

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 24 2024

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AMADO DE LA MORA CARDENAS,

Defendant - Appellant.

No. 23-2206

D.C. No. 4:20-cr-06028-MKD-1
Eastern District of Washington,
Richland

ORDER

Before: CALLAHAN, LEE, and FORREST, Circuit Judges.

Appellant's motion (Docket Entry No. 23.1) to file under seal his response to appellee's motion to dismiss is granted. The Clerk will file under seal the motion to seal at Docket Entry No. 23.1, and the response at Docket Entry Nos. 23.2 & 24.

Appellee's motion (Docket Entry No. 25.1) to file under seal its reply to appellant's response is granted. The Clerk will file under seal appellee's motion (Docket Entry No. 25.1), and the reply at Docket Entry Nos. 25.2 & 26.

Appellee's motion to dismiss this appeal in light of the valid appeal waiver (Docket Entry No. 22) is granted. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011) (knowing and voluntary appeal waiver whose language encompasses the right to appeal on the grounds raised is enforceable). Appellant's argument that he reasonably expected a lower sentence is not supported by the plea

agreement, which unambiguously provided that appellant waived his right appeal as long as his sentence did not exceed 136 months. Contrary to appellant's claim, that waiver applies even if he did not foresee the issues he now wishes to raise on appeal. *See United States v. Medina-Carrasco*, 815 F.3d 457, 462-63 (9th Cir. 2016). Moreover, even if this court were to recognize a miscarriage of justice exception to enforcement of appeal waivers, it would not apply here.

DISMISSED.

Sep 12, 2023

UNITED STATES DISTRICT COURT
Eastern District of Washington

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA

V.

AMADO DE LA MORA CARDENAS

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 4:20-CR-06028-SAB-1

USM Number: 21791-085

Andrew M Wagley

Defendant's Attorney

Date of Original Judgment

8/29/2023

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 4 of the Indictment
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court. _____
- ☐ was found guilty on count(s) after a
plea of not guilty. _____

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §841(a)(1),(b)(1)(A)(viii) Actual (Pure) Methamphetamine	Possession with the Intent to Distribute 50 Grams or More of	09/25/2020	4

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) All remaining counts ☐ 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.

8/23/2023

Date of Imposition of Judgment

Signature of Judge

The Honorable Stanley A. Bastian

Chief Judge, U.S. District Court

Name and Title of Judge

9/12/2023

Date _____

DEFENDANT: AMADO DE LA MORA CARDENAS
Case Number: 4:20-CR-06028-SAB-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 136 months as to Count 4*

Defendant shall receive credit for time served.

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

The Court recommends defendant serve his sentence at FCI Sheridan to allow family to visit. The Court also recommends that defendant be given the opportunity to participate in the RDAP program if he is eligible pursuant to U.S. Bureau of Prisons guidelines.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: AMADO DE LA MORA CARDENAS
Case Number: 4:20-CR-06028-SAB-1

SUPERVISED RELEASE

Upon release from imprisonment, you shall be on supervised release for a term of: 5 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance, including marijuana, which remains illegal under federal law.
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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ 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)*
6. ☐ 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 other conditions on the attached page.

DEFENDANT: AMADO DE LA MORA CARDENAS
Case Number: 4:20-CR-06028-SAB-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 be truthful when responding to 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 this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: AMADO DE LA MORA CARDENAS
Case Number: 4:20-CR-06028-SAB-1

SPECIAL CONDITIONS OF SUPERVISION

1. Should you be deported, you are prohibited from returning to the United States without advance legal permission from the United States Attorney General or his designee. Should you reenter the United States, you are required to report to the probation office within 72 hours of reentry.
2. You must complete a mental health evaluation and follow any treatment recommendations of the evaluating professional which do not require forced or psychotropic medication and/or inpatient confinement, absent further order of the court. You must allow reciprocal release of information between the supervising officer and treatment provider. You must contribute to the cost of treatment according to your ability to pay.
3. You must submit your person, residence, office, or vehicle and belongings to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You must warn persons with whom you share a residence that the premises may be subject to search.
4. You must undergo a substance abuse evaluation and, if indicated by a licensed/certified treatment provider, enter into and successfully complete an approved substance abuse treatment program, which could include inpatient treatment and aftercare upon further order of the court. You must contribute to the cost of treatment according to your ability to pay. You must allow full reciprocal disclosure between the supervising officer and treatment provider.
5. You must not enter into or remain in any establishment where alcohol is the primary item of sale. You must abstain from alcohol and must submit to urinalysis and Breathalyzer testing as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from this substance.
6. You must abstain from the use of illegal controlled substances, and must submit to urinalysis and sweat patch testing, as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from these substances.

DEFENDANT: AMADO DE LA MORA CARDENAS
Case Number: 4:20-CR-06028-SAB-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

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

- ☐ The special assessment imposed pursuant to 18 U.S.C. § 3013 is hereby remitted pursuant to 18 U.S.C. § 3573(1) because reasonable efforts to collect this assessment are not likely to be effective and in the interests of justice.
- ☐ 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

- ☐ 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 Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

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

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

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

DEFENDANT: AMADO DE LA MORA CARDENAS
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SCHEDULE OF PAYMENTS

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

- A ☐ Lump sum payments of \$ _____ due immediately, balance due _____, or
☐ not later than _____,
☐ in accordance with ☐ 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 _____ (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:

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than \$25.00 per quarter.

While on supervised release, monetary penalties are payable on a monthly basis of not less than \$25.00 per month or 10% of the defendant's net household income, whichever is larger, commencing 30 days after the defendant is released from imprisonment.

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 online at www.waed.uscourts.gov/payments or mailed to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

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

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

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DISTRICT: Eastern District of Washington

Sep 12, 2023

Statement of Reasons - Page 1 of 4

SEAN F. MCAVOY, CLERK

STATEMENT OF REASONS

(Not for Public Disclosure)

*Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.***I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT**

- A. ☐ The court adopts the presentence investigation report without change.
- B. ☒ The court adopts the presentence investigation report with the following changes: (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report)
1. ☐ Chapter Two of the United States Sentencing Commission **Guidelines Manual** determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics):
 2. ☒ Chapter Three of the United States Sentencing Commission **Guidelines Manual** determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
Court applies 2-level increase at USSG §3B1.4 and does not apply a 2-level reduction at USSG §3B1.2(b).
 3. ☐ Chapter Four of the United States Sentencing Commission **Guidelines Manual** determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations):
 4. ☐ Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it):
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed. R. Crim. P. 32.
Applicable Sentencing Guideline (if more than one guideline applies, list the guideline producing the highest offense level): _____

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

- A. ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case (Specify):
 - ☐ substantial assistance (18 U.S.C. § 3553(e))
 - ☐ the statutory safety valve (18 U.S.C. § 3553(f))
- C. ☐ No count of conviction carries a mandatory minimum sentence.

