Petitioner's Appendix

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of September, two thousand twenty-six.

Before: William J. Nardini,
Beth Robinson,
Myrna Pérez,
Circuit Judges.

United States of America,

Appellee,

v.

Anderson Garcia, AKA Sealed Defendant 1,

Defendant - Appellant.

ORDER

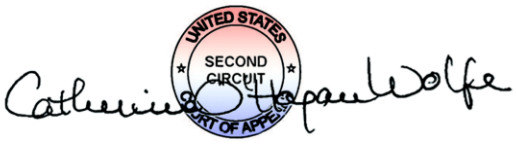
Docket No. 22-2561

Appellant moves to recall the mandate.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 21 CR 402 (RMB)

ANDERSON GARCIA,

Defendant. Sentence
(via Microsoft Teams)
----------x

New York, N.Y.
September 21, 2022
9:00 a.m.

Before:

HON. RICHARD M. BERMAN,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: JUN XIANG
REBECCA DELL
Assistant United States Attorneys

FEDERAL DEFENDERS OF NEW YORK, INC.
Attorneys for Defendant
BY: ZAWADI S. BAHARANYI

(Case called)

THE COURT: Good morning, everybody. This is Judge Berman. We are on today, as you all know, for sentencing in this matter.

I have two preliminary concerns or issues, rather. One has to do with the CARES Act. By that I mean, we are obviously not proceeding in a courthouse, in an SDNY courthouse today, but rather we are proceeding by video and that has to do in part, in substantial part with the fact of the pandemic, the COVID pandemic, which has placed certain -- not restrictions, but limitations on the ability to utilize the entire courthouse.

Parenthetically, also today, there are technical problems in the Moynihan courthouse unrelated I think -- I am not sure -- to the CARES Act or COVID, which has limited access to the building today in terms of elevators and producing parties for appearances.

In any event, I do find that it's necessary for us to go forward with this sentencing unless there is an objection, which I would be happy to hear out.

I would ask defense counsel if they are, first of all, comfortable and Mr. Garcia also in proceeding in this fashion today; that is to say, by video.

MS. BAHARANYI: Yes, your Honor, we are comfortable proceeding today by video.

THE COURT: Is Mr. Garcia waiving any right that he may have to proceed in person?

MS. BAHARANYI: Your Honor, we have discussed his rights to proceed in person. He does voluntarily waive those, and he is prepared to proceed today by video.

THE COURT: Mr. Garcia, is that OK with you as well, just for the record.

I think you have to come a little closer to the microphone.

THE DEFENDANT: I said, yes, that's OK, your Honor.

THE COURT: That's great. Thank you.

The second is, the issue of any sentencing proceeding, but this one in particular, I suppose, is the issue of restitution. I did not see any proposed order or proposed restitution claim or amount. There is a victim, certainly, in connection with this proceeding, but no one has brought to my attention whether or not restitution is required or sought or what.

I turn to the government, first, for that issue.

MR. XIANG: Thank you, your Honor. I'm happy to speak to that. The government has spoken with victim's counsel in this case -- as the Court knows, the victim is also represented -- about specifically the issue of restitution. The most recent conversation on that topic was last week in advance of the government's sentencing submission.

At that time victim's counsel advised that the victim, with the assistance of counsel, was still considering the issue.

Obviously, as the Court is aware, the victim is laboring under substantial impairments. Based on counsel's representation, that has limited counsel's ability to have full conversations about the topic of restitution.

THE COURT: You are referring to physical limitations.

MR. XIANG: I'm referring to the fact that the victim has been deemed to be mentally incompetent. That's obviously impaired his ability to speak with counsel about the topic and also counsel's ability to obtain, for example, medical bills, things of that nature that would document the amount of restitutable loss.

I think another issue that victim counsel raised was I don't think he was -- he knew at that point what part of the losses were borne out of pocket by the victim versus by insurance and how that would affect the restitution analysis. So the bottom line was that victim counsel wanted more time to think through the issue.

The government understands that under the statute there is a 90-day period after sentencing in which the Court could order restitution. So the government would ask the Court's leave to permit victim's counsel and the victim more time to think through the issue, to provide appropriate

documentation and so forth.

THE COURT: Defense counsel, is that agreeable? Before you answer, what would happen? Would you and defense counsel get together first, if there is a restitution claim, and discuss it and then present it to the Court, either jointly or independently, however your discussion works out?

MR. XIANG: Your Honor, it would certainly be the government's intent and hope that we would have a joint consent proposal to provide to the Court. In the plea agreement the defendant does agree to restitution, although not as to a specific amount. Obviously, if the parties had some disagreement as to the appropriate amount or the manner of payment, we would need to tee that up for the Court.

Again, at this time the government doesn't have a position as to a particular amount or category of payment, because we are waiting on that information from victim's counsel.

THE COURT: Defense counsel, do you want to add anything?

MS. BAHARANYI: I think the only thing I'd add, your Honor, is that one of the conditions recommended by probation does seem to be relying or depending on there being some restitution obligation on behalf of Mr. Garcia. So I do think if ultimately 90 days out we get to a position where there is no restitution that he is owed, we would seek the modification

of one of the conditions of supervised release. I'm not quite sure how to do that. Or perhaps we could build it into the Court's order of today for supervised release that the condition that he can't open new lines of credit is dependent upon whether there is any sort of financial obligation owed by Mr. Garcia. Because absent a financial obligation, that condition doesn't seem appropriate in this case.

THE COURT: I see.

When we get there, if I overlook it somehow, please interrupt and flag that we should have that discussion at that point.

MS. BAHARANYI: Absolutely.

THE COURT: Thank you.

There is a very extensive record here, sentencing record, and I've been through it all, so this may take some time. But here is where I come out.

First, I'll start by saying that, as you all know, that in sentencing, following now ten-year-old or so Supreme Court cases and other cases, the *Gall* case is one of them, the *Kimbrough* case is another, and the *Booker* case is yet another. There are other cases too, but those are some. One other case I should mention is *Regalado*. That actually is the Second Circuit decision from 2008.

The upshot of that jurisprudence is that the United States Sentencing Guidelines are no longer mandatory. And what

we do in sentencing and what I have done, I think, in some depth before we started today's proceeding is to consider and review the sentencing guidelines, but, in particular, under 18, United States Code, Section 3553(a), we are concerned with the nature and the circumstances of the crime or offense, as well as the history and characteristics of Mr. Garcia, and we seek -- as sentencing courts, we seek to come up with a sentence that reflects the seriousness of the crime, promotes respect for the law, provides a just punishment, affords adequate deterrence to criminal conduct, protects the public from further crimes of the defendant, provides the defendant, Mr. Garcia, with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

And here, and I will go into it in more detail, but I am going to recommend absolutely that in connection with any incarceration and/or supervised release, if it were to come into play in this case, I'm certainly going to recommend that Mr. Garcia receive or have the opportunity to receive drug counseling, number 1, and mental health counseling and treatment, number 2. I will speak more about that as I go along.

But also in sentencing we review the kinds of sentences that are available, the kinds of sentence and the sentencing range established under the sentencing guidelines,

even though, as I say at the outset, they are no longer mandatory. We look at any policy statements that may have been issued by the United States Sentencing Commission. We seek to avoid unwarranted sentence disparities among similarly situated defendants and, we touched on this briefly already, the need to provide restitution.

We always start with the guidelines framework or analysis, which, again, is not mandatory, but it is as follows. Here what we call the offense level is 28. The criminal history category is VI. The guideline range is 140 to 175 months of incarceration. I have considered the guidelines and all the other factors at 18, United States Code, Section 3553(a), and in doing so these are just some of the highlights. I promise you that I've been through everything you have submitted and I probably won't, in the same detail, go through every issue, but I'll try and touch on all of the important ones.

The analysis suggests or comes up with the following: On January 27, 2022, Mr. Garcia, who is a citizen of the Dominican Republic, and parenthetically, as I understand it, is under deportation or involved in deportation proceedings simultaneous with today's proceeding, or at least running at the same time, that is to say, the deportation proceedings.

Mr. Garcia on that date pled guilty before me to a conspiracy to commit Hobbs Act robbery of an individual who is

said to be a drug trafficker. Mr. Garcia, at the time of the crime, was 22 years old, a young adult at the time of the crime that the crime took place.

Mr. Garcia pled guilty pursuant to a written plea agreement, which was dated November 17, 2021, and in which, among other provisions, was what is called a stipulated guideline range of 140 to 175 months that coincides with my analysis and the range that I mentioned a few minutes ago.

This was a particularly violent crime in that the victim was pistol whipped and that he suffered some severe injuries resulting; in fact, it appears from traumatic brain injury that required hospitalization and surgery. The details of the injury are set forth in the submissions and also in the presentence report. But it is clear that that was an act of violence and that the victim really did sustain serious and perhaps long-term injury.

The victim of the offense, Mr. [redacted], asked his attorney, Mr. Kluger, to provide a victim impact statement on his behalf. And Mr. Kluger, the attorney, stated the following, and this is a quote: "Quite simply, this event has ruined his life." That's the attorney speaking on behalf of his client, Mr. [redacted]. The attorney goes on to say: "Mr. [redacted] was robbed and then, for no reason, violently pistol whipped. While Mr. [redacted] may have been lucky to survive, the injury has left him in constant pain with

permanent brain damage. Before the incident, family and friends described Mr. [redacted] as cheerful, easy going, and fun to be around. Now, in addition to the pain, he is forgetful, irritable and in a state of constant confusion. Moreover, to add insult to injury, literally, in parens, once the police responded, they allegedly observed contraband in plain sight, which led to Mr. [redacted]'s arrest and federal prosecution. Now, on top of everything else, he faces a mandatory minimum prison sentence. Frankly, concludes, Mr. Kluger, in my opinion, given his fragile mental and physical condition, it is unlikely that he will last very long in prison."

