

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Docket No: 22-cr-10086-FDS
)	
JESUS GRACIELO GARCIA-VEGA)	<i>FILED UNDER SEAL</i>

DEFENDANT’S SENTENCING MEMORANDUM

The Defendant, Jesus Gracielo Garcia-Vega, submits this memorandum to assist in his sentencing. Mr. Garcia-Vega agreed to supply a kilogram of fentanyl to a cooperating witness and was found to be in possession of approximately one kilogram of fentanyl at the time of a traffic stop on March 24, 2022. He was first charged with possession with intent to distribute 400 grams or more of fentanyl, carrying a 10 year mandatory minimum sentence upon conviction.

[REDACTED]

[REDACTED]

[REDACTED] Moreover, due to prior convictions for transporting marijuana and unlawful reentry, Mr. Garcia-Vega does not qualify for the safety valve provisions of § 3553(f). After consideration of these circumstances, the parties reached a plea agreement under which the Defendant agreed to plead guilty to a superseding information charging possession with intent to distribute fentanyl (but alleging no specific quantity and carrying no mandatory minimum sentence). Mr. Garcia-Vega tendered a guilty plea on March 20, 2023 and now faces sentencing. The undisputed guidelines sentencing range as calculated in the presentence report is 87-108 months imprisonment.

Mr. Garcia-Vega respectfully seeks a sentence of 70 months imprisonment. Although the Defendant does not qualify for the safety valve under § 3553(f) or the related two level downward adjustment under §2D1.1(b)(18), the Defendant's background and personal history demonstrate that he is a migrant (admittedly with a history of recidivism in that regard) and not a hardened drug trafficker. [REDACTED]

[REDACTED] Had Mr. Garcia-Vega received the benefit of the two level downward adjustment under §2D1.1(b)(18), his total offense level would be 25, with a corresponding GSR of 70-87 months. In essence, Mr. Garcia-Vega asks the Court to sentence in accordance with the guidelines had §2D1.1(b)(18) applied.

PROCEDURAL HISTORY

On March 24, 2022, Mr. Garcia-Vega was arrested and charged via complaint with possession of 400 grams or more of fentanyl with the intent to distribute. Subsequently, on April 21, 2022, he was indicted on a single count of possession with intent to distribute 400 grams or more of fentanyl. On June 30, 2022, a superseding indictment added an additional county of unlawful reentry.

Between November of 2022 and March of 2023, several hearings took place regarding the parties' efforts to resolve the case. At those hearings, the Court (Woodlock, J.) expressed concerns about the manner in which the case was charged and the applicable mandatory minimum sentence. The parties reached an agreement whereby the Defendant agreed to plead guilty to a superseding information charging possession with intent to distribute fentanyl (but alleging no specific quantity and triggering no mandatory minimum sentence). The parties briefed the Court on the applicable law and explained the circumstances animating the charge

concession.¹ On March 20, 2023, the Defendant waived indictment and tendered a guilty to plea an Information containing one count of possession with intent to distribute fentanyl and one count of unlawful reentry, which was accepted. On June 13, 2023, the case was reassigned and sentencing scheduled for August 30, 2023.

GARCIA-VEGA'S BACKGROUND AND PERSONAL HISTORY

Even among the modest backgrounds typical of migrants, Mr. Garcia-Vega's upbringing stands out as exceptionally deprived. While his family was loving and supportive, they endured deep poverty. Raised with 8 siblings in a small home with a tin roof, his family home had dirt floor, no telephone, and no running water. Mr. Garcia-Vega recalls his father crafting shoes for him and his siblings out of old rubber tires. Their basic needs were not always met. Mr. Garcia-Vega left school after the sixth grade in order to assist his father with farmwork and help support the family.

Having been raised in this sort of environment, Mr. Garcia-Vega sought a better life for himself in the United States. Starting at the age of 18, he repeatedly attempted to enter the United States but was unsuccessful. In 2012, during one such attempt, the coyote responsible for guiding him across the border required him and other members of their group to carry backpacks of marijuana. The marijuana carried by Mr. Garcia-Vega was not his to sell and its transport was a condition of his passage, an exploitive practice well known in the area.² When the group

¹ [REDACTED]

² See <https://www.npr.org/2011/12/04/143025654/migrants-say-theyre-unwilling-mules-for-cartels>; see also https://tucson.com/news/local/border/costly-crossing-fees-turn-illegal-immigrants-into-marijuana-smugglers/article_1e95e570-080c-5dd7-a240-687cce94ca8f.html

was stopped and apprehended in Arizona, they were prosecuted by Arizona authorities. Mr. Garcia-Vega was convicted of possession of marijuana for sale and received a 2 ½ year sentence.

Upon his release in 2012, he again was apprehended in Arizona after reentering the United States and prosecuted for unlawful reentry. Having been convicted of the marijuana case in Arizona, he was sentenced to 46 months imprisonment and remained in custody until March 2016, when he was removed to Mexico. He remained in Mexico for several years, working in various factories and living with his partner Librada and their two children. Unable to make ends meet and living in poverty, he again made the decision to reenter the United States in 2020. After a brief stint in the area of Portland, Oregon, he made his way to Massachusetts and found work in a food truck and later doing construction. At the time of his arrest, he lived modestly in a small Lawrence apartment, regularly sending money to Librada in Mexico.

ARGUMENT

Mr. Garcia-Vega concedes that his prior convictions place him in Criminal History Category III and disqualify him from the two level downward adjustment for safety valve eligibility under §2D1.1(b)(18). But a closer examination of those convictions does not reveal a sophisticated drug trafficker, but rather a serial migrant unable to resist the better opportunities afforded by the United States. It is true that Mr. Garcia-Vega was convicted for carrying a large quantity of marijuana across the Arizona desert and sentenced to a prison term accruing 3 criminal history points, but the circumstances of that case are clearly different in kind than the offense conduct here. In turn, that Arizona conviction for serving as a drug mule had cascading effects when Mr. Garcia-Vega was arrested for reentering the United States, resulting in a 46 month sentence for unlawful reentry.

Certainly, Mr. Garcia-Vega's history raises questions of recidivism as it relates to his repeated attempts to enter the United States. But he is hardly the sort of recidivist drug trafficker for whom the safety valve should not apply. Indeed, his personal background and the circumstances of this offense, suggest that he is precisely the sort of low-level, nonviolent offender for whom the safety valve was intended. [REDACTED]

[REDACTED] Although a strict application of the Guidelines does not account for that, this Court can and should do so under §3553. A sentence of 70 months would place Mr. Garcia-Vega in the same position as a safety-valve eligible defendant and otherwise serve the purposes of sentencing.

Respectfully submitted,

/s/ Scott Lauer

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CERTIFICATE OF SERVICE

I hereby certify that this document and related attachments will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), as well as U.S. Probation Officer Luciana Sousa, on August 25, 2023.

/s/ Scott Lauer

Scott Lauer