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

Total Offense Level 37

Criminal History Category: I

Guideline Range: (after application of § 5G1.1 and § 5G1.2) 210 to 262 months

Supervised Release Range: 5 years

Fine Range: \$ \$40,000.00 to \$10,000,000.00

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

DEFENDANT: AMADO DE LA MORA CARDENAS
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DISTRICT: Eastern District of Washington

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

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

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

- A. **The sentence imposed departs** *(Check only one):*
☐ above the guideline range
☐ below the guideline range
- B. **Motion for departure before the court pursuant to** *(Check all that apply and specify reason(s) in sections C and D):*

1. **Plea Agreement**

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

2. **Motion Not Addressed in a Plea Agreement**

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

3. **Other**

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

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

- | | | |
|---|--|--|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |

☐ 5K3.1 Early Disposition Program (EDP)

- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual (see "List of Departure Provisions" following the Index in the Guidelines Manual). *(Please specify):*

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

DEFENDANT: AMADO DE LA MORA CARDENAS
CASE NUMBER: 4:20-CR-06028-SAB-1
DISTRICT: Eastern District of Washington

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STATEMENT OF REASONS**VI. COURT DETERMINATION FOR A VARIANCE (If applicable)****A. The sentence imposed is (Check only one):**

- ☐ above the guideline range
☒ below the guideline range

B. Motion for a variance before the court pursuant to (Check all that apply and specify reason(s) in sections C and D):**1. Plea Agreement**

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

2. Motion Not Addressed in a Plea Agreement

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

3. Other

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

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance (Check all that apply)☒ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)

- | | | |
|--|--|--|
| <input type="checkbox"/> Mens Rea | <input type="checkbox"/> Extreme Conduct | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> Role in the Offense | <input type="checkbox"/> Victim Impact | |
| <input type="checkbox"/> General Aggravating or Mitigating Factors (Specify) _____ | | |

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

- | | |
|---|---|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other (Specify): _____ |

☒ Issues with Criminal History (Specify): _____☒ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))☒ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))☒ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (Specify in section D)☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))☐ Acceptance of Responsibility☐ Conduct Pre-trial/On Bond☐ Cooperation Without Government Motion for Departure☐ Early Plea Agreement☐ Global Plea Agreement☐ Time Served (not counted in sentence)☐ Waiver of Indictment☐ Waiver of Appeal☐ Policy Disagreement with the Guidelines (Kimbrough v. U.S., 552 U.S. 85 (2007). (Specify): _____☐ Other (Specify): _____**D. State the basis for a variance. (Use Section VIII if necessary)**

DEFENDANT: AMADO DE LA MORA CARDENAS
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DISTRICT: Eastern District of Washington

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STATEMENT OF REASONS**VII. COURT DETERMINATIONS OF RESTITUTION**A. ☒ **Restitution not applicable.**B. **Total amount of restitution:** \$0.00C. **Restitution not ordered** (*Check only one*):

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. (*Explain*)

D. ☐ **Partial restitution is ordered for these reasons** (*18 U.S.C. § 3553(c)*):**VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE** (*If applicable*)

Defendant's Soc. Sec. No.: N/A

Defendant's Date of Birth: 08/14/1988

Defendant's Residence Address:
318 W. Pearl Street, Apt. D105
Pasco, WA 99301

Defendant's Mailing Address:
Same as above

8/23/2023

Date of Imposition of Judgment

Signature of Judge

The Honorable Stanley A. Bastian Chief Judge, U.S. District Court

9/12/2023

Date Signed

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No. 4:20-CR-06028-SAB-1
Plaintiff,) August 23, 2023; 10:14 am
v.) Yakima, Washington
AMADO DE LA MORA CARDENAS,) Sentencing Hearing
Defendant.) Pages 1 to 46

BEFORE THE HONORABLE STANLEY A. BASTIAN
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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Court-Certified Interpreter: Ms. Natalia Rivera

Official Court Reporter: Marilynn S. McMartin, CCR #2515
United States District Courthouse
P.O. Box 2706
Yakima, Washington 98907
509-573-6617

Proceedings reported by mechanical stenography; transcript
produced by computer-aided transcription.

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3

1 (August 23, 2023; 10:14 am)

2 THE COURTROOM DEPUTY: All rise.

3 (Call to order of the Court)

4 THE COURT: Good morning. Please be seated.

10:14:43

5 THE COURTROOM DEPUTY: We have *United States of America v.*
6 *Amado De La Mora Cardenas*, Case No. 4:20-CR-6028-SAB, Defendant
7 No. 1, time set for a sentencing hearing.

8 Counsel, would you please make your appearances for the
9 record.

10:15:07

10 MS. VAN MARTER: Good morning, Your Honor. Stephanie
11 Van Marter on behalf of the United States.

12 THE COURT: Morning.

13 MR. WAGLEY: Good morning, Your Honor. Andrew Wagley on
14 behalf of Defendant.

10:15:17

15 THE COURT: Morning to both of you.

16 MR. WAGLEY: Good morning.

17 THE DEFENDANT: Good morning.

18 THE COURT: All right. We're here for sentencing. I
19 just want to verify that, Mr. Cardenas, are you able to hear the
20 interpreter with the use of the headphones that you're wearing?

10:15:31

21 THE DEFENDANT: Yes.

22 THE COURT: And are you able to understand me with the
23 help of the interpreter?

24 THE DEFENDANT: Yes.

10:15:42

25 THE COURT: All right. We're here for sentencing, and

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4

1 Mr. Cardenas has pled guilty to possession with intent to
2 distribute methamphetamine, 50 grams or more. Did I write that
3 down -- methamphetamine; is that correct? I'm just so used to
4 everything has now turned into fentanyl. I just want to make
5 sure I'm saying it correctly.

10:16:04

6 MS. VAN MARTER: It is, Your Honor.

7 THE COURT: All right.

8 THE INTERPRETER: And the interpreter speaking.

9 Your Honor, it seems that Defendant was trying to say

10:16:10

10 something, so the interpreter wants to make sure everything's
11 okay with the equipment. One moment, please.

12 (Pause in proceedings)

13 MR. WAGLEY: Your Honor, Mr. De La Mora Cardenas's family
14 just showed up. If we could have a moment to have them set up
15 with interpretation equipment?

10:16:41

16 THE COURT: No.

17 MR. WAGLEY: Okay.

18 THE COURT: I'm sorry, but we're -- we're gonna proceed.

19 MR. WAGLEY: Understood. Thank you.

10:16:50

20 THE COURT: Okay.

21 So going back to my notes, the charge is possession with
22 intent to distribute methamphetamine. Thank you for clarifying.

