

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

CASE NO.: 17-CR-109 (TJM)

JOSE GUZMAN-LOPEZ,

Defendant.

SENTENCING MEMORANDUM

DATED: September 26, 2017

Respectfully submitted,

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PRELIMINARY STATEMENT

On July 29, 2017, Jose Guzman-Lopez pleaded guilty to a single count of possession of a counterfeit alien registration card, in violation of 18 U.S.C. § 1546(a). Jose Guzman-Lopez is currently scheduled for sentencing on October 27, 2017. Mr. Guzman-Lopez has been in continuous federal custody since his arrest on May 2, 2017.

This Sentencing Memorandum is submitted on behalf of Mr. Guzman-Lopez in support of a sentence “sufficient, but not greater than necessary” to achieve the statutory purposes of punishment as required by 18 U.S.C. § 3553(a)(2). In this instance, a sentence of time served is the appropriate sentence.

ARGUMENT

I. THE 18 U.S.C. § 3553(a) FACTORS WEIGH IN FAVOR OF A BELOW GUIDELINE SENTENCE.

United States v. Booker, 543 U.S. 220, 226 (2005), held that the mandatory application of the United States Sentencing Guidelines is a violation of the Sixth Amendment. Therefore, a sentencing court is required to consider the advisory sentencing guideline range along with the statutory factors set forth in 18 U.S.C. § 3553(a), specifically (1) the offense and offender characteristics; (2) the need for the sentence to reflect the basic aims of sentencing, namely, (a) “just punishment” (retribution), (b) deterrence, (c) incapacitation, (d) rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need for restitution. 18 U.S.C. § 3553(a); *see also Rita v. United States*, 551 U.S. 338, 347-48 (2007). Here, each of these factors militate toward sentencing Guzman-Lopez to time served.

A. Background and History of Guzman-Lopez

Jose was born in Juxalja, Chiapas, Mexico to Antonio Guzman-Lopez and Antonia Gomez-Lopez. He is currently 32. His parents have never married, but have been together for approximately 40 years. Although he is 65, his father still works as a coffee farmer in Chiapas. His mother, who is 60, also helps with the farm work.

Jose grew up in a large family, he is one of 10 children. Jose and his family struggled with poverty like many families in Mexico, however the situation in Chiapas was extraordinary. The state of Chiapas is incredibly impoverished compared to other Mexican states and has a history of widespread, state-sponsored, violence as well as drug cartel violence. Chiapas lags behind the rest of the country in almost all socioeconomic indicators.¹ Income, education, health and housing are all the lowest in the country and it has a significantly higher percentage of illiteracy than the rest of the country.² The implementation of the North American Free Trade Agreement (NAFTA) in 1994 caused further negative effects on the economy, by lowering prices for agricultural products. It has also worked to make the southern states of Mexico poorer in comparison to those in the north with over 90% of the poorest municipalities in the south of the country.³ This had a direct impact on Jose and his family who barely subsisted by doing grueling farm labor.

The dire economic situation culminated in the Zapatista Uprising of 1994. The Zapatista Uprising was the rebellion coordinated by the Zapatista Army of National Liberation in response to the implementation of NAFTA. After 12 days of fighting, a ceasefire was called and peace talks began. An agreement was eventually signed by the Zapatistas and the government, and political stalemate continues as Zapatista rebels continue to control lands in Chiapas to the present day.

¹ Rodrigo Aguilera, *On the Margins: Why Mexico's Southern States Have Fallen Behind*, Huffington Post (Aug. 10, 2016). Retrieved 2017-09-25.

