portillo reports witnessing several incidents of police brutality. He says that unlike in America, the police force in El Salvador are not to be trusted.

Around this time, Mr. Portillo describes displaying defiant behaviors towards his grandmother, ignoring her rules and spending significant amounts of time hanging out on the streets with his friends. Although he denied being a gang member at this time, he reported feeling that joining a gang was going to be inevitable, as those who didn't join were victimized. Due to his growing oppositional defiant behavior with his grandmother and the increase in violence in the area, when Mr. Portillo was 14, he says his mother and grandmother decided it would be best for him to join his mother in the United States.

Mr. Portillo's journey to the United States occurred in July and August of 2015. It was an experience Mr. Portillo describes as traumatic. He reports that during part of the trip he was transported in an unventilated shipping container that was so crowded it was impossible to stand without touching other people. At another point, the truck he was in was so crowded that there were 3 other teenagers on top of him and he felt that he couldn't breathe. He also reports having to run away from immigration officials and had to hide from them in a trough. After he crossed the border, Mr. Portillo was taken into custody by other immigration officials. He was eventually sent to the Bronx, where he was reunited with his mother.

Mr. Portillo reported that after the journey from El Salvador, he would have frequent nightmares about the trip, and would have difficulty being in hot areas, as they reminded him of the crowded conditions he had endured. However, he stated that this was no longer happening at the time of the evaluation with this writer.

On arrival to New York, Mr. Portillo stayed in a group home for approximately a month before going to stay with his mother. His mother lived in an apartment in Central Islip, Long Island with her partner Jose Diaz, Jose's grandmother, and Mr. Portillo's younger half-sister, Genesis.

Vilma Portillo reports that when Josue first lived with her in Central Islip, he appeared in good spirits and was cooperative. Josue enjoyed being taken to the soccer fields by Jose. He attended the local public school and attempted to learn. She says he did well in school during his first year, which is consistent with what is documented in the school record. Vilma Portillo reports that Josue appeared initially motivated to perform well in school. She says it was a challenge because he did not speak English, so he attended bilingual classes. Vilma Portillo reports that it was her observation that Josue had poor frustration tolerance. She says if the school was placing demands on him, which he found arduous, he would get upset and not do his work or leave the classroom.

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Vilma Portillo reports that when Josue attended the Central Islip High School, things drastically changed for the worse. She reports that he would get dropped off at school in the morning but take it upon himself to leave class. His school performance deteriorated. Vilma Portillo says she was brought into school by the counselors. She reports Josue received counseling and a social worker made visits to their home. Vilma Portillo did not appreciate that at the time, her son was smoking large amounts of marijuana. She did not know that he had joined the MS-13 gang. She says however, that she was worried about him. He was not violent at home, but he was moody and withdrawn. Though, in some respects, she says she believed his problems were typical adolescent behavior.

Josue Portillo entered the 8th grade in the fall of 2015. He reported that adjusting to the new school was very difficult. The school was much larger and more crowded than he was used to. In addition, he found the academic work more difficult. The curriculum was more challenging, and he did not speak the language.

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Mr. Portillo says he joined MS-13 approximately a month after arriving in the U.S. Mr. Portillo provided several reasons explaining his motivation for joining MS-13. When he first arrived in Central Islip, he describes feeling uncomfortably estranged from his mother. He says he "did not know her", "it was weird." He reports feeling more at ease with the other youths from El Salvador who were in the MS-13 gang. He reported that he joined the gang because he had a desire for respect, and he believed that the people in his area in the U.S. had a respect for the gang members, sighting the fact that the MS-13 gang is prominent in popular culture and the news. He also stated that he thought that the gang would allow him easier access to friends, women, and marijuana, which he had begun using with increasing regularity since his arrival to the U.S.

Beginning in the latter half of the 8th grade, Mr. Portillo began to receive disciplinary action in school for disruptive behavior and truancy. On 4/25/16, he received 1 day of in school suspension (ISS), and on 6/08/16, he received 2 days of off-site suspension (OSS). Although Mr. Portillo performed adequately in most school subjects, he needed to retake math and English in summer school after completing the 8th grade. He passed both classes.

In the summer of 2016, when Mr. Portillo was between 8th grade and high school, he says he was approached outside a 7-Eleven by the victims of the alleged offense, who were members of a rival gang. They asked him if he were a member of MS-13 and threatened to beat him up if he were. Mr. Portillo denied being a member of MS-13 and escaped the situation unscathed.

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When Mr. Portillo entered the 9th grade at Central Islip High School in September of 2016 his pattern of truancy and disruptive behavior increased significantly and escalated throughout the course of the year. On 9/19/16, Mr. Portillo received In School Suspension (ISS) for one day, after he was truant and refused to follow the instructions of a school security officer. On 10/24/16 he received 5 days of ISS for ongoing behavioral issues. In total, by 12/05/16, he had 20 full days truancy and 12 days of partial truancy.

Because of his persistent truancy, deteriorated school performance and cannabis use in October of 2016, Mr. Portillo was referred to the Person in Need of Supervision (PINS) program, and his case was officially opened on 12/06/16. Through the Community Reinvestment Program (CRP), Hope for Youth was contracted to work with Mr. Portillo, and he was assigned a Case Manager, Stephanie Rivera. However, it does not appear that these interventions made a significant impact. In the first academic quarter of 2016, Mr. Portillo failed 4 of his 10 classes. Available records indicate that these grades were a reflection of poor attendance, rather than of academic difficulty.

On 12/14/16 Mr. Portillo was caught smoking marijuana on school property. At that time, he received 5 days of offsite supervision (OSS). He received OSS again on or around 01/31/18 for 5 days after fleeing school security officers. On 4/03/17, he received OSS again for 5 days, after he was insubordinate, cutting class, and being in an unauthorized area. Due to spring break, this suspension lasted until 4/18/17, and he received OSS again on the day after he returned, 04/19/17, for 5 days for insubordination, and entering the female bathroom. These episodes of offsite suspension were interspersed with several days of ISS, and on 5/22/17 he received OSS for 5 days due to, among other things, refusing to attend ISS. By this time, the "April 11 Murders" had already occurred.

School records indicate that in addition to Mr. Portillo's frequent unexcused absences, he was also frequently disruptive and oppositional in class. He would often not participate in the assigned activity, would yell and talk back to the teacher, and on occasion would throw things.

The records also indicate that the school made numerous attempts to work with Mr. Portillo's mother to address his problematic behavior. In addition to requesting frequent parent-teacher conferences, they had numerous phone calls and discussion about ways in which she could attempt to implement more discipline in the household. These records indicate that Mr. Portillo's mother conveyed to his teachers her frustration with her son's behavior and her difficulty exercising any sort of control over his behaviors. For instance, she would drop him off at school every day, but Mr. Portillo would immediately sneak out and go hang out with friends. CRP counselling records indicate that part of why she had difficulty controlling Mr. Portillo was their distant relationship and her lack of involvement in his life up until that point. It appears that Vilma Portillo, an uneducated woman who had no experience in parenting a high school age student, lacked the necessary judgement and skills to successfully supervise and advocate for her son.

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When interviewed by this examiner, Mr. Portillo reported that during his 9th grade year he was frequently bored by school and preferred to spend his time smoking marijuana and hanging out with girls and his friends in MS-13. He reported that he was smoking marijuana on a daily basis. He would always smoke in the morning and would frequently smoke in the evening. At times he would stay out late with his friends and refuse to follow his mother's instructions on when to return home. He stated that at that time he had already made the decision that he was going to leave school at the earliest opportunity and get a job. Vilma Portillo reports that her son had repeatedly stated that he wanted to drop out of school and work.

Mr. Portillo reported that during his 9th grade year, his rank in MS-13 was a "paro," the lowest rank in the gang. According to Mr. Portillo, in order to be promoted in MS-13, it is necessary to kill a member of a rival gang. However, sometime during the course of that year, he told a higher-ranking MS-13 member about his altercation with the rival gang members outside the 7-Eleven. Because of that altercation, and another incident involving the victims and a high-ranking member of the local chapter of MS-13, a plan was made to assassinate these rivals, with the understanding that Mr. Portillo would be promoted in MS-13 if he participated.

LEGAL HISTORY: Mr. Portillo had one prior arrest for a minor crime, when in early 2017, when he was found to be loitering in an abandoned building.

PSYCHIATRIC HISTORY: Mr. Portillo received talk therapy through the CRP following his designation as a PINS. He and his mother reported that he has never received a psychiatric diagnosis and has never taken psychiatric medication.

SUBSTANCE ABUSE PROBLEM: Mr. Portillo began smoking marijuana at age 12. By age 14, he was using large amounts of cannabis on a daily basis. He has no history of abusing alcohol or other illicit substances.

MEDICAL AND DEVELOPMENTAL HISTORY: According to Mr. Portillo's mother, he was born on time and without complications. He met all developmental milestones on time and did not experience any developmental delays. He has no significant medical history.

MENTAL STATUS EXAMINATION: At the time of the evaluation with this writer, Mr. Portillo was a 16-year-old male, who appeared his stated age. He was calm and cooperative with the evaluation and appeared to make a good effort to be honest and forthcoming. His attention and concentration were adequate, and there was no indication of any cognitive limitations. He spoke fluent Spanish, and the evaluation was conducted with the aid of an interpreter, although it did appear that Mr. Portillo understood many of the questions asked of him. His thought process appeared organized, and there was no indication of any sort of thought disorder or hallucinations. He reported some recent periods of depression and thoughts about wanting to be dead but denied any of these at the time of the evaluation. During the course of the evaluation, Mr. Portillo displayed very little emotional range, and his facial expressions and tone were the same when discussing both good and bad memories. Although there was no evidence of cognitive

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limitations, Mr. Portillo gave the impression of being immature for his age. His manner did not indicate a full appreciation of the gravity of the charges against him, or of the life altering implications of those charges. He also did not appear to have insight into his own motivations or behaviors.

DIAGNOSIS: Oppositional Defiant Disorder.
 Cannabis Use Disorder.
 Adolescent Anti-Social Behavior.

FORMULATION: Mr. Portillo is a 17-year-old male member of the MS-13 gang. He is accused of gang related crimes, including participating in the fatal stabbing of four rival gang members. Mr. Portillo was 15 years 11 months old at the time of the "April 11 Murders." During the evaluation of Mr. Portillo on 4/11/18, there was no indication of the presence of any major mental illness. In addition, Mr. Portillo, Mr. Portillo's mother and available school and therapy records agree that Mr. Portillo has no history of a major psychiatric disorder.

However, beginning at the age of 8, while living with his grandmother and older sister in El Salvador, Josue Portillo began to evidence oppositional defiant behaviors which continued throughout his adolescence and up until his arrest. Josue Portillo has evidenced difficulty with the self-control of his emotions and behaviors. He can be easily annoyed, and actively defies or refuses to comply with authority figures, meeting the DSM-5 diagnostic criteria for Oppositional Defiant Disorder.