23 The maximum -- I like to summarize the maximum -- is
24 mandatory minimum of 10 years to life, with a potential fine of
25 up to \$10 million, supervised release a mandatory minimum of

10:17:12

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5

1 five years to life, and a special penalty assessment of \$100.

2 I have reviewed the presentence report which has these
3 calculations -- which I know are being challenged to some
4 extent: A total offense level of 33, with a criminal history
10:17:32 5 category of Level I, which leads to a recommended range of 135
6 to 168 months.

7 I have reviewed all the materials, and the materials are
8 a little bit more than most cases. I know that we've got a few
9 issues open that are ready for conversation and discussion, but
10:17:51 10 I am familiar with everything that's been filed.

11 So I'm gonna identify the issues that I think we need to
12 talk about briefly, and I'll make a decision on those issues.
13 Then if I overlook something, then you can bring those to my
14 attention.

10:18:07 15 So the first issue I think is we have the argument as to
16 whether there should be a two-point enhancement for the
17 defendant using a minor to help commit the crime, and this would
18 be based on Section 3B1.4 of the guidelines. I've reviewed both
19 arguments. I'm gonna just indicate what my tentative thoughts
10:18:31 20 are, and then you can respond. I think it kind of helps save
21 time that way.

22 I'm familiar with the way both -- the court was bothered
23 by the fact that a minor was involved and the backpack was used.
24 However, I'm not sure what the evidence is to support that the
10:18:47 25 defendant affirmatively acted to use the minor as opposed to not

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Enhancement Using a Minor - Argument by Ms. Van Marter

6

1 affirmatively acting to discourage, and I think there's a
2 distinction, so that's the question I have.

3 So, Ms. Van Marter, I'll let you address that. You're
4 asking for the enhancement.

10:19:06 5 MS. VAN MARTER: Yes, Your Honor.

6 THE COURT: Yeah.

7 MS. VAN MARTER: Your Honor, and I think this case is
8 also in somewhat of a unique posture because for the codefendant
9 Mr. Muniz, who was also involved in the 10-pound transaction
10:19:20 10 with the child, I believe that presentence investigation report
11 was prepared by another author and before a separate judge, so I
12 do think -- I do want to apologize to probation and the court
13 because I didn't realize that there was some things lost in
14 translation on a review of the discovery. So I want to first
10:19:33 15 just review with the court facts that we believe establish the
16 enhancement.

17 If the court recalls, certainly from the attachments,
18 that the primary communication and negotiation was between the
19 confidential source and Mr. Madrigal, who repeatedly referenced
10:19:49 20 being a part of a drug trafficking organization who had large
21 capacity and access to methamphetamine, and began to describe
22 his source as an older male who had been in the game for a
23 period of time introduced by a brother-in-law or family member,
24 which ended up being the defendant.

10:20:06 25 THE COURT: That's what -- I saw that reference to the

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Enhancement Using a Minor, - Argument by Ms. Van Marter

7

1 older male. Is it your interpretation that reference is to the
2 defendant, Mr. Cardenas?

3 MS. VAN MARTER: The older male is Mr. Muniz.

4 THE COURT: That's what I thought.

10:20:19 5 MS. VAN MARTER: And the defendant provided the
6 introduction of Mr. Madrigal to Mr. Muniz and their organization
7 from the government's perspective.

8 THE COURT: Okay. Thank you.

9 MS. VAN MARTER: On this particular occasion and leading
10:20:31 10 up to it there is recorded negotiation for the 10-pound
11 transaction based upon Mr. Madrigal's representation that they
12 had just received a 200-pound shipment.

13 At that time during -- on the day of the buy, who -- we
14 had already identified the defendant, because he had already
10:20:48 15 traveled with and brought Mr. Madrigal to a previous negotiation
16 meeting with a confidential source; that they observed that the
17 defendant and Mr. Madrigal met up after Madrigal had affirmed
18 that the drugs were ready for delivery. The 10 pounds was ready
19 for delivery. He just needed to contact his man.

10:21:11 20 THE COURT: And that was Mr. Muniz?

21 MS. VAN MARTER: That was the defendant.

22 THE COURT: Defendant. Sorry.

23 MS. VAN MARTER: That was the defendant. I know there's
24 a lot of moving parts, Your Honor.

10:21:16 25 THE COURT: Yeah. That's okay.

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Enhancement Using a Minor - Argument by Ms. Van Marter

8

1 MS. VAN MARTER: In fact, the communication between
2 Mr. Madrigal and the organization was predominantly through the
3 defendant, not Mr. Muniz. The communication, the phone
4 connectivity would go from Mr. Madrigal to the defendant, and
5 then the defendant to Mr. Muniz.

10:21:35

6 THE COURT: Okay.

7 MS. VAN MARTER: There was not communication between
8 Mr. Muniz and Mr. Madrigal, which is an important factor when we
9 talk about the 10-pound transaction.

10:21:44

10 THE COURT: I -- I meant to bring something up. You're
11 kind of doing a deep drive, which is fine, but I meant to bring
12 this up before you did that.

10:21:58

13 You initially said that you were going to have a case
14 agent here, and then yesterday you notified us that the case
15 agent wasn't available to be here. Thank you for keeping us
16 informed.

10:22:15

17 I don't know that I need the case agent for decisions. I
18 have a decision to make about use of the minor, which you're
19 addressing; [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED] [REDACTED] [REDACTED]. I don't necessarily need him, but
21 if you do, that's what I wanted to ask.

10:22:29

22 MS. VAN MARTER: Well, I certainly have him available in
23 case there's a factual dispute that needs to be fettered out
24 through testimony. I think there's sufficient information
25 before the court for the court to make that determination.

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Enhancement Using a Minor - Argument by Ms. Van Marter

9

1 THE COURT: Okay.

2 MS. VAN MARTER: But as we get through this, if there's --
3 if there's that type of factual dispute, we may need to revisit
4 that.

10:22:39

5 THE COURT: Okay.

6 MS. VAN MARTER: But I think the court has sufficient
7 information. And there's sufficient information even in the
8 stipulated facts by the defendant, I think, for the court to
9 make certain determinations.

10:22:45

10 THE COURT: Okay.

11 MS. VAN MARTER: So that communication trail is very
12 important. So, again, Madrigal would contact the defendant.
13 Defendant would contact Mr. Muniz. Mr. Muniz was not making
14 contact with the confidential source or Mr. Madrigal.

10:22:57

15 So the only way the evidence shows that Muniz knew about
16 the 10-pound transaction and order was the defendant. The
17 defendant was followed to that car wash where he met with
18 Mr. Muniz. And what is significant at this point is law
19 enforcement had not identified who the old man was until that
20 moment in time.