Back to the 3553(a) analysis, Mr. Garcia is 24 years old. He is single and is the father of a relative newborn who was born, I believe, in July 2021, while Mr. Garcia was incarcerated. As I mentioned, Mr. Garcia is a citizen of the Dominican Republic. According to the presentence report, he has a pending immigration case and is currently under removal proceedings. The Department of Homeland Security has issued a warrant for Mr. Garcia which is currently lodged as an immigration detainer. In the defense submission counsel states that the next immigration hearing in immigration court is scheduled for December of this year.

Mr. Garcia has a spotty education background experience, meaning that he did not get very far in school,

certainly not in the United States. He had a very tumultuous, upbringing, I guess you would say, in life, and school was not something that he was consistently able to do.

His parents separated before he was born. Mr. Garcia's father is reportedly serving a life sentence for murder in the Dominican Republic. Mr. Garcia's mother came to the United States when Mr. Garcia was an infant, and she too has had considerable difficulties in her life. She apparently suffers, among other things, from serious mental issues. She reportedly left Mr. Garcia in the Dominican Republic under the care of a boyfriend or significant other. When Mr. Garcia was approximately six years old, his mother brought him to the United States. When Mr. Garcia was approximately nine years old, his mother sent him back to the Dominican Republic because, among other things, he was getting into trouble in school in the United States. In the Dominican Republic Mr. Garcia resided with, as I understand it, his mother's husband, who was physically abusive to Mr. Garcia. Mr. Garcia stayed with his stepfather for a short period of time before he returned to the United States to be with his mother, who was, fair to say, having a difficult time in the United States in terms of supporting herself and Mr. Garcia.

Mr. Garcia reported to probation that he frequently ran away from home and spent time in several group homes, until he aged out at the age of 18. Thereafter, he lived in various

shelters and for a time also with various relatives and also for some time, if I understand it correctly, with foster parents.

Mr. Garcia has a very serious criminal record, including multiple arrests and convictions starting from the age of 15 and giving rise, as I said at the outset, to a criminal history agree of VI, which is, I believe, the highest level.

Mr. Garcia was adjudicated, among other things, a juvenile delinquent for two separate offenses. He has also been adjudicated a youthful offender. He has convictions for the following: False report of a stolen vehicle, robbery in the third degree, criminal possession of stolen property in the fourth degree, assault in the third degree, possession of a controlled substance, false identification to law enforcement, among other things. The presentence investigation report appears to be thorough and definitive on the issue of the history of Mr. Garcia's arrests and convictions.

Some of his prior convictions also included violent behavior, including intentionally crashing his motor vehicle into police cars, also dragging a robbery victim around on the sidewalk, and also striking a corrections officer with closed fists to the officer's head.

Defendant, Mr. Garcia, has serious mental health issues and has quite a history in that regard. He has been

diagnosed with, among other things, bipolar disorder, anxiety disorder, and hyperactivity. He has been hospitalized several times in the past for manic and suicidal episodes. He is currently prescribed medication for various mental issues.

On top of that, Mr. Garcia has also serious cooccurring substance abuse history. That includes alcohol, marijuana, Xanax, and Ecstasy.

He has a limited employment history, consisting of work, spotty work in construction, and also as a lifeguard in the boroughs of New York City.

He received a $3,000 stimulus check from the government while incarcerated.

By submission, dated September 6, 2022, the defense requests a sentence of 48 months of incarceration. I didn't want to prejudge anything because I am going to hear from all of you, and I still have an open mind. But at least on the surface it seems pretty clear that a 48-month sentence is unrealistic in this case, given the extensive criminal history and background, including criminal history category VI. But we will see and hear from all the parties assembled today on this and other subjects.

Defense counsel states that defendant did not possess a firearm during the underlying offense here and that he did not hit or strike the victim at any point in the robbery, and the defense asks that the Court consider that if not for the

firearm enhancement in this case, Mr. Garcia's guideline range would drop to 84 to 105 months. I certainly am considering those factors in whatever sentence I come up with.

The crime in question, there is no doubt, was very serious and involved, as I've mentioned, a victim who received a life-threatening pistol whipping to his head. Defense counsel describes Mr. Garcia's home life when he was younger and how the defendant did not have any consistent adult positive role model. That's certainly all very true. And also defense counsel describes how Mr. Garcia self-medicated with drugs and alcohol.

Defense counsel asked the Court to take into consideration the fact that the defendant, Mr. Garcia, was a young adult, age 22, when he participated in the instant offense, and I have certainly acknowledged that in reviewing the 3553(a) factors.

He was only six years old when he began experiencing loss, trauma, neglect, and abuse, and the defense argues that, as a result of his early exposure to such loss and trauma, Mr. Garcia was particularly vulnerable to negative outside pressures. I don't think anybody is disputing the tumultuous nature of Mr. Garcia's upbringing, nor is anybody, I don't think, serious disputing his substance abuse history, cooccurring with mental health issues.

Defense counsel has submitted with her papers, her

sentencing papers, a psychological evaluation. I think it's dated December 14, 2020. It perhaps was not concluded until February of 2020. I am not sure of those dates. I am sure of the dates, but I am not sure what the date is from the psychological evaluation. In any event, it is very thorough. It was prepared by Dr. Joseph Giardino. And it appears, if I'm not mistaken, defense counsel will correct me if I'm wrong, that it has been or will be submitted to the U.S. immigration authorities, and it argues that Mr. Garcia not be deported to the Dominican Republic.

I won't go through -- it's a lengthy and comprehensive report by Dr. Giardino, but I will mention some of the highlights or the points made in that report. One is that Mr. Garcia's current symptoms, this is Dr. Giardino speaking, one of his symptoms and impairments include the fact that Mr. Garcia has suffered from manic episodes in which he feels a persistently elevated or irritable mood, requires limited sleep, is grandiose and has flights of ideas and experiences a surge in goal-directed activity. Dr. Giardino indicated that while in manic states, Mr. Garcia engage in highly risky behavior, such as auto theft, provocation of fights, and increased substance use. He has an extensive arrest record for criminal activities related to these particular behaviors.

Another point made by Dr. Giardino is that Mr. Garcia, at least at the time of that report, had been in a major

depressive episode in which his mood is down and depressed most days, more days than not.

He presented -- and here are some technical terms, psychological mental health terms -- he presented with marked anhedonia, which reflects a loss of pleasure, and also marked avolition, which substitutes for lack of motivation. Mr. Garcia indicated to Dr. Giardino that he attempts to remain largely to himself, feeling constantly irritable around other people.

Another point made by Dr. Giardino is that, this is, again, at the time of this evaluation made by Dr. Giardino, Mr. Garcia had marked changes in self concept.

Another point is that Mr. Garcia discussed feeling often empty and hopeless, and he would attempt to ward off these negative feelings by excessive substance use, including cannabis, Xanax, MDMA, and alcohol. Mr. Garcia indicated to Dr. Giardino that he utilized all of these substances on a daily basis, feeling often out of control and wanting to find a way to reduce his use.

Another point made by Dr. Giardino is the following. Again, one must consider at the time that the report was made and interviews conducted. Dr. Giardino said that since in jail Mr. Garcia has been less able to rely on substances and thus has increasingly felt more irritable and restless.

Dr. Giardino also points out that Mr. Garcia at the

time has frequent thoughts of death and disappearing. Mr. Garcia apparently discussed with Dr. Giardino how he has never completed a formal outpatient treatment program for his mental health or substance abuse issues. They are largely due to his instability in the foster care system and recurrent context in the criminal justice system.

In my own personal observation, this is a huge problem, that is to say, it seems very, very, very difficult, if not impossible, for Mr. Garcia to overcome those serious cooccurring disorders, namely, drug abuse and mental health issues, without ever completing a formal outpatient treatment program.

Dr. Giardino also points out that Mr. Garcia, at least was at that time, at risk for suicide. And this comes up several times throughout Dr. Giardino's report, which I incorporate the entire report here by reference.

Dr. Giardino also points out that Mr. Garcia at nighttime has difficulty falling asleep. He has poor sleep, contributing to chronic fatigue and low energy. He has tension headaches. And his global -- this is Dr. Giardino -- global cognitive functioning is troublesome -- is problematic.

It was clear to Dr. Giardino, in putting together this report, that Mr. Garcia was in a vulnerable state, suffering from numerous psychiatric impairments. He also describes that Mr. Garcia began to skip school and remained out late at night

with friends and hung out in the streets, as it were. He received multiple suspensions, was frequently in trouble for fighting, and struggled immensely in early adolescence. He was placed in the foster care system due to maternal abuse and neglect. I am going into this background in some detail. Bear with me.

Dr. Giardino says Mr. Garcia displays a concerning pattern of impulsivity and recurrent suicidality. He has been hospitalized on at least four occasions, typically due to suicidal intent. His pattern continues to be problematic, and he was at severe risk for suicide at the time of the meeting between Mr. Garcia and Dr. Giardino.

Mr. Garcia suffers from bipolar 1 disorder and major neurocognitive disorder in the opinion of Dr. Giardino. He also met criteria for polysubstance dependence, including addiction to hallucinogens, alcohol, cannabis, etc. And he says he, Dr. Giardino, says that Mr. Garcia is in need of intensive treatment for his dual diagnosis, likely through a residential treatment program, but that certainly stands out to me as well.

