

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA)	
)	
v.)	Case no. 19-cr-10459-RWZ-24
)	
OSCAR PENA, et. al.,)	
)	
Defendants.)	
_____)	

DEFENDANT’S SENTENCING MEMORANDUM

Defendant, Oscar Pena, by and through his counsel, hereby submits his Sentencing Memorandum for the Court’s consideration and requests a sentence, as calculated and reviewed pursuant to 18 U.S.C. §§ 3553 and 3661, that is sufficient but not greater than necessary to achieve the statutory goals of sentencing.

Respectfully submitted
OSCAR PENA,
By his counsel

/s/ Derege B. Demissie

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TABLE OF CONTENTS

I.	Overview	3
	A. Introduction	3
	B. Statement of Facts	3
II.	Application of 18 U.S.C. § 3553(a) Sentencing Factors	4
	A. History and Characteristics of Oscar Pena	4
	1. Children and Relationships	4
	2. Mental and Physical Ailments	4
	3. Education and Work History	5
	4. Responsibility for offense conduct	5
	5. Mr. Pena Has Been Trying to Improve Himself and Create a Better Life for Himself and His Family	5
III.	Nature and Circumstances of the Offense	7
IV.	The Need for a Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence, and Protect the Public from Further Crimes.	7
	A. The Kinds of Sentences Available	8
	1. Mr. Pena’s Criminal History Category Should be a Category III.	8
	2. Mr. Pena Should Qualify for a 2-Point Minor Role Reduction.	10
	3. It is Fundamentally Fair to Sentence Mr. Pena to the Same Term as Other Co-Defendants Who Committed the Same or Similar Offenses	11
	4. The Department of Justice has Recommended Less Stringent Sentences for Individuals Involved in More Serious Crimes But Had the Advantage of Wealth and Status	11
	B. Other Factors	12
	1. Collateral Consequences Mr. Pena Will Suffer	12

in Addition to the Prison Sentence

V. Conclusion

12

MEMORANDUM

I. Overview

A. Introduction

An analysis of each of the factors enumerated in 18 U.S.C. § 3553(a), including the specific offense conduct, Mr. Pena’s background and history, the need for deterrence, the prospect of recidivism, the impact on innocent third parties, and the direction of Congress to avoid sentencing disparities with similarly situated defendants supports a sentence of 30 months of incarceration followed by three years of supervised release. The recommended sentence would best achieve the objectives listed in 18 U.S.C. § 3553(a)(2), as it would reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public. Such a sentence would also satisfy 18 U.S.C. § 3553(a)’s parsimony clause, which requires that the sentence be “sufficient but not greater than necessary” to accomplish the stated goals of sentencing.

B. Statement of Facts

Mr. Pena was arrested on December 5, 2019 for Conspiracy to Conduct Enterprise Affairs Through a Pattern of Racketeering Activity in violation of 18 U.S.C. § 1962(d). Mr. Pena has been detained in federal custody since his arrest. Mr. Pena pled guilty on August 5, 2020 after reaching a plea agreement with the Government that included the following terms: The underlying activity of Mr. Pena includes 38.7 grams of fentanyl to a cooperating witness; that the government agreed to recommend a sentence of incarceration within the advisory guideline range as calculated by the Court followed by 36 months of supervised release; and that the Defendant reserved his right to seek a 2-point reduction for minor role in the offense.

The admitted evidence indicates Mr. Pena was a member of a criminal organization called Latin Kings. Mr. Pena was involved in racketeering activity with involved distribution of 38.7 grams of fentanyl on November 21, 2018. Mr. Pena was also arrested on November 11, 2017 where a search revealed 13 grams of heroin and 2 grams of cocaine in a motor vehicle.

II. Application of the 18 U.S.C. § 3553(a) Sentencing Factors

A. History and Characteristics of Oscar Pena

Mr. Pena is a 25-year-old father to two children. He is the only child born to his parents, Wilson Peguero and Jacqueline Pena. He has five half-siblings.

1. Children and Relationships

Mr. Pena is in a relationship with Taronna Billingslea. They have been in a healthy and stable relationship for about two years. Ms. Billingslea is a special education teacher's assistant. She works and also cares for the son they have together, Osin Pena, who is about four months old. In addition to his son, Mr. Pena also has a daughter, Karter Baldez, who is about 2 years old and lives with her mother, Casey Baldez.

In 2000, Mr. Pena was in a relationship with Casey Baldez and together they had Mr. Pena's daughter. Before Mr. Pena was incarcerated, he saw his daughter several times per month and provided financial support for her. Mr. Pena has complied with all child support orders. His children's wellbeing has always been his top priority.

2. Mental and Physical Ailments

Mr. Pena has no physical ailments other than asthma. Other than anxiety associated increased isolation at Wyatt Detention Facility due to the COVID-19 pandemic, Mr. Pena does not suffer from any mental ailments. He copes with his anxiety by reading and appreciates the emotional support Ms. Billingslea provides for him.

