

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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CANDIDO GOMEZ-SANTACRUZ,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent

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PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Appendix A Order denying Mr. Gomez's timely petition for panel rehearing  
(Pet.App.a1)

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## APPENDIX A

# United States Court of Appeals for the Fifth Circuit

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No. 21-11143

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

CANDIDO GOMEZ-SANTACRUZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:20-CR-522-1

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## ON PETITION FOR REHEARING

Before KING, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

## APPENDIX B

United States Court of Appeals  
for the Fifth Circuit

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No. 21-11143

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United States Court of Appeals  
Fifth Circuit

**FILED**

September 15, 2022

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

CANDIDO GOMEZ-SANTACRUZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:20-CR-522

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Before KING, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Candido Gomez-Santacruz appeals the ten-year sentence he received for his illegal reentry into the country. We affirm.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

**I.**

On September 20, 2020, Candido Gomez-Santacruz (“Gomez”) was arrested by the Dallas Police Department for aggravated assault. That same day, while he was in custody, Immigration and Customs Enforcement discovered that Gomez, a Mexican citizen, was in the United States illegally. Gomez was subsequently charged with illegal reentry after removal from the United States under 8 U.S.C. sections 1326(a) and (b)(2). Gomez previously was removed in 2014 following his release from state prison in Georgia, where he had pleaded guilty to sexual battery, burglary, and false imprisonment in 2012 (the “2012 Convictions”). On March 30, 2021, Gomez pleaded guilty to the illegal reentry offense.

On November 12, 2021, Gomez appeared before the district court for sentencing (the “Sentencing Hearing”). Prior to the Sentencing Hearing, the district court had notified the parties that it was considering imposing a sentence greater than the range recommended under the sentencing guidelines issued by the United States Sentencing Commission (the “Guidelines”). Under the illegal reentry statute, Gomez could receive a maximum sentence of twenty years of imprisonment, 8 U.S.C. § 1326(b)(2); however, the Guidelines recommended a shorter term of imprisonment of fifteen to twenty-one months. In his sentencing memorandum, Gomez argued that he should receive a prison term within the range recommended by the Guidelines. The Government agreed, but contended that the court should impose the maximum term within that range, i.e., twenty-one months.

At the conclusion of the Sentencing Hearing, Gomez was sentenced to 120 months of imprisonment, ninety-nine months higher than the Guidelines’ recommendation (the “Variance”); three years of supervised release; and a \$100 mandatory special assessment. As explained during the Sentencing Hearing, the district court’s chief concern was the “horrifying”

facts surrounding Gomez's 2012 Convictions. According to the arrest report that Gomez provided to the district court, the victim was asleep in her bedroom on October 29, 2011, but awoke to find Gomez in bed with her. (The victim suspected that Gomez had entered through a patio door that she had mistakenly left unlocked.) Gomez had pulled the victim's underwear down to her knees and was rubbing the outside of her vagina with his hands while kissing her neck. Startled, the victim repeatedly asked Gomez to stop, but he refused and grabbed her to prevent her from leaving the bed. The victim was eventually able to free herself from Gomez's grasp, but Gomez blocked the apartment's exit and refused to let her leave. Gomez only left the victim's apartment once she convinced him to go home and get her a cigarette, promising to let Gomez back into the apartment upon his return. Instead, once Gomez had left, the victim locked him out and called the police.

After the court announced its sentence, Gomez lodged multiple objections. First, he argued that the sentence was "unreasonable" and "greater than necessary." Second, Gomez objected to the court's characterizations of his past offense. When providing its justification for its variance from the Guidelines, the court twice incorrectly referred to Gomez's sexual battery offense as rape and once as a sexual assault. Third, Gomez asserted that the court might have considered facts that were unreliable. Specifically, before handing down its sentence, the court stated that it was "disturbing to have an allegation that [Gomez] pulled a gun on somebody" and Gomez "got arrested for that, so [the police] believe there was probable cause." These statements referred to the unrelated, pending aggravated assault arrest. At the same time, however, the court did acknowledge that Gomez had not been convicted for that crime and that it did not need to consider the facts behind the arrest to arrive at its sentence.

The court responded to Gomez's latter two objections. To Gomez's second objection, the court expressed that "[w]hether it was rape or sexual

battery does not change my assessment of it, when looking at the facts.” And in response to the third objection, the court clarified that the aggravated assault arrest did not influence its sentence because the case had not been “filed”<sup>1</sup> and Gomez had not been convicted.

The court provided other reasons for the Variance as well. Earlier during the Sentencing Hearing, Gomez had apologized for reentering the country, explaining that he had only done so for his four children. The court expressed concern that, because his wife and children were located in the United States, Gomez was likely to “come right back,” noting that he previously had done so within a year of being removed. According to the court, Gomez’s behavior—particularly the illegal reentry and sexual battery offenses—demonstrated “a lack of respect for the American legal system and its justice,” which made Gomez a “threat to all American citizens, and those who are not citizens, in this country.” Therefore, the court determined that, in addition to serving as a just punishment, this sentence would effectively deter Gomez from making future attempts to illegally reenter the United States.

At the conclusion of the Sentencing Hearing, the court summarized its reasoning for applying the Variance to Gomez’s sentence, albeit using a regrettable choice of words:

And so I understand that the Sentencing Guidelines are at 15 to 21 months, but I don’t think that’s sufficient time to protect the community or to reflect the seriousness of this crime. This is not a man who’s running back over the border to roof our

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<sup>1</sup> At the time of Gomez’s illegal reentry sentencing, the aggravated assault charge remained pending, but the prosecution had not obtained or filed an indictment regarding the matter.

house. This is not a man who is running back over the border to do lawn work. This is somebody who's a bad guy, who's been convicted of sexual battery. And I understand he argues all the reasons . . . why he pled guilty. But in my eyes, he's a sexual batterer. He keeps coming. Four years didn't stop him. Maybe ten will.

On appeal, Gomez challenges the Variance imposed by the district court as substantively unreasonable. According to Gomez, the Variance is a product of clear error that infected the district court's balancing of the factors it is required to consider during sentencing.

## II.

We review a sentence's substantive reasonableness for an abuse of discretion. *United States v. Khan*, 997 F.3d 242, 247 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1153 (2022). “A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence.” *United States v. Teuschler*, 689 F.3d 397, 399 (5th Cir. 2012) (internal quotations omitted). While a court’s interpretation of the law, including the Guidelines, is an issue that we review *de novo*, *id.*, its findings of fact are reviewed only for clear error, *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). Accordingly, factual findings must merely be “plausible.” *Id.* at 764. Under the plausibility standard, a court’s factual findings are clearly erroneous, if, when viewing the record as a whole, “this court is left with the definite and firm conviction that a mistake has been committed.” *Khan*, 997 F.3d at 247 (internal quotations omitted).

A court is required to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in” 18 U.S.C. section 3553(a)(2). 18 U.S.C. § 3553(a). For a sentence to be substantively reasonable, a court must consider all of the seven sentencing factors listed in

18 U.S.C. section 3553(a). *Khan*, 997 F.3d at 247. In doing so, a court “must make an individualized assessment based on the facts presented.” *Gall v. United States*, 552 U.S. 38, 50 (2007). A court is afforded considerable latitude in deciding that the Guidelines do not appropriately weigh the sentencing factors in its particular assessment and may deviate from the Guidelines’ recommendation accordingly. *United States v. Williams*, 517 F.3d 801, 809 (5th Cir. 2008). Thus, a court that chooses to eschew a Guidelines recommendation need not justify its decision based on “‘extraordinary’ circumstances.” *Gall*, 552 U.S. at 47. Instead, the court must “more thoroughly articulate its reasons” than it otherwise would; those reasons should be “fact-specific and consistent with the sentencing factors enumerated in” section 3553(a). *United States v. Hebert*, 813 F.3d 551, 562 (5th Cir. 2015) (internal quotations omitted). “The farther a sentence varies from the applicable Guideline sentence, the more compelling the justification based on factors in section 3553(a) must be.” *United States v. Smith*, 440 F.3d 704, 707 (5th Cir. 2006) (internal quotations omitted). A court imposing a sentence outside of the Guidelines has failed to adequately account for section 3553(a)’s sentencing factors if it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Nguyen*, 854 F.3d 276, 283 (5th Cir. 2017) (internal quotations omitted).

It is not enough for this court to decide that it “might reasonably have concluded that a different sentence was appropriate.” *Gall*, 552 U.S. at 51. Rather, we “must give due deference to the district court’s decision that the [section] 3553(a) factors, on a whole, justify the extent of the variance.” *Id.* Therefore, “[e]ven a significant variance from the Guidelines does not constitute an abuse of discretion if it is commensurate with the individualized, case-specific reasons provided by the district court.” *United*

*States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015) (internal quotations omitted).