² *Id.*

³ *Id.*

Jose is Tzeltal, one of many Mayan ethnic groups. His first language was Tzeltal, not Spanish. The indigenous Mayan in Mexico have been systematically marginalized by the government which often responds violently to activism on behalf of the indigenous population. In 2014, 43 students from a college in Chiapas went missing. According to official reports, the students were travelling by bus to Mexico City to commemorate the anniversary of the 1968 Tlatelolco Massacre. During the journey, local police intercepted the students and a confrontation ensued. The official investigation concluded that once the students were in custody, they were handed over to the local Guerreros Unidos ("United Warriors") crime syndicate and killed. Mexican authorities claimed Iguala's mayor masterminded the abduction.⁴ However, other reports linked Federal forces to the case, some stating that military personnel in the area deliberately omitted helping the students in distress.⁵ This incident is illustrative of the state-sponsored violence indigenous groups face in Southern Mexico. If Jose had stayed in Chiapas he would have faced the same kind of violence.

Jose's family was desperate to get him away from the violence and, at the age of 9, they made the agonizing decision to send him to a free boarding school in Zinacantán, Mexico, six hours away from their home. Jose's family learned about the school from his uncle, who was later killed in the conflict.

Although he had to leave his family behind at nine years old, the school provided a refuge from the violence that marred the region. Jose worked for the school by cleaning and taking care of the animals. He did well in boarding school and enrolled in high school in Mexico City once he completed primary school. Jose completed high school in Mexico City and enrolled in college. He worked

⁴ "Militares del 27 Batallón interceptan y amenazan a normalistas de Teloloapan - Proceso". *Proceso.com.mx*. November 19, 2014. Retrieved 2017-09-25.

⁵ "Iguala: la historia no oficial - Proceso". *Proceso.com.mx*. December 14, 2014. Retrieved 2017-09-25..

seasonal retail jobs during high school and his semester of college. Unfortunately, college was not a sanctuary for Jose. He was shot twice during bouts of random street violence that still plagues some Mexican cities. The first time he was shot he was walking to school and a bullet grazed his leg. The second time he was at work when a shootout erupted and a bullet grazed his right shoulder.

Jose decided he had to seek opportunity elsewhere. Not only to keep himself safe, but to provide for his family. He knew if he worked hard in America he could be successful and take care of his family. At 21, Jose made the treacherous journey to the United States. He first moved to Edison, New Jersey, where he lived for approximately seven months before moving to Ithaca, New York. Jose has lived in Ithaca, New York, ever since that time—for a total of 11 years. In Ithaca he rented an apartment for approximately five years where he lived alone, with his cat. He worked six days per week for 12 hours per day. Between work Jose made time for friends with whom he became very close. This has been his life for over a decade.

B. Offense Conduct

On November 11, 2013, Mr. Guzman-Lopez was involved in an altercation at a house party in Ithaca. During a drunken brawl Mr. Guzman-Lopez was alleged to have stabbed another man. Ultimately, the Tompkins County District Attorney's Office, the agency responsible for investigating and prosecuting the incident, reduced the charge to disorderly conduct. Nevertheless, this incident put Mr. Guzman-Lopez on ICE's radar.

Three years later, on May 2, 2016, Mr. Guzman-Lopez was walking to pay off his cellphone bill before heading to work. ICE agents approached him and called out his name. Their assignment was to "identify, locate, and apprehend Guzman-Lopez." (Deportation Officer ("DO") Rodriguez Report). After locating and identifying Mr. Guzman-Lopez, the agents immediately

placed him in handcuffs and conducted a pat down search. After handcuffing Mr. Guzman-Lopez they escorted him to the back of a police vehicle.

During a subsequent search, it was revealed that Mr. Guzman-Lopez had a fraudulent alien registration card. After discovering the alien registration card, DO Rodriguez asked Mr. Guzman-Lopez: “what’s this?” and Mr. Guzman-Lopez responded by admitting that he knew the document was fraudulent. Mr. Guzman-Lopez was at all times truthful and cooperative with the agents.

C. Need for Just Punishment

Section 3553(a)(2)(A) instructs the Court to craft a sentence that reflects the seriousness of the offense, promotes respect for the law, and provides just punishment. A punishment is “just” insofar as it “fit[s] the crime,” and “reflect[s] the gravity of the defendant’s conduct.” *Simon v. United States*, 361 F.Supp.2d 35, 43 (E.D.N.Y. 2005) (quoting S.Rep. 98-225, 1984 U.S.C.C.A.N. 3182, 3258-59). Here, a sentence of time served reflects the need for a just punishment, at sentencing he will have been in custody for nearly five months.

