

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

JESUS GRACIELO GARCIA-VEGA, a/k/a
Jonathan Ivan Badillo-Hernandez,

Defendant

CRIMINAL No. 22-10086-FDS

GOVERNMENT’S SENTENCING MEMORANDUM

On March 24, 2022, the defendant, who was using the alias Jonathan Ivan Badillo-Hernandez, drove with two associates from Lawrence to the Wrentham Premium Outlets to sell one kilogram of fentanyl to a cooperating source (CS) of the Drug Enforcement Administration (DEA). The defendant had delivered a sample of fentanyl to the CS in Methuen the previous day. When the CS failed to arrive in Wrentham on March 24, the defendant’s group drove back toward Lawrence and was pulled over in Westford. Defendant was arrested with the kilogram of fentanyl. A search warrant for defendant’s apartment yielded identification papers in his true name, Jesus Gracielo Garcia-Vega. Defendant later admitted his true name via counsel. Defendant has a history of being caught entering and repeatedly re-entering the United States unlawfully. Most recently, he was convicted in 2013 in the District of Arizona of illegal reentry and, on March 23, 2016, was deported to Mexico. Defendant nonetheless returned to the United States in 2020, moved to Massachusetts, and committed the instant offense.

On April 21, 2022, a federal grand jury returned an Indictment charging the defendant with one count of Possession with Intent to Distribute 400 Grams or More of Fentanyl, in violation of 21 U.S.C. § 841(a)(1). The grand jury returned a Superseding Indictment on June 30, 2022, that

added a count of Illegal Re-Entry in violation of 8 U.S.C. §§ 1326(a) & (b)(1). At a hearing on December 15, 2022, the defendant sought to plead guilty, pursuant to a plea agreement, to a lesser quantity of fentanyl, i.e., 40 grams or more of fentanyl. *See* ECF Nos. 48, 52. The district court (Woodlock, J.) stated that the lesser quantity should be in a charging document and no plea was taken. *See* ECF No. 68. The following day, December 16, 2022, the Attorney General issued guidance to federal prosecutors on the use of mandatory-minimum charges. The parties negotiated a new plea agreement under which the defendant was to plead guilty to a Superseding Information with no drug quantity. The illegal re-entry charge remained. *See* ECF Nos. 49, 50, 70. At subsequent hearings, the district court (Woodblock, J.) questioned whether it could, at sentencing, judicially apply a mandatory-minimum sentence even if no drug quantity was charged. After briefing and argument the Court determined it could not, *see* ECF Nos. 54, 62, 75, and on March 20, 2023, the defendant pleaded guilty to the Superseding Information.

The Pre-Sentence Report (“PSR”) calculates defendant’s Guidelines Sentencing Range (“GSR”) as 87-108 months’ imprisonment and 1-3 years of supervised release. For the reasons set forth below, the government recommends a sentence of imprisonment of 87 months.

I. ADVISORY SENTENCING GUIDELINES

The PSR found that the defendant was accountable for 991.603 grams of fentanyl and 0.22 grams of cocaine, which converts to 2,479.05 kilograms of converted drug weight. PSR ¶¶ 19. The defendant’s base offense level for that quantity of drugs is 30. *Id.* Defendant’s illegal re-entry charge is grouped with the narcotics charge resulting in combined adjusted offense level of 30. *See id.* ¶¶ 32-35. Defendant’s offense level was further reduced three levels for his timely acceptance of responsibility under USSG § 3E1.1, resulting in a total offense level of 27. PSR ¶¶ 37-39. The defendant has a prior conviction for marijuana possession in Arizona state court and a

prior conviction for illegal reentry in the U.S. District Court for the District of Arizona, resulting in 6 criminal history points and placing him in Criminal History Category III. PSR ¶¶ 41-46. The defendant's advisory GSR is 87-108 months' imprisonment and 1-3 years of supervised release. PSR ¶¶ 79-81. The government agrees with the PSR's calculation of the GSR.

II. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)

Consideration of the § 3553(a) factors demonstrates that a sentence of 87 months' imprisonment is sufficient, but not greater than necessary, to meet the goals of sentencing.

A. Nature of the Offense

Despite his prior history of being caught unlawfully entering and re-entering the United States, including an instance in which he carried four pounds of marijuana into the country and received a 2.5-year sentence, defendant came back to the United States, moved to Boston, and sought to distribute a kilogram of deadly fentanyl. There is no telling what damage defendant would have done had his fentanyl been released to into the community. His actions helped fuel the opioid epidemic in Massachusetts and beyond.

