No. _____

In the

Supreme Court of the United States

JUAN AGUIERA-GUZMAN, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

Appendix to Petition for a Writ of Certiorari

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APPENDIX INDEX

Page No.

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NOT FOR PUBLICATION

FILED

JAN 16 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JUAN AGUIERA-GUZMAN, AKA Robert Aguilera Guzman, AKA Roberto Aguilera Guzman, AKA Roberto Guzman, AKA Antonio Valseachi Riga, Defendant-Appellant.	No. 22-50248 D.C. No. 2:22-cr-00289-SVW-1 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted January 11, 2024**
Pasadena, California

Before: TALLMAN, CALLAHAN, and BENNETT, Circuit Judges.

Defendant Juan Aguiera-Guzman appeals his high-end Guidelines sentence of forty-one months' imprisonment for illegal reentry. He makes three arguments

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and concedes that all are subject to plain error review. Thus, for each he must establish that "there has been (1) error; (2) that was plain; (3) that affected substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *United States v. Cannel*, 517 F.3d 1172, 1176 (9th Cir. 2008). Exercising our jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742, we affirm.

1. The government recommended a sentence of twenty-seven months' incarceration and three years of supervised release, as required by the plea agreement. But Defendant claims that the government implicitly breached the plea agreement by unnecessarily mentioning Defendant's extensive criminal history and the need for deterrence and to protect the public in its sentencing memorandum. We reject this claim, as Defendant fails to satisfy several of the plain error factors.

First, there was no implicit breach because the government's challenged statements served a valid purpose other than to advocate for a harsher sentence. *See United States v. Heredia*, 768 F.3d 1220, 1231 (9th Cir. 2014). The statements explained why three years of supervised release was appropriate even though the Sentencing Guidelines provide that supervised release is usually not appropriate when, as here, a defendant is likely to be removed. *See* U.S.S.G. § 5D1.1(c). Second, even if an implicit breach occurred, it was not plain because the government's general references to Defendant's recidivism and disregard for the law

were relevant to imposing supervised release. *Cf. Heredia*, 768 F.3d at 1233–34 (acknowledging that the government can make "some factual reference" to a defendant's criminal history to justify supervised release so long as the reference is not "likelier to inflame than to provide information relevant to the imposition of supervised release").

Finally, even if we were to conclude that a plain breach occurred, it would not affect Defendant's substantial rights because "to meet this standard an error must be 'prejudicial,' which means that there must be a reasonable probability that the error affected the outcome." *United States v. Marcus*, 560 U.S. 258, 262 (2010) (citing *United States v. Olano*, 507 U.S. 725, 734–35 (1993)). The record shows that the district court believed a high-end Guidelines sentence of forty-one months was warranted based on Defendant's extensive criminal history, with the court specifically noting that he had been undeterred by prior substantial sentences. This information was conveyed to the court—in significantly more detail—in the plea agreement, at the change of plea hearing, in the presentence investigation report, and in the probation office's letter. Nothing suggests that the court would have disregarded such information had the government not made the challenged statements in its sentencing memorandum. *See United States v. Gonzalez-Aguilar*, 718 F.3d 1185, 1188–89 (9th Cir. 2013) (no impact on substantial rights when the challenged information in the sentencing memorandum was already conveyed "in

far greater detail" in other documents before the district court). Thus, there is no reasonable probability that the challenged statements affected the outcome.

2. Defendant argues that the court procedurally erred by failing to give the government an opportunity to speak at sentencing. *See* Fed. R. Crim. P. 32(i)(4)(A)(iii) ("Before imposing sentence, the court must . . . provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney."). But even if there were a plain violation of Rule 32(i)(4)(A)(iii), Defendant cannot show the requisite prejudice, and so his challenge fails. *See Marcus*, 560 U.S. at 262.

Defendant's assertion that the government would have advocated at the hearing for a sentence below forty-one months is speculative. Moreover, even if the government had recommended a sentence below forty-one months at the hearing, the record does not support that the court would have been influenced by such recommendation. The district court had already rejected the government's proposed sentence of twenty-seven months' incarceration. And, given the court's focus on Defendant's extensive criminal history and the need for deterrence, and the fact that Defendant had been undeterred by prior sentences of forty-eight, forty-two, thirty-six, twenty-four, and sixteen months, the court would probably not have been persuaded to give a sentence lower than forty-one months, even had the government added to its prior recommendation at the sentencing hearing. In short, the record

does not show that there is a reasonable probability that the court would have imposed a more lenient sentence had the government been given a chance to speak at sentencing. *See Gonzalez-Aguilar*, 718 F.3d at 1189 ("Mere 'possibility' is insufficient to establish prejudice.").