10:23:16

21 There was communication between the confidential source
22 and Madrigal as to a timeline, and that timeline is referenced
23 in the plea agreement. It's referenced in the affidavits. That
24 timeline is also important, because this was not a substantial
25 amount of time. The confidential source was advised the 10

10:23:31

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10

1 pounds was ready. They observed Mr. Madrigal meet with the
2 defendant. Directly thereafter, they observed the defendant
3 travel to the car wash. They observed the defendant meet up
4 with Mr. Muniz.

10:23:46

5 Mr. Muniz took the child out of the car with the
6 backpack, as evidenced in the photographs. They then met with
7 the child together, and at this point in time the defendant and
8 Mr. Muniz know that there's a 10-pound transaction and that they
9 are providing 10 pounds of methamphetamine.

10:24:02

10 There was no other bag removed from Mr. Muniz's car.
11 There was no box. There was no backpack. It was only the child
12 wearing the Spider-Man backpack. At that point in time this
13 defendant was abundantly on notice, whether he brought the child
14 or not, that that was where the drugs were.

10:24:21

15 That backpack was placed in the back of the defendant's
16 car as well as the child. They moved Mr. Muniz's Mercedes, and
17 then the three of them got into the defendant's car. At that
18 time the confidential source advised that they were on their
19 way. They would travel in the direction of the meet with the
20 confidential source, and then the traffic stop occurred. The
21 only location the drugs were found were inside the Spider-Man
22 backpack.

10:24:41

23 THE COURT: Do we know -- do you know if the drugs were
24 in the backpack when the child first got out of the car that
25 Mr. Muniz drove?

10:24:58

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Enhancement Using a Minor - Argument by Ms. Van Marter

11

1 MS. VAN MARTER: Based upon all of the surveillance who
2 were recording the event, that was the only bag that was removed
3 from the Mercedes. And upon a search of the Mercedes, there was
4 no other contents; no other bags; nothing else located.

10:25:12

5 THE COURT: And there was no other -- I think they got
6 stopped in either the Ford or the Chevy. I can't remember which.

7 MS. VAN MARTER: In the defendant's vehicle, which was
8 the Chevy Cruze.

10:25:23

9 THE COURT: The Chevy Cruze. And there was no other bags
10 in the Chevy when they got stopped?

11 MS. VAN MARTER: There was no other bags in the Chevy
12 Cruze.

13 THE COURT: Okay.

10:25:29

14 MS. VAN MARTER: Well, I take that back. As we did in
15 our argument, there was a bag in the front seat, like a kind of
16 cooler type of bag, and our -- and there was -- that bag was
17 never removed from the Cruze. There was never a transfer of the
18 methamphetamine. So from the government's perspective, they had
19 the capacity to take the drugs away from the child, and they
20 chose not to.

10:25:41

21 THE COURT: Okay.

22 MS. VAN MARTER: And the timeline, they never stopped.
23 There was never a movement of bags. They were surveilled
24 directly from the car wash location on their way to the meet
25 when they were pulled over.

10:25:52

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Enhancement Using a Minor - Argument by Ms. Van Marter

12

1 So there's two sets of cases I think that are important
2 to highlight. Mr. Wagley highlighted another set of cases when
3 it comes to this enhancement. There's a line of cases when you
4 willfully use a child, and most of those are you have a minor
10:26:07 5 present during a bank robbery; you have a minor present to aid --
6 an older child, 15, 16, 17, to aid in the delivery of drugs.

7 And those line of cases seem to kind of further affirm --
8 which the United States included in its memorandum -- that you
9 have to affirmatively use them somehow. They can't just be
10:26:24 10 present. And we agree with that. That is somewhat different
11 when you are using a minor child the age of four to mask or
12 attempt to mask your criminal activities.

13 THE COURT: This child was four?

14 MS. VAN MARTER: This child was four years old.

10:26:38 15 THE COURT: For some reason I had 14 in my mind, but that
16 doesn't necessarily mean I'm right.

17 MS. VAN MARTER: And I think you can tell from the
18 photographs --

19 THE COURT: Okay.

10:26:46 20 MS. VAN MARTER: -- that it is a small child,
21 four-year-old child. That line of cases and the cases that the
22 United States included in its memorandum, specifically the
23 *Castro-Hernandez* and those series of cases, *Preciado*, *Jimenez*,
24 Ninth Circuit has found where Defendant is smuggling drugs and
10:27:02 25 has a minor with him, the court must look to the circumstantial

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Enhancement Using a Minor - Argument by Ms. Van Marter

13

1 evidence in determining whether the defendant used the minor to
2 avoid detection.

3 THE COURT: I see the photograph.

4 MS. VAN MARTER: So this is not the circumstance where
10:27:13 5 there's a 16-year-old lookout; there's a 17-year-old merely
6 present. This was a minor child used to avoid and mask their
7 involvement. And just the fact of the age of the child, the
8 manner in which the drugs were packaged and stored into that
9 backpack, from the government's perspective if it applied to
10:27:34 10 Mr. Muniz -- I understand he brought the child.

11 That is not a dispositive factor as to whether it applies
12 to this defendant, because once this defendant, who negotiated
13 the 10-pound transaction from Madrigal to Mr. Muniz -- once the
14 defendant saw the child removed, once the defendant stood in the
10:27:54 15 child's presence with the backpack on his back, once that
16 backpack was placed into his vehicle along with the child, he's
17 using that child, and he's using that child knowingly. He was
18 on his way and affirmed to Madrigal that they were on their way
19 to meet the source, meaning they had the drugs, as it had been
10:28:14 20 affirmed. So in those circumstances, I don't see a difference
21 in how it can be applied to Mr. Muniz and not this particular
22 defendant.

23 THE COURT: Okay. Let me hear from Mr. Wagley on this
24 issue. While he gets his materials and his thoughts together,
10:28:31 25 Ms. Van Marter, so the two-point increase is not currently in

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Enhancement Using a Minor - Argument by Mr. Wagley

14

1 the calculation; is that right?

2 MS. VAN MARTER: That is correct.

3 THE COURT: Yeah. Okay.

4 MR. WAGLEY: Good morning, Your Honor.

10:28:40 5 THE COURT: Good morning.

6 MR. WAGLEY: We extensively briefed this issue. I
7 apologize for the amount of briefing in this matter, but there
8 are a lot of issues --

9 THE COURT: You never have to apologize for being
10:28:52 10 prepared and trying to get me prepared.

11 MR. WAGLEY: Thank you.

12 The Ninth Circuit cases, in particular it's *United States*
13 *v. Jimenez*, indicate that there has to be an affirmative act
14 that involves a minor. And there's also a Ninth Circuit case
10:29:08 15 called *Parker* which stands for the proposition that it should be
16 individualized to the defendant. I believe in *Parker* it was a
17 coconspirator who was a minor.