Gomez raises two issues on appeal, both of which challenge how the district court balanced section 3553(a)'s sentencing factors. First, Gomez asserts that the court unduly weighed the factual findings it made relating to the 2012 Convictions. Second, Gomez contends that the court placed too much emphasis on the sentencing factors involving deterrence and incapacitation.

#### A.

The purposes enumerated in section 3553(a)(2) that a court must consider during its sentencing determination include “the need for the sentence imposed . . . 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). “A district court’s determination of the seriousness of the offense . . . must be rationally related to the nature of the offense.” *United States v. Roush*, 466 F.3d 380, 390 (5th Cir. 2006). An individual convicted of illegal reentry may be (1) imprisoned for up to ten years “subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony,” or (2) imprisoned for up to twenty years “subsequent to a conviction for commission of an aggravated felony.” 8 U.S.C. §§ 1326(b)(1)–(2).

Gomez concedes that his 2012 burglary conviction qualifies as an aggravated felony for the purpose of section 1326(b)(2), making him eligible for a sentence of up to twenty years imprisonment. *Compare* 8 U.S.C. § 1101(a)(43)(G) (defining “aggravated felony,” in part, as a “burglary offense” with a “term of imprisonment at least one year”), *with* GA. CODE ANN. § 16-7-1(a) (West 2011) (requiring minimum one-year sentence for

burglary).<sup>2</sup> Nevertheless, Gomez contends that the district court “irrationally and repeatedly inflated the severity” of his illegal reentry by “misinterpreting the nature of his prior sexual-battery conviction.”

Gomez argues that the district court’s repeated mischaracterization of his prior conviction for sexual battery caused it to improperly exaggerate the significance of that offense while making its sentencing determination. Specifically, Gomez points to multiple occasions during the Sentencing Hearing when the court either misidentified his prior offense as a rape or sexual assault. Gomez contends that in the State of Georgia, where he was convicted, rape is “qualitatively different” than sexual battery, which is reflected in the differences between (1) the elements of both offenses,<sup>3</sup> and (2) the sentencing regime for each offense<sup>4</sup>. Gomez also asserts that the district court incorrectly referred to his sexual battery conviction as a

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<sup>2</sup> All references and citations to the Georgia Code reflect the statutes as they were written at the time that Gomez committed the offenses leading to the 2012 Convictions.

<sup>3</sup> In Georgia, “[a] person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.” GA. CODE ANN. § 16-6-22.1(b) (West 2011). “Intimate parts” are defined as “the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.” *Id.* § 16-6-22.1(a). “A person commits the offense of rape,” however, “when there is any penetration of [a female’s] sex organ by the male sex organ” “forcibly and against her will.” *Id.* § 16-6-1(a). “[T]he term ‘forcibly’ means acts of physical force, threats of death or physical bodily harm, or mental coercion, such as intimidation.” *Haynes v. State*, 756 S.E.2d 599, 602 (Ga. Ct. App. 2014) (quoting *State v. Collins*, 508 S.E.2d 390, 391 (Ga. 1998)).

<sup>4</sup> Sexual battery is a “misdemeanor of a high and aggravated nature,” GA. CODE ANN. § 16-6-22.1(c) (West 2011), which is punishable for a term of confinement not to exceed twelve months, *id.* § 17-10-4(a). Rape is punishable “by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life.” *Id.* § 16-6-1(b).

“violent felony,” arguing that this offense is neither considered a felony nor violent under either Georgia or federal law.<sup>5</sup>

The record indicates that the court was driven to its decision based on the facts (set forth in the arrest report provided by Gomez) underlying Gomez’s 2012 Convictions. Although the court may have imprecisely stated the name for one of the crimes for which Gomez was ultimately convicted, it accurately recited the facts supporting that conviction. And after being corrected by Gomez’s counsel, the court acknowledged its mistake and confirmed that its decision to impose the Variance was based on its “looking at the facts,” and “[w]hether it was rape or sexual battery d[id] not change [its] assessment.”

The court’s use of the phrase “violent felony” should be similarly discounted. Whether Gomez had previously been convicted of a felony did not influence the court’s decision to impose the Variance—the underlying facts did. Additionally, in light of its reliance on the facts surrounding the 2012 Convictions rather than the legal classification of those convictions themselves, it is apparent that the court used the word “violent” in a general sense rather than in the technical, narrower sense sometimes required by law. Notwithstanding Gomez’s argument that his prior convictions may not have been technically “violent” as defined by law, violence is frequently associated with sexual offenses in extrajudicial contexts that do not otherwise adhere to his rigid standards.<sup>6</sup>

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<sup>5</sup> Alternatively, Gomez argues that the district court may have instead been referring to his contemporaneous burglary conviction, but asserts that context supports his initial contention that it was citing his conviction for sexual battery. While we agree that context supports Gomez’s first inclination, our analysis and decision remain unaltered even under his alternative theory.

<sup>6</sup> See, e.g., *What is Sexual Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html>

Gomez also contends that vacatur is warranted based on our decision in *United States v. Hoffman*, 901 F.3d 523 (5th Cir. 2018). In *Hoffman*, we vacated the sentence of a defendant, Peter Hoffman, who had been convicted of nineteen counts of wire fraud, one count of mail fraud, and one count of conspiracy to commit mail and wire fraud, all in connection with a large, fraudulent, tax-credit scheme. During sentencing, the district court applied a significant downward variance, sentencing Hoffman to five years probation, even though the Guidelines had recommended fourteen to seventeen years of imprisonment. *Id.* at 536. Calling this disparity “colossal,” neither we, nor Hoffman’s counsel, could recall a previous challenge to such a substantial downward variance. *Id.* at 555. In vacating the district court’s sentence, we reasoned that probation served as an ineffective deterrent for such a large-scale fraud and did not “reflect the serious nature of either this offense or economic crimes more generally,” especially considering that Hoffman had been sentenced to probation once before. *Id.* at 557. We also noted the likely “significant and unwarranted” disparities between Hoffman’s sentence and the sentences of others who “engaged in frauds of similar magnitude who receive sentences at least in the ballpark of what the Guidelines recommend” and our “distaste for sentencing that reflects different standards of justice being applied to white and blue collar criminals.” *Id.* (internal quotations omitted). Although we agreed with the district court that there were “sound

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(last visited Sept. 7, 2022) (“Sexual violence is sexual activity when consent is not obtained or freely given.”); *Definitions*, SEXUAL VIOLENCE RSCH. INITIATIVE, <https://www.svri.org/research-methods/definitions> (last visited Sept. 7, 2022) (defining “gender-based violence” to include “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”); *Sexual Violence Definitions*, MICH. STATE UNIV. CTR. FOR SURVIVORS, <https://centerforsurvivors.msu.edu/education-resources/sexual-violence-educational-information/sexual-violence-definitions.html> (last visited Sept. 7, 2022) (including stalking, sexual coercion, and sexual harassment as forms of sexual violence).

reasons” for a downward variance, we could not justify affirming the degree to which both the quantitative—“from roughly 15 years in prison to zero”—and qualitative—custodial to probationary—nature of the sentence differed from the norm. *Id.*

Gomez argues that in *Hoffman* we vacated the district court’s sentence because it placed an undue emphasis on the actual loss that the victim, the State of Louisiana, suffered, which was small in comparison to what Hoffman had intended. *Id.* at 558. But our reasoning in *Hoffman* belies Gomez’s reading. Indeed, in *Hoffman*, we recognized that “the uncertainty about whether Louisiana ultimately suffered any loss” could serve as a valid justification for a “substantial” downward variance, but that the district court’s variance went too far. *Id.* at 557. There, the district court did not err in its emphasis, but how it accounted for that emphasis. Here, the disparity between Gomez’s sentence and the range that the Guidelines recommends is not as great as the disparity in *Hoffman*. And, in this case, the concerns regarding deterrence are reversed. Whereas in *Hoffman* we ruled that the district court improperly discounted the deterrent effect of a tougher sentence, the district court here expressly stressed the importance of deterrence as part of its analysis.

Despite the blunders in terminology, the record is clear that the district court was guided by the facts underlying Gomez’s 2012 Convictions rather than formal statutory definitions. Therefore, the court did not misinterpret the nature of Gomez’s 2012 Convictions and applied a reasonably appropriate weight to his prior transgressions during sentencing.