3. Defendant argues that the court failed to sufficiently explain the reasons for the sentence imposed, mainly because it did not address his sentencing arguments or mitigation evidence. *See* 18 U.S.C. § 3553(c). We disagree. In imposing the sentence, the court explained that it considered the § 3553(a) factors and determined that, given Defendant's extensive criminal history, there was a strong need for deterrence and to protect the public. The record also shows that the court heard and considered Defendant's arguments and mitigation evidence but found them insufficient to warrant a lower sentence. The court even stated that it "considered . . . [Defendant's] particular circumstances as articulated by [defense] Counsel." Because the record shows that the court had a reasoned basis for the sentence it imposed and that it considered Defendant's arguments and mitigation evidence, the court's explanation was sufficient. *See United States v. Perez-Perez*, 512 F.3d 514, 516–17 (9th Cir. 2008) (finding no error when the court "expressly based the within-guidelines sentence on the defendant's extensive criminal history and the need for deterrence" and it was clear from the transcript that the court considered the defendant's arguments).

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

-oOo-

HONORABLE STEPHEN V. WILSON, UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 2:22-cr-00289-SVW

JUAN AGUIERA-GUZMAN,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

OCTOBER 24, 2022

SUZANNE M. McKENNON, CRR, RMR
UNITED STATES COURT REPORTER

UNITED STATES COURTHOUSE
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(Proceedings commenced on October 24, 2022, at 11:28 a.m.)

THE COURTROOM DEPUTY: Item 4, CR-22-289-SVW, United States of America versus Juan Aguiera-Guzman.

Counsel, please state your appearances.

MS. NEVAREZ: Good morning, Your Honor. Sonya Nevarez for the United States.

MR. WASSERMAN: Good morning, Your Honor. David Wasserman for Mr. Aguilera-Guzman, who is present before the Court, in custody.

THE COURT: Was this plea made pursuant to Rule 11(c)(1)?

MR. WASSERMAN: Yes, Your Honor.

THE COURT: Fast track?

MS. NEVAREZ: It was, Your Honor.

THE COURT: I mean, at this point the government -- the Court has to either accept the plea and sentence in accordance with the plea agreement or allow the defendant to withdraw his plea and proceed to trial. And the Court will not accept the plea agreement. And, therefore, we should set a trial date.

MR. WASSERMAN: Your Honor, can I have one moment, please?

THE COURT: Yes.

(A discussion off the record between Counsel and Defendant.)

MR. WASSERMAN: Your Honor, two things. Number one,

I appreciate the Court's position. I would ask that the Court at least hear out the defense, but we also would persist in a guilty plea. We don't plan on going to trial in this case.

THE COURT: I don't follow. In other words, he pled pursuant to Rule 11(c)(1), which is a mechanism where the Court has to accept the plea agreement. The Court has rejected that. It seems to me that, if I'm interpreting what you're saying correctly, he now wants to enter a new and different guilty plea without the benefit of 11(c)(1)?

MR. WASSERMAN: Your Honor, just to -- I think what I'm saying is that, my understanding -- obviously, the government and the Court can correct me if I'm wrong -- is, if the Court rejects an 11(c)(1)(C) plea agreement, defendant has two choices: one, to persist in the guilty plea, as you indicated, without the plea agreement itself, but he doesn't have to enter a new plea because the plea was to the information. It's already --

THE COURT: That's correct.

MR. WASSERMAN: Or go to trial. And what I'm saying is we have no intention of going to trial. We would persist in the plea agree -- or rather in the plea of guilty and ask the Court to consider our arguments.

THE COURT: Well, you mean to go to sentencing now?

MR. WASSERMAN: Correct.

THE COURT: Well, I think we should take the guilty

plea again, because the guilty plea initially was 11(c)(1), and he pled guilty then with the idea that there would be a sentence pursuant to the agreement.

Do you think it's necessary to go through the plea colloquy again?

MR. WASSERMAN: I don't think it's necessary, but I'll confer with the client just to make sure?

THE COURT: Does the government think it's necessary?