18 So based upon the government seeking to enhance the
19 offense level, they bear the burden of proof. They have to
10:29:25 20 prove the involvement of the minor by a preponderance of the
21 evidence, but then they also have to prove that Mr. De La Mora
22 acted affirmatively to involve the minor and that it wasn't
23 passive activity or out-of-the-ordinary acts which resulted in
24 the minor's presence. And for that proposition we rely on
10:29:48 25 *Jimenez*, which I believe was a smuggling case and involved

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Enhancement Using a Minor - Argument by Mr. Wagley

15

1 marijuana and a truck. And the Ninth Circuit said that the
2 application -- the increase didn't apply because the son was not
3 normally elsewhere, and it was routine for the son to accompany
4 the defendant.

10:30:01 5 So looking at the situation at hand and the fact that it
6 has to be individualized based upon Chapter 3B and the Seventh
7 Circuit case I believe we cite, the evidence is clear that it
8 was Muniz who brought the child to the car wash and who also,
9 after Mr. De La Mora Cardenas and Mr. Muniz were arrested,
10:30:25 10 arranged to have the child picked up.

11 The evidence also shows that it was Muniz who put the
12 backpack in Mr. De La Mora Cardenas's vehicle and accompanied
13 the whole time. In fact, Mr. De La Mora Cardenas didn't know
14 that the child was gonna be there during that time.

10:30:40 15 And we believe that the child is Mr. Muniz's son, and I
16 would point towards -- we didn't see this in our briefing at the
17 time, but it's Exhibit D attached to the government's brief
18 where Muniz indicates that the reason he had a different ID on
19 him was -- is because he believed his son had brought the wrong
10:31:00 20 identification, and Mr. Muniz was the one who arranged for the
21 child to be picked up after him and Mr. De La Mora Cardenas were
22 arrested.

23 And also Mr. Muniz indicates during his discussions that
24 it wasn't weird to have the child there because they're all
10:31:15 25 family, and it sounds like the child would accompany Mr. Muniz

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Enhancement Using a Minor - Court's Oral Decision

16

1 various times.

2 So the fact that the government highlights -- or tries to
3 highlight that Mr. De La Mora Cardenas is the middleman doesn't
4 establish that he affirmatively used the child when Mr. Muniz,
10:31:30 5 the codefendant, is the one who brought the child, arranged for
6 the child's transport afterwards, and has indicated that it
7 wasn't weird to have the child there. And we don't think the
8 government's met their burden to have this specific offense
9 characteristic apply, Your Honor.

10:31:46 10 THE COURT: Okay. Thank you.

11 MR. WAGLEY: Thank you.

12 THE COURT: [REDACTED]

13 [REDACTED] I'm going to rule in favor of the government on the
14 application, and here's why.

10:31:57 15 I was kind of back and forth on this until I heard the
16 arguments, but this isn't just that the child was there. I
17 don't know that had the child shown up with Mr. Muniz
18 unexpectedly to the defendant -- although I'd like to say, as a
19 matter of moral and ethics, that he should object and say: No.
10:32:18 20 Let's start over. Let's send the child home.

21 Legally and under the guidelines, that's not what's --
22 what's at issue. At issue is whether he encouraged it and he
23 acted affirmatively. And he did because he allowed the child to
24 be put into his car. He knew they were delivering 10 pounds of
10:32:41 25 methamphetamine -- when I say "he," I mean the defendant. He

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17

1 knew he didn't have it in his car, that it was being delivered
2 by Mr. Muniz. That's why he needed Mr. Muniz there. And
3 Mr. Muniz showed up with nothing in hand other than a child with
4 a backpack which, minutes later on the traffic stop, the only
10:33:08 5 bag in the car -- other than this empty freezer bag, the only
6 bag in the car was the child's bag which had the drugs in it.

7 And so I think the defendant did affirmatively take
8 action to use the minor in the commission of this crime. And
9 it's not only dangerous to the minor, it's -- anyway, I'll stop
10:33:30 10 there. I'll apply the two-point increase.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
10:33:47 15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]
19 [REDACTED]
10:34:03 20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

10:34:24 25 [REDACTED]

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10:36:03

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19

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
10:36:18 5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10:36:26 10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
10:36:41 15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
10:36:56 20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
10:37:15 25 [REDACTED]

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20

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
10:37:31 5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10:37:52 10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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14 [REDACTED]
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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

24

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MARILYNN S. McMARTIN, RDR, CRR, CCR #2515
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APP-37

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Sentencing Hearing - August 23, 2023

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MARILYNN S. McMARTIN, RDR, CRR, CCR #2515
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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
Sentencing Hearing - August 23, 2023

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USA v. De La Mora Cardenas/4:20-CR-06028-SAB-1
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Mitigating Role Adjustment

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24 There's one other issue. That's the minor participant
10:52:29 25 role. I don't know that it's gonna play a factor in the judge's

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Mitigating Role Adjustment - Argument by Ms. Van Marter

31

1 decision, but did you want to be heard on that? I think you
2 object to it, but I don't know that it really matters.

3 MS. VAN MARTER: Your Honor, and we objected, and again
4 this is the fault of the United States for -- I think it's that
10:52:43 5 transition between another author to new and not being present
6 to highlight certain information.

7 As we indicated, the defendant had been present during
8 one of the initial meets with Mr. Madrigal where they were
9 discussing the scope of the drugs that could be provided by this
10:52:58 10 organization. That was the first time that the defendant was
11 identified. He did not actively participate in that
12 conversation. He was present and from there understood him to
13 be just that, the middleman for the organization. And he was
14 the only one who had the direct association to Mr. Muniz. As I
10:53:18 15 indicated earlier, there was no contact or communication between
16 Mr. Muniz and Madrigal and the source, so it only came through
17 the defendant.

18 And even accepting what was on recorded communications
19 and the representations as to the scope of the organization and
10:53:35 20 how much drugs were coming into this area, an individual who's
21 acting as that middleman to help distribute that quantity is in
22 no way a minor or minimal participant.

23 The court can certainly consider any other mitigating
24 factors under 3553(a), but under these facts, with what the
10:53:55 25 defendant's role was and his direct participation in the

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Mitigating Role Adjustment - Court's Oral Decision

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1 10-pound transaction, it would not be an appropriate adjustment
2 to apply.

3 THE COURT: I was just looking for it and -- struggling
4 for that.

10:54:18 5 Ms. Valencia, did you apply it? I'm looking at the
6 presentence. Maybe I -- yes, you did, paragraph 58. Okay.
7 That's what I was looking for, and I was struggling. So it was
8 applied in the presentence at paragraph 58, "It appears the
9 defendant was a minor participant." All right.

10:54:35 10 MS. VAN MARTER: Thank you, Your Honor.