Interestingly, defense counsel also notes that Mr. Garcia has access to mental health treatment while incarcerated at the Essex facility, where he is today, and he has been taking prescribed medication to help treat depression and bipolar disorder. Defense counsel also asks that the Court

take into account difficult conditions of the defendant's incarceration, including particularly during the pandemic, and I certainly do take that into account. It's true of everybody in the criminal justice system who is incarcerated pretty much.

Also, as I mentioned before, notwithstanding these issues that we have been discussing, Mr. Garcia became a father -- and I mentioned this before too -- while he has been incarcerated. I don't think he has ever physically met with his child, but has had frequent telephone calls with him.

There is a letter here from Mr. Garcia which says: "This case has been a wake-up call to me. I realized that if I don't get my life together now, I could spend a lot of my life in prison. I don't want that. I had a son after I was locked up. I have never met him; only talked to him on the phone. But having a son changed my entire outlook on life. I know I messed up. I promise that I want to be better. I want to be better for myself and my son."

There are other submissions of interest submitted by the defense, including a letter from defendant's mother, who indicates that, to say the least, Mr. Garcia had a tough childhood, but she also pointed out that he would always try and help his mother out.

A former foster parent of Mr. Garcia, Ms. Edwards, also wrote the Court on behalf of him, and she states, among other things, that she believes Mr. Garcia can become a better

person.

Also, a friend of the former foster parent, Ms. Bell, also wrote a letter on behalf of Mr. Garcia, stating that he always returns to their houses for a good night sleep or hot meal. She wrote: "He hasn't been able to break out of the mold that was set for him at a very young age." Among other things. I'm not reading the entire letters of anyone. But they are incorporated here by reference.

And she says, by the way, that despite Anderson, meaning, Mr. Garcia's, despite his failures "I know that he is not beyond redemption." I must add my personal view is, I don't think he or hardly anyone else, if anyone at all, is beyond redemption.

A girlfriend of Mr. Garcia's also wrote a letter in support of him. She advised the Court that she plans to buy a house for her and Mr. Garcia and Mr. Garcia's son to live in upon his release from custody and that she will assist him in finding a job upon his release.

There is also a letter from someone described as a former brother-in-law who writes on his behalf. That individual states that Mr. Garcia is determined to right his wrongs. By letter, dated September 14, 20202, the government argues and requests a sentence of at least 168 months of imprisonment. That is within the advisory of sentencing guidelines range.

The government argues that the home invasion robbery that Mr. Garcia participated in was brutal and devastating. I'm quoting from the government's letter. The defendant and his cohorts robbed the victim of more than marijuana and money. They robbed the victim of his dignity, his health, and the soundness of his mind.

As a result of the defendant's, Mr. Garcia's conduct, the victim's life has been forever changed. The sentence imposed on the defendant should reflect that reality. And I have to agree that it needs very seriously to be taken into account. The government also notes that for each of the defendant's prior offenses, he received modest sentences. And the government notes that three of the defendant's prior offenses occurred while he was on some form of probation.

The government states that the defendant's criminal history makes clear that he has received many second chances and has chosen not to avail himself of those opportunities.

The government goes on to say that it appreciates that the defendant grew up under exceptionally difficult circumstances and that those circumstances deprived him of a healthy upbringing.

The government also understands that Mr. Garcia has some documented mental illness, and the government agrees that the Court can and should consider the possibility of rehabilitation in crafting an appropriate sentence.

And among other things, as I said before, I will recommend that wherever he is housed in the criminal justice system that he have access to drug treatment and mental health treatment.

The government goes on to say that while the defendant does not appear to have taken advantage of the many opportunities for rehabilitation previously presented to him, the sentence imposed should leave open the possibility that he will make a better choice this time.

The government states that a 168-month sentence would permit Mr. Garcia to be released while he is still in his thirties, I am talking about his age, and fairly balances the serious nature of the offense and the need to protect the public from violent behavior by the defendant against the mitigating factors set forth in the defense submission.

The government has provided two copies of reports of psychological evaluations that were prepared on behalf of the victim in this case in conjunction with the victim's own pending criminal case. I will incorporate those by reference as well.

I also, of course, received and reviewed the presentence investigation report, which is thorough and helpful. It was prepared on March 22, 2022, together with an addendum, dated April 19, 2022, and the sentencing recommendation approved the same date. And, again, I have

correspondence, dated September 6, 2022, from defense counsel and, dated September 14, 2022, from the Assistant U.S. Attorney.

My question at this point is, have Mr. Garcia and his counsel had the opportunity to read and discuss the presentence investigation report, as well as the addendum and sentencing recommendation? Start with defense counsel.

MS. BAHARANYI: Thank you, your Honor. Yes, we have. Mr. Garcia has a copy of the report with him at the facility. We have had an opportunity to discuss it prior to today.

THE COURT: Mr. Garcia, you have that report and have you read it and gone over it with your attorney?

THE DEFENDANT: Yes, correct, your Honor.

THE COURT: Do either of you, starting with defense counsel, have any objections to the contents of the presentence report?

MS. BAHARANYI: Your Honor, I raised one possible objection earlier that I think we might address later on, it seems, regarding the prohibition on new credit charges.

I think the only other condition that seems problematic in this case and I would object to is this condition that probation can search his cloud storage, electronic devices. This isn't a case that involved computers. This isn't a sex case. And I don't think particularly see a nexus between the facts of this case and that particular

condition.

Those would be my two objections, your Honor, the new credit charges and this ability for probation to search his electronic devices. I don't object to the ability to search his home, but just the computers, phones, cloud storage.

THE COURT: I am not sure -- maybe we will hear from government counsel. These days, in the cases that I've been getting and in sentencing, it doesn't appear to be that much of a distinction between one's physical home and one's cloud storage or phone or computers, but we will hear from the government when we get to that point.

Apart from those objections, Mr. Garcia, do you have any objections to the contents of the presentence report?

THE DEFENDANT: No, your Honor.

THE COURT: I will return the presentence report to the probation department, which is our practice. At this time I'll hear in this order, if you wish to be heard, defense counsel, Mr. Garcia, and government counsel with respect to sentencing.

MS. BAHARANYI: Thank you, your Honor.

Your Honor, this is certainly a tragic case. I think the Court has recognized that. I think in preparation for today I had the opportunity to truly dig into the victim's background, Mr. [redacted]'s background, and compare it to Mr. Garcia's. And I think it makes this case, these

circumstances, all the more tragic. It is striking to me how many similarities there are between these two individuals.

THE COURT: You mean the victim and Mr. Garcia.

MS. BAHARANYI: Yes. Between the victim and Mr. Garcia, there are a mountain of similarities, your Honor.

Going through the victim's own psychological report, I see a long history of trauma, beginning with loss that he experienced as a young child, just as Mr. Garcia experienced, the loss of his brother, his protector, when he was just nine years old. Both of them, again, cycling in and out of the foster care system at relatively young ages. It looks like around for 11 years old for Mr. Garcia and around that same age, or perhaps a little bit earlier, for the victim in this case.

Both have struggled for their entire lives, it seems, with substance abuse. Both have been diagnosed with major newer cognitive disorder. Both have suffered -- I think all of that ties into their longstanding issues to grapple with mental illness and with cognitive impairments that have been a striking part of both the victim's life since he was young and Mr. Garcia's, also since he was a young child, up until today. Of course both have extensive experience with the criminal justice system and today are facing federal charges.

I don't often -- in many of my cases there aren't always victims, and there are stories that we must grapple

with. So this is somewhat of a unique case for me. It's just striking to me, your Honor, just how much the victim's story, the victim's history, mirrors that of Mr. Garcia's.

Of course the major difference here is that we are looking at Mr. Garcia today at 24 years old, and the victim in this case is 54. I raise this at the outset, your Honor, because I do think that this case and the Court's decision today will have an impact on what Mr. Garcia's life looks like when he himself is 54 years old, 30 years down the line.

The Court's decision today I think will have a huge impact on whether at that age he is still suffering from his traumas, he is still grappling with his history of child abuse, his history of neglect. He is still trying to get a hold of his addiction and mental illness. I think the Court is in a unique position to kind of break this cycle, a cycle that's played out in the life of the victim and a cycle that appears to be in its early stages here for Mr. Garcia.

What that looks like, your Honor, helping break through this cycle, I don't believe is a 14-year sentence, as the government has requested. And I think even looking at the victim's own history provides corroboration or proof of that. It's in those psychological reports that we see that the victim, sadly, was sentenced to 12 years when he was a -- 12 years in federal prison when he was a relatively young man, and now he is here, in a position that is both tragic for him and

also life changing in that he is facing new federal charges. It does not seem that he has come out of that process, a lengthy bit in federal prison, as a more complete person, but rather a more broken person, and certainly now deeply affected by the trauma of this offense.

I do think that 14 years would similarly break Mr. Garcia. He is 24 years old. This crime was committed when he was even younger, at 22. I think such a lengthy term of imprisonment, as the guidelines call for or as the government has requested, only compounds the trauma in Mr. Garcia's life. It increases the risk, your Honor, of Mr. Garcia being in a position 30 years later where he is still grappling with all of these demons.