## B.

Section 3553(a)’s sentencing factors also include “the need for the sentence imposed . . . to afford adequate deterrence to criminal conduct” and “to protect the public from further crimes of the defendant,” i.e.,

deterrence and incapacitation. 18 U.S.C. §§ 3553(a)(2)(B), (C). Gomez argues that the district court placed too much weight on these factors as well.

Specifically, Gomez argues that the nature of his current offense of illegal reentry differs dramatically from his prior offenses, and that the district court failed to account for this distinction. That is, Gomez contends that he could have received more than thirty years of imprisonment in the aggregate for his 2012 Convictions compared to the maximum of twenty years to which he could be sentenced for illegal reentry. He also notes that, unlike his prior offenses, his current offense has “no identifiable victim.” Gomez further points to the absence of any convictions following his 2015 illegal reentry. According to Gomez, the district court incorrectly characterized him as a recidivist and “threat to all American citizens, and those who are not citizens, in this country” at sentencing, citing the district court’s unfortunate statements that Gomez “is not a man who’s running back over the border to roof our house” and “is not a man who is running back over the border to do lawn work.”

Gomez argues that the district court’s ill-suited words during the Sentencing Hearing show that it improperly weighed section 3553(a)’s sentencing factors. While we agree that this problematic language lends credence to Gomez’s argument, the district court’s reasoning, *in toto*, does not rise to an abuse of discretion.

In weighing the need for deterrence and incapacitation, the district court accounted for multiple facets of Gomez’s criminal history and its relation to his life today. Gomez had reentered the country less than a year after being deported and completing the sentence for his 2012 Convictions. The court also found the facts underlying the 2012 Convictions to be “horrifying.” Consequently, the court determined that Gomez’s criminal history demonstrated a “lack of respect for the American legal system.” The

court also considered that Gomez was likely to make another attempt at illegal reentry due to his wife and four children being located in the United States.

Gomez cites no authority for the proposition that there is a per se ceiling on the length of his current sentence because he is eligible to receive less prison time for his illegal reentry offense than for his 2012 Convictions. Nor is the lack of an identifiable victim for his most recent offense or the dearth of any interim convictions dispositive. At the Sentencing Hearing, the court was able to consider additional factors that did not exist when he was sentenced in 2012: (1) there was further evidence of Gomez's disrespect for the law, and (2) Gomez's family's presence in the United States would likely incentivize another illegal reentry attempt absent additional deterrence. Therefore, the court's reasons were sufficient to support the Variance and it did not commit an abuse of discretion.

Gomez's remaining argument is unavailing. He contends that the district court "privileged massive gaps in the record over the Guidelines." Specifically, at the Sentencing Hearing, Gomez asserted that he had been having a consensual affair with the victim in his 2012 Convictions and her call to the police was the product of a misunderstanding. Gomez made these arguments for the first time at the Sentencing Hearing and presented no corroborating evidence. The court, skeptical of Gomez's story, stated that his account was "hard to believe." Gomez does not argue that the court's factual findings here constituted clear error. *See Cisneros-Gutierrez*, 517 F.3d at 764. Instead, he asserts that they somehow show that the court used his prior four-year prison term as a "baseline" or "floor" during sentencing. In further support of this argument, Gomez points to the court's statement that a ten-year sentence might serve as a more effective deterrent than his prior four-year sentence. It was well within the court's discretion to consider

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whether Gomez's previous sentence had been an effective deterrent, and, having concluded that it had not, ruled accordingly.

**III.**

The Variance imposed by the district court is undoubtedly substantial. Indeed, some may reasonably disagree as to the necessity of imposing such a long sentence. Although we recognize the imperfect nature of the Sentencing Hearing, those imperfections do not rise to an abuse of discretion. Therefore, "due deference" must be given to the district court's balancing of the sentencing factors in section 3553(a). *Gall*, 552 U.S. at 51. Thus, for the foregoing reasons, the district court's judgment is AFFIRMED.

## APPENDIX C

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

UNITED STATES OF AMERICA

§ **JUDGMENT IN A CRIMINAL CASE**

v.

§

**CANDIDO GOMEZ-SANTACRUZ**

§

Case Number: **3:20-CR-00522-E(1)**

§

USM Number: **11303-509**

§

**Maria Esther Torres Chin**

§ 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.	<b>Count 1 of the Indictment filed on 10/21/2020</b>
<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**

8 U.S.C. § 1326(a) Illegal Reentry After Removal from the United States

**Offense Ended**

09/20/2020

**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.

**November 12, 2021**

Date of Imposition of Judgment



Signature of Judge

**ADA BROWN**  
**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**November 12, 2021**

Date

DEFENDANT: CANDIDO GOMEZ-SANTACRUZ  
CASE NUMBER: 3:20-CR-00522-E(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: **One hundred-Twenty (120) months as to count 1**. This sentence shall run consecutive to any sentence imposed in Case No. **F-2058413**, pending in the Dallas County Criminal District Court 5, as it is unrelated to the instant offense.

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

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

21-11143.57

DEFENDANT: CANDIDO GOMEZ-SANTACRUZ  
CASE NUMBER: 3:20-CR-00522-E(1)

## **SUPERVISED RELEASE**

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

## **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: CANDIDO GOMEZ-SANTACRUZ  
CASE NUMBER: 3:20-CR-00522-E(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](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: CANDIDO GOMEZ-SANTACRUZ  
CASE NUMBER: 3:20-CR-00522-E(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported upon release from imprisonment, the defendant shall comply with the standard conditions contained in this Judgment and shall comply with the mandatory and special conditions stated herein.

DEFENDANT: CANDIDO GOMEZ-SANTACRUZ  
 CASE NUMBER: 3:20-CR-00522-E(1)

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

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

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:  
 the interest requirement is waived for the  fine  restitution  
 the interest requirement for the  fine  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: CANDIDO GOMEZ-SANTACRUZ  
CASE NUMBER: 3:20-CR-00522-E(1)

## SCHEDEULE 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

## APPENDIX D

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF TEXAS  
3                   DALLAS DIVISION

4

5   UNITED STATES OF AMERICA,                   ) 3:20-CR-00522-E-1  
6    )  
6                   Plaintiff,                      )  
7    )  
7   VS.    ) DALLAS, TEXAS  
8    )  
8   CANDIDO GOMEZ-SANTACRUZ,                    )  
9    )  
9                   Defendant.                      ) NOVEMBER 12, 2021

10

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15                   TRANSCRIPT OF

16                   SENTENCING HEARING

17                   VOLUME 1

18                   BEFORE THE HONORABLE ADA E. BROWN

19                   UNITED STATES DISTRICT JUDGE

20                   -----

21

22

23

24

25

## 1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

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7

8 FOR THE DEFENDANT:

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

2 THE COURT: On the record. This is Case Number  
3 3:20-CR-00522, styled the United States of America versus  
4 Candido Gomez-Santacruz. And we're set here today for  
5 sentencing and further proceedings.

6 Government, are you ready to proceed?

7 MR. BRIGGS: Good morning. Andrew Briggs for the  
8 United States.

9 THE COURT: Fantastic. Good to see you.

10 And I see you, Mr. Calvert.

11 MR. CALVERT: Good morning, Your Honor. Good to  
12 see you.

13 THE COURT: And I have a new friend.

14 MS. TORRES CHIN: Actually, I've been here before,  
15 Your Honor.

16 THE COURT: Oh, that's right. I didn't recognize  
17 you with the mask. The mask changes everything.

18 MS. TORRES CHIN: We were just talking about it  
19 before.

20 It's Maria Torres Chin, on behalf Candido  
21 Gomez-Santacruz, who is present, in custody; and he's being  
22 assisted by a court interpreter.

23 THE COURT: Great.

24 (Interpreter sworn.)

25 THE COURT: And, Senor Gomez, if you will

1 acknowledge your presence in court for the record by stating  
2 your name.

3 THE DEFENDANT: Candido Gomez-Santacruz.

4 THE COURT: Thank you.

5 Okay. On September 20th of 2020, you were arrested  
6 for this charge. You had an initial appearance before  
7 Judge Rutherford; and on March 30th of 2021, you were taken  
8 before Judge Ramirez for your rearraignment hearing. And at  
9 that hearing, you pled guilty to a one-count indictment. The  
10 charge to which you pled guilty was illegal reentry after  
11 removal from the United States, in violation of 8 United  
12 States Code, Sections 1326(a) and (b) (2).

13 On this same date, Judge Ramirez found that your  
14 plea of guilty was a knowing and voluntary plea, supported by  
15 an independent basis in fact, containing each of the  
16 essential elements of the offense to which you pled guilty.  
17 At this hearing, you told the judge that you understood the  
18 elements, you agreed to the accuracy of the -- that you had  
19 committed the crime, and all essential elements of the  
20 offense.

