

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD SANCHEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 28, 2022

Lyle W. Cayce
Clerk

No. 21-11281
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDWARD SANCHEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-245-1

Before JONES, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Edward Sanchez appeals the 78-month sentence imposed following his conviction for possession of a firearm after a felony conviction. He argues that the district court reversibly erred in calculating his advisory guidelines range by classifying his prior Texas conviction for aggravated assault as a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

crime of violence pursuant to U.S.S.G. § 4B1.2(a). He asserts that the relevant version of the Texas aggravated assault statute is broader than generic aggravated assault and would not otherwise qualify as a crime of violence for purposes of the Guidelines.

The Government has filed an unopposed motion for summary affirmance, correctly asserting that the issue raised on appeal is foreclosed. *See United States v. Guillen-Alvarez*, 489 F.3d 197, 200-01 (5th Cir. 2007). Sanchez concedes that the sole issue raised on appeal is foreclosed by our precedent, but he seeks to preserve it for further review. Accordingly, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as MOOT.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

EDWARD SANCHEZ

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:20-CR-00245-N(1)**

§ USM Number: **60312-177**

§ **Douglas A Morris**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment filed May 28, 2020.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18 U.S.C. §§ 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon

Offense Ended

04/22/2020

Count

1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

DECEMBER 13, 2021

Date of Imposition of Judgment



Signature of Judge

DAVID C. GODBEY, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

DECEMBER 17, 2021

Date

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

78 (Seventy-Eight) months as to count 1. This sentence shall run concurrently to any sentence imposed in Case No. F-2036662 in Dallas County Criminal Court 2.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a facility in the Dallas/Fort Worth Texas area, if possible.

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

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

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years as to Count 1.**

MANDATORY CONDITIONS

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

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

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

The defendant must provide to the probation officer any requested financial information.

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$.00	\$.00	\$.00	\$.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

DEFENDANT: EDWARD SANCHEZ
CASE NUMBER: 3:20-CR-00245-N(1)

SCHEDULE OF PAYMENTS

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

- A** ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or
- D** ☐ Payment in equal 20 (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	No. 3:20-CR-245-N
EDWARD SANCHEZ,	§	
Defendant.	§	

**OBJECTION TO THE PRESENTENCE REPORT, WITHDRAW OF AN OBJECTION
TO THE PRESENTENCE REPORT, AND NOTICE TO THIS COURT**

Defendant **EDWARD SANCHEZ**, by his counsel, Assistant Federal Public Defender Douglas A. Morris, hereby withdraws an objection to the Presentence Report. Mr. Sanchez also makes an objection to the PSR to preserve an issue for further review, and he makes sentencing and placement requests to this Court.

Specifically, based on the information within the Addendum to the PSR and a discussion with the government, Mr. Sanchez withdraws his objection to the (1) enhancement of two offense-levels based on the fact that at least one of the firearms qualified as a semi-automatic firearm that was capable of accepting a nearby magazine that held 15 cartridges or more and (2) the enhancement of two offense-levels based on the number of firearms. See (PSR ¶¶18 & 19.) Mr. Sanchez contends that he honored his brother's order that he not physically possess the firearms in question. However, it is undisputed that Mr. Sanchez had knowledge that the firearms were present in the family home, and it is undisputed that Mr. Sanchez knew where his brother placed the firearms. Combine these undisputed facts with the open and obvious way that Mr. Sanchez's brother "stored" the firearms—they were no locks on the bedroom door that contained the firearms, the firearms did not have trigger locks, and some of the firearms were simply lying about in the unlocked bedroom of Mr. Sanchez's brother—while there is no evidence that Mr. Sanchez

physically possessed the firearms in question, there is both plausible evidence and even a preponderance of the evidence showing that he constructively possessed the firearms in question. See (PSR Addendum p.1.) Accordingly, Mr. Sanchez withdraws the objection to the PSR.

Though Mr. Sanchez withdraws this objection, Mr. Sanchez asks this Court to take into consideration something that the Guidelines do not take into consideration—the distinction between actually possessing a firearm and constructively possessing a firearm. Here, because Mr. Sanchez’s brother had firearms in the family home in an open and obvious manner and at least one of the numerous unsecured firearms qualifies as a semi-automatic that was capable of accepting a nearby magazine that held 15 cartridges or more, Mr. Sanchez’s guideline sentence range increased from 46 to 57 months of imprisonment instead of 70 to 87 months of imprisonment. Cf. (PSR ¶62.) Mr. Sanchez asks this Court consider a sentence within the sentence range of 46 to 57 months of imprisonment (the sentence range without the extra four offense-levels), instead of current sentence range of 70 to 87 months of imprisonment. If this Court determines that such a reduction is not reasonable, then Mr. Sanchez asks that this Court consider a sentence of 70 months—the bottom of the current guideline range.