Most significantly, Josue Portillo began using marijuana at the age of 12 and by age 14, his use escalated to daily large quantities. He meets DSM-5 diagnostic criteria for Cannabis Use Disorder.

The scientific literature has now rapidly demonstrated the negative effects of cannabis on the adolescent developing brain, which is particularly vulnerable to lasting damage from marijuana use. It has repeatedly been demonstrated that adolescents who use large quantities of cannabis have poorer school and psychological functioning with lowered IQ scores, problems in self-control and diminished impulse control. Most significantly, for adolescents the frontal cortex has not fully developed. It has been shown that use of large quantities of cannabis in adolescents is toxic to the developing frontal cortex resulting in problems with planning, judgment, decision making and personality. Adolescents who use large quantities of marijuana are likely to show these executive function problems.

According to *United States v. Nelson* 68 F.3d 583, 588 (2d Cir. 1995), when evaluating whether a transfer to adult status would be "in the interest of justice," a district court must consider the following six factors and make findings on the record as to each: (1) the juvenile's age and social background; (2) the nature of the offense alleged; (3) the nature and extent of any prior delinquency record; (4) the juvenile's present psychological maturity and intellectual development; (5) the juvenile's response to past treatment efforts and the nature of those efforts; and (6) available programs that are designed to treat the juvenile's behavior problems. Below I will address those factors that can be spoken of from a psychiatric perspective.

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Mr. Portillo's Age and Social Background: Mr. Portillo is a 17-year-old male, born Lolotiquillo, a small town in El Salvador. He was raised primarily by what appears to be a competent grandmother after he was left by both parents at an early age. He never knew his father, and his mother moved to the United States when he was 3 years old. His mother, Vilma Portillo was raised in poverty, is uneducated and lacked the necessary skills to adequately parent her adolescent son. Although he and his mother communicated sporadically between her emigration and his at the age of 14, they were not close, and Mr. Portillo reports that he has had difficulty in the past relating to her as a maternal figure. He felt awkward in her presence when he came to the United States. Mr. Portillo's grandfather died when Vilma Portillo was relatively young, and it does not appear that Josue Portillo had any significant male role models during his formative years. Mr. Portillo reports that his family had limited financial means, as evidenced by his mother leaving her small children in order to seek out economic opportunities. His grandmother supported him and his older sister primarily by farming and selling root medicine. The transition from rural El Salvador to New York appears to have been a difficult and destabilizing one for Mr. Portillo. He endured significant trauma during the journey, and had a hard time adjusting to the crowds and academics in his new school. In addition, the lack of a relationship with his mother left him more isolated and with few sources of support in a country where he did not speak the language. This destabilization left him vulnerable to dangerous influences, particularly in the form of an older cousin, who was already a member of the MS-13 gang and had also immigrated to the U.S. from Lolotiquillo. Although he denies any involvement in gangs prior to coming to the U.S., within a month of arrival he had joined MS-13. Mr. Portillo maintains that he approached MS-13 representatives and expressed interest. However, based on the narrative he relates, it appears that the gang actively recruited him, initially through his cousin, who introduced Mr. Portillo to other members, and also through inducements such as access to marijuana and women. Feeling alienated in his home with his mother, Josue Portillo found the camaraderie with other adolescents from El Salvador who were in the MS-13 gang very appealing.

The Nature of the Offense Alleged: It is alleged that Mr. Portillo participated in a plan to lure 5 members of a rival gang into the woods, where he and other members of the MS-13 gang stabbed 4 of them to death in retaliation for threats the victims had made. He is also accused of other gang related crimes.

The Nature and Extent of Any Prior Delinquency Record: Mr. Portillo had one previous arrest, in the winter prior to his arrest, when he was found trespassing in an abandoned building. In addition, he had an extensive history of truancy from school, received extensive disciplinary actions in the form of numerous suspensions, and was once caught smoking marijuana on school property.

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Mr. Portillo's Present Psychological Maturity and Intellectual Development: Mr. Portillo does not appear to have any intellectual limitations. Although his academic records indicate he has failed several classes in the past, these failures appear to be the result of poor attendance and effort rather than intellectual limitations. He appears to have met all of his developmental milestones within a normal time frame. He is currently not suffering from any appreciable sign of major mental illness. Although he does admit to some anxiety about his future and some passive thoughts about wishing to be dead, these are of an intensity expectable given his current legal situation. In fact, during the evaluation with this writer, Mr. Portillo seemed less anxious and distressed than would usually be expected, given the gravity of his charges. This is potentially due to the fact that he appears to be immature for his age. This immaturity is manifested in his difficulty understanding or expressing his motivations for his behaviors (such as the decision to join MS-13), the superficiality with which he views his current situation, and the self-involved way in which he frames the events leading to his arrest, and his difficulty in considering the ways in which his actions are likely to impact others. However, Josue Portillo consistently used large quantities of marijuana. Understanding the effects of large quantities of cannabis on the developing adolescent frontal cortex, he likely has executive function problems involving judgement and decision making.

Mr. Portillo's Response to Past Treatment Efforts and the Nature of those Efforts: Mr. Portillo engaged in a brief course of therapy with his CRP counselor in the months leading up to his arrest. Records indicate that during this time, Mr. Portillo concealed the extent of his gang involvement from his therapist. There is no indication that Mr. Portillo was either benefitted or harmed by this intervention.

Available Programs designed to treat the Juvenile's behavior: Mr. Portillo does not evidence psychiatric or intellectual limitations that would prevent him from being able to successfully engage in a residential program for juveniles. A juvenile residential treatment program is the ideal choice of treatment environment for Josue Portillo. These programs are able to manage behavioral and substance abuse problems. Josue Portillo requires intensive substance abuse treatment to assist him in achieving lasting sobriety. The components of his program should include modules of psychoeducation, relapse prevention, and therapeutic elements of motivational interviewing techniques. Josue Portillo requires cognitive behavioral psychotherapy to address his oppositional defiant and antisocial behaviors. Behavioral interventions will over time extinguish the unwanted problematic behaviors replacing them with prosocial behaviors. In addition, education and vocational training services available at a juvenile residential treatment facility will support emotional and psychological growth, providing him with the positive experience of productivity.

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If Josue Portillo is able to successfully complete the treatment, educational and vocational components of juvenile residential treatment program, his risk of recidivism would be significantly reduced.

Respectfully submitted,

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A.B.P.N.

Clinical Assistant Professor of Psychiatry, New York University School of Medicine

EG/pm

Community Reinvestment Program Report

HFY IDT Narrative**Case Number: 124****Date of IDT: 2/14/17****Child's Name: Josue Portillo****Program: CRP**

Please provide a brief explanation of actionable domain items and the goals associated with those items. Narrative goals should be the same as those on the CANS form.

Demographic Information:

Josue Portillo is a 15-year-old Salvadoran male who arrived to the United States in 2015. Josue is currently living in Central Islip in a multi-family home with his birth mother's and birth mother's current boyfriend named Jose Diaz and his family. Birth mother and boyfriend have one child together, a 6-year-old girl named Genesis.

Child Strengths:

CRP is in process of learning more about Josue. Josue is a 15-year-old Salvadorian male, who lived in El Salvador with his maternal grandmother and older sister. Josue describes having a closing relationship with his family in El Salvador and misses them. Josue has little to no information of birth father since birth father left when Josue was a child. Birth mother states she has heard rumors about Josue's birth father being dead, however no one is sure about those details. In 2015, Josue migrated to the United States due to behavior issues he was having in El Salvador. According to Birth mother, maternal grandmother stated that Josue was disobedient and was not following grandmother's rules. Birth mother states that Josue's older sister witness Josue coming home drunk and smelling like marijuana since the age of 12. Therefore, birth mother decided for Josue to come to the United States and reside with her in hopes of him doing better. Josue and birth mother have a strain relationship. Birth mother states Josue has no emotional connection towards her. Mother fears that something will happen to her son in the streets. Birth mother is aware of Josue's substance use since he is open about it. Josue enjoys playing soccer, and reports that he likes to hangs out with friends in the community.

2/14/17

CANS score for family origin has increased from a 1-2.

During this reported time CRP has learned more about Josue. Josue is a very resilient adolescent who desires to do well and improve his school behaviors and drug use. Josue has been compliant with working with therapist and participating in therapy. Birth mother and Josue have both expressed a distant relationship with one other. Although both care for each other, both Josue and birth mother are in the beginning stages of learning more about each other.

Case manager has only meet with Josue 3 times, as family either forgets appointments, as well as assisting birth mother with more prevalent situations. Case manger has started but not completed Casey life skills with Josue, and is still in the process of learning about Josue. According to YES report Josue has not meet with the program.

Goals:

Therapist and Josue will work together to find out what motivates and encourages Josue to succeed. (In progress)

Josue will possess a greater level of self-esteem. (In progress)

Josue will learn positive coping and communication skills. (In progress)

Josue will be connect with YES. (Jack of progress)

Child Needs and Functioning:

CRP is currently evaluating for any needs Josue may need, and have only met with Josue one time. However, birth mother states he does not follow parental rules and walks in and out the house when he wants.

IDT 2-14-17

CANS score for Dental needs has increased from a 0-1.

As we have learned, Josue struggles with following parental rules. Therapist is learning a little bit more, as to why this is. Josue struggles to connect with his birth mother, as they do not have an emotional bond or connection with one another. Birth mother struggles with setting limits and disciplining Josue. Birth mother is willing to make a connection with her son, however feels like this would be a difficult process since she states she has lost hope.

Case manager has attempted to gather Josue medical and well as dental information. However, Birth mother is unaware of the location, and contact information of Josue's medical provider. Birth mother recently reinstated Josue health insurance, which was active as of 2/1/17. Birth mother is in the process of setting up medical appointment for Josue. Case manager is to follow up with birth mother on 2/15/17. In the meantime, Case manager is in the process of getting a copy of Josue last physical from Central Islip high school. Josue does not have any current known medical condition and is not on medications.

Goals:

Family will gain a better understanding of one another (In progress)

Family will have family structure, family rules and expectations of each other. (in progress)

Birth mother will follow up and well as find medical information for Josue. (New goal)

Caregiver Strengths and Needs Domain:

CRP is still getting to know birth mother. During first family session, birth mother shared her struggle with forming a relationship with her son since his arrival. Birth mother stated

she was embarrassed to ask for her help, but decided to follow through due to her not wanting to see her son go down the wrong path.

IDT 2-14-17

Case manager assisted Birth Mother with understanding Josue reinstatement of health insurance and explained activation dates and information on insurance card. Case manager also assisted Birth with how to properly use her cell phone in order to check voicemails. Birth disclosed that she has a limited education and does not know how to read or write well, but has shown ability to text with Case manager and Therapist. Birth mother can be disorganized with keeping appointments, and often needs reminder the day before or day of appointments. Case manager has also started help Birth mother learn and understand parent right with school involvement.