I think tragically it increases the risk that someone like Mr. Garcia's son, [redacted], who is now a little past one years old, will possibly find himself in his own father's shoes. If he were to be incarcerated for 14 years, if Mr. Garcia were to be incarcerated for 14 years or given a guidelines sentence, that means that [redacted] grows up with his father in prison, just like Mr. Garcia did. That means that [redacted] misses out on having his father in his life for these formative years. And I truly fear what that means for the cycle of this family and the next generation of this family.

Your Honor, my request for a 48-month sentence is in light of that history, I think in light of the desire to try

something different for this young man, for Mr. Garcia, to break through the cycle, and to give him a sentence that includes more time and more punishment, but that still allows him to have a role in his child's life while his son is still a child.

Forty-eight months would be the longest period of incarceration he has ever spent in custody. It would be more than twice as long as his previous longest period, which I believe was 18 months, your Honor. And he has already experienced punishment just waiting for this case at Essex.

I won't go into detail, because the Court has already reviewed our submission, but your Honor understands just how difficult of an experience during COVID, during the violence at Essex, pretrial incarceration has been for Mr. Garcia.

Your Honor, part of the reason why we are even moving forward in this way by video instead of in person in a courtroom, as I preferred for Mr. Garcia, is that he truly is eager to see a resolution to this case and eager to get out of Essex and to be placed in a BOP designated facility that is hopefully less violent and hopefully has more programming opportunities for him.

Your Honor, I spent a lot of time in my sentencing submission discussing his youth, discussing the impact of both his childhood trauma on his own brain development and on the brain development of other young adults like him. I understand

from the government's letter that -- the government's letter seems to perhaps minimize the impact of young adulthood in Mr. Garcia's case on decision making, which I do think is a bold and frankly wrong position to take.

I think the science, and this is fairly new science, but the science is showing us that it's just not adolescence, but young people in their early twenties who are suffering from -- who still have the biological impairments that make it difficult to make rational, well-reasoned decisions. The parts of their brain, the prefrontal cortex that allows them to assess risk and allows them to make better decisions in their lives continues to develop well into their mid twenties.

Part of the reason why I make this request for 48 months is that it would be a sentence that would have Mr. Garcia coming out of prison and back into the community, hopefully here in the United States, at a time where his brain, your Honor, is in a better position to make better, well-reasoned decisions.

Certainly, as the Court is aware, he has a lengthy history of both trauma and mental illness. That has impacted his decisions in the past. It certainly has impacted his criminal history. But that is also something that's being addressed now in a way that it never was when he was out in the community, in a way that it was never addressed prior to this offense.

Your Honor, prior to August 2020, he was not taking medication for bipolar disorder. He was self-medicating with drugs and alcohol. Instead now, since being in Essex, he has been prescribed Olanzapine. He has been actually compliant with his medication. Olanzapine is a medication that treats both his bipolar and mood disorder, your Honor. So he has not only that as a new tool for him going back into the community, he has a better formed, more formed, more mature brain when he goes back into the community.

And, hopefully, if he is here in the United States, he will have our office's support as well and the support of the Bronx Defenders who have been assisting him with the pending immigration matter.

In fact it's through the Bronx Defenders that they identified a mental health treatment facility and drug treatment facility that provides intensive outpatient, sort of dual diagnosis care to individuals, young people like Mr. Garcia. It's called the Bridge Back to Life Center. It's an option that we asked the Court to consider last year during our bail application for Mr. Garcia and it is still one that would be available to him at the end of his sentence in this case, and both our office and Bronx Defenders will ensure that he actually does this time when he's coming out, he does connected to mental health treatment and the supports that he needs to continue to make better decisions in his life going

forward.

Your Honor, I am going to wrap up shortly. I think the Court understands our position regarding the circumstances of this offense. This is incredibly serious conduct that resulted in lasting trauma to the victim in this case.

I do think it's important for the Court to recognize that this is not -- it was not Mr. Garcia who was the individual who pistol whipped the person, the victim in this case. But he takes full accountability for being there to rob this victim, that is what he was there to do. He knew this was a person that dealt drugs in the community, who had money. This was a quick way of making some cash, and it was a terribly -- it ended in a terribly tragic way that he did not foresee.

I think for myself, perhaps for some of the other individuals on this call, who are older, it probably seems strange to say he didn't foresee this turning out in this way. It's a robbery. It's a robbery of a drug dealer. But we are also individuals who have the benefit of our experience this the system, but also the benefit of brains that are more fully developed and able to think through the potential consequences, to think through how things could go wrong before we take certain action.

I think because of the trauma, the mental illness that Mr. Garcia was experiencing at the time, the mental illness

that was not treated at that time as well, your Honor, he was not in a position and he did not think through just how badly, just how traumatically this incident, this robbery could have turned out. He is truly sorry for even part of it and for not seeing how this could end so badly for the victim and for himself.

Now, it's clear from the victim's report that he, as I explained earlier, has long suffered from different health ailments, different mental health issues as well. Even my understanding from one of his reports is that he did experience head trauma several years -- three or four years prior to this robbery. Mr. Garcia did not create these initial health issues, but he understands the role in the robbery and exacerbating all of them, and for that he is truly sorry, and you will have the opportunity to hear from Mr. Garcia more on that point and his remorse very shortly, your Honor.

I will just end with this, your Honor. I think that if Mr. Garcia were to be released in his late twenties, as we have requested, and if he were to remain here in the United States, he has a support system through Felicity, his partner, through our office, that I think is in a better position to ensure that he does not come back to this place, your Honor.

And he has a motivation that he did not have before, and that motivation is his son [redacted], who, as the Court has acknowledged, was born just last year, while he was still

incarcerated.

Mr. Garcia understands that any additional involvement in criminal activity, even any violation of his conditions would mean that his son does in fact grow up without a father. It would mean that [redacted] is going to be in the same position that Mr. Garcia was in for most of his life with an incarcerated father far away, and Mr. Garcia does not want that future for him.

I think it is significant that he is starting to make the small changes that he can in the space that he is, at Essex, to demonstrate his desire to change. By taking medication, by sticking with his medication regimen, and treating his bipolar disorder, he is making it so that he can be present for his son later on upon his release.

As the Court hopefully saw as well, he received a certification to work in the cafeteria so that he could work at Essex in the cafeteria there. This is just another opportunity or another way for him to remain positively or productively engaged while incarcerated there at Essex. There is not a lot that one can do at Essex, but he is trying his best to do it all, to work on himself and to engage himself productively so that he can come out better and come out ready to make a better life for his son.

Your Honor, for these reasons, for the reasons that you certainly reviewed and I have explained in our sentencing

submission, I am asking the Court for leniency here. I think his age, I think his particular involvement in the offense, I think the fact that he has a very young son at home who could use a father are all reasons to grant the sentence of 48 months that I have requested.

THE COURT: I take it you disagree with Dr. Giardino, who says that in the absence of an inpatient treatment, an intensive inpatient treatment -- by the way, I share that view, that from my own experience -- by the way, everybody is unique, of course. But Mr. Garcia's experiences are not new to me in other people.

You point out the victim. I have hundreds of cases, many of whom suffered -- this is the tricky part from the cooccurring disorders of mental health and drug abuse. Very difficult to overcome. I'm happy -- of course it's my obligation to try and fashion a sentence that would help Mr. Garcia overcome them, but I have to say -- so this sentence -- this situation is unique because Mr. Garcia is unique. But the factors surrounding it, sadly, are not unique.

Our system does not do enough of a job to be of help to people at young enough ages. It doesn't do enough of a job to try and help people incarcerated. If people devoted or could devote their entire period of incarceration to substance abuse, education, mental health treatment, if one could do all that, that is, of course, a place where it would be very

desirable if it happened. Unfortunately, it doesn't happen often enough. But these are tough sets of facts to consider.

I do have a question for you. You are disagreeing with Dr. Giardino in the context of what treatment -- listen. It could all be academic. If there is deportation, it will be academic. Do you actually think that Mr. Garcia could right this ship and turn things around on an outpatient basis? Just one person's opinion versus somebody else's.

MS. BAHARANYI: Your Honor, I actually think -- I probably should have been clearer. I think we are open to all of the tools to right the ship for Mr. Garcia, as is Mr. Garcia. And I think time will tell if we have all the tools available, meaning, if he is deported or if he is allowed to remain in this country. I mentioned the Bridge Back to Life Center as an option because it's one that we have already made contact with on his behalf. And I think that more work from probation would be needed to figure out what type of placement, if it were inpatient, would be appropriate for Mr. Garcia at the time that he's coming out. Because, again, we are talking him coming out, certainly wouldn't be today. I think all parties understand that. So we would have to see what is the mental state that he is in and how is he doing, even at that time even with his medication. And what are the programs available to him.

So we are not writing off, and in fact I truly value

Dr. Giardino's comprehensive report and opinion in this case. We are willing to use every tool possible to make sure that his life, Mr. Garcia's life, is changed, [redacted]'s life is changed, and that the community is protected as well.

THE COURT: Mr. Garcia, if you wish to be heard, I will be happy to hear from you. It would be helpful if you come closer to the microphone.

THE DEFENDANT: Yes, your Honor. I would just like to say that I apologize to the courts, to the victim, to my family for making them go through everything that they are going through, to myself for putting myself in that situation that I am in, to my son for not being there from when he was born. I would love if your Honor would let me raise my son and he can be somebody better than me. I don't want him to commit the same mistakes that I've been committing my whole life.

Thank you, your Honor.

THE COURT: How about the government.

MR. XIANG: Thank you, your Honor.

This has very much been a sentencing that the government, Ms. Dell and I, have thought a lot about, have struggled with, as it appears that the Court has as well, and, as is evident from defense counsel's remarks as well, that the defense has thought deeply about as well.