Lastly, in order to preserve an issue for further review, Mr. Sanchez objects to the conclusion that his prior conviction for Aggravated Assault with a Deadly Weapon qualifies as a “crime of violence.” See (PSR ¶18.) Precedent is currently against this argument, see United States v. Cruz, 691 Fed. Appx. 204, 205 (5th Cir. 2017) (per curiam) (unpublished) (citing United States v. Guillen-Alvarez, 489 F.3d 197, 199-201 (5th Cir. 2007); United States v. Rayo-Valdez, 302 F.3d 314, 318 (5th Cir. 2002)); therefore, as noted, Mr. Sanchez makes this argument to preserve the record for further review.

Conclusion

In addition to asking this Court to consider reducing the sentence based on the above argument, Mr. Sanchez asks that this Court order that the sentence imposed in the instant case be served concurrent to any sentence imposed in the offense noted in paragraph 39 of the PSR. Mr. Sanchez further asks that this Court recommend to the Bureau of Prisons that he be allowed to serve his sentence in local federal facility and he be allowed to participate in the 500-hour residential drug treatment program and any other vocational, educational, or other form of training and/or programing designed to reduce the risk of reoffending.

Respectfully submitted,

s/s Douglas A. Morris

Douglas A. Morris

Assistant Federal Public Defender

Northern District of Texas

Texas Bar No. 24028323

525 Griffin Street, Suite 629

Dallas, Texas 75202

214.767.2746

doug_morris@fd.org

Attorney for Mr. Edward Sanchez

CERTIFICATE OF SERVICE

I certify that on November 15, 2021, I caused a copy of Defendant's Objections to the Presentence Report and Notice to this Court to be delivered to the Honorable David C. Godbey, United States District Judge; Abe McGlothlin, Assistant United States Attorney; and Kenneth Carroll, United States Probation Officer, at 1100 Commerce Street, Dallas, Texas.

s/s Douglas A. Morris

Douglas A. Morris

Assistant Federal Public Defender

APPENDIX D

UNITED STATES OF AMERICA,) 3:20-cr-00245-N
PLAINTIFF,)
)
vs.) DALLAS, TEXAS
)
EDWARD SANCHEZ,)
DEFENDANT.) December 13, 2021

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

FOR THE PLAINTIFF: **MR. ABE MCGLOTHIN**
 UNITED STATES DEPARTMENT OF JUSTICE
 NORTHERN DISTRICT OF TEXAS
 1100 Commerce Street, 3rd Floor
 Dallas, Texas 75242
 abe.mcglathin@usdoj.gov
 (214) 659-8600

1 FOR THE DEFENDANT:

MR. DOUGLAS A. MORRIS

OFFICE OF THE FEDERAL PUBLIC DEFENDER
525 Griffin Street, Suite 629
Dallas, Texas 75202
doug_morris@fd.org
(214) 767-2746

18 COURT REPORTER:

MR. JEFF L. FOSTER, RMR, CRR

United States Court Reporter
1100 Commerce St., Room 1504
Dallas, Texas 75242
(214) 753-2349

24 Proceedings reported by mechanical stenography and
25 transcript produced by computer.

1 SENTENCING HEARING -- DECEMBER 13, 2021

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

3 THE COURT: Are we ready to proceed with the sentencing
4 of Edward Sanchez?

5 MR. MORRIS: Yes, Your Honor. Mr. Sanchez is ready and
6 Doug Morris here for Mr. Sanchez.

7 MR. MCGLOTHIN: And Abe McGlothlin for the United
8 States, Your Honor.

9 THE COURT: Good morning.

10 MR. MCGLOTHIN: Good morning.

11 THE COURT: Mr. Morris, could I ask you, please, to
12 confirm for record purposes that you've had an opportunity to
13 review the presentence report and any addenda and have gone over
14 those with Mr. Sanchez?

15 MR. MORRIS: Judge, he can't hear you at all. I'm
16 sorry.

17 THE COURT: I'm sorry. Can you confirm that you've had
18 a chance to review the PSR and any addenda and have gone over
19 those with your client?