Mr. Guzman- Lopez did not come to the United States to commit crimes; he came here to work. His motive for coming to the U.S. was to provide for his family back home. His motive was therefore not malevolent, but honorable: he came here in order to give his family a better life than he had. He did something most men would have done if they were in his situation.

The Sentencing Guidelines recommend that “family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.” U.S.S.G. § 5H1.6. Nevertheless, the Second Circuit has held, “if the circumstances related to those factors are extraordinary, a sentencing court is not precluded as a matter of law from considering them in making a downward departure.” *United States v. Alba*, 933 F.2d 1117, 1122 (2d Cir. 1991). Here,

the offense was motivated to extraordinary family responsibilities. At an incredibly young age, Mr. Guzman- Lopez left his family and everyone he knew to travel over 3,000 miles, so he could work seven days a week and send his hard-earned money home. This circumstance should be considered in imposing a sentence.

Additionally, Mr. Guzman- Lopez faces the possibility of deportation following his sentence. The specter of deportation adds an additional punishment to this offense. Mr. Guzman- Lopez will have to undergo immigration proceedings following the resolution of this case. In all likelihood he will be held in custody during the pendency of those proceedings, which can be extremely lengthy. Additional imprisonment for criminal offense would do nothing to advance the goals of deterrence or promote respect for the law, but would impose a significant expense on the tax-payers. Therefore, subjecting Mr. Guzman- Lopez to a lengthy term of incarceration will cause an undue burden on limited government resources and would not support the purposes of punishment as required by 18 U.S.C. § 3553(a).

Practical concerns aside, imprisoning a young man for a non-violent immigration offense motivated by a desire to support his family and create a better life for himself is offensive and contrary to American values.

D. Downward Departure based on Cultural Assimilation

On November 1, 2010, the United States Sentencing Commission added commentary to USSG § 2L12, which recognizes that cultural assimilation may provide a basis for a downward departure from the guideline range. USSG App. C, Amend. 740. The new language reads as follows:

There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those

cultural ties provided the primary motivation for the defendant's illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.

USSG § 2L1.1, comment. (n. 8).

There are several reasons why consideration is due an individual who has become assimilated into the culture of the United States. In *United States v. Reyes-Campos*, 293 F. Supp. 2d 1252, 1258 - 1259 (M.D. Ala. 2004), citing *United States v. Lipman*, 133 F.3d 726 (9th Cir. 1998), the court recognized "two ways in which a defendant's cultural assimilation to the United States could 'speak to his offense and to his character'" :

The court wrote that "cultural assimilation may be relevant. . . if a district court finds that a defendant's unusual cultural ties to the United States - - rather than ordinary economic incentives - - provided the motivation for the defendant's illegal reentry." *Id.* Cultural assimilation may also be relevant to the character of a defendant. . . in so far as his culpability might be lessened if his motives were familial or cultural rather than economic." *Id.*

United States v. Reyes-Campos, 293 F. Supp. 2d at 1256. Then, too, in weighing the extent of the punishment to be imposed, courts have recognized that deportation is an especially harsh penalty. *See Padilla v. Kentucky*, 130 S.Ct. 1473, 1481 (2010) ("We have long recognized that deportation is a particularly severe 'penalty' . . ."). That is even more true when the individual being deported has been assimilated into the culture of the United States and has a minimal connection with the country to which he or she is being deported.

Here, all these considerations are implicated. Jose has called the United States home for over a decade. All of his friends are in the United States. His estranged wife is in the United States. Jose was part of the social fabric of his community. The Court should consider Jose's cultural assimilation when deciding Jose's sentence.

CONCLUSION

For these reasons, counsel respectfully requests that this Court consider a sentence of time served. We submit that such a sentence is sufficient, but not greater than necessary, to comply with the punishment requirements of the Sentencing Reform Act. *See* 18 U.S.C. § 3553(a).

DATED: September 26, 2017

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