Goals:

BM will express to Julio her belief in him, and encourage Josue to reach his goals.

BM will learn more about her son and learn how to emotionally connect with him. (In progress)

BM will understand possess positive parenting skills, consequences and limit setting for Josue. (In progress)

BM will have her own self-care routine so that she can be her best self and parent for Josue. (In progress)

BM will gain knowledge on parents right in regards to school- New goal

Adverse Childhood Experiences:

CRP is getting to know Josue. Josue shared a little bit about his childhood experience when living in El Salvador. Josue states that he was brought to the United States without him having a say. Josue stated that he wanted to come over, but did not have a choice as to when he was coming over. Josue states that his birth mother surprised him with his migration travels.

IDT 2-14-17

During this reported time therapist has learned more about Josue's life. Josue shared with therapist about his migration process. Josue experienced trauma during his migration journey and described it as a life or death situation. Josue shared with therapist at times he experiences nightmares and has some triggers. For example: Josue stated that he can not be in an area where there is too much heat as this reminds him of when he was stuck in a truck for 4 hours with 144 other individuals, Josue shared that during this time he had 3 other adolescent sitting on top of him and this he could not breath. Josue shared with therapist that this is the first time he has spoken and shared his migration story. Birth mother is unaware of her son's experiences. Josue and birth mother do not have a mother-son relationship as his mother left Josue when Josue was 4 months. Birth mother left

Josue to go work as an in-home house cleaner in another town when living in El Salvador. Birth mother stated that she would return home every 2 month, only for the weekend. However, she shared that she would spend her weekends selling table clothes and did not spend quality time with her children as she would have liked too. Birth mother acknowledges her mother to be Josue's mother. Therefore, Josue does not have that connection with his mother. Josue shared that when he arrived to NY and his mother picked him up from the shelter, Josue did not recognize whom his mother was and felt like he was taken to a home by a stranger.

Goals:

Josue will be able to speak about his migration process and address childhood adverse experiences while living in El Salvador and his acculturation into the United States. (In progress)

Josue will learn about trauma (In progress)

Josue will learn healthy coping skill when triggered in his environment (In progress)

Risk Factors and Behaviors:

During first family session, Josue admitted to being non-compliant with grandmother's rules and being his substance use since the age of 12. Josue states that he enjoys hanging out with his friends. Josue states that they spoke and walk around their community.

IDT 2/14/17

As mentioned above, Josue struggles with following parental rules. Birth mother works at night, and arrives home by 2am. Birth mother has shared at times Josue is not home when she arrives. Birth mother states Josue does not follow house rules. Josue's whereabouts and social connections are of a great concern as mother states there is a possible suspicion of possible gang involvements or affiliations.

Goals:

Josue will learn about the harm and dangers of community violence in his neighborhood. (In progress)

Josue will learn about peer pressure, positive and negative social connections. (In progress)

Education:

Josue was placed on PINS Diversion via a school PINS for truancy. As of 12/5/16, Josue has 20 full truancy days and 12 partial truancy days. According to the PO, Josue attends school regularly, and on days he misses the bus, his mother takes him to school. Josue's struggles staying in class, and reports leaving school grounds by himself to walk around and at times walks to the local McDonald's to get coffee.

Referral for LIAC was made, and family met with Eileen Buckley. Josue is currently attending both bi-lingual and SIFE classes. Before the beginning of 2016-2017 academic school years, Josue reports taking a test, which placed him in a beginner, level ENL classes. He reports attending summer school for Math and English and passed with the help of his friends. He describes feeling bored in class, and has some trouble understanding the material. Josue feels like if he is taught in Spanish he would not have any difficulties learning the material. Currently, his school performance is poor, and he is failing some of his classes. During his time in El Salvador, Josue attended school regularly and reports completing the 6th grade. Josue is also struggling with acclimating to the United States life style. Josue has mixed feelings towards education. Josue believes there are some benefits to his education but does not believe his school environment is encouraging or supportive. Josue has no interest in school activities. Josue states, There are no staff members at the school he feels closely too.

IDT 2-14-17

CANS score for school behavior has increased from a 0-2.

Josue has a long history of behavioral problems with school. Josue has expressed that he cuts classes, and surrounds himself with negative peers that get him into trouble. Josue has been very honest with the CRP team and has Josue disclosed that he does not work well with certain staff members in Central Islip High School. Josue states that he also feels singled out by specific staff. The CRP, and LIAC have been working very closely to correct certain barriers that Josue was facing in school.

Prior to CRP case opening, the school has tried to reach out and communicate with birth mother on a few occasions. Case manager was able to set up a team meeting for birth mother, and LIAC. Josue was not in attendance due to at the time being on OSS. Team meeting held on 2/01/17. The school's main concerns were Josue's behavioral problems. According to the school, Josue surrounds himself with known gang members, and negative peers in school. He is disruptive in the classroom, and shows a high level of disrespect towards staff, especially an elderly aid that he made cry on a few occasions. Josue has been found in the hallways on various occasions with out permission and runs away from school staff and security.

Once CRP opened Josue's case, Josue has made efforts to attend school and follow school rules. In a short period, the school recognized Josue's efforts and sent a post card disclosing that he has improved in his attitude. However, Josue was still being targeted by

security. Throughout the meeting, case manager explained, that Josue is feeling extremely targeted at the high school. He feels he is routinely stopped and questioned by security, and while he is making great efforts to change his behavior and attitude at school, he feels his ability to do so is hindered by the school routinely singling him out or accusing him of doing things in which he had no involvement. Due to Josue OSS that he received on 1/31/17, birth mother also felt that Josue had been unfairly treated in school and was upset how the school approached him. It was also mentioned at the team meeting the family had yet to receive a letter about Josue suspension and return date back to school. Since the school failed to do this, with in a 24 hours period, and with the help from LIAC, Josue return to school and the OSS taken from his record. It was learned at the team meeting that Josue was cleared of the accusations, was placed on OSS because he run away from security that day.

Josue also stated that he is making an effort to change, however the school is constantly falsely accusing him. This is greatly effects Josue, since he states due to these false accusations, he feels like he no longer wants to attended school. School did send a past card in the mail that Josue had been improving his behaviors as of late, which made him very happy.

Case manager further expressed Josue feelings of feeling bored in his classroom, and not understanding why he has 1st period ISS. School explained that ISS was a informal way for Josue to have one on one support with staff. Birth Mother also presented three options for Josue education. One was to stay in SIFE which the school claimed now is credited baring, Bi-lingual regular education, and BOCE night school. Birth mother and Josue decided to switch him into Bi-lingual regular education.

On 2/6/17, CM received a phone call from Mrs. Rio school worker. There was a missed understanding with the school and Josue. The misunderstanding later was resolve and Josue will not be facing any negative actions.

Goals:

Josue will attend school regularly. progress

Josue will remain in class during the school day. progress

LIAC will continue to work with the family. progress

Modules:

Behavior Health: Josue states that he does not follow parental rules and enjoys hanging out with his friends. As mentioned above Josue has has these same behaviors since he was living in El Salvador. Birth mother states his grandmother began to notice Josue's behavior change at the age of 12.

Substance use:

As mentioned above, Josue admitted to using substances since the age of 12. CRP is still getting to know Josue and his substance abuse history.

IDT 2-14-17

Behavioral Health: Josue continues to not follow parental rules and continues to sneak out the house.

Trauma: As mentioned above, Josue has experienced trauma which he is currently working through in therapy.

Substance use: Therapist drug screened Josue on 2/2/17. Josue tested positive for marijuana. Josue understand the harm and dangers to substance use and is willing to decrease his drug use.

Goals:

Josue will be able to gain knowledge on the risk involved with substance use, learn healthy coping skills.

Josue will learn about how his trauma effects his emotions and behaviors.

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 UNITED STATES OF AMERICA, : CR-17-366
5 -against- : (JFB)
6 JOSUE PORTILLO, : United States Courthouse
7 Defendant. : Central Islip, New York
8 : June 12, 2019
9 : ^ TIME
10 -----X

11 TRANSCRIPT OF SENTENCING
12 BEFORE THE HONORABLE JOSEPH F. BIANCO
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Government: RICHARD P. DONOGHUE, ESQ.
16 UNITED STATES ATTORNEY
17 BY: JOHN DURHAM, AUSA
18 PAUL SCOTTI, AUSA
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23
24 Official Court Reporter: Paul J. Lombardi, RMR, FCRR
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Fax (631) 712-6122 Central Islip, New York 11722

26 Proceedings recorded by mechanical stenography.
27 Transcript produced by CAT.

1 THE CLERK: Calling criminal case 17-CR-366,
2 United States of America v Josue Portillo.

3 Counsel please state your appearances for the
4 record.

5 MR. DURHAM: John Durham, Paul Scotti, and
6 Justina Geraci for the United States. Good morning, your
7 Honor.

8 THE COURT: Good morning.

9 MR. RYAN: Good morning, your Honor. Joseph
10 Ryan for Mr. Portillo.

11 THE COURT: Good morning.

12 Mr. Portillo is present. We have the Spanish
13 interpreters, Ms. Gray and Mr. Hontoria, who both have
14 been sworn as interpreters. We are here for sentencing.

15 Are both sides ready to proceed?

16 MR. DURHAM: Yes, your Honor.

17 MR. RYAN: Yes, your Honor.

18 THE COURT: I'm just going to review what
19 documentation I have to make sure I have everything that
20 you have submitted and also that you have everything that
21 is before the court.

22 The court has, obviously, the presentence
23 report. The court has the recommendation of life
24 imprisonment from the probation department. The court has
25 the addendum filed by the probation department. The court

1 has the January 17 sentencing memo and attachments from
2 Mr. Ryan, including Dr. Goldsmith's report, the
3 defendant's letter and the community reinvestment program
4 documents.

5 The court has the February 25th defense counsel
6 letter, the March 8th defense counsel letter which
7 attaches letters of support from the defendant's family.
8 The court has the government's March 18 sentencing letter,
9 March 18 supplemental sentencing letter, the April 3 reply
10 letter from defense counsel, the April 22 government
11 response, the April 24 defense counsel letter, and the
12 second letter on that date.

13 I went back and reviewed the Dr. Goldsmith
14 hearing transcript from the court's hearing transferring
15 the defendant to adult status which I considered,
16 obviously in addition to the report. I went back and
17 reviewed the plea transcript and I believe that's all I
18 have in connection with the sentencing. Obviously there
19 are other letters but in terms of the substantive letters
20 I believe that's all I have.

21 Is there anything else the government wants to
22 bring to my attention?

23 MR. DURHAM: No, your Honor. Thank you.

24 THE COURT: Anything else from the defense?

25 MR. RYAN: No, your Honor. Thank you.

1 THE COURT: Mr. Ryan, have you and your client
2 received the presentence report, the recommendation and
3 the addendum?