21 At this hearing, you waived your right to a jury  
22 trial by pleading guilty, and you waived to appeal or  
23 otherwise challenge your sentence, except for a couple of  
24 small things.

25 If I were to sentence you outside the maximum

1 available sentence under law, which I'm not going to do, you  
2 could appeal that. If I were -- if I made a math error at  
3 sentencing, you could appeal that. If you wanted to  
4 challenge the voluntariness of your plea, or the waiver, you  
5 could appeal that. And finally, you could make an appeal for  
6 a claim of ineffective assistance of counsel.

7 Let's go off the record for a second.

8 (Off-the-record discussion.)

9 THE COURT: Back on the record.

10 And I want to confirm, I didn't see any plea  
11 bargain in place; is that right?

12 MS. TORRES CHIN: That's correct, Your Honor.

13 THE COURT: Okay. On April 13th of 2021, I  
14 accepted your plea of guilty, I had judged you guilty, and  
15 then I ordered the creation of what we're going to call a  
16 PSR, the Presentence Report, and I set it for a hearing in  
17 August. And August got rescheduled for today.

18 I'm now going to take judicial notice of all the  
19 filings on the ECF filing system related to this case.

20 Any objections from the government?

21 MR. BRIGGS: No, Your Honor. Thank you.

22 THE COURT: Objections from Defense?

23 MS. TORRES CHIN: No, Your Honor.

24 THE COURT: Then I will take judicial notice.

25 Let's talk about the PSR. And I show for this

1 case, I think we just had an original PSR and no addenda,  
2 right?

3 MR. BRIGGS: That's correct, Your Honor.

4 THE COURT: Okay. Great.

5 Government, did you timely receive a copy of the  
6 PSR?

7 MR. BRIGGS: Yes, Your Honor.

8 THE COURT: Defense, did you timely receive a copy  
9 of the PSR?

10 MS. TORRES CHIN: We did, Your Honor.

11 THE COURT: All right. Government, I show you had  
12 no objections; is that correct?

13 MR. BRIGGS: That's correct.

14 THE COURT: Okay. And, Defense, I show you had no  
15 objections, but you filed a Sentencing Memorandum.

16 MS. TORRES CHIN: That's correct.

17 THE COURT: Okay. And so I did see that the  
18 government filed a clarification request to clear up that  
19 Mr. Gomez's mother's name is C-L-E-F-I-R-A.

20 MS. TORRES CHIN: That was actually the defense,  
21 Your Honor.

22 THE COURT: Oh, I'm sorry. Pardon me. The  
23 defense's clarification. That's right. ECF 31. You're  
24 right.

25 And so, any objection to accepting this

1 clarification, Government?

2 MR. BRIGGS: No, Your Honor.

3 THE COURT: And I know you have no objection.

4 So I will accept that and amend the PSR to clarify  
5 that Mr. Gomez's mother's name is C-L-A-R-I-F-A.

6 Okay. Okay. Let's look at our guidelines. We are  
7 looking at a guideline sentence of 15 months to 21 months, a  
8 supervised release term of 1-to-3 years. Probation's --  
9 ineligible for probation under the statutory guidelines. A  
10 fine of 5,500 to \$55,000. Restitution's not applicable, and  
11 there will be a Mandatory Special Assessment of \$100.

12 Now, the Court had filed a notice of intent to  
13 upward vary or depart, and I just do that to put you on  
14 notice that's something I'm thinking about. Won't  
15 necessarily do it, but I'm thinking about that. And I do it  
16 so you'll have time to kind of prepare.

17 You did a really good Sentencing Memorandum, and it  
18 points out several important things that I want to lay out  
19 for the record. And then you're welcome to -- you guys will  
20 both have an opportunity to talk about it, too.

21 Prior -- the primary arguments I saw in the  
22 Sentencing Memorandum are that, based on the nature and  
23 circumstances of this offense, that the Sentencing Guidelines  
24 are appropriate. You say that defendant has one prior  
25 removal from 2014. This is his first illegal reentry and his

1 first immigration offense. You point out that his behavior  
2 after his arrest, he cooperated with -- with law enforcement,  
3 waived his right to remain silent; talked to ICE; gave a  
4 statement. Looks like he spent 15 days in state and  
5 immigration custody. And in your Sentencing Memorandum, you  
6 ask for back time, and talk about the ways I could accomplish  
7 that.

8 And you also talk about the defendant's background;  
9 that he grew up in poverty, no water in his house. He has  
10 abandonment issues because his father was gone the whole  
11 time. He went as far as the 8th grade. At 16, he was laying  
12 floors to support his family. He has four children.

13 His criminal history is limited to one conviction,  
14 where he was 22 years old at the time. We talk about Gomez  
15 being arrested in 2020 for aggravated assault with a deadly  
16 weapon, which kind of led to this case. And so, in the end,  
17 at your Sentencing Memorandum, you pray that I sentence  
18 him -- just stick within the guidelines. Is that pretty much  
19 a good --

20 MS. TORRES CHIN: That's correct.

21 THE COURT: Got you. And so I'm going to walk  
22 through some facts of the -- his criminal history, and then  
23 I'll hear argument on the appropriateness of his sentence.  
24 And you can hit your -- you know, talk about your memorandum.

25 And, of course, Government, you'll have a chance to

1 respond.

2                   Immigration history: Gomez is a citizen and  
3 national of Mexico. It's unknown when the first time was  
4 that he illegally entered the U.S. He was arrested on  
5 9/6/2011 in Georgia. And he was arrested again on  
6 October 29th, 2011.

7                   His prior criminal history is disturbing. On  
8 December 10th, 2012, he was convicted of false imprisonment,  
9 burglary and sexual battery in a court in Decatur, Georgia.  
10 And those were all connected, the -- the three counts from  
11 the same event. And defendant was sentenced to 20 years, and  
12 he -- and that broke down, somehow weirdly in Georgia, for  
13 four years incarcerated and then 16 years of probation.  
14 Which I've never heard of anybody getting 16 years of  
15 probation, but he did.

16                   And so he was ordered removed from the United  
17 States on 6/10/2014. So I assume that his four-year sentence  
18 must have been finished, whatever they -- so he certainly  
19 didn't do the full -- he was only convicted on December 10th,  
20 2012, and so he's already being ordered removed in June 10th  
21 of 2014.

22                   He actually was removed on July 1st, 2014.  
23 Immigration documents indicate he came back in May of 2015.  
24 And when he was deported, Georgia kind of closed their file,  
25 closed out his probation, and that was that.

1                   So he's got a pending state court charge at --  
2                   which is what flagged the notice of the feds to look at his  
3                   status. The state court charge is an aggravated assault with  
4                   a deadly weapon.

5                   On September 20th of 2020, the defendant was  
6                   arrested by Dallas police for aggravated assault with a  
7                   deadly weapon, state -- state court charge. The facts are  
8                   that DPD officers showed up to a disturbance. And when they  
9                   showed up, they made contact with the victim, who told the  
10                   police that the defendant threatened him with a firearm.

11                  And while police were talking to the victim, the  
12                  defendant walked out and walked toward the police officers.  
13                  They did a pat-down search and noticed he had glassy eyes and  
14                  smelled like alcohol.

15                  The victim told police that he'd been just sitting  
16                  on his front porch with another person when the defendant  
17                  walked -- walked into the complainant's driveway, the  
18                  victim's driveway and front porch. An argument began about a  
19                  car parked in front of the defendant's house, even though it  
20                  was not blocking the defendant's driveway. The defendant was  
21                  convinced that the vehicle belonged to the victim. And the  
22                  defendant began acting belligerent and cussing the victim.  
23                  And, of course, this is all the version that the victim  
24                  gives.

25                  The victim told the defendant he couldn't move the

1 car because it wasn't his. When the defendant came close to  
2 the victim, the victim pushed the defendant away. And at  
3 that point, the defendant became more upset; lifted his  
4 shirt, used his right hand to lift out a black pistol from  
5 inside his waistband. The victim said the defendant pulled  
6 back the slide and then pointed it at his stomach, and in  
7 Spanish, he yelled something along the lines of, I don't give  
8 an F, I'll kill you. Witnesses corroborated the victim's  
9 account of the incident.

10 On -- when defendant was 22 years old, in September  
11 of 2011, he was arrested for and convicted of driving with a  
12 suspended license. And was sentenced to a year of probation,  
13 but it's a little unusual. It's -- it's not just driving  
14 with a suspended license.