MS. NEVAREZ: No, Your Honor. The government has the same position that a new open plea can be taken without going through the plea colloquy.

THE COURT: Well, he has been asked all the requisite questions under oath pursuant to Rule 11. And he has given answers which allow the Court to accept the plea which the Court did, but it accepted the plea pursuant to 11(c)(1).

Let me ask the defendant, under oath now, is he agreeing that he is guilty of the offense, and is willing to plead guilty without the benefit of the plea agreement?

THE DEFENDANT: Yes, Your Honor.

THE COURTROOM DEPUTY: Do you want me to swear him in, Your Honor?

THE COURT: You understand that now the matter of sentencing is solely for me? I will consider the arguments of Counsel, any statement you intend to give, and all of the other relevant information. But instead of proceeding pursuant to an

11(c)(1), which limited your sentence pursuant to the plea agreement, the sentence now can be any sentence the Court thinks is appropriate consistent with the guidelines and the sentencing factors.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

(A discussion off the record between Counsel and Defendant.)

THE DEFENDANT: Yes, Your Honor, I understand.

THE COURT: Are you satisfied, Mr. Wasserman that your client does understand that?

MR. WASSERMAN: Yes, Your Honor.

THE COURT: Then we can hear from you first and then your client, if he wishes, as to what the appropriate sentence is. I am beginning with the starting point of the guideline being 33 or 41 months.

MR. WASSERMAN: Understood, Your Honor.

So I guess the 27-month sentence that we're requesting, you know, I guess that the parties are requesting, is kind of our starting point. I do understand where the Court is starting with the guideline range.

I'll just put it this way. You know, I have a very quick pitch for Your Honor. I think there are five reasons why the Court should follow the parties' recommendation and, at the very least, give no more than 27 months.

First, this is Mr. Aguilera-Guzman's first and only

unlawful re-entry into the United States. Prior to this re-entry, he was living in Chile caring for his mother, who actually passed away while he was in custody here. And he had no intent on returning to the United States after he was removed. But he re-entered due to the tragic death of his son in a motorcycle accident, and he wanted to be able to bury his son.

Now, the death of his adult son in that motorcycle accident, for which he returned to the United States, was basically --

THE COURT: What year was that?

MR. WASSERMAN: That was in 20 -- he was deported in 2018.

THE DEFENDANT: 2018, my son passed away on June 7, 2019.

MR. WASSERMAN: And so what happened was that exacerbated the underlying mental health and drug addiction issues he already had, because decades ago, his two and a half year old was killed in a car accident. And that's actually what started Mr. Aguilera's drug use so many years ago. So not being present when his toddler was killed, and then not being present when his adult son was killed it just compounded the trauma.

But what I would say is that despite this and everything else that's noted in Paragraphs 83 through 97 of the probation

report, which is his history and characteristics, including, you know, growing up in Chile and then moving to El Salvador, you know, being basically a child groom marrying someone who is 25 years his senior in order to stay in El Salvador and avoid the abuse in Chile, and then having to leave El Salvador because of the El Salvadorian Civil War.

Notwithstanding any of this, he's never been convicted of a crime of violence. He's never been convicted of a controlled substance offense. He's never been convicted of a DUI.

THE COURT: He does have ten prior felony convictions.

MR. WASSERMAN: He does have a long list --

THE COURT: Ten. Ten felony convictions.

MR. WASSERMAN: He has ten felony convictions for theft offenses. That is absolutely right. And I'm not diminishing that.

THE COURT: Yes.

MR. WASSERMAN: What I do think is notable that, at least in my experience, before this Court and in other courts, a lot of illegal re-entry cases, a lot of defendants have crimes of violence, controlled substance offenses in their criminal history.

And given someone with his history and his trauma and his own substance use, it is actually remarkable that those offenses don't appear on his criminal record. That's all I'm

saying.

What's more notable, though, is --

THE COURT: Let me ask you to clarify something for me.

MR. WASSERMAN: Sure.

THE COURT: His son's tragedy in 2019, your argument is that that was the impetus for him to come to the United States?

MR. WASSERMAN: Correct.

THE COURT: But he isn't a citizen. And the record here, going back to his first felony conviction, was 1995. So I mean, his criminal record indicates that he's been -- let me just see something here. Get that straight. Wait a second. 1990 -- 1984. He's been committing crimes in the United States from 1984 until -- well, I won't count the -- he has committed crimes at least until 2019.