4 MR. RYAN: Yes, your Honor.

5 THE COURT: Have you had sufficient time to
6 review it?

7 MR. RYAN: Yes, we have.

8 THE COURT: Mr. Portillo, I want to make sure
9 you had sufficient time to review the presentence report,
10 the recommendation and the addendum and discuss it with
11 your attorney.

12 Have you had sufficient time to do those things?

13 THE DEFENDANT: Yes.

14 THE COURT: Does your client have any objections
15 to the report?

16 Obviously with the understanding that with
17 respect to the crimes themselves the court is sentencing
18 the defendant based upon the information contained in
19 document number 73, as well as obviously the statements he
20 made at his plea and to Dr. Goldsmith.

21 With that clarification, are there any
22 objections to the report, Mr. Ryan?

23 MR. RYAN: No, your Honor, except for the
24 recommendation.

25 THE COURT: Obviously I understand that and

1 we'll talk about that.

2 Does the government have any objections to the
3 report?

4 MR. DURHAM: No, your Honor.

5 THE COURT: I adopt the information contained in
6 the presentence report as factual findings by the court.

7 With respect to the guidelines calculation, the
8 report calculates the guidelines to be a level 43. The
9 defendant has a criminal history category I with an
10 advisory range of life imprisonment before any departures.
11 Obviously Mr. Ryan has made a motion for a downward
12 departure based upon the defendant's age and also argues
13 for a nonguidelines sentence under the 3553(a) factors.

14 But prior to any such departure do both sides
15 agree that's the proper calculation of the range?

16 MR. DURHAM: Yes, your Honor.

17 MR. RYAN: Yes, your Honor.

18 THE COURT: I agree as well.

19 I adopt the calculation as contained in the
20 presentence report. Just by way of summary it's a base
21 offense level 43. Because the defendant pled guilty to
22 aiding and abetting, the murder of four individuals, under
23 the grouping analysis his offense level increases by four
24 to a level 47. He did accept responsibility by pleading
25 guilty in a timely fashion. He is entitled to a

1 three-level reduction for that, which brings him to 44.
2 The highest level is 43, so his total offense level
3 becomes a 43.

4 He has no criminal history points and,
5 therefore, is a criminal history category I. So the
6 advisory range is life before any departures. Obviously
7 as I noted pursuant to **United States v Booker** and its
8 progeny the guidelines are only advisory. They are only
9 one factor the court is to consider among all the
10 statutory factors.

11 I'll now hear from each side regarding the
12 downward departure motion by Mr. Ryan as well as all the
13 3553(a) factors and anything either side wishes to say in
14 connection with the sentencing and I'll start with
15 Mr. Ryan.

16 Go ahead, Mr. Ryan.

17 MR. RYAN: Thank you, your Honor.

18 Your Honor's decision today is going to
19 determine whether or not this young man is going to have
20 the chance of being rehabilitated in our federal prison
21 system to become a reformed person. We are dealing here
22 with a heinous crime he committed at 15 years of age. His
23 life expectancy is 75. So you break it down by 15-year
24 segments you have five stages of his life.

25 He committed the heinous crime at 15. The

1 question is what should this court do with the balance,
2 the other four quarters of his life? According to the
3 government you should extinguish his ability to become
4 free, and he should die in prison. That's what he should
5 do for what he did at 15.

6 It's also undisputed by courts and neuroscience
7 studies that when he committed this crime at 15 he did not
8 have an adult brain. He had a juvenile brain and hadn't
9 been fully physiologically developed. The Supreme Court
10 tells us that a person at that age, with that infirmity,
11 is influenced by his peers, doesn't think about
12 consequences, acts impetuously. So you have at 15 years
13 of age a man who was dealt a bad hand at birth, no father,
14 never showed up. His mother left him at three and during
15 those three years she worked as a maid in another town and
16 hardly spent any time with him on weekends.

17 She left him with a 68 year old grandmother, and
18 with all due respect to your Honor's findings on the
19 transfer hearing, that was not an environment that was a
20 stable, loving environment that he would have had if he
21 had his father and mother rearing him and guiding him and
22 disciplining him. She was 68 years old. She already
23 raised one family, and now she was burdened with him and
24 it became perfectly obvious that when he was in
25 El Salvador she could not control him. He's smoking

1 marijuana at 12 and all he wants to do is play soccer.

2 So eventually it came to the time when he was 14
3 years of age she threw her hands up. She called his
4 mother, who is now in the United States in Central Islip
5 with a new family, and together they decide that he should
6 be smuggled into the United States. He almost died coming
7 into the United States when he was in a trailer packed
8 with others on the bottom of a pack of human bodies, but
9 he survived.

10 And when he got to McAllen, Texas he was
11 welcomed by the border patrol. All they wanted were his
12 mother's name and telephone number. His mother got the
13 call. The arrangements were made and eventually he wound
14 up with his mother. His mother has a whole new family,
15 beautiful little girl as a result of her new union with
16 another family. Told Dr. Goldsmith that it felt weird
17 because that's understandable. He hadn't seen his mother
18 since she left at three years of age and he hardly saw her
19 between birth and three years of age.

20 So he found himself in Central Islip with a
21 mother who has a new family, works nights, and when he
22 began eighth grade in school he did fairly well for a new
23 arrival in Central Islip. For a juvenile without an adult
24 brain he looked for some relief and MS-13 offered him that
25 kind of relief. There were girls. There was soccer.

1 Apparently he's a good soccer player, marijuana, which he
2 had been smoking since 12. And this became his world.

3 We work in courthouses and courtrooms. He
4 worked with MS-13 as a juvenile without an adult brain,
5 and it was a great outlet for him. Forget about school.
6 Don't go to class. Cut classes. Forget about grades.
7 Antagonizes school officials, which is predictable
8 according to all the experts that if you have a parentless
9 teenager, he's going to be in trouble. No guidance, no
10 love.

11 MS-13 has a price to pay. If you get on the
12 ship and am a member of its crew, when it leaves the dock
13 you are going nowhere else. You are going to do as you
14 are told. And he shared with the leaders of the MS-13
15 that there were some 18th Street youths who were, in
16 effect, threatening him not to become a member of MS-13
17 and he reported it. He reported it to a 20 year old, a 15
18 year old reporting to a 20 year old codefendant in this
19 courtroom, whose nickname is Antichristo.

20 Antichristo's going to fix this problem, because
21 we don't make money in MS-13 when we have dominance and
22 control we get respect. We can kill people if they don't
23 conform with the way we think. That's what they consider
24 a threat to MS-13, and he does what he's told. That's
25 what you are supposed to do when you are a new member of a

1 gang. You carry out tasks, and he carried out tasks. The
2 government says he planned it. He was a mastermind. No.
3 A ninth grader is not going to tell a 20 year old how to
4 commit a murder.

5 And then the night came and he's with his group
6 and the Supreme Court tells us peer pressure, peer
7 influence is the dominant force on a juvenile brain. They
8 don't listen to common sense or any other reliable source.
9 It's what their world is, and their influence in the peers
10 and he's going to do what all the other juveniles do when
11 they came to that horrible dark night. He will remember
12 that night when he's 75, if he should live so long.

13 He was the first one to plead guilty in this
14 case, and as far as I can see he was the first one that
15 fully confessed. When the FBI agent confronted him in the
16 detention center in Virginia he didn't hold back. He
17 didn't deny it. He realizes it, and for the last two
18 years he's been housed in the Suffolk County juvenile
19 center with no programs, nothing.

20 He's met with Dr. Goldsmith and with an
21 interpreter on many occasions, and he's had plenty of time
22 to think about this. And my own observation is, based
23 upon more than a dozen jail visits, that he's a person of
24 a passive personality. He's not an aggressor, and he is
25 remorseful. He may not know how to express it as a

1 juvenile to Dr. Goldsmith, and the one problem I have with
2 Dr. Goldsmith is that he praises the grandmother as the
3 one who gave him rules and discipline. Her own actions
4 show that that wasn't working. There was no love. There
5 might have been rules without love, but she got to the
6 point where she had to call the mother.

7 So he came to this country through no choice of
8 his own. This was a plan devised by his mother and his
9 grandmother. And if it is anyplace he wants to go from
10 this courtroom or for the federal Bureau of Prisons it's
11 back to his home country, El Salvador. He has a sister
12 there and by the time he's released, perhaps he will have
13 a family that welcomes him. He wants to learn a skill.
14 He wants to become an adult that can perform a positive
15 function for himself and for others.

16 So we are here to ask for a second chance. Your
17 Honor's an expert in MS-13. There is no judge in this
18 country that knows more about how it operates from all the
19 trial experience you have had. He was swept away, but
20 that doesn't excuse his conduct and he doesn't intend it
21 justifies his conduct. What he intends to do is
22 demonstrate to your Honor that you can be proud of him
23 whenever he gets out and is sent back to El Salvador.

24 Thank you, very much.

25 THE COURT: Thank you, Mr. Ryan.

1 Mr. Portillo, you also have the right to speak
2 today at your sentencing. I have read your letter, but
3 you also have the right to speak today. You can remain
4 seated and say anything you wish to say to the court
5 before you are sentenced.

6 THE DEFENDANT: Honorable Judge Bianco, I expect
7 a severe sentence because as an MS-13 member what I did to
8 Michael Lopez and to others, but please do not put me in
9 jail for the rest of my life.

10 I know that what I have done was very wrong. I
11 apologize for my heinous crime and will always pray for
12 the families of these victims, none of whom deserved to
13 die. I respectfully pray that I be given a second chance
14 to prove to your Honor and the victims' families that I
15 can be a different person than I was at 15. I pledge to
16 make you proud.

17 I now realize how selfish it was for me to be
18 consumed by soccer, girls and marijuana offered by the
19 MS-13. I will learn a trade or skill in prison that will
20 enable me to help others after my deportation to
21 El Salvador. I will prove to your Honor that I can become
22 a law-abiding person helping others. I have every
23 confidence that your Honor appreciates my personal
24 circumstances at 15.

25 Thank you.

1 THE COURT: Mr. Portillo, before I hear from the
2 government let me just say in response to what you just
3 said to the court, and Mr. Ryan noted this, obviously once
4 you were arrested you did confess. You accepted
5 responsibility. You pled immediately after the court
6 transferred you to adult status and obviously you
7 expressed your remorse today.

8 So I want you to understand that I am
9 considering that. That is important to me, and obviously
10 I'm considering the age when you committed the crime, one
11 of the things that Mr. Ryan has ably pointed out in his
12 letters and today. You also obviously understand, you
13 made reference to it, that, notwithstanding that remorse
14 and that acceptance of responsibility, the court has to
15 consider a lot of other factors including the harm that
16 you caused. There are four individuals who are dead who
17 have no chance, no stages of life that Mr. Ryan talked
18 about in your life.

19 So the court has to consider the harm you have
20 caused and the other factors under the law, but I do not
21 intend to impose a life sentence and one of the reasons
22 I'm not imposing a life sentence is your acceptance of
23 responsibility, your remorse and your age at the time of
24 the offense. But before I impose the sentence I'll hear
25 from the government.