15 Sandy Springs, Georgia police were dispatched to a  
16 crash, a two -- a crash involving two cars. While police  
17 were investigating that, the defendant lied to the police and  
18 said his brother had been the driver. And then he also lied  
19 when he presented his brother's ID card and claimed to police  
20 that it was his. Further investigation revealed that the  
21 defendant was the driver and the -- the only occupant of the  
22 car at the time of the wreck.

23 Hold on one second.

24 And again, we have the -- and then the next charge,  
25 we have that same -- I guess two months later is that sexual

1 assault case. And again, the probated portion of the  
2 sentence was suspended upon his deportation. So he did a  
3 couple of years in prison. Looks like he did about 18 months  
4 and 22 days, by my count.

5               Okay. Okay. So let's talk about what an  
6 appropriate sentence is. We've gone through what the  
7 guidelines say. So, Defense, I'll give you the first word.

8               Off the record.

9               (Off-the-record discussion.)

10              THE COURT: Back on the record.

11              MS. TORRES CHIN: There's a couple of things that I  
12 want to point out. The first thing that I wanted to point  
13 out was that the Court stated that he only served, I think,  
14 about 18 months on that Georgia. I don't think that's  
15 correct.

16              THE COURT: Okay.

17              MS. TORRES CHIN: Because he was actually arrested  
18 on October 29th of 2011.

19              THE COURT: Okay.

20              MS. TORRES CHIN: And he remained in custody until  
21 he was sentenced in 2012.

22              THE COURT: Got you. And when you say "remained in  
23 custody," do we know if that's like the local jail or did he  
24 stay in prison?

25              MS. TORRES CHIN: I would imagine -- I don't

1 know -- I've never practiced in Georgia, but I would imagine  
2 it's the local jail.

3 THE COURT: And I should clarify. Of the four-year  
4 prison sentence, I thought, from my loose calculations, he  
5 did about 18 months and 22 days in prison.

6 MS. TORRES CHIN: Okay.

7 THE COURT: Not the county jail.

8 MS. TORRES CHIN: Okay. But I -- I guess I would  
9 argue that any kind of incarceration, right, because they get  
10 the back time for that. And while I understand that prison  
11 time might be a little bit different, it's still jail time --  
12 or county jail time does not -- it's not any easier, right?

13 THE COURT: Right.

14 MS. TORRES CHIN: It's not like they're allowed to  
15 go to work; it's not like they have their freedoms. Their  
16 freedom is still deprived.

17 I -- I would also submit to the Court that -- and I  
18 think I stated that in my sentencing memo -- that on paper it  
19 does appear -- and it is a very serious charge. But there  
20 are some things that -- that need to be brought out.

21 For example, the victim in that case was someone  
22 with whom he was having a relationship with. So I think that  
23 it's relevant, not as an excuse to what occurred, but when  
24 we're talking about deterrence and also safety of our  
25 community, right, we know that when there is a relationship,

1 it is less likely that this person will go out there and  
2 commit the same type of offense.

3 I would also submit to the Court that his sentence  
4 was a result of plea negotiations. And it is not unusual, in  
5 my experience, for someone who is looking at 20 years in  
6 prison to end up pleading guilty as opposed to going to  
7 trial, if the offer is, we will give only four years of  
8 incarceration. That is an incentive for somebody to the  
9 plead guilty instead of going to trial, because the risk of  
10 going to trial, as this Court knows, is higher. Especially  
11 in a case where it's he-said, she-said, which is -- would  
12 have been this case. So he had every incentive to accept  
13 that deal and plead guilty to it.

14 Now, his probation was suspended because he was  
15 deported, right?

16 THE COURT: Right.

17 MS. TORRES CHIN: I think it is also very important  
18 for the Court to know -- and just for the record, I do have  
19 the police report regarding that incident from the --

20 THE COURT: Which one?

21 MS. TORRES CHIN: For -- Paragraph 28, for the  
22 Georgia incident.

23 THE COURT: Oh, I'd like to see that.

24 MS. TORRES CHIN: I do have the police report,  
25 and it's worth noting that the victim refused EMS or any type

1 of services. So sometimes that might have significance.

2 Again, it would be -- it would have been a trial of  
3 he-said, she-said. Someone who is undocumented, in my  
4 experience, has a lot more difficulties having the same  
5 credibility as someone who is not. And that's just a  
6 reality.

7 If the Court wants to see that?

8 THE COURT: Yes. If you'll make that a defense  
9 exhibit, and if you'll show it to the government, too.

10 Have you already seen it, Government?

11 MR. BRIGGS: Yes, Your Honor.

12 THE COURT: Any objection from anybody letting me  
13 see it?

14 MR. BRIGGS: No, Your Honor.

15 THE COURT: Off the record real quick and let me  
16 read this.

17 (Brief pause.)

18 THE COURT: So did he know this woman?

19 MS. TORRES CHIN: Yes. He was having a  
20 relationship -- an affair with this woman, which is why --  
21 I -- I mean, it doesn't excuse -- he accepted responsibility  
22 for his conduct, but it is something that I think the Court  
23 should take into account. And I -- I think that when she  
24 says, oh, and I told him to go get me a cigarette, and he  
25 left to get the cigarette, and that is when she called the

1 police, I -- again, that it is something that -- and to be  
2 clear, it was only her side of the story. I don't think that  
3 he was interviewed. I don't know if was because of language  
4 barriers, but it's a credibility. It's like a he-said,  
5 she-said type of situation. And this is someone with whom he  
6 was having a sexual relationship.

7 In addition to that, I think it is important for  
8 the Court to know that he was 22 years old at the time. He  
9 is now 32. And we don't have any other convictions from the  
10 time he was 22. So that is a -- ten years have passed since  
11 he had any other convictions, right?

12 Now, I do understand that we do have this -- and in  
13 the PSR it says it is a pending charge. However, even this  
14 morning I checked and there's been no indictment filed.

15 THE COURT: Okay.

16 MS. TORRES CHIN: I did talk to his state attorney  
17 that was originally appointed when he was first arrested.  
18 And that's attorney Roberto Dueno.

19 THE COURT: Oh, yeah.

20 MS. TORRES CHIN: Yeah, I talked to him and he  
21 didn't even recall Mr. Gomez-Santacruz or the case. And when  
22 he checked in the computer, said, this has been a long time;  
23 this is probably not going to be filed.

24 I did submit as an exhibit with the Sentencing  
25 Memorandum the police report, the complete police report, in

1 which it indicates that -- a couple of things.

2 There's conflicting statements. Because we do have  
3 his brother-in-law, that was also interviewed, that are  
4 saying, I've never seen him with a gun, he didn't have a gun,  
5 right? And then we have the other people on the other side.

6 THE COURT: Who are not related to him, yeah.

7 MS. TORRES CHIN: Yes, but they are related to --  
8 to the victim, to the alleged victim.

9 THE COURT: Uh-huh.

10 MS. TORRES CHIN: So it is -- you know, it's like a  
11 dispute, with conflicting evidence.

12 And we do know that -- or at least it was reported  
13 to me that they had an altercation before, in which the  
14 neighbor backing out of the driveway hit his car, or his  
15 wife's car. And they said, don't call the police. We're  
16 just going to -- you know, we're neighbors; we're going to  
17 pay for the damages to the car. Later on, knowing that he's  
18 undocumented, they said, sorry, we're not going to pay for  
19 the damages.

20 So I think that history is important for the Court  
21 to know as to why there would be this argument about a car  
22 being close to the driveway. So --

23 THE COURT: Is his position he never pulled a gun  
24 on the neighbor?

25 MS. TORRES CHIN: That's correct.

1                   THE COURT: Okay.

2                   MS. TORRES CHIN: And if they were to file  
3 officially the charges, formally the charges, he intends on  
4 contesting those charges.

5                   THE COURT: Well, I think that they were filed,  
6 right? It had a -- it has a cause number, but I -- it just  
7 hasn't had action taken on it.

8                   MS. TORRES CHIN: There is no indictment been  
9 filed. So as far as I know, it is just a complaint. And I  
10 didn't even see a complaint on the docket, to be honest.

11                  THE COURT: And he was arrested for it, though,  
12 right?

13                  MS. TORRES CHIN: Yes. That's how he came, and --

14                  THE COURT: And that's how they found --

15                  MS. TORRES CHIN: -- he went to administrative  
16 custody, immigration administrative custody.

17                  So my point being, that I don't think that the  
18 Court should consider that conduct in fashioning a  
19 sentencing. Number one, because he's presumed innocent. And  
20 although the guidelines allow for the Court to consider other  
21 criminal conduct, I would submit to the Court that there is  
22 enough there to cause -- to have reasonable doubt, at least  
23 as we have it right now. And with the police report that I  
24 submitted to the Court, and also with the fact that the state  
25 does not appear that they're going to pursue those charges;

1 and I think because of the conflicting nature of the story.