20 MR. MORRIS: Yes, Your Honor, Mr. Sanchez and I have
21 been able to have an opportunity to review the presentence
22 report, make objections to the presentence report, we've reviewed
23 the addendum, filed an objection and reviewed the second addendum
24 and filed yet another objection toward the end on -- this past
25 November 15th.

1 THE COURT: Then I'm ready to listen to whatever the
2 defense would care to present.

3 MR. MORRIS: Can you hear him at all, Mr. Sanchez?
4 It's really important that you hear him.

5 THE DEFENDANT: I can barely hear him.

6 MR. MORRIS: You can barely hear him? Judge, I'm
7 sorry, Mr. Sanchez and I can barely hear you.

8 THE COURT: I said I'm ready to listen to whatever you
9 want to tell me.

10 MR. MORRIS: Thank you very much, Your Honor. Your
11 Honor, in regards to Mr. Sanchez, within the presentence report
12 I think Mr. Carroll does a good job of summarizing and writing
13 down Mr. Sanchez's personal history.

14 Mr. Sanchez is still a fairly young person, but when he
15 was younger he grew up in a household with a number of
16 challenges. His father was illegally present in the country, he
17 was an alcoholic, sometimes didn't use money appropriately within
18 the family. He ended up being removed when Mr. Sanchez was
19 approximately eight years old, I believe. That left a really
20 quite heavy burden on Mr. Sanchez's mother. The result is
21 Mr. Sanchez was left alone quite a bit.

22 And he lived in a challenging neighborhood as well
23 where a number of people had a number of problems that include,
24 because he had so much free time, that he ended up being involved
25 with -- being gang involved, as they say.

1 People would recruit younger people to be involved with
2 illegal activity and as noted accurately in the presentence
3 report Mr. Sanchez then started consuming marijuana when he was
4 11 years old. And shortly thereafter, I believe, started
5 consuming Xanax.

6 He has a record of -- he was an irregular consumer of
7 other controlled substances, but his drugs of choice, as they
8 say, were both marijuana and Xanax, of which he continued to use
9 up until the date of his arrest this last April of 2020.

10 So Mr. Sanchez has had a number of challenges in that
11 area that has made it -- and these are both external things and
12 internal things, of course, that he has had struggles with. He
13 has spent some time in custody both as a teenager -- well, his
14 time -- his time in custody started as a teenager. So those
15 challenges that he had, along with physical health problems and
16 weight problems.

17 He made it all the way through 8th grade and dropped
18 out when he was in 9th grade, so he really has nothing in the
19 line of -- much in the line of education. He has no job training
20 whatsoever.

21 And as an end result we oftentimes see -- I know you've
22 been here for a long time and you've seen folks who just have --
23 they have no job training, they have no real coping skills,
24 because they've learned how to cope by using controlled
25 substances, so they don't know how to interact well with people.

1 And those folks who have those challenges are the ones
2 who are the ripest for recruitment to engaging in illegal
3 activity. Ultimately they have their own responsibility not to
4 engage in illegal activity.

5 When we're thinking about the challenges that somebody
6 has -- who might not have any challenges whatsoever and engaged
7 in illegal activity versus somebody who has the great deal of
8 challenges that Mr. Sanchez has, the guidelines don't make a
9 distinction between those two. So when we're thinking about the
10 history and characteristics of the Defendant, with Mr. Sanchez,
11 I'd ask you to consider those things, as I know you will, because
12 they're part of 3553 and how those interact with the nature and
13 circumstances of the offense also.

14 In regards to how this sentence range works with
15 the -- with the public safety factors that we note in 3553(a)(2),
16 it appears that Mr. Sanchez was released from custody without --
17 without the kind of intensive supervision that we oftentimes see
18 in the federal system.

19 I know a great deal of probation officers who work real
20 hard and have a lot of success. Nobody has 100 percent success.
21 And an example of one I know of today -- even if she wasn't here
22 I would use her name as an example. Ms. Williams is a fantastic
23 probation officer and I know that the difference between having
24 somebody who supervises you really well and kind of keeping you
25 on the ball and giving you that encouragement can make a huge

1 difference.

2 And I have -- I have -- always have faith in that type
3 of system where we have people who are working hard to help other
4 people; that somebody like Mr. Sanchez can get out of that model
5 that he has been in and move to a different model of being a
6 success.