1 First, under the victims' rights act are there
2 victims who want to speak before you speak, Mr. Durham?

3 MR. DURHAM: Yes, your Honor. There are a
4 number of victims' family members here today and my
5 understanding is only one of them would like to address
6 the court, and her name is Lourdes, L-O-U-R-D-E-S,
7 Banegas, B-A-N-E-G-A-S, Michael Lopez's mother.

8 With the court's permission I will use one of
9 the Spanish interpreters so she can address the court.

10 THE COURT: Yes.

11 Ms. Banegas, you can address the court here.

12 MS. BANEGAS: I am Michael's mother, Michael
13 Banegas.

14 I came to this country 20 years ago. I have two
15 children who are citizens. I had another two born in
16 Honduras. When I came to this country I had a dream, have
17 my children in this country honestly, like Michael's
18 family has always done, Portillo took away this dream.

19 He took away the strongest child, the best for
20 my heart and he doesn't know the harm inflicted on myself
21 and my family. Two years ago we were a happy family.
22 Portillo arrived and he destroyed everything, everything.
23 Because today we are not the same. My children are not
24 happy. My husband is not the same. I receive monthly
25 therapy, have to take medications when I never had to do

1 that before.

2 Portillo's lawyer says that he has five stages
3 in his life, and now I'm asking him where are the stages
4 of my son? Portillo took them away from him. Portillo
5 doesn't know the harm that he inflicted upon us. My
6 dreams are gone. My dreams were gone the night that
7 Portillo killed my son. I don't know if justice will be
8 done, but there is a God that will do that by himself.

9 Thank you.

10 THE COURT: Thank you, Ms. Banegas.

11 I just want to say to you first of all I want to
12 express my deepest condolences to you, your family, and
13 all the victims' families here for the loss of your loved
14 ones. As a father of six children the emotional suffering
15 that you are going through is unimaginable to me and I
16 fully understand what you have expressed to the court
17 today.

18 I also want to commend you, not just for being
19 here, but for getting up and making that statement.
20 That's a very difficult thing to do and I know there are
21 other victims' families here and I have gotten their
22 statements through the probation department. Everybody
23 expresses their grief in a different way, but whatever
24 form it's in it's important to me to hear from you, for
25 everybody to hear from you, for Mr. Portillo to hear from

1 you so that we remember your son Michael and that we
2 understand, to the best that we can, the ongoing, lifelong
3 emotional suffering that you and your family are enduring
4 as a result of this heinous crime.

5 I want to assure you that the sentence I will
6 impose today I can't bring your son Michael back or any of
7 the other people that were killed that night, but I can
8 assure you I have given this sentence a lot of thought,
9 hours and hours, and my hope is in balancing all the
10 factors that I am required to under the law that this
11 sentence is a just sentence that adequately reflects the
12 loss of your son's life, the loss of the life of those
13 other young men that day and the pain that you and your
14 family and all the loved ones are going to have for the
15 rest of their life.

16 So thank you, again, for your statement and for
17 being here today.

18 MS BANEGAS: Thank you.

19 THE COURT: I'll now hear from the government.

20 Go ahead, Mr. Durham.

21 MR. DURHAM: Thank you, your Honor.

22 I know I have said this to the court before, but
23 any time you get up to speak following a victim's mother
24 or father pretty much anything that I have to say pales in
25 comparison. We worked these cases for years. We deal

1 with dozens of murders and at some point you start to
2 become numb to it all, and when you come into court and
3 you listen to victims' family members speak about the loss
4 that they have suffered it's incredibly powerful.

5 That impact that Ms. Banegas just described in
6 this case, it's quadruple. There are three other families
7 going through that same grief, suffering those same things
8 and as the court noted they have expressed those feelings
9 in letters to the court. Each one of those families,
10 their lives will never ever be the same, birthdays,
11 holidays, everything is different. It's different because
12 of the actions of this defendant and his fellow MS-13
13 members.

14 As the court had said, the advisory guideline
15 sentence here is life but there are other factors the
16 court must consider, both from Congress, Section 3553(a),
17 as well as the Supreme Court in the Miller case because of
18 this defendant's age at the time of the offense. However,
19 even in light of his age and in light of those factors,
20 the government is recommending a sentence of 60 years.
21 That's an extremely severe sentence. We don't do that
22 lightly. We do that in recognition of the seriousness of
23 the offense, the need for deterrence and the need to
24 protect society from further crimes from this defendant.

25 There's been extensive briefing in the case. I

1 know the court is familiar with the facts so I won't
2 belabor those points, but just to sum it up, this is an
3 extremely, extremely serious murder. Every murder is
4 serious but here not only are there four murder victims,
5 but the nature of this murder, which was planned weeks if
6 not months in advance, in a cold-blooded calculated way
7 where the victims were lured out into the woods by two
8 young women with a promise of smoking weed, perhaps more,
9 five victims were lured out and this defendant and over a
10 dozen other MS-13 members conspired to kill them.

11 They surrounded the victims. They were armed
12 with machetes, knives, tree branches, even an ax, and they
13 surrounded the victims, one of them immediately ran away
14 and escaped, but the other four were not so lucky. They
15 were captured and then they were slowly executed. They
16 were stabbed, hacked, chopped, beaten to death in the most
17 excruciating and painful way. So when the court considers
18 Section 3553(a), this is an extremely serious offense.
19 Offenses in the court don't get much more serious. The
20 nature of the circumstances definitely weigh in favor of
21 the 60-year sentence.

22 Now, the defendant was 15 years old. He does
23 not have a prior criminal history of significance, but the
24 court can also look at his background, both here and in
25 El Salvador. At a very young age he began to demonstrate

1 antisocial behavior. He began to associate with the MS-13
2 in El Salvador, and unlike many defendants who come before
3 this court, this defendant had a loving and supportive
4 family. That is abundantly clear from Dr. Goldsmith's
5 report.

6 He had a grandmother who loved him and attempted
7 to raise him as best she could. When that didn't work she
8 had the defendant come to this country to join his mother
9 and his mother, while she may have immigrated to the
10 United States and she remarried and had a family here, she
11 made extensive efforts to integrate this defendant into
12 that family, as did the stepfather, her boyfriend.

13 However, the defendant was not receptive to
14 those efforts, and immediately upon his arrival in this
15 country he began getting in trouble in the school. He was
16 repeatedly suspended. He was disrespectful to his
17 teachers. He began smoking marijuana and, most
18 importantly, he immediately reassociated himself with the
19 MS-13.

20 In light of those factors this court needs to
21 sentence this defendant to deter him specifically from
22 further criminal conduct but also other members of the
23 MS-13. A reduced sentence would send the wrong message
24 that you can commit these types of crimes, serve your
25 sentence and get out and enjoy those other stages of life

1 which have been deprived for each of the victims.

2 I was at an event earlier this week and somebody
3 quoted John Adams and they said facts are strange things.
4 I think that's really, really applicable when I was
5 listening to Mr. Ryan speak. There are very few facts
6 that the government and the defense disagree upon. We
7 might disagree about what arguments or inferences should
8 be made from those facts, but the core facts are not in
9 dispute here.

10 There is no dispute that the defendant had
11 family members who attempted to care for him. There is no
12 dispute that he was involved in the MS-13 in El Salvador,
13 and continued to associate with the MS-13 here. There's
14 no dispute that beginning of when this crime began, when
15 this defendant had an altercation at a 7-Eleven with one
16 of the intended targets of the murder plot. There is no
17 dispute that after that happened this defendant brought
18 that dispute to the MS-13. He's the one who brought
19 Antichristo into this conspiracy. He's the one who
20 brought Discreto, Manicomo, into this conspiracy. So
21 while he is young in age, he played a significant role in
22 this murder.

23 There's also no dispute that leading up to this
24 murder in the weeks and months there were numerous
25 conversations, there were meetings where the plan was

1 discussed. The defendant was present for those meetings.
2 The defendant was the one on the night of the murders who
3 was in contact with the two females, regular contact to
4 coordinate luring the victims into the woods, and this is
5 important, on the night of the murders, the defendant was
6 the one who called the leaders of the Leeward clique to
7 get permission to carry out these murders.

8 Antichristo was there. Mr. Ryan would like to
9 defer a lot of the blame on Antichristo and Antichristo is
10 going to come before this court some day if and when he's
11 convicted and the court can render sentence on him, but
12 Antichristo belongs to another clique. So it was this
13 defendant who reached out and spoke to the leaders of his
14 clique and obtained permission to carry out these murders.

15 Once he had permission, this defendant continued
16 to coordinate the attack with the two females. He
17 determined the victims' exact location and time of arrival
18 and once they arrived he participated in the attack,
19 striking victims with a machete. These are undisputed
20 facts, your Honor, and there are three important things
21 that these facts show.

22 One, they demonstrate the significant role that
23 this defendant played in the murders.

24 Two, it undermines Mr. Ryan's argument about
25 immaturity or impetuousness. These murders were carefully

1 planned. They were cold-blooded and this defendant was
2 involved in every stage of the plan.

3 And last, your Honor, these facts demand a
4 significant sentence. They demand a sentence of 60 years
5 imprisonment.

6 Thank you.

7 THE COURT: Thank you, Mr. Durham.

8 I'll now describe the sentence I intend to
9 impose and give the attorneys a final opportunity to make
10 any legal objections before the sentence is finally
11 imposed. In imposing the sentence I have carefully
12 considered, as I am required to, the factors set forth by
13 Congress in Section 3553(a). These factors include, among
14 others, I'll not mention all of them although I am
15 considering all of them, the nature and the circumstances
16 of these murders. They include the history and the
17 characteristics of Mr. Portillo. They include the need
18 for the sentence that the court imposes today to provide a
19 just -- reflect the seriousness of the offense, to promote
20 respect for the law and to provide a just punishment for
21 the offense. I also need to afford adequate deterrence to
22 criminal conduct. I also need to protect the public from
23 further crimes by this defendant.

24 I have also considered the advisory sentencing
25 guidelines issued by the Sentencing Commission and the

1 advisory range in this case which we have discussed, as
2 well as the applicable policy statements issued by the
3 Sentencing Commission. I have also considered the need to
4 avoid unwarranted sentencing disparities among
5 similarly-situated defendants.

6 This court personally has sentenced many, many
7 defendants for murders in connection with the MS-13 gang.
8 I am aware of other sentences that other judges have
9 imposed in similar circumstances, and I have sentenced
10 juveniles for such crimes and I asked the government to
11 submit a chart to me providing the court with as much
12 information as possible regarding cases across the country
13 where other judges have sentenced juveniles for one or
14 more murders, including their age, and I have reviewed
15 that chart as well, as well as Mr. Ryan's information.