With the Court's indulgence, I would like to speak at a little more length than I think I normally would at a

sentencing.

I want to start with what I think are some relatively --

THE COURT: I am just going to interrupt you for one moment about the length. You can have as much time as you need. Because in point of fact, in our system, so to speak, in our criminal justice system, and in the SDNY, as elsewhere, the real story is, as far as the judge is concerned, in terms of the criminal docket, there is always -- not always. 90 plus percent, maybe 95 percent of every case is resolved with a plea, as in this case. That means that really the Court doesn't know a whole lot about the person, as it would be impossible, and it's somewhat of a mechanical process that the questions are all known in advance and the answers are always yes, your Honor, yes, your Honor.

In reality, the sentencing is where it's at for everybody. You certainly can have as much time as you need, and I felt the submissions written by yourself and also by the defense were and are very helpful. Just that. You have the floor.

MR. XIANG: Thank you very much, your Honor.

Let me start with what I think are some relatively uncontroversial first principles that I think everybody would agree with, which is that a gunpoint robbery in and of itself is a serious offense. Certainly a gunpoint home invasion

robbery in which the robbers forced themselves into someone's home to commit the robbery there, that's an even more serious offense.

If the facts in this case ended there, we would be having, I think, a different sort of conversation. We would be talking still about a serious offense, but the sort of offense where judges in this district have sentenced somewhere between eight years, nine years, ten years, have viewed that to be the appropriate sort of sentence for serious offenses of that nature. That's obviously not where the conduct in this case stopped.

Those are cases, and we cited some examples of those in our submission, in which there was no injury to the victims whatsoever. There was threats of force, it was very serious, it was gunpoint, but no actual injury. Here there is an injury. Not only was it an injury, it was a serious injury. Not only was it a serious injury, it was a life-threatening injury.

We quoted excerpts from the emergency room medical records from that night. Although I don't profess to know what red team is and what tier 1 activation is and bedside and all that stuff, I think it's a fair inference from those records that, at least to the medical professionals that night who saw the victim's state, that they were very concerned about the nature and extent of the injuries and what that meant for his

life.

Your Honor, not only were these life-threatening injuries, these have been life-altering injuries. These have been life-altering injuries to a man who was assaulted in his mid fifties and who, by all accounts, according to his counsel, according to the professional opinions of both defense and government experts engaged to assess his mental competence and to have deemed him to be mentally incompetent, everybody agrees that he is broken. He is a shell and fundamentally not who he was before this happened and may never return to being that person. That is incredibly tragic and I think that is relatively unique and unusual, even among the subset of gunpoint robberies, necessarily violent crimes that we are talking about.

I very much want to acknowledge the circumstances of the defendant's upbringing, his struggles with mental health illness, serious mental health illness, and his substance abuse challenges. I think the Court absolutely should take each of those considerations into account in crafting a sentence. I think any responsible and compassionate system of justice would take those considerations into account, and I believe our system of justice does take those things into account.

I very much want to echo as well your Honor's remark that no one is beyond redemption. The government very much agrees with that sentiment as well and said as much in its

sentencing submission.

However, it's also important today to grapple with the facts as they exist, the facts as to what Mr. Garcia has done in the past and how he has responded to his prior encounters with the criminal justice system.

As your Honor noted, he is in the highest category of criminal history, and he is there not simply because of fraud offenses or simple drug offenses, but, in meaningful part, because of prior violent offenses. And not only offenses that are violent because it's a violent statute that was charged, but in which his conduct was in some cases incredibly violent. Beating a corrections officer who was lying on the ground repeatedly in the face and head while screaming, I am going to F you up, ramming a car towards a police officer, reversing and then ramming the car ahead again in an incident that resulted in injuries to three police officers. Multiple robberies in which he was hands on with the victim, dragging the victim to the ground, assaulting the victim.

And in each of those prior instances, many of the mitigating facts that defense counsel has pointed to the Court were true then. All of the facts that the defendant's traumatic childhood and upbringing and the challenges he has faced, which are, by the way, incredibly sad and tragic, all of those were true then as to those prior violent offenses.

Although the government hasn't looked into those

transcripts, one would imagine that those factors were taken into account at those sentencings and are reflected in the fact that, by and large, the defendant got very, very modest sentences in each of those cases.

While I'm sure those sentences were well intentioned and appropriately took into account the mitigating factors that defense counsel sets forth today, one very tragic and unintended consequence of those prior lenient sentences is that they failed to incapacitate Mr. Garcia, they failed to rehabilitate him, and they failed to deter him from participating in this home invasion gunpoint robbery that has forever changed the victim's life. That is the sad reality that I think we all have to confront and that it's appropriate to take into account in the sentence that your Honor fashions.

I want to pick up on a point that your Honor made before, which I think is a very important one, which is that I think everyone here agrees that rehabilitation is important and that an important component of Mr. Garcia's rehabilitation will be substance abuse treatment and also mental health treatment. In the government's view, those things are not inconsistent with a meaningful incarceratory sentence.

As I'm sure the Court is aware, the Bureau of Prisons administers the RDAP program, which is an inpatient in-custody substance treatment program which, to the government's understanding, is a very good program, which has good rates of

success. And unlike in an environment where it's up to Mr. Garcia whether or not he reports to treatment, whether or not he falls back to self-medicating with street drugs, while in custody and while participating in an in-custody and necessarily inpatient program, those factors are controlled and those would seem to be a better set of circumstances for him ultimately overcoming the issues that he needs to overcome.

I think for that reason the sentence that the government recommends, which the government fully appreciates is a very significant sentence, is not incompatible or inconsistent with the goal of ultimately permitting Mr. Garcia a path toward the redemption that your Honor mentioned and toward leading a better life.

I want to remark briefly on two points that defense counsel made. One point that she made was about cycles and about breaking cycles and about the absence of good role models, good parent figures in Mr. Garcia's life when he was a child. The government agrees, I think every fair-minded and responsible participant in the criminal justice system of course would agree that as a society we have a long ways to go in addressing the social forces that lead to folks experiencing those types of childhoods, those types of upbringings.

However, as the Court has also noted, those realities are not, sadly, unique to Mr. Garcia. Many folks have very, very troubling childhoods and upbringings and struggle with

many substance issues, mental health issues. That's true certainly of other defendants in this court, many of whom do not commit crimes of this severity, of this degree of violence. That is also true of many individuals who never enter the criminal justice system, who are struggling with these things, who have difficult lives as a result but do not choose or respond by engaging in brutal violence against other individuals.

On the issue of parenthood, of course, it is often the case and tragically the case that when there are serious crimes and therefore serious sentences, that members of the defendant's family suffer as a result.

I will note that, based on when the defense represents that Mr. Garcia's son was born, it appears that Mr. Garcia fathered this child roughly around the time that he committed this robbery. I don't know if it was shortly before or shortly after. I think it's fair for the Court to consider whether that was a responsible decision, whether either Mr. Garcia, having fathered a child, chose to commit this act, or, knowing that he has committed this act and has not yet been caught for it, decided to become a parent. It is of course very sad for Mr. Garcia's son that Mr. Garcia put himself in this position. But I think it's also fair for the Court to consider the decisions that Mr. Garcia made in that regard.

I want to end by talking about the comparison that

defense counsel made between Mr. Garcia and the victim here. Of course there are parallels. I think both are certainly individuals who have had very difficult upbringings, who have perhaps, as a result of those difficult upbringings, had significant encounters with the criminal justice system, with our court.

But here is one crucial difference, which is that, to the government's knowledge, at least, the victim in this case never participated in a brutal act of violence in the same way that Mr. Garcia has. Again, Mr. Garcia, this is not the first violent case that he has participated in. So in that respect, they are different and, in the government's view, significantly different.

I'll end by saying, again, that the government recognizes that a 14-year sentence or any sentence within the guidelines is a very lengthy sentence, a very significant one. I will note that on the government's recommendation the defendant, depending on good time, etc., is going to be released from jail in his mid to late thirties. He would still be a very young man. He would still have a lot of life to live.

And hopefully at that age he would have, having had the opportunity to have treatment and to confront these challenges while in custody, and hopefully availing himself of programming while in custody to improve his education, that he

will come out of the incarceratory system with more judgment, more maturation, and equipped to live a productive and law-abiding life. Thank you, your Honor.

MS. BAHARANYI: Your Honor, if I may briefly.

THE COURT: Yes.

Let me first because I have a couple of comments that you may want to respond to.

One is the victim. I have to say that I was a little surprised about how much discussion by the defense about the victim. Both in writing -- here I'm talking about pages 6 and 7 in particular of the defense letter. I am sure this wasn't the intention. But it does come close or in some ways to blame the victim.

So, on page 6, we are reminded that he is a known drug dealer and that -- this is Mr. [redacted]. He has a reputation in the community and there is reference to drug trafficking apartment. And then, on page 7, it says that [redacted] was dealing serious drugs out of his apartment and unlawfully in possession of ammunition and likely guns. She goes on to say, does not justify what happened to him.

Also picking him out as a comparator to Mr. Garcia in terms of his difficult life experiences. I don't know. Could be any one of a hundred or a thousand other defendants might be equally or perhaps more apt. Again, I can't imagine that the defense is doing that, but I just call it to your attention the

way I read it in part. I was a little bit -- what does that have got to do with it, is really my reaction? Because in point of fact, it has nothing to do with it. If you pistol-whip a professor from Columbia Law School, it's terrible. It's equally terrible, frankly, if you pistol-whip a defenseless Mr. [redacted]. That's just -- again, I don't think that that's what was intended, but it did come across somewhat that way.