The last four were -- or 2020 -- misdemeanors, but the felonies were at least through 2015, and that means a period of 21 years, and then a series of misdemeanors up to 2020. 2020, according to the San Diego police, he and a female companion entered a Victoria Secret and stole 100 units of women's underwear totaling around $1,650.

I mean, so what I'm trying to better understand is your argument that he just came here in 2019 because of his son's tragedy. I mean, can you explain that more thoroughly to me?

MR. WASSERMAN: Sure. So there's two parts to that, Your Honor. The first is going back to the felonies back in the day.

THE COURT: Yeah.

MR. WASSERMAN: So 1984, right, is the first felony. He's working at a restaurant. A buddy of his says, "Hey, you know, sit outside" -- because they say that he's a lookout in the probation report -- "sit outside. We're going into the restaurant and go handle some business." They work at the restaurant.

His friend goes and steals money from the restaurant. I'm not excusing what's happening. I am just explaining what happens in '84.

THE COURT: Right.

MR. WASSERMAN: So that's the first felony.

The next felony is in 1991.

(The court reporter interrupted.)

MR. WASSERMAN: Apologies.

In between that period of time is when his toddler gets killed.

THE COURT: And what happened?

MR. WASSERMAN: In between that period of time, 1984 and 1991, his toddler gets hit by a car and run over by -- the person who killed the toddler was the toddler's grandfather. And so that's when the drug use starts. The drug use starts,

and then it keeps on going for decades. There's never been any sustained treatment. He's just been using drugs.

He gets deported from the United States in 2018. He's in Chile. He has no reason to come back. His mom is there. He's taking care of her.

Then he finds out that his adult son gets killed in the car accident. That's when he comes back to the States for the first and only re-entry, is what I was explaining to the Court.

He's still using drugs. And so, yes, he's a petty thief who still uses drugs. It doesn't mean that stealing things is good. That's not what we're saying. But it is very characteristics of folks -- bless you -- with significant substance abuse problems to commit petty crimes. And I don't mean petty in the unimportant sense. I'm talking about the actual definition of some of these offenses.

And so then the question for this Court in imposing sentence is, given the length of his criminal history but also the likelihood that he's ever going to come back to the States, what is the appropriate sentence? Given that it's his first illegal re-entry case, his first illegal re-entry into the country at all -- and, again, I'm saying "re-entry." He's only entered one other time. That was when he was escaping from El Salvador in the '80s.

And given the fact that, his kids that are adults, are all successful, don't have criminal records -- one's a marine.

One's a phlebotomist. He's done what he's tried to do to raise them well so that they don't endure the same trauma and also engage in the same criminal conduct that he's engaged in through his life.

So there is a balance of factors. You have someone who, yes, has a long criminal history but, on the other hand, has contributed to this country by making sure that his kids, quite frankly, haven't done the same bad things that he's done. And the letters that we've attached to our sentencing brief from his daughter and his son are a testament to that. They both acknowledge that he has made bad decisions and committed crimes. But they also say that he has always been a good father to them, that he's always supported them, and that they've always known that they could count on him. And that does go to his character even though he's a drug addict.

And so what we're asking for is a 27-month sentence. We think that this sentence makes sense, given the guidelines in this case, given the trauma that he experienced and why he left in the first place, and given the very unique facts of why he returned to the country, only really to bury his son.

Yes, we acknowledge that, a while back, he committed some crimes. That's true. And he was sentenced for those crimes, and now he's being sentenced for --

THE COURT: Actually, in looking at the presentence report, he received some substantial sentences along the way by

the state court and still committed further crimes. It looks like there was no deterrence in some of those sentences. For example, looking at Paragraph 51 -- well, that was only an eight-month sentence.

But looking at Paragraph 48, 2004 theft, he received a 42-month sentence. And, I mean, that was early on. That didn't deter him.

And then sometimes I see state court judges impose probationary sentences for recidivists, but here he received jail sentences for at least five more, six more, seven more of the sentences, including three-year sentences, and nothing stopped him from committing further crimes.

So one of the factors the Court has to consider is: Is he a threat to society? Your argument is he's not going to come back. That he only has one illegal re-entry. So even if the Court concludes that he is a threat to society, he's not going to be here; correct?

MR. WASSERMAN: That's correct.

THE COURT: But his ties here are very strong.