2 So having discussed those, again, I think that's  
3 what is relevant here, too, is that from Paragraph 28 until  
4 now, it's ten years. And as the Court stated that there was  
5 perhaps evidence from immigration that he reentered in 2015,  
6 we don't have any other law enforcement encounter, we don't  
7 have any other criminal conduct.

8 I would also ask the Court to take into account his  
9 age when he was convicted of Paragraph 28 --

10 THE COURT: Okay.

11 MS. TORRES CHIN: -- being 22, being undocumented  
12 at the time, and not being able to communicate, not being  
13 able to have the language skills necessary to voice his  
14 version of the facts.

15 And also, the plea deal. Because, to be honest,  
16 I -- that's very common in state court. I mean, I -- I've  
17 been doing this for over 20 years, and it's -- you know, as  
18 an attorney, we tell the client, it's four years versus you  
19 could see 20, or potentially more. And it's going to be a  
20 he-said, she-said; take the deal, right? I mean, that is  
21 something that is common.

22 And again, I'm not saying this because I'm in  
23 agreement with the conduct. It was detailed in the report, I  
24 am not. But there's always two sides, or three sides.

25 THE COURT: At least. I agree with that.

1 MS. TORRES CHIN: His, hers, and the truth, right?

2 So I would like the Court to just consider that.

3 I think most importantly, too, is that this is his  
4 first immigration conviction ever. That prior charge from  
5 Georgia hit him both ways. Hit him -- his criminal history  
6 and also hit his offense level by eight. I think that he now  
7 has an understanding. I have been able to explain to him in  
8 Spanish the gravity of the offense of illegal reentry and how  
9 serious they are in the federal system.

10 I also explained to him that should he return  
11 illegally again, he will be facing an even greater sentence,  
12 because he would -- then would have a -- an added plus four  
13 for having this illegal reentry conviction. So he would  
14 receive potentially a plus 12, eight plus four, right, 12, a  
15 plus 12 to his offense level. And he would also have more  
16 criminal history points added to him. I -- I do believe that  
17 he understands that he will be looking at years next time he  
18 returns, if he were to return. And I think that he has made  
19 arrangements to remain in Mexico.

20 In addition to that, I know that in this district  
21 it's not customary for the Courts to impose a period of  
22 supervised release. And it's also -- the guidelines say that  
23 someone who is going to be deported should not be. However,  
24 that is something that the Court could use for deterrence.  
25 And to make sure that if he returns, that he will be

1       penalized for another -- he will have another illegal  
2       reentry, with all the other enhancements, and then he could  
3       be penalized for not following his terms of supervised  
4       release. So that is also a mechanism that the Court could  
5       use.

6               Which is why, Your Honor, I'm asking the Court to  
7       consider a sentence within the guideline range. The  
8       guideline range was properly calculated. It -- his criminal  
9       history all received the points. There is that one arrest  
10       for the driving without a license, but no one gets criminal  
11       history points for that one. It's not because it's too old  
12       or whatever; it's because no one really gets points for --  
13       for that. Even though I think it's -- it would have aged  
14       out, too, because he was 22.

15               So for those reasons, Your Honor, we ask that the  
16       Court will not upwardly depart, and that the Court give him a  
17       sentence within the guideline range.

18               THE COURT: Okay. Thank you.

19               Government, what say you?

20               MR. BRIGGS: Thank you, Your Honor.

21               The government agrees with -- with the defense that  
22       the Court should impose a guideline sentence here, but at the  
23       high end of the guidelines. A sentence of 21 months, Your  
24       Honor.

25               I think that the Court -- as the Court was going

1 through Mr. Gomez's criminal history, there's a pattern that  
2 emerges, which is -- and albeit it goes back ten years, but  
3 it is a pattern of a unwillingness or inability to comply  
4 with the law.

5 So Mr. Gomez gets pulled over, and he gets arrested  
6 and he gets convicted for that driving without a license  
7 offense. He's put on probation for that. What does he do  
8 when he's on probation? He goes out and commits these felony  
9 offenses, serious felonies. And is then convicted of those  
10 three felony offenses.

11 He serves the time. And I don't know how that  
12 really shook out in Georgia, but that is the time he served.  
13 He's then deported. Within a year -- less than a year goes  
14 by, and he returns illegally, right? He was ordered to not  
15 return. And what does he do? He returns.

16 Fast-forward, then, to February -- or, excuse me,  
17 September 2020. I understand the merits of the allegations  
18 in that DPD report have not been adjudicated, but it doesn't  
19 bode well for our defendant, Mr. Gomez-Santacruz. It is  
20 conduct unbecoming of somebody who has illegally reentered  
21 and he's involved in this drunken brawl where there's  
22 allegations of the brandishing and the threatening use of a  
23 firearm.

24 Weighing that, Your Honor -- well, for those  
25 reasons, Your Honor, I -- the government thinks it's

1 important -- there's certainly a need for deterrence here and  
2 also to promote respect for the law. Which just really  
3 hasn't gotten through to Mr. Gomez-Santacruz to this point.  
4 At least that is what it appears to be.

5 And I'll just say, for the record, that the  
6 government does appreciate and is sympathetic to the fact  
7 that Mr. Gomez-Santacruz had what -- what appears to be a --  
8 a tough childhood and a tough adolescence. And he's got a  
9 wife and four kids. And I -- the government is sympathetic  
10 to those facts, that he reportedly supports those folks. But  
11 there comes a time where there needs to be respect for the law  
12 and deterrence.

13 And so for that reason -- or for those reasons,  
14 Your Honor, the government requests a guideline sentence, but  
15 at the high end.

16 THE COURT: All right.

17 MR. BRIGGS: Thank you.

18 THE COURT: I'll give you the last word. And I  
19 need to make sure we offer your client the chance to allocute  
20 should he wish to.

21 You can talk to me if you want to. You don't have  
22 to. It is all up to you. Your attorney can advise you, but  
23 ultimately it is your decision. And so just let me know if  
24 you would like -- like to talk to me.

25 THE DEFENDANT: That would be fine, thank you.

1 (Defendant sworn.)

2 THE DEFENDANT: I would like to apologize for  
3 having come in for my reentry into the United States. I  
4 honestly had only done that for my children, because they  
5 were here in the United States. But I do understand now the  
6 problems that can be caused by this.

7 That would be all.

8 THE COURT: Okay. Well, I have a few questions for  
9 you. When were you married?

10 THE DEFENDANT: I got married in 2006.

11 THE COURT: Okay. And are your children and wife  
12 in America?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. I'm looking at this police  
15 report from the DeKalb County Police Department. And so you  
16 would have been married at the time this happened.

17 And I know, Defense, you've asserted that this was  
18 someone known to him and that he had some kind of  
19 relationship. But when I read the -- the supplemental  
20 narrative that's Defendant's Exhibit 1, that I'll incorporate  
21 into the record, I just want to make a couple of notes.

22 The police officer says, upon his arrival, he was  
23 directed to make contact with the victim. Upon making  
24 contact with the victim, he stated she was asleep in her  
25 bedroom and awoke to find the suspect in bed with her. The

1 suspect had the victim's underwear pulled down to her knees  
2 and was rubbing the outside of her vagina with his hands,  
3 while he was kissing her neck.

4 The victim was startled and attempted to get away  
5 from the suspect by getting out of bed, but the suspect  
6 grabbed her and held her in the bed with him. And so she was  
7 able to finally get him to leave. She locked him out and  
8 called 911. She stated her patio door was left unlocked by  
9 accident when she went to bed, and that is how she thinks he  
10 made entry.

11 That doesn't sound to me like a -- like a bad  
12 relationship; that -- that sounds like a stranger, in my  
13 opinion.

14 MS. TORRES CHIN: No. They were neighbors and they  
15 were having an affair. Which is part of the reason  
16 there's -- there is no indication that she screamed, that  
17 anyone heard her. He was married, that is correct. Which is  
18 one of the reasons that he did not want perhaps to go to  
19 trial.

20 THE COURT: Right.

21 MS. TORRES CHIN: Right, because --

22 THE COURT: I mean, you say that that -- that he --  
23 he had an affair with her, but I just -- for the record, I  
24 think that's pretty important. And, I mean, I'm a little  
25 surprised that is not included in here.

1                   You know, usually on domestic violence, or anything  
2 involving couples, they'll kind of drop that line that says  
3 they were known to each other. But it doesn't say anything  
4 about being neighbors; doesn't say that was my boyfriend.

5                   MS. TORRES CHIN: Because they didn't interview  
6 him. The only version that they had was from her. Who -- my  
7 understanding, she also -- that for her, it was also an  
8 affair, right?