11 THE COURT: I have found my bearings.

12 Mr. Wagley, did you want to address that issue?

13 MR. WAGLEY: Your Honor, our position on it is I don't
14 think we can argue for it based on the plea agreement. We would
10:54:46 15 defer to probation.

16 THE COURT: All right. I'm -- I'm gonna disagree with
17 Ms. Valencia. I'm not going to apply it and ask that the
18 presentence be adjusted not only to apply a two-point increase
19 for the minor -- use of the minor but also to take away the
10:54:59 20 minor role participant.

21 So are there any other issues on the presentence or are
22 we ready to come up with a final calculation?

23 MS. VAN MARTER: Those were the issues from the United
24 States, Your Honor. Thank you.

10:55:13 25 THE COURT: All right. Mr. Wagley.

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Argument/Recommendations by Ms. Van Marter

33

1 MR. WAGLEY: Your Honor, we had another sentencing
2 argument regarding the purity of methamphetamine, but we would
3 rest on our briefing on that unless the court has any specific
4 questions.

10:55:22 5 THE COURT: Okay. Is there a doubt as to the purity or
6 is your argument that it's not fair to -- since it's all pure
7 these days --

8 MR. WAGLEY: Yes, Your Honor.

9 THE COURT: -- it's not fair to have an increase?

10:55:33 10 Okay. I think the calculation is done correctly. I
11 understand the argument you made. To me that's not
12 a calculation -- I'm not saying this to be critical. It's not
13 necessarily a calculation issue. It's a fairness issue, but
14 that's a -- that's a different issue.

10:55:45 15 So we start with a base offense level of 38. We take
16 away the minor role adjustment, so it remains at 38. And then
17 we add the use of the minor, so we come up with an -- a 40.
18 There's still acceptance of responsibility minus 2, minus 1, so
19 that would be a total offense level of 37, the number I come up
10:56:17 20 with?

21 MS. VAN MARTER: That is correct.

22 THE COURT: All right. So I have a total offense level
23 of 37, the same criminal history of I. I'll look up the range.
24 Let's take the recommendations and . . .

10:56:31 25 MS. VAN MARTER: After all of that argument, then, the

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Argument/Recommendations by Ms. Van Marter

34

1 government will stand before the court and ask the court to
2 impose 137 months, which is below that applicable guideline
3 range. And that is predominantly done in consideration of the
4 3553(a) factors as well as the sentences that have been imposed
5 for the codefendants in this matter.

10:56:52

6 And the United States, as this court, takes very
7 seriously this issue and application of disparity, so I don't
8 think that there's any scenario where this particular defendant
9 should receive a sentence higher than Mr. Muniz. The United
10 States had requested a sentence of 168 months for Mr. Muniz, and
11 the court imposed a sentence of 144 months after that particular
12 hearing.

10:57:12

13 And so I think in this particular case, the recommendation
14 of 136 months takes into account the defendant's role as
15 compared to Mr. Muniz, which the United States fully acknowledges,
16 and this court has found here today, that Mr. Muniz was acting
17 as the source of supply for this particular organization in this
18 area, where the defendant had acted as a middleman individual
19 who was helping him to distribute those supply of methamphetamine
20 involving Mr. Madrigal.

10:57:30

10:57:51

21 And I think in this particular case the United States is
22 trying to be forward thinking in that the defendant and Mr. Muniz,
23 they don't have any criminal history. This is their first time
24 before a United States District Court judge. It is incredibly
25 serious conduct. They were involved importing large, large

10:58:07

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Argument/Recommendations by Ms. Van Marter

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1 quantities of methamphetamine.

2 And to that point I would just for the record note that
3 this guideline calculation is not based on purity. This
4 guideline calculation is based on the totality of narcotics,
10:58:23 5 specifically methamphetamine imported by this organization.

6 So the base offense level 38, whether we seized the 10
7 pounds or not, would have appropriately applied as they each
8 admitted that the scope and relevant conduct was 100 to 200
9 pounds of methamphetamine every other month. So it's not based
10:58:42 10 on purity.

11 THE COURT: So I'm -- and I'm at a disadvantage, which
12 you know, because I wasn't the sentencing judge on these other
13 cases, so I come to this case kind of new. You say Mr. Muniz
14 got 144 months by Judge Shea. You asked for 168 months. Did
10:58:58 15 Mr. Muniz have a criminal history?

16 MS. VAN MARTER: He did not have a criminal history. I
17 don't have his presentence investigation report.

18 THE COURT: That's fine.

19 MS. VAN MARTER: I do not recall that he had a criminal
10:59:06 20 history, because he did qualify for reductions that this
21 defendant did not.

22 THE COURT: And Mr. Madrigal also got 144 months.

23 MS. VAN MARTER: Correct.

24 THE COURT: What did you ask for for Mr. Madrigal, if you
10:59:19 25 remember? If you don't, that's all right. I'm just trying to

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Argument/Recommendations by Ms. Van Marter

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1 kind of fit things into a comparison graph.

2 MS. VAN MARTER: We also requested --

3 THE COURT: Yeah.

4 MS. VAN MARTER: So we also requested 168 months.

10:59:27 5 THE COURT: Okay.

6 MS. VAN MARTER: It was because Mr. Madrigal was
7 sentenced, I believe, first, and so that somewhat dictated --

8 THE COURT: Yeah.

9 MS. VAN MARTER: -- where everything went. I think that
10 when we come to the last defendant sentenced, we have to --

11 THE COURT: Yeah. I know, I know.

12 MS. VAN MARTER: -- fit it in with where everyone else
13 got.

14 I think -- so he was also the same recommendation. He
10:59:48 15 did not receive the same -- any reductions that Mr. Muniz did
16 receive. So they each, they each received sentences of 144
17 months.

18 THE COURT: So how does Mr. De La Mora Cardenas compare
19 to Mr. Salinas, who got 60 months?

11:00:08 20 MS. VAN MARTER: So Mr. Salinas -- if the court recalls
21 from the materials, Mr. Salinas lived in a trailer in Connell
22 and was associated with Mr. Madrigal as a deliveryman.

23 THE COURT: To Mr. Madrigal?

24 MS. VAN MARTER: To Mr. Madrigal. He was not connected
11:00:24 25 or associated to Mr. Muniz and/or this defendant. And, in fact,

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Argument/Recommendations by Ms. Van Marter

37

1 it was that -- Mr. Madrigal, Mr. Pascual's [sic] association
2 somewhat threw law enforcement off, because he didn't have any
3 association with Mr. Muniz or, more importantly, the defendant.

4 THE COURT: Okay.

11:00:40

5 MS. VAN MARTER: So when we started looking into the
6 defendant and the phone connectivity and finding out, he seemed
7 to be separate and apart. And so I think that Mr. -- our
8 understanding from the evidence, Mr. Madrigal was trying to
9 allow Mr. Pascual [sic] to make some money on the side by
10 helping him to make a delivery.