Then the other issue I wanted to just -- before I get to hear from you again and also get to the sentence, the government used the word incapacitated. That sound sometimes like an awful concept, but really it shouldn't be taken that way. Incapacitated means essentially that someone is in some form of lockup, I guess, or can mean -- in this context it does mean. I think that has two goals. One is to mitigate danger to the community. Someone is locked up, there is less of a chance that someone, whether it's Mr. [redacted] or somebody else, is going to be impacted by Mr. Garcia.

It's not really -- I think it comes across sometimes as pejorative, but it's really not. It means in one context the flip side of protecting the community, danger to the community. That's really very serious consideration in the 3553(a) analysis.

And then, second, it has -- incapacitated, again, has a productive aspect to it. That is to say, Dr. Giardino, as I

mentioned before, says that very unlikely in his opinion, seems to me, that anything but inpatient treatment for these cooccurring disorders of drug abuse and mental health is required. From the judge's point of view and also someone who -- so I'm a licensed social worker as well, and I think I have experience in these subjects.

The incapacity is sometimes the only thing that enables a person to accept treatment. You got nowhere else to go. If there is an appropriate treatment, drug treatment, mental health treatment, I think you're more apt or inclined to avail yourself of it and that is a positive. That is a positive.

Many people, many defendants that I have, they can't tolerate inpatient because they have such great issues, as Mr. Garcia has, with impulsivity and can't sit still and mood swings and manic episodes. But if you're incapacitated, there is are more of a likelihood that you can accept and take in the treatment.

So it's not, again, in my opinion, necessarily a bad word, and that is the meaning that should be the meaning of incapacitated in jail, should be an opportunity to address and resolve those kinds of issues. In my own experience, I don't know what percentage of the time they exist, those programs. It certainly should be the focus, in my opinion, of prisons, certainly not that.

But I'm hopeful and, as I said, I am going to recommend that Mr. Garcia be housed at such a facility. The same is true even during -- I have a lot of experience with supervised release. And there too, in many instances, people with cognitive disorders, impulsivity, manic behavior, bipolar disease, can't get the person to sit still, so to speak, long enough to absorb the treatment.

I think it's Dr. Giardino who says that first you got to get the drug issue under control. I think he said it, in this order, before you can really aptly, correctly, effectively deal with the mental health issue. He is suggesting a form of incapacity to take care of one of the cooccurring disorders while -- and thus enable one to treat the other disorder. It's complicated.

I will say one thing. I hear this over and over again, and I know in Mr. Garcia's case that it's in the best of intentions, and I think he means it. But many defendants or persons in Mr. Garcia's position, it's very interesting how it's often a new child. You hear them say, well, this is really going to get my attention and I am going to do things differently and I am going to be able to teach -- essentially, the meaning is teach my child not to be like me.

These are -- only in small part are these issues or these disorders disorders of intention. I think, because I hear it over and over again and I believe it, that the

defendant or the person we are sentencing or putting on supervised release or whatever, the intention, in my humble opinion, cannot overcome these disorders.

I don't think anybody could wake up and say, you know, now I have a kid, I got to get together. I got to get a job and I got to turn my life around. They do. They mean that. But it can't be done, in my opinion, by intention alone.

So I think that the incapacity, so to speak, is vital, actually, and is not again, not a negative in some respects, but is in fact required in order, especially since -- I also thought Dr. Giardino's report was thorough in order to accomplish what needs to be accomplished with someone who has such severe lifelong trauma and experience.

Sorry for the interruption. Defense counsel, you wanted to add something.

MS. BAHARANYI: Yes, your Honor. I think to respond both to the government and your Honor's points.

Your Honor, the recommendation by Dr. Giardino is for him to have access to a thorough comprehensive treatment in a setting that is an inpatient setting and certainly at least follow treatment in the community. Both of these would be within the community. I do want to make that clear.

When we are talking about the jails and prisons or the prisons that Mr. Garcia would be sentenced to or sent to, we are not talking about -- as the Court is aware, we are not

talking about treatment facilities. Incapacitation is not going to be, in Mr. Garcia's case, him being placed in a prison where he is getting quality, consistent mental health treatment.

Unfortunately, because of changes made in the '70s, we are seeing more and more people sent into prisons because of mental illness, and the jails are grappling with that. But, unfortunately, they don't have the resources. BOP, federal facilities, don't have the resources to ensure that they are providing the sort of consistent, quality treatment that individuals like Mr. Garcia need.

Incapacitation in this sense, your Honor, in this context, I think, especially for the length of time that the government has requested and the guidelines considered, I think would do far more harm than good because this isn't a place where he is going to be treating, have an opportunity to treat and address in a comprehensive way and in a consistent way the issues that he came into the system with.

Your Honor, I'm very happy that he is currently medicated. I think that is certainly a benefit to him, and I think your Honor has seen how he has been able to like sit through these proceedings. He hasn't been agitated. He hasn't been reactive. He has truly been taking all this in and considering the Court's words, the government's words.

But he is not getting counseling at Essex. Even

counseling in some of these other BOP facilities is truly not available and not consistently available.

RDAP, the program mentioned by the government, has a wait list that is incredibly long, your Honor. And many of my clients who wish to participate in this program instead spend years languishing on wait lists to get into this program. We are talking about putting him away in a facility for years of his life in a place where he is not going to be able to address the issues that we want him to address.

I think Mr. Giardino's recommendation, in a way, and I hope the Court will consider, is that this is a young man who does need quality services. And with those services in the community, in an inpatient or outpatient setting, is going to be in a position to make the changes that he wants to make.

So your Honor is absolutely correct. It's not just about intention to be better. That's not what's going to make him better. It's the resources, it's treatment, it's services. That's what's been lacking in his history in a consistent way.

I think the government has mentioned the different prior convictions and offenses of Mr. Garcia. All of those happened when he was a teenager. What followed those convictions and sentences, as short as they may have been, was not outpatient or inpatient treatment. It was not an opportunity to address the reasons why he came into the system in the first place.

That is the problem. It's not the length of sentences. It's not that they were too lenient in terms of their prison sentence. It's that people weren't being creative about what this young man needed next when he came out.

And, fortunately, as the Court is aware, that is what our office is in a position to do. We work with probation to come up when our clients are ready to come out to make sure that they are in a position to have the services that they need. Your Honor takes a hands-on role in also checking in with the individuals you supervise to ensure they have the services they need so that people like Mr. Garcia don't slip through the cracks, as he has done in the state system when he was a teenager.

Your Honor, I do think it's important for me to address the Court's comments about my comments on the victim. I want to make absolutely clear that it certainly was not my intention. In fact I do not blame the victim in this. Mr. Garcia certainly does not. He knows what he did. That's why he pled guilty. That's why he is here. And he has expressed his remorse to the victim in his own letter to the Court and today.

The reason why I spent so much time, your Honor, especially today, in speaking about the victim is, it is uncommon to have two psychological reports detailing such a rich history of the life of the person who was affected by the

crime.

In fact, I don't think I have ever been in this position before, and I was struck. It was striking to me the tragedy that befelled that victim over the years, and I think my simple desire is, I don't want to see similar tragedies happening to this young man in front of the Court. That is what I intended to convey. I do apologize if that was not in fact conveyed.

THE COURT: I thought that, and I appreciate you're saying it.

MS. BAHARANYI: Your Honor, as a final point, I think the Court has raised other cases involving robberies, involving gunpoint robberies that have received significant sentences, and I've had an opportunity to review the submissions in those cases. I think what's striking to me in each of those other cases, the *Smith* case cited by the Court, by the government --

THE COURT: I think you meant the government.

MS. BAHARANYI: I said the Court. I meant the government in their submission. Both the *Gilmore* case, the *Smith* case, the *Parker* case involved individuals, defendants who were far older than Mr. Garcia at the time of their criminal conduct in these cases, well into their thirties or forties.

And I do think that that is significant here, as I have explained, the combination of Mr. Garcia's youth, the

impact of his own trauma and mental illness on his development. I think it requires us to treat him differently than these much older adults who committed these crimes. I think that different treatment should be and is warranted under the guidelines and should be reflected in the sentence.

THE COURT: Mr. Garcia, did you want to add anything today?

THE DEFENDANT: I am OK. Thanks.

THE COURT: I am going to adopt the findings of fact in the presentence report, unless defense counsel has any further objections.

MS. BAHARANYI: No further objections than what I have raised earlier, your Honor.

THE COURT: We will have to raise them again as I go through it.

Any further objections from Mr. Garcia?

THE DEFENDANT: No. Thank you.

THE COURT: How about from the government?

MR. XIANG: No, your Honor. Thank you.

THE COURT: I am going to now preface the sentence and then I will impose it. In doing this, by the way, I hope it comes across that I am very seriously considering the cooccurring disorders of mental health and drug abuse and also the severity and the violence involved in this conspiracy, and also I acknowledge that Mr. Garcia was 22 at the time of the

crime, young adulthood.

I also am taking into account everything that I mentioned really, but the gun enhancement, what it plays in terms of the guideline range, and of course the issue of pandemic, which surrounds everything we do these days.

I intend to impose a sentence of custody of 145 months. That is toward the low end of the guideline range. That range is 140 to 175 months.

Now, supervised release, I think probation department recommended against any supervision. I acknowledge that Mr. Garcia may well be deported. But I am going to impose a term of supervised release of three years in the event that he is released from custody in the United States. If for some reason if they determine he is not to be deported, it would be critical to have a period of supervision, I think.