7 So he's going to be learning some new tools while he is
8 in the Bureau of Prisons, such as recovery tools, hopefully be
9 able to get some type of trade, increase his education level from
10 an 8th grade education to something higher than that, hopefully
11 get a GED and move on from there. Those are the personal factors
12 that I highlight at this time, Judge.

13 As to the offense factors, I know you saw that I wrote
14 an issue about the actual construction of firearms versus the
15 constructive possession of firearms.

16 Now, having -- the guidelines don't make a difference
17 between those who actually possess the firearms and those who
18 constructively possess the firearms. Now, I also would agree and
19 understand that if somebody doesn't have construction of these
20 extra firearms they don't treat them the same. So somebody who
21 has constructive possession of a semi-automatic assault weapon
22 should be somebody treated different than somebody who doesn't
23 have constructive possession of one. There's not one in the
24 house whatsoever.

25 But I'd also ask, Judge, for you to consider this

1 constructive possession of these firearms without the evidence
2 that he's actually possessed these firearms has increased the
3 guidelines from -- an extra 24 to 30 months. We have a range of
4 46 to 57 months without Mr. Sanchez's lawful -- Mr. Sanchez's
5 brother's lawful possession of firearms to a 70 to 87 months. So
6 he gets an extra 24 to 30 months because he gets out of prison,
7 comes back to the family home and his brother has lawfully owned
8 firearms. That's how the law works. And after visiting with
9 Mr. McGlothlin and getting additional information that's why
10 I withdrew that objection.

11 And so we understand that's how the law works and
12 that's how we have to apply it here, but I'd ask you to consider
13 the distinction between somebody who is -- that the guidelines
14 does not make -- who actually possesses a semi-automatic assault
15 weapon or enough of them to get a quantity enhancement for
16 firearms and a type of firearm enhancement, to actually take that
17 into consideration. And if you don't believe that he ought to
18 have somewhere between 46 and 57 in the form of a variance,
19 taking that into consideration and Mr. Sanchez's personal
20 circumstances that I know you'll take into consideration as
21 well -- but I'd ask you to consider at the bottom of the
22 guideline of 70 months if you don't believe these facts warrant
23 going to -- to the 56 (sic) to 57 month range.

24 I'd also -- when you're in the judgment, Your Honor,
25 I'd ask for a request -- a recommendation for local placement.

1 Mr. Sanchez has a pending case in Dallas County. It's in
2 paragraph 39 of the presentence report. I'd ask for a
3 recommendation -- I'd ask for this sentence to run concurrent to
4 any sentence that's imposed for that related case in paragraph
5 39.

6 That's what I have on behalf of Mr. Sanchez, Your
7 Honor. I know that he has a short note that he wrote to address
8 the Court with and he'd like to share that with you as well,
9 Judge.

10 THE COURT: All right.

11 THE DEFENDANT: Can I take my mask off?

12 MR. MORRIS: That's okay. I'm comfortable with it if
13 you are.

14 THE DEFENDANT: I want to thank you for letting me read
15 this letter to you, Your Honor. I want to -- first I want to say
16 sorry to my family for failing them. I know I made bad choices.
17 So with the time that I'm going to get I'm going to better
18 myself, take classes and get my GED. I want to get into welding
19 so I can come home and help my family and start a new career and
20 show that I can change, Your Honor.

21 I want to say sorry to you and to the United States for
22 breaking the law. And with this time I'm going to get I will
23 change. Thank you -- thank you for letting me read this letter
24 to you, Your Honor.

25 THE COURT: Thank you, sir. Anything else from the

1 defense?

2 MR. MORRIS: Nothing from the defense, Your Honor.

3 Thank you.

4 THE COURT: What says the Government?

5 MR. MCGLOTHIN: Your Honor, looking at this -- looking
6 at this Defendant, Your Honor, I believe that this is an
7 individual who should be sentenced in the middle of the
8 guidelines.

9 Your Honor, looking at Mr. -- looking at Mr. Sanchez he
10 is a young guy, but he has continued to engage in criminal
11 conduct even as -- as Mr. Morris stated, even as a child.

12 But even looking at his adult criminal convictions --
13 looking at when he was 17 in 2014 he was charged with criminal
14 trespass, but if the Court would look at it, the incident
15 surrounding that was related to a fight that was observed -- that
16 police officers were able to observe and involving this
17 particular defendant.

18 Later on in 2014 he's evading arrest and running away
19 from the police. He is sentenced there. His probation is
20 ultimate revoked and then he has additional charges.