MR. WASSERMAN: This is true. He does have children here, but he also has -- and they're all adults --

THE COURT: Yes.

MR. WASSERMAN: -- which is different than a lot of folks. And so they have the capacity to be able to travel to Chile.

THE COURT: I see.

MR. WASSERMAN: And that's -- obviously, that wasn't the issue with his son, who passed away. That's why he came back. He had to come here for that.

THE COURT: I see.

MR. WASSERMAN: And I understand. I'm not saying that that's the excuse or that it's legal. But it's different than with adult kids who can travel to go see him, which is the plan.

As we outlined in our papers, everybody understands that he can't be a parent or a grandparent if he's in jail. And with regard to the argument that he is going to, you know, be a threat to the United States and to society, I do think that, given the reason why he came back, that reason doesn't exist anymore.

And if folks are going to come and see him, he has a life in Chile already. So he has something that he's going back to. This isn't a person who, you know, has lived most of their life in the United States, has no ties to any other country, and, therefore, everything they have is in the United States.

THE COURT: But it seems like most of his life has been in the United States.

MR. WASSERMAN: Yes. But it doesn't mean that he has no ties to Chile.

THE COURT: I see.

MR. WASSERMAN: And that he has no life in Chile.
THE COURT: I see.
MR. WASSERMAN: And that he has nothing to go back to. And given the fact that his adult children are mobile and can go there to see him, there is no reason for him to come here and go to jail again. And, plus, you know --
THE COURT: He's not afraid of jail.
MR. WASSERMAN: Your Honor, I --
THE COURT: I mean, that's a reasonable conclusion based upon looking at his criminal history. He's not -- he doesn't -- jail is not a deterrent. He's been sentenced over and over and over again, 42 months, three years, eight months. It doesn't seem to affect him. He just goes on and steals.
MR. WASSERMAN: Well, I would say this, with something as slightly different than those previous interactions. Although, I do agree with the Court, prison is not a deterrent. But that, to me, means I don't think a lengthy prison sentence is appropriate.
THE COURT: Well, but it -- that's a reasonable argument if I fully accept your argument that he's not going to return.
MR. WASSERMAN: But there's a second part, which is this stint in custody has been particularly difficult because, while in custody, he suffered a hernia. First off, he's 62 years old. He's kind of tired of this life. He suffered a

hernia. He had hernia surgery while in custody, and the surgery did not go well. So now he wears a hernia belt every day when he walks around, he can no longer workout, he can't really walk very well, and he needs to have a second surgery.

One of the things I was going to ask the Court to recommend is that BOP provide him necessary medical treatment, because his time in prison now is a lot different than it was when he was serving those long sentences.

THE COURT: Where was he housed when he --

MR. WASSERMAN: Had the surgery?

THE COURT: Had the surgery.

MR. WASSERMAN: MDC.

THE COURT: Well, I mean, generally, my experience they provide good medical services. If there was some problem with the surgery, it certainly should be rectified. I mean, hernia surgery today is usually very successful.

MR. WASSERMAN: And it was -- I agree with Your Honor, except that in this case it wasn't, and they've already told him that he needs to have a second surgery because the first one wasn't successful.

THE COURT: Are they prepared to give it to him?

MR. WASSERMAN: They say that they are. They haven't yet.

THE COURT: Where did he have the surgery that didn't work out well?

MR. WASSERMAN: At White Memorial.

THE COURT: Oh.

MR. WASSERMAN: And so, again, it's all sort of this tapestry of things; right? His time in custody now is not the same as before. Prison doesn't deter the conduct. And the fact is is he's here for the reasons why he came back, which don't exist anymore. And we believe that he's not coming back because it's not going to serve his family or himself in any way positive.

And so because of that, yes, we are acknowledging his criminal history. He will be the first one to acknowledge he has done some very, very stupid things in the past. But with that said, going forward, what are the chances of him coming back? Very low.

The Court is going to put him on supervision. So if he comes back, the Court can hammer him then. But right now, we just don't believe that that's necessary under 3553.

THE COURT: Well, I appreciate your argument.

Does he wish to be heard?

MR. WASSERMAN: Yes, Your Honor.

THE DEFENDANT: Your Honor, I was -- even in Chile, I had a job. I came back because my son's tragedy. Being my second boy who passed away, I didn't take it very well, and so I came back to bury my son. That doesn't just identify my actions and my wrongdoing. My apologies to society, to the

Court, and to the Judge.