9                   THE COURT: Okay.

10                  MS. TORRES CHIN: So -- and sometimes -- and I just  
11 don't want to sound like I'm bashing the victim.

12                  THE COURT: You are doing your job, I understand.  
13 I understand you are -- you are not --

14                  MS. TORRES CHIN: Sometimes --

15                  THE COURT: -- oh, I'm sorry. So we're clear, you  
16 are doing your job, and I -- I understand. You -- you  
17 advocate as hard for him as you can. I don't think you're  
18 being ugly to the victim; I think you are being a good  
19 advocate. So don't worry about that.

20                  MS. TORRES CHIN: I just think that sometimes when  
21 we get caught, and in something that is especially morally  
22 viewed in a negative way, that we are not 100 percent  
23 truthful, just to cover up embarrassment.

24                  But what is also important is what is missing in  
25 that report. There is no other witnesses that saw him coming

1 through any patio door. There's no -- none of the neighbors  
2 say that they heard any screaming. Everything comes from  
3 her.

4 THE COURT: Uh-huh. Well, and we have to factor  
5 in, too, that he pled guilty. And not to like a knocked-down  
6 misdemeanor offensive touching Class C ticket or anything, he  
7 pled guilty to sexual battery.

8 MS. TORRES CHIN: True. But he was sentenced to  
9 four years instead of like 20, 25, 30.

10 THE COURT: I get you.

11 MS. TORRES CHIN: Yeah.

12 THE COURT: I get you that you -- but to me, taking  
13 a plea deal, that locks you in at four years. I -- I  
14 understand how you think that is a good deal. But I -- I --  
15 I -- if I had -- I mean, I'm just trying to imagine if these  
16 were people who knew each other and it is some affair, then  
17 why is he, you know, breaking in patio doors or -- or  
18 slipping in the patio door to meet his mistress? That sounds  
19 odd.

20 MS. TORRES CHIN: There is no sign of breaking in.  
21 She had to say, oh, I left it unlocked.

22 THE COURT: Yeah.

23 MS. TORRES CHIN: That is like -- I -- I don't  
24 know. I would have taken that to trial, let's just put it  
25 that way.

1                   THE COURT: Yeah, I get it. I get it.

2                   MS. TORRES CHIN: I don't know if he was given an  
3 attorney; if his attorney spoke Spanish --

4                   THE COURT: Were you given an attorney on this  
5 case?

6                   THE DEFENDANT: Yes.

7                   THE COURT: Did your attorney speak Spanish?

8                   THE DEFENDANT: No.

9                   THE COURT: Did they give you an interpreter?

10                  THE DEFENDANT: Yes.

11                  THE COURT: Your interpreter spoke Spanish?

12                  THE DEFENDANT: Yes.

13                  THE COURT: So he -- he had a lawyer.

14                  All right. Well, I understand you have a different  
15 version of it. You know, I'm looking at the narrative and,  
16 yeah...

17                  MS. TORRES CHIN: And ultimately, Your Honor,  
18 having said that, he received the three points for that  
19 offense. And not only three points criminal history; it also  
20 gave him the enhancement. And he did pay his debt to  
21 society. So it did -- was calculated, or taken into account,  
22 at -- in the guideline calculations, so.

23                  THE COURT: Okay. Well, so, Mr. Gomez-Santacruz,  
24 this fight with the neighbor, what's your version of that?

25                  MS. TORRES CHIN: Your Honor, because that is still

1       technically pending, I can't let him answer that --

2               THE COURT: Got you.

3               MS. TORRES CHIN: -- question.

4               THE COURT: No problem.

5               Okay. Well, I appreciate your allocution, sir.

6               And do you have anything further to offer at this

7       point.

8               MS. TORRES CHIN: No. Thank you, Your Honor.

9               THE COURT: Okay. Well, you did a great job in  
10       your Sentencing Memorandum. Both sides did. I think you did  
11       very well.

12               Okay. I'll now state the sentence, after  
13       consideration of all the factors set out in 18 United States  
14       Code, Section 3553(a), including especially the advisory  
15       Sentencing Guidelines issued by the Sentencing Commission and  
16       the conduct admitted to by the defendant in his factual  
17       resume -- or I don't think we have a factual resume here, but  
18       in his plea to the judge, where he agreed that he committed  
19       each of the essential elements of the offense. Both sides  
20       will have a final chance to make legal objection before  
21       sentence is finally imposed.

22               I am going to upward vary based upon everything  
23       I've heard today. The four years in prison didn't deter the  
24       defendant at all. He was back less than a year after that  
25       felony and, you know, he pled guilty to sexual battery.

1                   And when I look at the police report, it's  
2 horrifying. You know, he slips in to somebody's apartment  
3 because their patio door was left unlocked. And she was  
4 asleep. When she wakes up and finds him in bed with her, she  
5 had her underwear pulled down to her knees and he was rubbing  
6 her vagina with his hands, while he kisses her neck. She was  
7 startled and tried to get away by getting out of bed. He  
8 grabbed her and held her in the bed with him and continued to  
9 touch her genitals and kiss her.

10                  Finally, he leaves. She locks him out and calls  
11 911. And then she tells police that she thinks that it all  
12 happened because her patio door was left unlocked by  
13 accident.

14                  And so he was charged with burglary, sexual  
15 battery, and false imprisonment; all of which he pled guilty  
16 to. And he was sentenced to 20 years, to serve four and have  
17 16 years probation. Well, he didn't even serve the whole  
18 four, and they didn't -- he didn't do a year of probation  
19 because he got deported.

20                  And so the Court is concerned -- I mean, this --  
21 I -- I get that we're asserting now that this is his  
22 mistress, but this sounds, to me -- I don't -- I find that  
23 hard to believe. Just looking at Defendant's Exhibit  
24 Number 1, this sounds like a woman who was sleeping at night  
25 and was surprised to find the defendant showing up in her

1 bedroom, and calling 911 and he's grabbing her and won't let  
2 her go. And that, to me, is kind of inconsistent with  
3 someone you have some kind of a sexual relationship with.

4 And there's no mention of it in this report. There  
5 is no mention that they knew each other. There is no mention  
6 that they had any romance or illicit love aware. I get that  
7 that is what the defense is -- is saying is true, but I -- I  
8 don't have any evidence of that other than argument. The  
9 evidence I do have is that he pled guilty and he got four  
10 years, and didn't do even that.

11 So -- and I understand that he has not been  
12 convicted of this aggravated assault with a deadly weapon.  
13 And I don't think the Court even has to consider that in  
14 crafting this sentence. But it is disturbing to have an  
15 allegation that he pulled a gun on somebody. Because it  
16 sounds like he was drunk, or at least had alcohol on him. He  
17 gets upset with his -- because somebody won't move a car that  
18 is not theirs, and he lifts his shirt, uses his right hand to  
19 pull out a black pistol from inside his waistband, cocks the  
20 slide back and points the firearm toward the complainant's  
21 stomach and yells, in Spanish, loosely, I don't give an F,  
22 I'll kill you.

23 And so the police report said witnesses  
24 corroborated his account of the incident. I don't know who  
25 those witnesses were. I don't know if they were family,

1 friend. I don't know if they hated him, so I -- I'm not  
2 going to put a lot of stock in that. Because, like I said,  
3 he got arrested for that, so they believe there was probable  
4 cause, but he hasn't been convicted of that.

5 I'm concerned that his wife and kids are here and  
6 that he's going to come right back. And I really don't like  
7 that sexual assault. So I'm -- pursuant to the Sentencing  
8 Reform Act of 1984, it is the judgment of this Court that  
9 Defendant Gomez-Santacruz is hereby committed to the Federal  
10 Bureau of Prisons for a period of 120 months.

11 So you'll have 120 months confinement, three years  
12 of supervised release. You are not eligible for probation.  
13 I'm not ordering a fine. There is a \$100 mandatory special  
14 assessment, and restitution is not applicable.

15 We don't have any forfeiture issues, do we?

16 MR. BRIGGS: No, Your Honor. Thank you.

17 THE COURT: Okay. And I don't think we have any  
18 counts to dismiss either.

19 MR. BRIGGS: None.

20 THE COURT: All right. As justification for my  
21 variance, a sentence of 120 months is necessary, but not  
22 greater than necessary, to promote the factors laid out in  
23 U.S. Sentencing Guideline, Section 3553(a).

24 The defendant was ordered removed and was deported  
25 after being convicted of rape, burglary and false

1 imprisonment. And he was sentenced to four years in prison  
2 for that offense. Didn't serve all four, and was deported in  
3 July 2014. He was already back by May 2015. And the way we  
4 found out about him again, was allegations involving him  
5 pulling a gun on somebody.