11:00:56

11 THE COURT: Okay.

12 MS. VAN MARTER: His scope of knowledge is nowhere
13 compared to what this defendant and/or Mr. Muniz's scope of
14 knowledge was. And certainly he was not a participant of in any
15 way the 10-pound transaction that involved the child or
16 identified Mr. Muniz. So that is why he's separate and apart.

11:01:08

17 THE COURT: That's fine.

18 And so you're asking for 137 months. Five years of
19 supervised release, is that what --

11:01:21

20 MS. VAN MARTER: Yes, Your Honor.

21 THE COURT: Okay.

22 [REDACTED] -- [REDACTED]

23 [REDACTED]

24 [REDACTED]

11:01:32

25 [REDACTED]

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Argument/Recommendations by Ms. Van Marter

38

1 That still would have been the appropriate sentence,
2 because he's still getting a variance from the guidelines
3 because of the sentences imposed for codefendants and in
4 consideration of his lack of criminal history and those other
11:01:46 5 mitigating factors that were presented in the United States'
6 memorandum and the defendant's memorandum.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
11:02:02 10 [REDACTED]

11 And I'm just gonna go back to it one more time, and then
12 I'll sit down, Your Honor. It is something unique for an
13 individual to knowingly choose to use a small child in the way
14 that this defendant and Mr. Muniz did.

11:02:20 15 And I raise that in support of our recommendation,
16 because to the United States it shows a level of disregard where
17 the business overcomes the recognition of the use of that child.
18 And an individual who recognizes that type of business over the
19 safety of the child, that means this is not the first time.
11:02:38 20 This is not the only time. It's their business. And that is
21 something that the United States considered in requesting this
22 recommendation.

23 Does the court have any questions?

24 THE COURT: I don't. Thank you.

11:02:48 25 MS. VAN MARTER: Thank you.

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Argument/Recommendations by Mr. Wagley

39

1 THE COURT: You've answered all my questions.

2 So, Mr. Wagley, while you gather your materials and your
3 thoughts, I will summarize with a total offense 37, criminal
4 history I, the range is 210 to 262. I just need to put that on
5 the record.

11:03:06

6 MR. WAGLEY: Yeah. Understood, Your Honor.

7 THE COURT: Yeah.

8 MR. WAGLEY: May I proceed?

9 THE COURT: You may.

11:03:10

10 MR. WAGLEY: Your Honor, we would request the court
11 sentence Mr. De La Mora Cardenas to the mandatory minimum of 120
12 months. This is based upon the individual characteristics of
13 Mr. De La Mora Cardenas, including his background.

14 As we indicated in our briefing, he was born in Colima,
15 Mexico, in 1988. He grew up in a turbulent family. His father
16 was an alcoholic and physically abusive. He forced his mother
17 to flee to the United States. He had a traumatic childhood
18 where after his mother fled, his grandmother would let drunks
19 and drug addicts stay at the house.

11:03:29

20 He moved to the Tri-Cities area in about 2013, and since
21 that time has had gainful employment until his arrest. He
22 worked at a dairy farm where he worked his way up from a general
23 laborer to a cattle doctor.

11:03:46

24 He has strong family support. His mother and sister and
25 other family members are present in the courtroom today. He has

11:04:02

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Argument/Recommendations by Mr. Wagley

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1 a long-time girlfriend, Catalina, who's also present in the
2 courtroom. And we've submitted various sentencing letters from
3 these individuals that talk about Mr. De La Mora Cardenas's
4 character.

11:04:16 5 And also in our response we've attached certificates that
6 he's received from the Gospel Echoes Team Bible Studies that he
7 takes great pride in, in trying to turn his life around since
8 he's been incarcerated. He has no criminal history besides
9 minor traffic infractions and deportation over 10 years ago.

11:04:38 10 And he also was in the thralls of addiction when this
11 crime occurred. He admitted that he was drinking a lot of beer
12 at the time and was an alcoholic. He's been using
13 methamphetamine since approximately 2015.

14 He would benefit from drug and alcohol substance abuse
11:04:52 15 treatment when incarcerated, and also he's shown an interest in
16 obtaining his GED and studying English while incarcerated and
17 also studying automotive mechanics. And he has a statement that
18 he's prepared to make to the court.

19 But, Your Honor, I would point the court towards page 15
11:05:08 20 of the PSR where it talks about while in custody, Mr. De La Mora
21 Cardenas indicated that he'd like to participate in training,
22 program, or educational opportunities. He commented that he
23 wants a different life for himself and wants to change. He
24 stated that he wants to stay away from bad people, avoid getting
11:05:27 25 into trouble, and is remorseful for his actions.

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Defendant's Right of Allocution

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1 In looking at the 3553 factors, particularly (a)(2)(D), a
2 sentence of 120 months would allow Mr. De La Mora Cardenas to
3 obtain substance abuse treatment and vocational training and
4 perhaps get out while he's still young enough to turn his life
5 around.

11:05:48

6 Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Wagley.

8 All right. Why don't you stay where you are, and, Mr.
9 De La Mora Cardenas, why don't you join him at the podium. And
10 while you walk up -- why don't you come up.

11:05:59

11 All right. Let's test the equipment. Are you still able
12 to hear the interpreter?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. You don't have to say anything if
15 you don't want to, but you do have the right to make some
16 comments right now, and so I'll listen to those comments if you
17 have some.

11:06:20

18 THE DEFENDANT: I wrote a letter to you.

19 Honorable Judge, I would like to thank you for being
20 here, but I would also like to apologize for the crime that I
21 committed. The reason and why we're here today, I would like to
22 apologize to the court, to my family, to the community, and
23 every single person that I offended with that crime. I apologize.

11:06:43

24 I promise never to do it again for my family since I hurt
25 them with my mistake, since I came to this country to make an

11:07:26

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Court's Oral Decision

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1 honest living by working, and things were going very well for me
2 working day by day so that I could help my family. And I also
3 have a son whom I do not want to see him suffer. I would like
4 for him to have a better future and give him advice and give him
5 education for when he is older so that he does not make the same
6 mistake I made, which has consequences.

7 Honorable Judge, I know that I committed a crime, and it
8 is very difficult for me. I ask that you have compassion for me
9 and that you give me the least amount of time possible so that I
10 can continue, so I can come out and I can be with my family and
11 be able to reunite with them since they need me.

12 I again ask everybody that I offended for their
13 forgiveness, and may God bless you all. And thank you very much
14 for hearing my words.

15 THE COURT: All right. Thank you for those comments,
16 Mr. De La Mora Cardenas.

17 My job is to come up with a sentence that is sufficient,
18 but not greater than necessary, and I have to consider all the
19 factors, and we've spent the last hour discussing many of them.