I have a job in Chile. I have counseling, psychological support. And whatever time I got left in my life, I want to be productive to society, to my family, to my kids, to my grandkids, and stay in Chile and work and be a parent and a grandparent.

Your Honor, I'm at your mercy. Thank you. Thank you.

THE COURT: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that Defendant Juan Aguiera-Guzman, whose true name is Roberto Aguilera-Guzman, is hereby committed on Count 1 of the information to the custody of the Bureau of Prisons for a term of 41 months.

I'm going to recommend that he participate in the RDAP program.

Upon release from imprisonment, he shall comply with the rules and regulations of the U.S. Probation Office and Second Amended General 20-04.

He shall refrain from any unlawful use of a controlled substance and submit to drug testing as directed by the probation officer not to exceed eight tests per month.

He shall participate in outpatient substance abuse treatment and counseling as directed by the probation officer.

He shall cooperate in the collection of a DNA sample.

He shall comply with the immigration rules and regulations of the United States. And if deported from this country,

either voluntarily or involuntarily, not re-enter the United States illegally.

He shall not obtain or possess any form of identification other than that in his true legal name.

The Court has considered the guidelines. The sentence is at the high end of the guideline. I've considered the nature and circumstances of the defendant, his particular circumstances as articulated by Counsel. I've considered the seriousness of the offense and the need to provide just punishment.

I've considered the need to deterrence, which is very strong in this case, given ten prior felony convictions, the need to protect the public from further crimes of this defendant, which again is justified by his record. I've considered other sentences available, and this is the most appropriate sentence.

MR. WASSERMAN: Your Honor, if I might, two things: Thank you for the RDAP recommendation. We would ask that there be a recommendation that he be placed at Terminal Island or Lompoc.

THE COURT: I'll make a recommendation for Southern California. That's all I can do, because the Bureau of Prisons has control of that.

MR. WASSERMAN: Certainly. I already requested that the BOP provide necessary medical care. I am hoping that the

Court will make that recommendation as well.

THE COURT: I will.

MR. WASSERMAN: And, finally, just for the record, since there is no plea agreement here, you know, we did want to note -- and I understand the Court's sentence -- that the sentencing data commission shows that the national average for this offense in people -- with defendants who are at criminal history Category VI, from FY 2021, the average sentence was 28 months, and the median sentence was 27 months.

So I just wanted to put that on the record in terms of 3553(a) factors.

THE COURT: All right. Well, that is relevant. I said I have considered other sentences available. I was doing that based upon my extensive experience in sentencing people of this kind. But I will -- I have considered, and I will consider -- if you want me to reconsider the sentence in light of what you said, I still would impose the sentence that I've imposed.

MR. WASSERMAN: Understood, Your Honor.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Will there be a period of supervised release?

THE COURT: Yes, three years.

Did I not impose that? I did impose three years. I gave the conditions, yes.

THE COURTROOM DEPUTY: Yes.
THE COURT: Yeah.
THE COURTROOM DEPUTY: Thank you.
MR. WASSERMAN: Can the Court --
THE COURT: Special assessment, what is it, $100?
THE COURTROOM DEPUTY: Yes, Your Honor.
THE COURT: Yes, special assessment.
MR. WASSERMAN: Could the Court advise of the right to appeal?
THE COURT: He has a right to appeal his sentence.
MR. WASSERMAN: Thank you.
(Adjourned at 11:58 a.m.)

-oOo-

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

/s/ Suzanne M. McKennon, CSR, CRR, RMR
_____ Date: 11/13/2022
United States Court Reporter

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 23 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JUAN AGUIERA-GUZMAN, AKA Robert Aguilera Guzman, AKA Roberto Aguilera Guzman, AKA Roberto Guzman, AKA Antonio Valseachi Riga, Defendant-Appellant.	No. 22-50248 D.C. No. 2:22-cr-00289-SVW-1 Central District of California, Los Angeles ORDER

Before: TALLMAN, CALLAHAN, and BENNETT, Circuit Judges.

Defendant-Appellant has filed petitions for panel rehearing and rehearing en banc. Dkt. No. 34. The panel has unanimously voted to deny the petition for panel rehearing. Judge Callahan and Judge Bennett have voted to deny the petition for rehearing en banc, and Judge Tallman so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for panel rehearing and rehearing en banc are DENIED.