6 Those haven't been adjudicated. But just the fact  
7 that he's back after committing a rape that he pled guilty to  
8 is very disturbing to the Court. And if four years did not  
9 deter him at all; and it didn't, because he came back less  
10 than a year later, then that tells the Court he needs a  
11 little more time.

12 The defendant's behavior both in his illegal  
13 reentries and in his commission of a violent felony show he  
14 clearly demonstrates a lack of respect for the American legal  
15 system and its justice, and is a threat to all American  
16 citizens, and those who are not citizens, in this country.  
17 And a prison sentence of four years obviously did not deter  
18 the defendant from committing crimes again and illegally  
19 reentering.

20 So the Court believes this sentence is necessary,  
21 but not greater than necessary, to provide deterrence and  
22 just punishment that reflects the seriousness of the crimes  
23 he's committed.

24 Pursuant to United States Sentencing Guideline  
25 5D1.1(C), if a defendant is a deportable alien, and a term of

1 supervised release is not required by statute, the Court  
2 usually does not impose a term of supervised release.  
3 However, in this case, because the defendant's wife and four  
4 kids are here, he has an incredible incentive to once again  
5 break the law and come back. So in this instance, the Court  
6 believes a three-year term of supervised release is necessary  
7 to both deter the defendant from committing new crimes and to  
8 deter him from coming back.

9 A fine hasn't been ordered because the defendant  
10 doesn't have the capacity to pay one.

11 When he's released from custody, the Court orders  
12 the defendant to follow the terms of supervised release set  
13 forth in Miscellaneous Order 64 and outlined in Part G of the  
14 defendant's Presentence Report, except as modified or  
15 supplemented by any facts set forth in any addendum and any  
16 facts found by the Court during this sentencing hearing. The  
17 defendant shall comply with each of the conditions throughout  
18 his supervised release term.

19 I have now stated the sentence and the reasons  
20 therefor; is there any reason under law why this sentence  
21 should not now be imposed as stated?

22 Government?

23 MR. BRIGGS: No, Your Honor. Thank you.

24 THE COURT: Defense?

25 MS. TORRES CHIN: We respectfully object, Your

1 Honor. And I don't know, I would like to put on the  
2 record --

3 THE COURT: Sure. Make a record.

4 MS. TORRES CHIN: -- it's an unreasonable sentence,  
5 as it is greater than necessary to comply with the 3553(a)  
6 factors.

7 In addition to that, on procedural grounds, the  
8 Court might have considered facts that are not reliable. In  
9 addition to that, the Court assumed that Paragraph 28, that  
10 that conviction was for rape. That conviction was actually  
11 for sexual battery, and not rape.

12 So we respectfully object to the sentence as  
13 pronounced.

14 THE COURT: Okay. And since you made some  
15 procedural objections, let me answer those.

16 I -- I referred to it as rape. Whether it was rape  
17 or sexual battery does not change my assessment of it, when  
18 looking at the facts.

19 The defendant pled guilty to sexually battering a  
20 woman, who called 911 and believed he slipped in through an  
21 open door. And so I don't find it plausible that he had some  
22 love affair during his marriage with somebody, and then  
23 turned around and pled guilty and went to prison for it, when  
24 there is no mention of any consensual relationship or  
25 knowledge between the victim and the defendant in the police

1 report. And, generally speaking, that's awfully important,  
2 and I think they would have included that.

3 You said something earlier about, I may have  
4 considered -- what was it, Nikki?

5 Let's go off the record.

6 (Off-the-record discussion.)

7 THE COURT: Back on the record.

8 In answering the objections to the Court's  
9 procedural -- procedure at this hearing, Defense counsel  
10 argues that the Court may have considered facts that are not  
11 reliable. And I'll tell you, as I'm crafting this, I am not  
12 taking into account his arrest with the gun. That's  
13 disturbing, but I agree with you, he's not convicted of that.  
14 If they haven't filed the case yet, I'm not going to put that  
15 on him.

16 My sentence is reflective of the fact that he's  
17 been convicted of sexual battery. You gave argument that the  
18 victim and he had had some consensual relationship, but  
19 that -- that's just argument that I've heard from you. The  
20 only evidence I have before me is Defendant's Exhibit 1,  
21 where there is no mention of them knowing each other, no  
22 mention made of relationship. And he pled guilty to having  
23 committed that crime, along with false imprisonment and  
24 burglary.

25 So, you know, the only credible evidence, the only

1 evidence before the Court on that issue is that he pled  
2 guilty and, therefore, he did that. And just based on the  
3 fact that he, you know, keeps coming to this country  
4 illegally, and is a sexual batterer of women, that enough --  
5 that is enough alone, not considering the arrest that led us  
6 here, to give him a ten-year sentence.

7 And I'll tell you the measure I came by, that I --  
8 that I -- I think of -- there is in deciding what's  
9 necessary, but not more than necessary, if four years didn't  
10 knock some sense into him, and he's back less than a year  
11 later after that, then the Court thinks in order to deter and  
12 protect the community, that more than four years is required.

13 And so I understand that the Sentencing Guidelines  
14 are at 15 to 21 months, but I don't think that's sufficient  
15 time to protect the community or to reflect the seriousness  
16 of this crime. This is not a man who's running back over the  
17 border to roof our house. This is not a man who is running  
18 back over the border to do lawn work. This is somebody who's  
19 a bad guy, who's been convicted of sexual battery.

20 And I understand he argues all the reasons why  
21 behind the -- through you, argues all the reasons behind it  
22 why he pled guilty. But in my eyes, he's a sexual batterer.  
23 He keeps coming. Four years didn't stop him. Maybe ten  
24 will.

25 So I -- I -- I note that you did object to

1 unreasonableness of the sentence, which is absolutely proper  
2 for you to argue for appeal. Are there any other objections,  
3 now that I've stated -- any other legal reasons why the  
4 sentence should not be imposed?

5 Government?

6 MR. BRIGGS: No, Your Honor.

7 THE COURT: Defense? Other than procedural -- I  
8 mean, other than the -- other than that it's objectively  
9 unreasonable, the sentence.

10 MS. TORRES CHIN: We do maintain that procedural,  
11 for the Court to consider that conviction in Paragraph 28.  
12 And when the Court stated that he kept coming back, he was  
13 not sentenced in 2011 -- or in 2012 for illegal reentry.

14 He is before this Court for illegal reentry, so we  
15 submit and we maintain our objection for appeal purposes that  
16 the Court improperly gave weight to that conviction and did  
17 not weigh in the 3553(a) factors in a balanced manner.

18 THE COURT: Okay. Well, I just -- I'm not going to  
19 fight one more time on the record. I'll just say that, you  
20 know, he pled guilty to that. He got removed to Mexico in  
21 2014, after pleading guilty to sexual battery, and then he  
22 was back less than a year later.

23 So I -- I get that you think that's an improper  
24 consideration, and I do agree that this has been counted as  
25 far as points. But I think -- I think it is appropriate and

1 necessary.

2 So with that being said -- oh, and I don't think  
3 that -- yes, if that case gets filed, F2058413, Dallas County  
4 Criminal District Court sentence -- let's go off the record  
5 for a second.

6 (Off-the-record discussion.)

7 THE COURT: Back on the record.

8 So as for Dallas County's felony Cause  
9 Number 2058413, pending in Dallas County Criminal District  
10 Court Number 5, should that case be filed, and should  
11 defendant be sentenced on that case, that sentence will run  
12 consecutive to the sentence given here.

13 And again, just to note, the Court has considered  
14 all the 3553(a) factors. And I just -- I think we have to go  
15 outside the guidelines on this one to do justice and keep  
16 people safe.

17 Mr. Gomez, you are hereby remanded to the custody  
18 of the U.S. marshals. Good luck to you.

19 And we're off the record.

20 (End of proceedings.)

21

22

23

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1                   I, BROOKE N. BARR, United States Court Reporter  
2   for the United States District Court in and for the Northern  
3   District of Texas, Dallas Division, hereby certify that the  
4   above and foregoing contains a true and correct transcription  
5   of all proceedings in the above-styled and -numbered cause.

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7                   WITNESS MY OFFICIAL HAND this the 4th day of  
8   December, 2021.

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11                   /S/ BROOKE N. BARR  
12                   BROOKE N. BARR, CSR NO. 6521  
13                   CSR Expiration Date: 12/31/21  
14                   United States Court Reporter  
15                   1100 Commerce Street  
16                   Room 1376  
17                   Dallas, Texas 75252  
18                   (214) 753-2661

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