The supervised release would be subject to various conditions, the so-called mandatory conditions that he not commit another federal, state, or local crime, that he not illegally possess a controlled substance, and that he refrain from any unlawful use of a controlled substance. He will be required to submit to one drug test within 15 days of placement on supervised release, if that happens, and at least two unscheduled drug tests thereafter, as may be directed by the probation officer.

In addition, if supervised release does come into

play -- and, as I say it's a big if -- if it does, then there also would be standard conditions on that supervision and there are 12 such conditions found at pages 29 to 31 of the presentence report, including, among other things, that he may not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon.

And then there are special conditions which the Court does find are reasonably related to the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(c), and (a)(2)(D) and in which the Court finds involved no greater deprivation of liberty than is reasonably necessary for the purposes set forth in Section 3553(a)(2)(B), (a)(2)(c), and (a)(2)(D), and are consistent with pertinent policy statements issued by the sentencing commission, pursuant to 18, United States Code, Section 994(a).

These are, in the event that he is released from custody into the community, he shall be supervised in his district of residence. He will be required to report to probation within 24 hours of release from custody, if that should occur, release in the United States. And, in addition, I am going to require that he undergo a psychiatric evaluation at such time as he is released from custody into the community to determine what is the best treatment or the most appropriate treatment or the most available treatment, as the case may be, for his both drug disorder and his mental health disorder.

I am going to include as a condition, and I acknowledge that I would reconsider it at the time of supervision. If the defense, during the supervised release, raises the issue, I will certainly reconsider. But absent such an application, I will require that he participate in a program approved by the probation department for substance abuse, inpatient, and that program shall include testing to determine whether he has reverted to the use of drugs or alcohol. He would be required and may be required -- not would be. He may be required to contribute to the cost of services rendered as by a copayment in an amount to be determined by the probation officer based on such factors as ability to pay or availability of third-party payment.

In addition, I am requiring, if there is supervised release, that he participate in individual and group therapeutic counseling by a licensed therapist. That too would be inpatient. And he may also there be required to contribute to the costs of services rendered as by a copayment in an amount to be determined by the probation officer based on ability to pay or availability of third-party payment.

Another special condition is that he shall cooperate with the Department of Homeland Security Bureau of Citizenship and Immigration Services in connection with any proceedings to determine his status in the United States, and he is required to abide by their rules, regulations, and laws. I am including

a search condition that covers both where he physically lives, if he is released into the community, and also his electronic devices. And that would be the conditions proposed by, I believe it was probation.

As to these I note that defense counsel objects, not to the search concept in terms of his physical habitation, but the defense objects to the extension of search to phone and electronic devices.

I do not intend to impose a fine. None is recommended by the probation department. As to restitution, I will impose restitution if -- one of two things. If both parties, that is to say, the government and the defense, agree on a restitution amount and payment schedule, etc. If there is disagreement, I will resolve the restitution issue if it is presented to me within I think the statutory period, which is 90 days.

I'm also requiring -- there is no forfeiture requirement. There is a requirement of a $100 special assessment, which is mandatory, pursuant to 18, United States Code, Section 3013.

Briefly, my reasons for this sentence would be that, first of all, the offense level is 28, criminal history category is VI. The guideline range is 140 to 175 months, as agreed in the plea agreement. I am taking all the factors into consideration, sentencing at the lower end of the guideline range. I think this sentence is appropriate, given the very

seriousness and violence and injury caused by the offense and the needs for punishment and deterrence but also rehabilitation. I have considered the nature and circumstances of the crime, as discussed during this session, and I will incorporate that discussion here by reference, as well as the history and characteristics of Mr. Garcia, which we have been, I think, over thoroughly.

I would intend to impose this sentence to reflect the seriousness of the crime, to promote respect for the law, and provide a just punishment, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of Mr. Garcia, and to provide him with needed educational, vocational, medical care or other correctional treatment in the most effective manner.

Here I am noting that I'm including also -- if defense counsel has a specific facility in mind, I would recommend that he go there, but, overall, and most importantly, I am going to recommend that he go to a facility where they can treat and do treat mental health disorders and drug disorders cooccurring.

I think that covers the waterfront. Unless defense counsel wishes to add anything at this point, before I impose that sentence.

MS. BAHARANYI: Your Honor, before you do, I just want to confirm, perhaps with Mr. Garcia, that placement as close to New York as possible would be preferable.

THE DEFENDANT: Yes.

MS. BAHARANYI: That would be our request, your Honor, if that could be built into the judgment, that we would like the BOP to designate him to a facility as close to New York City as possible, where his family is located.

THE COURT: I am going to add, just so you know, a facility that treats mental health and drug disorders. That to me -- I'm happy to add as close to New York as possible. But I think paramount for me is he at a place where -- for example, if there were two options, one in Philadelphia and one in New York -- this is hypothetical -- but the one in Philadelphia treats mental disorder and drug treatment and drug disorders, that means my recommendation is he go to Philadelphia. If some place that's closest to New York also treats both cooccurring disorders, then there is no issue.

MS. BAHARANYI: Understood, your Honor.

THE COURT: Mr. Garcia, anything you want to add?

THE DEFENDANT: I feel like the sentence was 140 --

MS. BAHARANYI: Your Honor, I'm having trouble hearing him, but also I think it would be helpful if we could speak prior to his final remarks. I know this is not convenient, but can we be placed again in that other room?

THE COURT: Chelsea, can you do that?

THE LAW CLERK: No problem.

THE COURT: We are going to put defense counsel and

Mr. Garcia in a virtual room before he adds any comments so he can have the advice of counsel.

(Recess)

MS. BAHARANYI: Thank you, your Honor, for that time. Thank you for giving us a moment. I've had a chance to speak now with Mr. Garcia.

I think our plea to the Court, your Honor, is to ask the Court to consider the fact that Mr. Garcia does have this young son at home that he would like to have a relationship with while he's a child, and if there is any way that the Court might consider a lower sentence. Given the child at home, given his own mental illness and traumatic background, that is our plea to your Honor before we sort of conclude and have a final judgment entered in this case. He has heard all of the words of the Court. He takes them seriously. I truly believe, with assistance from our office, probation, and this Court, things will be different for him. We just ask for a little less time.

THE COURT: I am going to ask, if it's OK with you, counsel, Mr. Garcia, if he wants to add anything to what you have just said.

Mr. Garcia.

THE DEFENDANT: Yes. I'm sorry, your Honor. What I was trying to say earlier was, your Honor, when you said about my son and about you don't believe that somebody could change

overnight, I just wanted to say that the difference now, that I have something to live for. Before, I was running the streets and didn't have nothing to live for. Now I have a son that I have to look out for and I have to live for. That's all I wanted you to know.

THE COURT: I am glad you added that, and I appreciate it. I do understand what you have to say.

Government, did you want to add anything?

MR. XIANG: No, your Honor. Thank you.

THE COURT: Now I am going to impose the sentence. That's just what I am going to do.

The guideline range is 140 to 175 months of incarceration. It's only advisory, not mandatory. Having considered the Sentencing Reform Act of 1984, the United States Sentencing Guidelines, and especially the factors at 18, United States Code, Section 3553(a), it is the judgment of this Court that the defendant, Anderson Garcia, be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 145 months of incarceration. The Court recommends that he be housed at a facility where he can receive appropriate drug treatment and mental health treatment and, secondarily, to a facility near New York City.

If there is supervised release, that is to say, if Mr. Garcia is released into the community in the United States, then supervised release would come into play for three years,

subject to the mandatory, standard, and special conditions as I've outlined.

I'm not imposing a fine.

As to restitution, I am imposing restitution, but the terms of that restitution will be determined over the next 90 days, and particularly if the government and defense counsel have the opportunity to discuss and perhaps agree on restitution. But, in any event, I would ask the government to notify the Court as to where things stand with respect to restitution.

MR. XIANG: Yes, your Honor.

THE COURT: I am imposing a $100 special assessment.

As stated before, the reasons for the sentence. Sentencing is a difficult process. I hope I have done it thoroughly. I certainly have done it sincerely. I have sentenced within the guideline range but toward the lower end of the range, taking into account all of the factors that I have discussed earlier and given the seriousness, particularly, of the offense and the needs for punishment, deterrence, and protection of the community. I incorporate the entirety of my discussion of the reasons for the sentence that I'm imposing earlier in this proceeding today, incorporating that here by reference.

Does either counsel, starting with the government, know of any legal reason why this sentence should not be

imposed as so stated?

MR. XIANG: No, your Honor.

THE COURT: Defense counsel.

MS. BAHARANYI: No, your Honor.

THE COURT: Then I hereby order the sentence to be imposed as so stated.

Mr. Garcia, to the extent that you have not already waived your appeal rights, and now I'm talking about the plea agreement, dated November 17, 2021, in which you do agree not to file a direct appeal and not to bring what's called a collateral challenge, including, but not limited, an application under Title 28, United States Code, Sections 2255 and/or 2241, of any sentence that is at or below the stipulated guideline range of 140 to 175 months. Of course, this sentence is within that range and toward the lower end of that range. You also agree that you would not challenge your conviction or sentence on a direct appeal or through litigation under Title 28, United States Code, Sections 2255 and/or 2241 on the basis of any actual or perceived adverse immigration consequences, including removal or denaturalization. Removal is I think the key point here resulting from your guilty plea and conviction.