This Court is well aware that fentanyl is a deadly drug that has wreaked havoc in the United States, and more specifically in Massachusetts, over the past several years. Fentanyl remains the primary driver behind the ongoing opioid crisis, with fentanyl involved in more overdose deaths than any other illicit drug. *See* U.S. Department of Justice Drug Enforcement Administration, 2020 National Drug Threat Assessment, at 7.¹ “Nearly 70 percent of all drug overdose deaths in the United States in 2018 involved an opioid. Deaths involving synthetic opioids other than

¹ This report is available at https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf (last visited August 22, 2023).

methadone—the category which includes fentanyl—increased by 10 percent according to data provided by the Centers for Disease Control and Prevention (CDC).” *Id.* “Fentanyl use and overdose deaths are more widespread across the country as the opioid crisis continues. Overall, fentanyl-involved deaths are still the most concentrated in states in the Great Lakes and Northeast of the United States.” *Id.* at 12.

Massachusetts has been one of the states hardest hit by the opioid crisis and was among the top five states with the most fentanyl reports in 2019. *Id.* at 8. These statistics are not hypothetical – they describe the opioid overdose crisis occurring in this district. The epidemic is real and being felt every day by families across Massachusetts and New England.

The defendant’s crimes played a role in fueling this epidemic. The nature of this offense requires a significant sentence of imprisonment.

B. Specific and General Deterrence and Protection of the Public

A significant sentence of imprisonment is warranted to deter others from becoming involved in any way, role, or capacity in the trafficking of fentanyl as the dangers associated with both cannot be overstated. Individuals tempted to engage in drug trafficking must understand that any involvement with fentanyl, no matter how minimal, will have immediate and serious consequences. Imprisonment is necessary to send a strong warning to others who might otherwise consider trafficking these dangerous drugs or assisting those who do.

Considerations of specific deterrence also support the imposition of a sentence of 87 months’ imprisonment. The defendant’s criminal history demonstrates a significant risk of recidivism. Defendant was convicted of illegal entry in federal court in Arizona in 2008. PSR ¶ 42. Undeterred, he returned to the United States with four pounds of marijuana and was caught again. *Id.* ¶ 43. He received a 2.5-year sentence, served 15 months, and was deported. *Id.*

Apparently unphased by his prison stay, immigration records reflect no fewer than four encounters with the defendant at the border in the 2009-2011 period. PSR ¶¶ 49-52. In 2012, defendant again returned to the United States, was convicted in federal court in Arizona of illegal reentry and was given a 46-month sentence. *Id.* ¶ 44. The judgment in that case reflected that a sentencing enhancement was applied for defendant's prior marijuana conviction. *See* Judgment, *United States v. Garcia-Vega*, 13-0030-ROS (D. Ariz. filed May 14, 2013), ECF No. 25. Despite all this interaction with the criminal justice system, defendant decided to return to the United States in 2020, move to Massachusetts, and become involved with distributing fentanyl. This Court should impose a significant term of imprisonment to deter this defendant from ever again engaging in drug trafficking or returning unlawfully to the United States.

The defendant grew up in poor socioeconomic conditions to be sure. But he also reported healthy family relationships, work skills and history, and no mental health or emotional issues. PSR ¶¶ 54-75. The defendant reported no substance abuse history, so this is not a case of a defendant selling drugs to feed his own addiction. PSR ¶ 67. Despite these attributes, and despite his criminal history, the defendant still chose to engage in the trafficking of dangerous drugs.

C. Avoiding Unwarranted Sentencing Disparities

As Probation described in the PSR, of the 73 defendants with similar guidelines, drug type, and criminal history sentenced in the last five fiscal years, the average length of sentence imposed was 78 months. PSR ¶ 71. Because the government's recommended sentence is within range of the average sentences other courts have imposed in similar cases, to vary significantly downward (or upward) would create an unwarranted sentencing disparity and should be avoided.

III. CONCLUSION

The government's sentencing recommendation considers the various factors set forth in § 3553(a) and the Sentencing Guidelines. Given these factors, the government believes that 87 months' imprisonment is an appropriate sentence and is justified by the defendant's conduct in this case and his criminal history. Such a sentence is sufficient, but not greater than necessary, to comply with the purposes of sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants .

/s/ Samuel R. Feldman

Samuel R. Feldman

Assistant United States Attorney

Date: August 26, 2023