21 And then we go on to 2017, Your Honor, where he gets an
22 aggravated assault charge where this Defendant shot a victim in
23 the thigh. The interesting thing about that, Your Honor, is that
24 he was released from custody February 21st of 2020 and about two
25 months later is when he is caught with this particular charge

1 here at his house in April 2020.

2 And the Court -- looking at paragraph 11 of the PSR,
3 you can see that this defendant not only had guns, but he was
4 involved with -- he had 213 grams of marijuana as well as
5 several -- as well as paraphernalia including digital scales,
6 plastic baggies, a grinder and everything. So this wasn't just
7 an individual with guns who didn't -- and the report that
8 officers received as it relates to this home where he was was the
9 fact that there was heavy traffic there. So not only did he have
10 guns there, Your Honor, but I would contend that this was
11 actually a drug house and this is what -- this is what he and his
12 brothers were engaged in.

13 So when looking at the factors and looking at what's
14 taken place, the 3553 factors, Your Honor, as far as the terms
15 are concerned, the sentences that have been given to this
16 Defendant so far have done nothing to deter him from criminal
17 conduct. He continues to engage in it. And being released from
18 custody and shortly thereafter he went right back and here we are
19 now after having discovered several firearms in the home and what
20 we believed to be drug activity taking place there as well.

21 So I believe that a sentence -- the guidelines have
22 them at 70 to 87 months. I believe that a sentence in the middle
23 of the guidelines of 80 months is sufficient in this case. And
24 it's sufficient, but not greater than necessary, to achieve the
25 factors under 3553, Your Honor.

1 THE COURT: All right. I am adopting the factual
2 contents of the presentence report and the addenda as my factual
3 determination in connection with sentencing. Here the guideline
4 calculation yields offense level 25, criminal history category
5 three, for a sentencing range of 70 to 87 months.

6 To the extent there are any remaining objections or
7 requests for a variance I'm denying those. I agree a sentence in
8 the middle of the guidelines is probably appropriate, therefore,
9 I'm going to sentence the Defendant to 78 months in the custody
10 of the Bureau of Prisons. I think that adequately reflects the
11 statutory sentencing factors of Section 3553(a).

12 This sentence should be concurrent with the pending
13 matter in Dallas Criminal District Court 2. I'm not going to
14 impose any fine due to inability to pay. I will impose the
15 mandatory special assessment in the amount of \$100.

16 I'm also going to place the Defendant on supervised
17 release for a term of three years subject to the conditions in
18 Miscellaneous Order 64 as well as Part G of the presentence
19 report.

20 I'm required to advise the Defendant regarding his
21 rights to appeal. You can appeal your conviction if you believe
22 your guilty plea was somehow unlawful or involuntary or if there
23 is some other fundamental defect in the proceedings that was not
24 waived by the guilty plea. You also have a right to appeal your
25 sentence, particularly if you think the sentence is contrary to

1 law.

2 You have the right to request to appeal at no cost if
3 you do not have sufficient funds for the appeal. And you may
4 request the district clerk to prepare and file a notice of appeal
5 on your behalf. With very few exceptions any notice of appeal
6 must be filed within 14 days of entry of formal written judgment.

7 And as requested I will recommend local placement.
8 That recommendation, as you know, is not binding on the Bureau of
9 Prisons, but I do think they give it some consideration.

10 That said, is there anything else this morning from the
11 defense?

12 MR. MORRIS: Your Honor, I just wanted to make sure --
13 I had noted an objection about aggravated assault being a crime
14 of violence. And I just wanted to make sure you overruled that
15 objection, because it presses against that.

16 THE COURT: Yes, that objection is overruled.

17 MR. MORRIS: And 76 months and three years of
18 supervision, is that right, Judge?

19 THE COURT: 78.

20 MR. MORRIS: 8?

21 THE COURT: 7-8.

22 MR. MORRIS: Thank you, Judge. That's all I have,
23 Your Honor.

24 THE COURT: Anything else from the Government?

25 MR. MCGLOTHIN: No, Your Honor.

1 THE COURT: All right. Then the Defendant is remanded
2 into custody and counsel may be excused if you have nothing
3 further with us.

4 MR. MORRIS: Thank you, Judge.

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1 I, Jeff L. Foster, United States Court Reporter for the
2 United States District Court in and for the Northern District of
3 Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 10th day of January, 2022

7
8
9
10 /s/ Jeff L. Foster
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