To the extent that there are other rights that I haven't considered or thought of, I notify you that you would have the right to appeal. If you were unable to pay the cost of an appeal based on such other rights, if they exist, then

you have the right to apply for leave to appeal *in forma pauperis*. If you request, the Clerk of Court will prepare and file a notice of appeal on your behalf immediately.

THE DEPUTY CLERK: Judge Furman, I'm sorry to interrupt. We lost the defendant on the call when you were reviewing his rights to appeal.

THE COURT: Are we trying to get him back? Does it work that way? Or did we lose him technologically?

THE DEPUTY CLERK: It may have been due to the time.

THE COURT: You mean he was removed from the proceeding, as it were, you think?

THE DEPUTY CLERK: Because the proceeding began at 9:00.

THE COURT: It's now 11:30. I see.

THE DEPUTY CLERK: Correct, Judge.

THE COURT: Well, what do you think? I think it's an important issue. I think we need to address it, his appeal rights.

I'll tell you what. Counsel, maybe you can confer with Mr. Garcia and see what he wishes to do and then let me know with respect to that issue.

MS. BAHARANYI: I'm happy to do that, your Honor.

MR. XIANG: Can I make a brief proposal, your Honor were. Would it be possible to just very quickly reach out to the facility to see if they can put him back on right now. If

he was timed out for technical reasons, maybe they could put him back on and resolve it. Obviously, it would best for his understanding of those rights and for the record if he heard it from your Honor during the proceeding.

THE COURT: Do you want to try and do that or do you want us to try and do that?

MR. XIANG: I'm happy to make calls or to have chambers staff do it, whatever the Court prefers.

THE COURT: Christine, what do you think would be most effective?

THE DEPUTY CLERK: I would have to defer to Chelsea on that.

Chelsea, do you think it's better off for you to attempt to get the defendant back on?

THE LAW CLERK: I'm trying to call right now. No one is answering. Here he is.

THE COURT: Thank you.

Mr. Garcia, can you hear me?

THE DEFENDANT: Yes, I can hear you.

THE COURT: I was at the point of the sentencing where I was explaining your appeal rights and the rights that you have already waived in the plea agreement.

I was saying, and I wanted you to hear, and then I am going to ask you if you understand what I'm saying, I'm saying that to the extent that you have not already waived your appeal

rights, and now I am talking about the plea agreement, dated November 17, 2021, in which you do agree not to file a direct appeal.

You also agree in the plea agreement not to bring a collateral challenge, including, but not limited to, an application under Title 28, United States Code, Sections 2255 and/or 2241 any sentence at or below the stipulated guideline range of 140 to 175 months. Of course, the sentence that I have imposed is within that range. You also agree in the plea agreement that you would not challenge your conviction or sentence on direct appeal or through litigation under Title 28, United States code, Sections 2255 and/or 2241 on the basis of any actual or perceived adverse immigration consequences, including removal and/or denaturalization resulting from your guilty plea and conviction. Those are the rights you waived in the plea agreement. To the extent that there are other rights that you may have that I haven't thought of, I notify you that you would have the right to appeal those other rights.

And if you were unable to pay the cost of an appeal, you would have the right to apply for leave to appeal *in forma pauperis*. If you request, the Clerk of Court will prepare and file a notice of appeal on your behalf immediately.

I wanted to ask you if you are familiar with the rights that you waived with respect to appeal, directly or indirectly, in your plea agreement as I have just explained it?

THE DEFENDANT: Can you repeat that, the last part? I'm sorry.

THE COURT: I was asking you if you understand the rights to appeal that you waived in the plea agreement, number 1.

THE DEFENDANT: I understand it a little bit. I understand it a little bit. I guess I can't appeal certain stuff?

THE COURT: I'm sorry?

THE DEFENDANT: I said, I can't appeal certain stuff?

THE COURT: Yeah. You agree in the plea agreement, and I'll ask defense counsel to follow up with you, you agree in that plea agreement that you won't -- will not file a direct appeal or a habeas appeal if I sentence you within or below the stipulated guideline range. And I have sentenced you within the stipulated guideline range. So those waivers of appeal that you agreed to in the plea agreement do apply, number 1. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Also, the plea agreement says that you would not challenge your conviction or your sentence on direct appeal or through Title 28, United States Code, Sections 2255 and/or 2241 on the basis of any actual or perceived adverse immigration consequences, including removal or denaturalization resulting from your guilty plea and conviction. So you also

agreed in the plea agreement that you would not appeal, directly or indirectly through habeas litigation on the basis of any actual or perceived adverse immigration consequences. That's also in your plea agreement.

Do you understand that?

THE DEFENDANT: Yes, I understand.

I have a question, your Honor, before -- I'm sorry. I understand the plea agreement I have, right. I thought I had the right to have a habeas before sentencing, if I would like to.

MS. BAHARANYI: Judge, I'm happy to speak with him about that separately as well, to answer the question. Either perhaps offline, unless the Court would like us to do that now.

THE COURT: Up to you. I want to make sure he understands, and he raises these questions. That's fine. I think it's best if you speak to him. Do you want to try and do that right now?

MS. BAHARANYI: Sure. I think that might make sense, especially if we can get the breakout room. That would be great.

THE COURT: Chelsea, if you could put them back in the breakout room.

(Recess)

MS. BAHARANYI: Judge Berman, thank you for that time. We are processing now I think the sentence and certainly

Mr. Garcia is disappointed with the sentence. The question that he had was not about habeas, per se, but a *Fatico* hearing and whether a *Fatico* hearing would be possible. I think he used the term habeas, but what he meant was a *Fatico* hearing.

THE COURT: What about it?

MS. BAHARANYI: Whether that was still possible at this stage of the sentencing. I have talked him through that and explained to him where we are with sentencing, that the sentencing hearing is done, and now we are going to just explain your appellate rights.

THE COURT: Did he understand, do you think, his rights?

MS. BAHARANYI: I do believe so. I have explained them to him. He understands that he has waived certain rights, those discussed in his plea agreement, and he also understands that we have an appellate team who can review if there are any other issues that we didn't cover today.

THE COURT: Mr. Garcia, do you understand the rights that you have and the rights that you have waived?

THE DEFENDANT: Yes, your Honor, I do understand. I just wanted to put it on record that before the sentence I asked the prosecutor for the *Fatico* hearing, and he denied me a *Fatico* hearing. That's the question I had to ask my attorney.

THE COURT: I am at the point -- I only have two questions left. Does the government, first of all, move to

dismiss any open counts, if there are any?

MR. XIANG: Yes, your Honor.

THE COURT: I grant that application. Perhaps more to the point in some sense is, does government counsel wish to add anything to today's proceeding?

MR. XIANG: Yes, your Honor, just a few brief things.

First, during the break I had the opportunity to review the transcript of your Honor's plea allocution of Mr. Garcia in which your Honor very thoroughly went through the plea agreement, including the appellate waiver and the immigration waiver that your Honor alluded to today. At that point, as today, Mr. Garcia indicated that he understood those rights and his waiver of those rights in the plea agreement. I wanted to place that on the record.

Number 2 --

THE COURT: Hold on one second. You mean you are referring to the transcript of the plea proceeding, and you went over and reviewed that to determine whether I had discussed with Mr. Garcia the rights, particularly to appeal and the waivers of appeal in his plea agreement?

MR. XIANG: That's correct, your Honor. And he did so indicate during that proceeding.

Number 2, I think there has been reference to the idea of a *Fatico* hearing. As I understand the proceeding today, there is no factual dispute between the defense and the

government on any facts pertinent to sentencing. I believe the only objections that were placed on the record with respect to the PSR were not objections as to the facts relating to the offense conduct, but an objection about the search condition, which obviously does not relate to the facts of what happened and which would not necessitate a *Fatico* hearing. I want to do place that on the record as well.

Finally, the government would request that the transcript from today's proceeding be briefly sealed so the government could redact references to the name of the victim. I think that came up at various points today. Obviously, given the very explicit and necessary conversation about the victim's health, his mental state, etc., the government believes there would be a basis simply to redact mentions of his name from today's transcript.

THE COURT: Counsel, do you have any problem with that? It would seem straightforward and reasonable.

MS. BAHARANYI: We don't object to redactions for the public record.

THE COURT: I'll grant your application. If you could get a hold of the court reporter so you could do that as quickly as possible.

MR. XIANG: Yes, your Honor. Thank you.

THE COURT: Anything that defense counsel wishes to add? You get the final say in connection with today's

proceeding.

MS. BAHARANYI: Your Honor, I'll only add that clearly we have had several moments since this Court has issued its ruling, several moments where I've had an opportunity to speak to Mr. Garcia. I think this is certainly a scary and disappointing sentence for him. I think it's most disappointing because of the time it will mean away from his son. We are sad, I am sad, for him. I would ask the Court to reconsider, just based off of the facts here and Mr. Garcia's youth, his son, and his background.

THE COURT: I do understand Mr. Garcia's concern. This is a big day, so to speak, and an important day in his life, the sentence. For that reason I have spent a lot of time preparing before we started the proceeding to make sure that I had read everything that was submitted and understood everything that was submitted and so I could give as thorough and comprehensive study as to what my sentence would be or should be. I listened to everybody's concerns, in addition to reviewing the written submissions.

I too am concerned about Mr. Garcia's well-being. But given all the factors, particularly the 3553(a) factors, my best intention and consideration, this is the sentence that I came up with, and I stand by it. I think it's the appropriate sentence.

I think that concludes our work for today.

Mr. Garcia, I sincerely wish you the best of luck going forward.

Thanks, everybody. We are adjourned for today.

(Adjourned)