16 I also need to consider restitution to the
17 victims' family which I will address in a moment.

18 Having considered the various 3553(a) factors,
19 those factors and all the factors, as well as the factors
20 set forth by the Supreme Court in *Miller v Alabama*, I find
21 in the exercise of my discretion that a sentence of 55
22 years, 660 months imprisonment, is warranted in this case.
23 I will describe to you how I arrived at that sentence. As
24 I noted to Ms. Baegas, the court has spent many, many
25 hours thinking about this sentence, and this is how I

1 arrived at that sentence.

2 First, this sentence of 55 years is necessary to
3 reflect the unbelievably violent nature of this crime and
4 the extreme harm that it caused. This defendant
5 participated in what is clearly a brutal execution style
6 murder of four young men for no reason. I emphasize that,
7 for no reason. And the sentence has to reflect the
8 devastating and the senseless act of evil of the loss of
9 four lives and, as I noted, the emotional lifelong
10 suffering that all of the loved ones of these four young
11 men continue to experience and will experience for the
12 rest of their lives.

13 The sentence has to also reflect the danger
14 represented by this defendant, willingness of an
15 individual, even at 15 years old and I'll address that
16 more in a moment, to engage in this level of violence in a
17 premeditated way is hard for anyone to fathom. He did
18 play a pivotal role in those murders. I disagree with
19 what Mr. Ryan said -- and Mr. Ryan's done an excellent job
20 in the case in advocating for his client -- but I
21 disagree. I think at the prior conference Mr. Ryan said
22 the decision of the court is to determine whether or not
23 Mr. Portillo was a follower or a leader. Certainly that
24 is something that the court considers.

25 But that's not the only consideration. He's

1 clearly not a leader. He did not supervise these murders.
2 So I agree with you to that extent. But even someone who
3 is not a leader, who plays a key role is highly culpable
4 in those murders, even when they are not a leader and
5 there is no question that he played a key role in the
6 prompting, in the planning and in the execution of this
7 quadruple homicide, and that requires a sentence of this
8 magnitude.

9 As Mr. Durham noted I'll briefly list these
10 facts, which again are not disputed, based upon the April
11 24th letter from Mr. Ryan, the statements the defendant
12 made to Dr. Goldsmith and made to me at the time of his
13 plea. It was he who had the verbal altercation with one
14 of the victims at the 7-Eleven way back in June of 2016
15 that began the dispute. This was also in the transcript
16 at page 31, Dr. Goldsmith's testimony eventually after
17 this was researched and the photo of one of the victims
18 was obtained from Facebook, it was this defendant who
19 brought the issue to the attention of the gang for action.
20 That's page 32 and 33 of Dr. Goldsmith's transcript, page
21 seven of his report and some of other documents as well.
22 I'm giving some citations.

23 He then participated in the meeting at the park
24 where he and the MS-13 members planned it. This defendant
25 then spoke to the two females regarding what their roles

1 would be in luring the victims. He met with one of them
2 at Clayton Park and I understand others met with them as
3 well. It wasn't exclusively him, but he played a key role
4 in their involvement. He then arranged the three-way call
5 with the leader of his clique, the Leeward clique,
6 immediately prior to the murders to get approval for the
7 murders to take place.

8 So he was integrally involved in bringing this
9 to the gang and then planning the carrying out of these
10 murders. At the time of the murders, as Mr. Durham noted,
11 it was this defendant who communicated by text with the
12 female coconspirators to find out where they were as they
13 were luring the victims and then convey that to the gang
14 members who were waiting to carry out the murder of these
15 four individuals. Obviously the defendant participated in
16 the murder by brutally stabbing Michael Lopez. At the
17 same time the other gang members were killing the other
18 victims.

19 The seriousness of this criminal conduct and the
20 danger that it poses on the community have to be reflected
21 in the sentence. It is clearly exacerbated by the fact
22 that it was committed in connection with the activities of
23 the MS-13, a violent street gang that represents a clear
24 and compelling danger to the community. These types of
25 horrific murders committed in parks in the communities

1 obviously present a danger to everyone who lives in those
2 communities because if the MS-13, for whatever reason,
3 decides that you disrespected them, you pose some threat
4 to them, in their mind they will kill you.

5 This court has seen approximately 50 murders on
6 Long Island committed by the MS-13 gang over the past ten
7 years. There is no clearer evidence of how dangerous this
8 gang is and how dangerous individuals who choose to join
9 this gang, including juveniles, the danger those
10 individuals, including juveniles, present to the
11 community.

12 I also believe that this sentence is necessary
13 as a general deterrent to others who right now are in the
14 MS-13 gang and might think about joining the gang as a
15 juvenile in high school or at any other age to send a
16 message to them that if they participate in these types of
17 acts of violence they will spend the rest of their life,
18 or close to the rest of their life, in jail.

19 I don't believe Mr. Ryan argued in one of his
20 submissions that even though this court has imposed life
21 sentences on juveniles previously and these types of
22 murders continue, that somehow there is no general
23 deterrence effect on juveniles because they don't think
24 clearly enough to consider that. I don't believe the fact
25 that there have been additional murders should suggest to

1 the court that there is no general deterrent value to long
2 sentences in terms of impacting gang members generally, as
3 well as juveniles.

4 I emphasize my sentence would be the same even
5 apart from this issue of general deterrence because I
6 think the other factors warrant a 55-year sentence
7 independent of that but I refuse to believe this has no
8 general deterrent effect. These would warrant a life
9 sentence. I have sentenced other juveniles to life, but I
10 believe there are sufficient factors that warrant a
11 sentence slightly below life at 55 years.

12 I think the government's recommendation of 60
13 years is slightly higher than the court thinks is
14 warranted for these reasons:

15 First, he committed the crime at age 15 and 11
16 months which is obviously a very young age. Mr. Ryan
17 asked me to downwardly depart under the advisory
18 guidelines under 5H1.1 and I am doing that in a modest
19 fashion for reasons I'll explain in a moment but I want
20 the record to be clear this does reflect a downward
21 departure on the advisory system.

22 I also want the record to be clear that my
23 sentence would be the same independent of whatever the
24 guidelines are, the sentence would be the same under the
25 3553(a) factors, but in light of his age, his acceptance

1 of responsibility, his quick plea of guilty that spared
2 the resources and the trauma to the victims' family of a
3 trial, his expression of remorse, as well as the
4 information contained in defense counsel's letter on
5 February 25, for all those reasons I believe that a
6 sentence less than life is appropriate in this case,
7 notwithstanding the probation department's recommendation.

8 Obviously I know I have the discretion to give
9 him less than 55 years, and I have considered whether or
10 not he should get less than 55 years in light of his age
11 and the other factors I pointed to and I went back and
12 read the Miller decision again a few days ago because the
13 Supreme Court, as Mr. Ryan noted, did emphasize in that
14 opinion that a court -- that a juvenile's brain is
15 different. Obviously I accept that science. I think
16 that's clear.

17 And that the court should consider, among other
18 factors, the defendant's chronological age and
19 characteristics, including any immaturity, impetuosity,
20 and failure to appreciate the risks and consequences. The
21 court should consider the family and home environment that
22 surrounded the defendant. The court should consider the
23 circumstances of the offense including the extent of the
24 defendant's participation and the conduct and the way
25 familial and peer pressures may have affected him and the

1 possibility of rehabilitation.

2 The court also noted, although there is no
3 evidence that this existed in this particular case whether
4 his youthful age affected his ability to negotiate with
5 the officers and be able to assist his own attorney.

6 Looking at all the other factors, I don't
7 believe in my discretion that they warrant a sentence of
8 less than 55 years. Although a 15 year old's brain is
9 different and Dr. Goldsmith concluded this defendant is
10 immature and his marijuana use compounded his lack of
11 judgment, I don't believe that they explained the
12 defendant's conduct in this case. I don't believe that
13 his age, which was just under 16, or his immaturity was
14 the driving issue in this case.

15 First of all, I want to note, as Mr. Ryan noted
16 he came here as an unaccompanied teenager which certainly
17 required a level of maturity. This is not a defendant who
18 lived a sheltered life unaware of the MS-13 gang or has no
19 ability to function independently. He is someone who was
20 familiar with the gang in El Salvador. He knew what the
21 gang was about. He came here in a very, as Mr. Ryan
22 noted, under very difficult circumstances. It took a long
23 period of time to get to the United States, something most
24 teenagers would never experience. But I believe that that
25 experience and his experience with the gang in El Salvador

1 made him more aware than the normal teenager of exactly
2 what he was getting into.

3 More importantly as relates to his age, as
4 Mr. Durham noted this was not an impulsive act. This is
5 not a teenager who was confronted with an evolving
6 situation that happened on a moment's notice and had to
7 make a quick decision about whether to participate or not.
8 This was something that developed in advance. He
9 participated in discussions about how it would be done.

10 As I noted he was active in every part of those
11 discussions, although not a leader. He had a continuous
12 role. This was a premeditated cold-blooded murder and I
13 don't believe his age or immaturity or marijuana use can
14 explain his decision, notwithstanding the time to think
15 about it, to participate in these murders. As
16 Dr. Goldsmith noted, there is no sign of mental illness.
17 There is no sign of any intellectual limitations of this
18 defendant. I don't believe that his age or other age
19 related factors warrant a sentence below the 55 years.

20 I don't believe any normal peer pressure that's
21 associated with that age or circumstances surrounding this
22 defendant explain his conduct. He joined the gang quickly
23 within months of arriving here, knowing what the gang was
24 all about. There was no indication in the record of any
25 pressure. His cousin obviously was involved in the gang,

1 but there was no indication that someone forced him to be
2 in the gang. He did it because, as he said to
3 Dr. Goldsmith on page five, he wanted respect. He thought
4 it would give him friends, marijuana, and girls. And he
5 participated in the murders he said because he wanted to
6 be promoted by participating in the murders.

7 So there is no indication of any pressure that
8 was put on him to join the gang or to participate in these
9 murders and I don't believe that explains his decision.
10 Although there's been back and forth about his family and
11 home environment, again, as I noted in the transfer
12 opinion there was no abuse, either here or in El Salvador,
13 and obviously the situation regarding the grandmother was
14 not an ideal situation, nor the situation when he arrived
15 here, but I don't believe that that supervision or lack of
16 supervision explains his decisions.

17 Finally, on efforts of rehabilitation and
18 likelihood of those efforts, the records showed that there
19 were efforts in the school through the community
20 reinvestment program to try to get him to disassociate
21 himself with the gang and they were unsuccessful. I don't
22 mean to suggest by noting that that means he could never
23 change or turn his life around. I don't believe that.

24 But I believe that that factor, even assuming
25 that at some point that he would be or would no longer be

1 a threat to society, I don't believe that that factor
2 alone is sufficient to justify a sentence and I don't know
3 when that point would be, it's unclear. Obviously as
4 Mr. Ryan noted he's had no programs in the jail. To me he
5 currently poses a danger to the community and a long-term
6 danger to the community.