20 I have to consider your past history, I have to consider
21 the circumstances of the offense, and I have to consider the
22 issue of trying to be consistent with other people involved in
23 this particular crime and also in terms of people at large who
24 have been involved in crimes like this, if not necessarily this
25 one. I've considered all of those, and so let me tell you what

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Court's Oral Decision*

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1 I've considered specific to you.

2 I do give you credit for the fact that you've pled guilty
3 and accepted responsibility. I'm observant of the fact that you
4 don't have a criminal history of any concern.

11:10:09 5 Do you need a Kleenex, sir, or are you okay? A tissue?

6 THE DEFENDANT: Yes, please.

7 THE COURT: Okay.

8 All right. I'm aware of the fact that given your
9 immigration status that it's quite possible that when you get
10 out of prison after your sentence that you will be deported back
11 to the country of origin, which I believe is Mexico. And that's
12 something the court is always aware of, tries to be aware of,
13 because it does affect the penalty to some extent.

14 But I also take note of the fact that, you know, we
11:10:55 15 talked about use of the minor child to commit this crime, and
16 that is something that does offend the court and is something
17 that weighs in the court's ultimate decision regarding sentence.

18 Based on all of those things, I'm going to sentence you
19 as follows: 137 months with credit for time served; no monetary
11:11:13 20 fine but a special penalty assessment of \$100; I will impose
21 five years -- or require five years of supervised release when
22 you get out of prison; and I will recommend that you participate
23 in drug and/or substance abuse treatment while you're in prison.
24 Of course, that decision is ultimately made by the Bureau of
11:11:35 25 Prisons, not by the court, but I will make the recommendation.

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Court's Oral Decision

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1 Counsel, do you want me to recommend a placement?

2 MR. WAGLEY: Sheridan, Your Honor, if you could.

3 THE COURT: Okay. I will make the recommendation that
4 you be placed at the facility in Sheridan, Oregon. There's no
11:11:52 5 guarantee that BOP -- there's a guarantee that BOP will consider
6 that recommendation. There's no guarantee they can follow the
7 recommendation, but I think they typically do. But I just
8 wanted to warn you of that.

9 And I think I've gone through all the issues. I'll ask
11:12:05 10 the parties if I've missed anything.

11 I believe that based on the written plea agreement you
12 have waived your appellate rights to that sentence. Are there
13 any other issues that I've overlooked?

14 MS. VAN MARTER: Your Honor, I apologize. I'm probably
11:12:21 15 the one that misspoke. The plea agreement was 136 months and
16 the waiver is at 136 months, I believe, so I wanted to make
17 sure -- I think the court said 137 months.

18 THE COURT: I did. I thought that was your
19 recommendation. And so if you want to correct that, I will
11:12:37 20 follow your correction.

21 MS. VAN MARTER: Yes, I would. I apologize if I
22 misspoke. It's 136 months was our agreement, Your Honor, and I
23 apologize.

24 THE COURT: All right. All right. Then, then I will
11:12:49 25 change that to 136 months.

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1 But any other issues other than that? I do appreciate
2 the correction as, I'm sure, Mr. Cardenas does as well.

3 MS. VAN MARTER: And the United States would move to
4 dismiss Count 1 pursuant to the plea agreement.

11:13:01

5 THE COURT: And that motion is granted.

6 Mr. Wagley, any other issues?

7 MR. WAGLEY: Not from the defense, Your Honor.

11:13:12

8 THE COURT: All right. Mr. De La Mora Cardenas, I do
9 wish you well. Do you have any questions about the sentence
10 I've imposed?

11 THE DEFENDANT: No.

12 THE COURT: All right. Thank you.

13 Court's in recess.

14 THE COURTROOM DEPUTY: All rise.

11:13:35

15 Court is in recess.

16 (Hearing concluded at 11:13 am)

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Reporter's Certificate

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C E R T I F I C A T E

I, MARILYNN S. McMARTIN, Registered Diplomate Reporter and
Certified Realtime Reporter, do hereby certify:

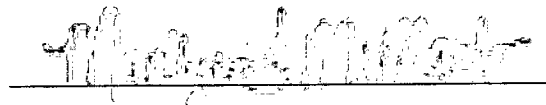
That I am an Official Court Reporter for the United States
District Court for the Eastern District of Washington in Yakima,
Washington;

That the foregoing proceedings were taken on the date and
at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and
accurate transcription of the requested proceedings, duly
transcribed by me or under my direction, to the best of my
ability.

I do further certify that I am not a relative of, employee
of, or counsel for any of said parties, or otherwise interested
in the event of said proceedings.

DATED this 30th day of October, 2023.



Marilynn S. McMartin, RDR, CRR

Washington CCR #2515

Official Court Reporter

Yakima, Washington

MARILYNN S. McMARTIN, RDR, CRR, CCR #2515
OFFICIAL COURT REPORTER

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

18 U.S.C.A. § 3553

§ 3553. Imposition of a sentence

Effective: December 21, 2018

Currentness

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

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

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

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

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

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

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

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

(5) any pertinent policy statement--

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

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

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

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

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

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

(2) Child crimes and sexual offenses.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

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

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

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

(1) the defendant does not have--

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

(B) a prior 3-point offense, as determined under the sentencing guidelines; and

(C) a prior 2-point violent offense, as determined under the sentencing guidelines;

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

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

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

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

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

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

CREDIT(S)

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

VALIDITY

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

Notes of Decisions (3272)

Footnotes

1 So in original. The period probably should be a semicolon.

2 So in original. No subpar. (B) has been enacted.

3 So in original. The second comma probably should not appear.

18 U.S.C.A. § 3553, 18 USCA § 3553

Current through P.L. 118-66. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Federal Sentencing Guidelines (Refs & Annos)
Chapter Three. Adjustments (Refs & Annos)
Part B. Role in the Offense (Refs & Annos)

USSG, § 3B1.4, 18 U.S.C.A.

§ 3B1.4. Using a Minor to Commit a Crime

Currentness

If the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by 2 levels.

CREDIT(S)

(Effective November 1, 1987; amended effective November 1, 1989; November 1, 1995; November 1, 1996; November 1, 2010; November 1, 2011; November 1, 2014; November 1, 2018.)

COMMENTARY

<Application Notes:>

<1. "Used or attempted to use" includes directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting.>

<2. Do not apply this adjustment if the Chapter Two offense guideline incorporates this factor. For example, if the defendant receives an enhancement under § 2D1.1(b)(16)(B) for involving an individual less than 18 years of age in the offense, do not apply this adjustment.>

<3. If the defendant used or attempted to use more than one person less than eighteen years of age, an upward departure may be warranted.>

Notes of Decisions (47)

Federal Sentencing Guidelines, § 3B1.4, 18 U.S.C.A., FSG § 3B1.4
As amended to 3-15-22.

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