7 But even assuming that that would dissipate over
8 some time prior to the 55 years, I believe the other
9 factors that I pointed to warrant this sentence in any
10 event. I don't believe the Miller factors are strong in
11 this case are outweighed by the other factors that I have
12 pointed to. But what I am trying to do by this sentence,
13 reflecting again that at some point I believe at an
14 advanced age he would pose a danger to the community and
15 because of his acceptance of responsibility I'm trying to
16 fashion this 55-year sentence given the possibility of not
17 dying in jail, having some period of what Mr. Ryan
18 referred to as his last stage of life, to have the hope,
19 although not the certainty, of not dying in jail.

20 And I believe the 55-year sentence is sufficient
21 to do that, but I believe any lower sentence would not
22 adequately account for all the other factors I stated
23 which is the seriousness of the offense, the loss of life,
24 the need to promote respect for the law and to provide
25 deterrence, including general deterrence.

1 Finally, I would note with respect to avoid
2 unwarranted sentencing disparities, I don't believe this
3 is a disparate sentence.

4 First of all, based on my own sentences this is
5 not disparate from what I imposed previously. A number of
6 years ago I did impose life sentences on juveniles for the
7 murder of a 19 year old woman, Ms. Argueta and her two
8 year old son, and the two who received life were 17, one
9 had just turned 17, Mr. Garcia, and Mr. Mejia, who was 16
10 years old at the time of his participation in that double
11 homicide I gave 45 years because he had a number of the
12 same factors here that Mr. Portillo has that persuaded me
13 based upon his age and those other factors that he
14 shouldn't receive a life sentence.

15 I believe Mr. Portillo is more culpable than
16 Mr. Mejia. We have four individuals here who are dead and
17 I believe that this is proportional to other sentences I
18 have imposed and if you look at the government's chart
19 it's certainly within the range of other sentences other
20 courts have imposed for murders or multiple murders,
21 although there were very few that are of this level of
22 violence in this chart.

23 In any event, even if it were not proportional,
24 again, I believe the other factors warrant this sentence
25 for the reasons I have indicated. I believe this sentence

1 is sufficient but is no greater than is necessary to
2 balance all of the factors. That's how I reached this
3 sentence.

4 The final thing I'll say is the court obviously
5 is aware of the Tapia decision by the court, T-A-P-I-A,
6 which says that you can't use imprisonment as a way to
7 achieve rehabilitation and prolong the sentence. I want
8 to make clear although the Miller decision makes reference
9 to rehabilitation and I made reference to rehabilitation
10 and the parties have, that the court is aware of that
11 decision and I am not doing that in this case.

12 This is not an effort to give Mr. Portillo
13 rehabilitation in jail. That is not the point of this
14 sentence. The point of this sentence is to reflect the
15 harm and protect the public from harm from him and his
16 dangerousness and from general deterrence.

17 Is the government seeking supervised release
18 given that he will be deported and how many years he will
19 be in jail?

20 MR. DURHAM: Your Honor, we would request it in
21 the unlikely event he's not deported.

22 THE COURT: Okay.

23 I'm going to impose -- you want to speak to that
24 issue, Mr. Ryan?

25 MR. RYAN: No.

1 I expect that he will be deported once he's
2 completed his sentence.

3 THE COURT: I fully expect that, but we are
4 talking about a long time down the road and in the
5 unlikely event that he is not deported for some reason I
6 am going to impose three years of supervised release.

7 I understand the guidelines suggest this is
8 unnecessary but we obviously have a crime here of the
9 utmost seriousness and certainly if for whatever reason he
10 remains in the United States for a day after he serves
11 this sentence he should be under supervision to ensure
12 that he does not return to any type of illegal activity.

13 And also even, if he is deported, it will also
14 operate as an additional incentive for him not to try to
15 return to the United States because, in addition to it
16 being a crime, it will be a violation of supervised
17 release. I'm going to impose three years of supervised
18 release with the standard conditions, the mandatory
19 conditions, and the one special condition that if he is
20 deported he will not illegally reenter the United States.

21 With respect to restitution, the addendum says
22 the government is seeking the victims' families for
23 funeral expenses, a total of \$24,108 in restitution. Is
24 that still accurate?

25 MR. DURHAM: It is, your Honor.

1 I think that's for three of the four victims'
2 families. The fourth family did not submit anything at
3 that point and I don't believe they have even since then.

4 THE COURT: All right.

5 The government is okay with proceeding with the
6 issue of restitution then?

7 MR. DURHAM: Yes, your Honor.

8 THE COURT: Mr. Ryan, does your client have any
9 objection to the restitution amount?

10 MR. RYAN: No, your Honor, despite its
11 impracticality.

12 THE COURT: Whether or not they will be able to
13 collect that money from Mr. Portillo is a different issue,
14 but I believe it should be imposed in the amount
15 indicated, \$24,108 as divided up and it will be due
16 immediately and payable at a rate of \$25 per quarter while
17 in custody and 10 percent of his net income while he's on
18 supervised release should he ever be on supervised
19 release.

20 I will impose the \$100 mandatory special
21 assessment.

22 I will not impose a fine because he has no
23 money.

24 Is there any legal reason why I cannot impose
25 that sentence, Mr. Durham?

1 MR. DURHAM: No, your Honor.

2 THE COURT: Mr. Ryan?

3 MR. RYAN: No, your Honor.

4 THE COURT: I'm now going to pronounce the
5 sentence.

6 Mr. Portillo, it is the judgment of this court
7 in its discretion that you be sentenced to the custody of
8 the Attorney General through the Bureau of Prisons to a
9 term of imprisonment of 55 years, 660 months. I impose
10 three years of supervised release to follow that term of
11 imprisonment with the standard conditions, the mandatory
12 conditions, and the one special condition that if you are
13 deported from the United States you will not illegally
14 reenter the United States.

15 I impose restitution in the amount of \$24,108,
16 consisting of \$8,723 to the Llivicura family, \$7,385 to
17 the Lopez family and \$8,000 to the Villalobos family due
18 immediately and payable at a rate of \$25 per quarter while
19 you are in custody and 10 percent of your net custody
20 while you are on supervised release.

21 I impose a \$100 mandatory special assessment. I
22 waive the interest on the restitution, given his limited
23 resources, and I impose no fine.

24 Mr. Portillo, I need to advise you of your
25 statutory right to appeal. You have the right to appeal

1 your conviction and sentence. If you are unable to pay
2 the cost of appeal you may apply for leave to appeal
3 in forma pauperis. If you cannot afford an attorney on
4 appeal one will be appointed to represent you. The notice
5 of appeal must be filed within 14 days of the judgment of
6 conviction.

7 I believe there is an underlying juvenile
8 information that needs to be dismissed. Is that correct?

9 MR. DURHAM: That's correct, your Honor. We
10 move to dismiss that at this time.

11 There are no open counts.

12 THE COURT: The underlying juvenile information
13 is dismissed.

14 Are there any other issues -- Mr. Ryan, you had
15 said in your letter you wanted me to recommend FCI
16 Coleman.

17 MR. RYAN: Yes, your Honor.

18 THE COURT: I have no problem with recommending
19 that facility.

20 I'll put that in the judgment.

21 MR. RYAN: Thank you.

22 THE COURT: Are there any other requests or
23 issues you have?

24 MR. RYAN: May I confer with the client?

25 THE COURT: Yes.

1 (There was a pause in the proceedings.)

2 MR. RYAN: One dispute we have is that
3 Mr. Portillo had to go to another clique to get
4 Mr. Antichristo permission to organize this murder plot is
5 wrong.

6 It was Mr. Antichristo who was from another
7 clique that had to get the permission under their
8 structure. Mr. Portillo facilitated by phone the
9 communication but it's Mr. Antichristo that had to get the
10 permission from another clique in order to carry out what
11 we say is his plan.

12 Outside of that I don't know if that makes any
13 difference. But I think that's a factual issue.

14 THE COURT: To the extent the government
15 suggested that, that is not a factor in my sentence.

16 MR. RYAN: Fine.

17 THE COURT: I want to emphasize I accept that
18 Antichristo was more culpable than him and I accept that.

19 MR. RYAN: Thank you.

20 THE COURT: And I also understand that he
21 arranged the phone call but I recall reading in one of the
22 papers that Antichristo went off to the side and had a
23 private conversation on the phone with the leader.

24 So I fully understand that.

25 MR. RYAN: Thank you.

1 THE COURT: It's not based upon any belief that
2 he was the mastermind or the planner.

3 It's based upon his active role at every stage.
4 That's really what it comes down to, but I don't want him
5 to think that particular disputed fact has any impact.

6 Okay?

7 MR. RYAN: I understand.

8 Thank you, very much.

9 THE COURT: Thank you.

10 (The matter concluded.)

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DEFENDANT: JOSUE PORTILLO
CASE NUMBER: CR 17-0366 (S-1)
DISTRICT: Eastern District of New York

★ JUL 12 2019 ★

STATEMENT OF REASONS LONG ISLAND OFFICE

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. The court adopts the presentence investigation report without change.

B. The court adopts the presentence investigation report with the following changes. (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)

1. Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
2. Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
3. Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
4. Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)

C. The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32. Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level)

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply)

A. One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.

B. One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:

- findings of fact in this case: (Specify)
- substantial assistance (18 U.S.C. § 3553(e))
- the statutory safety valve (18 U.S.C. § 3553(f))

C. No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: 43

Criminal History Category: I

Guideline Range: (after application of SSGI.1 and SSGI.2) life to months

Supervised Release Range: 2 to 5 years

Fine Range: \$ 50,000 to \$ 500,000

 Fine waived or below the guideline range because of inability to pay.

DEFENDANT: JOSUE PORTILLO

CASE NUMBER: CR 17-0366 (S-1)

DISTRICT: Eastern District of New York

STATEMENT OF REASONS**IV. GUIDELINE SENTENCING DETERMINATION** (*Check all that apply*)

- A. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: (*Use Section VIII if necessary*)
- C. The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(*Also complete Section V*)
- D. The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). (*Also complete Section VI*)

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL (*If applicable*)

- A. **The sentence imposed departs:** (*Check only one*)
 - above the guideline range
 - below the guideline range
- B. **Motion for departure before the court pursuant to:** (*Check all that apply and specify reason(s) in sections C and D*)
 1. **Plea Agreement**
 - binding plea agreement for departure accepted by the court
 - plea agreement for departure, which the court finds to be reasonable
 - plea agreement that states that the government will not oppose a defense departure motion.
 2. **Motion Not Addressed in a Plea Agreement**
 - government motion for departure
 - defense motion for departure to which the government did not object
 - defense motion for departure to which the government objected
 - joint motion by both parties
 3. **Other**
 - Other than a plea agreement or motion by the parties for departure

- C. **Reasons for departure:** (*Check all that apply*)

<input type="checkbox"/> 4A1.3 Criminal History Inadequacy	<input type="checkbox"/> SK2.1 Death	<input type="checkbox"/> SK2.12 Coercion and Duress
<input checked="" type="checkbox"/> SH1.1 Age	<input type="checkbox"/> SK2.2 Physical Injury	<input type="checkbox"/> SK2.13 Diminished Capacity
<input type="checkbox"/> SH1.2 Education and Vocational Skills	<input type="checkbox"/> SK2.3 Extreme Psychological Injury	<input type="checkbox"/> SK2.14 Public Welfare
<input type="checkbox"/> SH1.3 Mental and Emotional Condition	<input type="checkbox"/> SK2.4 Abduction or Unlawful Restraint	<input type="checkbox"/> SK2.16 Voluntary Disclosure of Offense
<input type="checkbox"/> SH1.4 Physical Condition	<input type="checkbox"/> SK2.5 Property Damage or Loss	<input type="checkbox"/> SK2.17 High-Capacity, Semiautomatic Weapon
<input type="checkbox"/> SH1.5 Employment Record	<input type="checkbox"/> SK2.6 Weapon	<input type="checkbox"/> SK2.18 Violent Street Gang
<input type="checkbox"/> SH1.6 Family Ties and Responsibilities	<input type="checkbox"/> SK2.7 Disruption of Government Function	<input type="checkbox"/> SK2.20 Aberrant Behavior
<input type="checkbox"/> SH1.11 Military Service	<input type="checkbox"/> SK2.8 Extreme Conduct	<input type="checkbox"/> SK2.21 Dismissed and Uncharged Conduct
<input type="checkbox"/> SH1.11 Charitable Service/Good Works	<input type="checkbox"/> SK2.9 Criminal Purpose	<input type="checkbox"/> SK2.22 Sex Offender Characteristics
<input type="checkbox"/> SK1.1 Substantial Assistance	<input type="checkbox"/> SK2.10 Victim's Conduct	<input type="checkbox"/> SK2.23 Discharged Terms of Imprisonment
<input type="checkbox"/> SK2.0 Aggravating/Mitigating Circumstances	<input type="checkbox"/> SK2.11 Lesser Harm	<input type="checkbox"/> SK2.24 Unauthorized Insignia
<input type="checkbox"/> Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the <u>Guidelines Manual</u> : (<i>see "List of Departure Provisions" following the Index in the Guidelines Manual</i>) (<i>Please specify</i>)		

D. State the basis for the departure. (*Use Section VIII if necessary*)

See attached rider.

DEFENDANT: JOSUE PORTILLO
CASE NUMBER: CR 17-0366 (S-1)
DISTRICT: Eastern District of New York

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE (*If applicable*)

A. The sentence imposed is: (*Check only one*)

- above the guideline range
- below the guideline range

B. Motion for a variance before the court pursuant to: (*Check all that apply and specify reason(s) in sections C and D*)

1. Plea Agreement

- binding plea agreement for a variance accepted by the court
- plea agreement for a variance, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- government motion for a variance
- defense motion for a variance to which the government did not object
- defense motion for a variance to which the government objected
- joint motion by both parties

3. Other

- Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance (*Check all that apply*)

The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)

- Mens Rea
- Extreme Conduct
- Dismissed/Uncharged Conduct
- Role in the Offense
- Victim Impact

General Aggravating or Mitigating Factors (*Specify*)

The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

- Aberrant Behavior
- Lack of Youthful Guidance
- Age
- Mental and Emotional Condition
- Charitable Service/Good Works
- Military Service
- Community Ties
- Non-Violent Offender
- Diminished Capacity
- Physical Condition
- Drug or Alcohol Dependence
- Pre-sentence Rehabilitation
- Employment Record
- Remorse/Lack of Remorse
- Family Ties and Responsibilities
- Other: (*Specify*)
- Issues with Criminal History: (*Specify*)

To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (*Specify in section D*)

To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

Acceptance of Responsibility

Conduct Pre-trial/On Bond

Cooperation Without Government Motion for

Early Plea Agreement

Global Plea Agreement

Departure

Time Served (*not counted in sentence*)

Waiver of Indictment

Waiver of Appeal

Policy Disagreement with the Guidelines (*Kimbrough v. U.S.*, 552 U.S. 85 (2007)): (*Specify*)

Other: (*Specify*)

D. State the basis for a variance. (Use Section VIII if necessary)

DEFENDANT: JOSUE PORTILLO
CASE NUMBER: CR 17-0366 (S-1)
DISTRICT: Eastern District of New York

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. **Restitution Not Applicable.**

B. **Total Amount of Restitution: \$ 24,108.00**

C. **Restitution not ordered: (Check only one)**

1. For offenses for which restitution is otherwise mandatory, the number of identifiable victims is so large as to make determining complex issues of fact and relating them to the offense or prolong the sentencing process to a degree that would impose an undue burden on the sentencing process under 18 U.S.C. § 3663(a)(1)(B)(ii).
2. For offenses for which restitution is otherwise mandatory, the burden on the sentencing process to a degree that would impose an undue burden on the sentencing process under 18 U.S.C. § 3663(a)(1)(B)(ii).
3. For other offenses for which restitution is authorized by guidelines, restitution is not ordered because the costs of the preparation and filing of a motion to order restitution from the fashioning of a restitution order outweigh the benefits of 18 U.S.C. § 3663(a)(1)(B)(ii).
4. For offenses for which restitution is otherwise mandatory under 3663A, restitution is not ordered because the victim would be unable to pay the amount of the restitution order (18 U.S.C. § 3664(g)(1)).
5. For offenses for which restitution is otherwise mandatory under 3663A, restitution is not ordered because the victim would be unable to pay the amount of the restitution order (18 U.S.C. § 3664(g)(1)).
6. Restitution is not ordered for other reasons. (Explain)

D. **Partial restitution is ordered for these reasons (18 U.S.C. § 3664(g)(1))**

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

See attached rider.

Defendant's Soc. Sec. No.: Not Applicable
Defendant's Date of Birth: 5/1/2001
Defendant's Residence Address: 54 Sage Street
Central Islip, New York 11722
Defendant's Mailing Address:

Date of Imposition of Judgment	6/12/2019
	
Signature of Judge	Joseph F. Bianco, U.S.C.J. (sitting by designation)
Name and Title of Judge	
Date Signed	7/12/19

DEFENDANT: JOSUE PORTILLO
CASE NUMBER: 17-CR-0366

Having considered all of the various 3553(a) factors, and the factors set forth in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), I find, in the exercise of my discretion, that a sentence of 660 months' imprisonment (with three years' supervised release) is warranted in this case.

As stated in detail on the record, that decision is based upon, among other things, the defendant's extremely violent conduct and the seriousness of the offense, which involved his participation in the brutal, execution-style murders of four young men, in connection with the racketeering activities of the violent MS-13 street gang. Specifically, the defendant stabbed and killed Michael Lopez, while his co-conspirators simultaneously murdered the other three victims. As outlined on the record, the defendant (albeit not a leader of the criminal activity) played a pivotal role in the murder conspiracy and the carrying out of the murders. This sentence is thus necessary, not only to reflect the seriousness of the offense and to promote respect for the law, but also to provide a just sentence for the senseless and devastating loss of life from this offense. The seriousness of this criminal conduct, and the danger it poses to the community, are exacerbated by the fact that it was committed in connection with the activities of a violent street gang. Moreover, this sentence is necessary as a general deterrent to others who might otherwise participate in a similar type of violent conduct in aid of the racketeering activities of street gangs.

The Court also has considered the *Miller* factors in determining, in its discretion, that a 55-year sentence is warranted. Thus, pursuant to *Miller*, the Court has considered age-related culpability factors including, *inter alia*, (1) the defendant's chronological age and characteristics including any immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the family and home environment that surrounds the defendant; (3) the circumstances of the homicide offense, including the extent of the defendant's participation in the conduct and the way familial and peer pressures may have affected him; and (4) the possibility of rehabilitation. Finally, the Court notes that, although mentioned as a potential factor in the *Miller* case, there is no evidence in this particular case that the defendant's youthful age affected his ability to bargain with police officers and prosecutors for a lesser charge, or his ability to assist his own attorneys.

As set forth in detail on the record, the Court concludes that the defendant has several mitigating factors, including, among other things: his age at the time of the offense, his remorse, his acceptance of responsibility, and his attempt to cooperate. In fact, the Court concludes that a downward departure under the advisory Guidelines system is warranted under Section 5H1.1 because of the defendant's age at the time of the offense. Given these mitigating factors and balancing them with all of the Section 3553(a) factors and the *Miller* factors, the Court believes that the advisory Guidelines range of life is not warranted, and that 55 years' imprisonment (rather than a higher amount) is sufficient (but not greater than necessary) to account for all of the 3553(a) factors. Moreover, although the Court has considered the defendant's arguments for a lower non-Guidelines sentence, the Court rejects those arguments and finds, in its discretion, that this sentence is necessary to adequately account for all of the Section 3553(a) factors for the reasons stated above and on the record, especially to reflect the seriousness of the offense, promote respect for the law, and to provide deterrence.

As set forth in detail on the record, the Court concludes that this sentence is warranted even when the *Miller* factors are considered in light of all the Section 3553(a) factors. First, although the defendant was 15 at the time of the offense and had some level of immaturity, his participation in these murders was not an impulsive or impetuous act, or one where the defendant did not appreciate the risks and consequences of his conduct. The murders were planned and pre-meditated. Second, with respect to his family and home environment, notwithstanding his difficult childhood, there is nothing in his family background that explains his extremely depraved conduct in this case. Third, the circumstances surrounding these brutal murders, including the defendant's particular role in the murders, strongly weigh in favor of the 55-year sentence. With respect to the issue of peer pressure, the defendant decided to participate in these murders without any peer pressure from gang leadership. With respect to the *Miller* factor regarding the possibility of rehabilitation, the Court concluded, in connection with the decision to transfer the defendant to adult status, that the defendant is not likely to be successful in rehabilitation and that his current risk of recidivism is extremely high. The Court again reaches that conclusion based upon the record at sentencing and views the defendant as an extremely dangerous individual from whom society needs to be protected for an extended period of time. Moreover, even apart from his high level of future dangerousness, the Court (as noted above) believes, in its discretion, that this sentence is necessary in order to adequately reflect the other factors, described above and on the record, including the extreme harm caused to the victims and their families.

Finally, the Court notes that it has extensively considered information regarding juvenile sentences across the nation in connection with extremely violent conduct and does not believe that this sentence results in any unwarranted sentencing disparities when considered in light of these other sentences. In any event, to the extent that there is any disparity, it is outweighed by the other factors that exist under the circumstances of this particular case.

In sum, after considering the Section 3553(a) factors and the *Miller* factors, the Court concludes in its discretion that this sentence is warranted in this case and is necessary to adequately account for all of the sentencing factors. It is sufficient, but no greater than is necessary to adequately account for all of the Section 3553(a) factors. The Court also notes that its sentence would be the same regardless of the advisory Guidelines range in this case, based upon all of the Section 3553(a) factors discussed above and on the record.