Mr. Pena's physical health is in serious jeopardy at Wyatt Detention Facility. They recently had another COVID-19 outbreak and because Mr. Pena has asthma, he is at risk of developing severe symptoms if he is ever exposed to COVID-19.

3. Education and Work History

Mr. Pena was able to complete the 10th grade but did not continue his studies and has not earned his GED yet. He plans to earn his GED while he is incarcerated. Before his arrest, Mr. Pena participated in a number of educational programs to better himself, including STRIVE, which he completed and Safe and Successful Youth Initiative (SSYI). Mr. Pena voluntarily enrolled in SSYI in 2019 for support in career development, housing, and case management. As a participant, he was always fully engaged and compliant. During his enrollment, he was hired as a laborer at Restaurant Depot and Needham, Massachusetts. He was employed at Restaurant Depot from August 2019 to December 2019. Mr. Pena also held a job at Domino's Pizza as a cook.

4. Responsibility for Offense Conduct

Mr. Pena fully understands the harm he has caused. Mr. Pena has taken full responsibility for his conduct by pleading guilty to the instant offense. He acknowledges his poor choices and poor judgment and accepts that he committed this crime and is ready to move on from it. He knows that serving his sentence is one step closer to improving his life and bettering himself.

5. Mr. Pena Has Been Trying to Improve Himself and Create a Better Life for Himself and His Family

Mr. Pena had a difficult childhood and is making efforts to overcome his difficulties and live a better life. When Mr. Pena was born, his father was incarcerated and not involved in his life. When he was six years old, he lost his mother when she was deported. Mr. Pena's mother's friends cared for him until he was able to stay with his aunt and grandmother around the age of

12 or 13 years old. Mr. Pena's aunt had other children in the home who she had to care for as well. Mr. Pena never had any stable parental figures or role models to look up to. Mr. Pena also lacked stability in his residences as he moved several times as a kid and teenager. Mr. Pena resorted to staying with friends and in shelters while he was residing in the Boston area. He finally gained some stability after meeting his current girlfriend and moving in with her in Randolph, Massachusetts.

The instability and lack of parental figures in Mr. Pena's life has certainly contributed to his actions in the instant offense, but he has had time to mature and think about his actions, and he has proven that he is prepared to live a better life. Mr. Pena recognized that he would benefit from becoming a safe and stable member of his community when he voluntarily enrolled in the SSYI program. Mr. Pena also participated in the STRIVE program. His commitment to finishing his education is shown through his determination to earn his GED while he is incarcerated.

Mr. Pena has ambitious plans for the future. Mr. Pena is completely committed to turning his life around, not only for himself, but for his family. During his sentence, he plans to earn his GED. After his sentence is completed, he plans to move away from Boston and become involved in real estate. He wants to buy property and earn his auction license so he can start selling cars. He also wants to make sure that he is able to provide for his children. He is committed to working on his personal growth and development so that when he is released, he will be prepared to start a new life.

Many people in Mr. Pena's life see great potential in him and recognize that he is trying extremely hard to become a better role model for his family. His girlfriend has watched Mr. Pena grow and mature and knows that Mr. Pena has the potential to become a positive member of society. Mr. Pena's perspective on his changed life has motivated him to work harder. He always

strived to be the best whenever he held employment. He always wanted to earn higher position and climb the ranks at the places of his employment. For example, before his arrest, his goal was to become a supervisor at Restaurant Depo and earn a certification to use machinery.

For the first time in his life, he has recently found stable support which gives him purpose in life that he's never had. Mr. Pena is very open to the advice and encouragement of those around him; he has people in his life who are helping him become a better person. He already has two important people in his life who motivate him to change: his girlfriend, who is an educator, and his son, who has helped reshape his thinking. He has a strong support system and surrounds himself with only positive influences now. While he has come to understand the consequences of his actions, he has parted ways with his old habits and old acquaintances, and he is only focused on bettering himself and his family life.

III. Nature and Circumstances of the Offense

The facts and circumstances of this case and the history and character of Mr. Pena call for a sentence of 30 months of incarceration. Mr. Pena is determined to turn his life around. Mr. Pena has clearly demonstrated that he has accepted responsibility for his crime and is ready to move on from his past. This was a victimless crime and once he is finished with his sentence, he plans on living a lawful life.

IV. The Need for a Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence, and Protect the Public from Further Crimes.

In the present case, a sentence of 30 months of incarceration is sufficient but not greater than necessary to accomplish the goals of sentencing. Mr. Pena is a 25-year-old father of two children who has accepted full responsibility for his actions and is ready to start a new life with his family after he completes his sentence.

A. The Kinds of Sentences Available

1. Mr. Pena's Criminal History Category Should be a Category III.

Mr. Pena has objected to a portion of the Presentence Report (PSR) as it pertains to his criminal history. As stated in his objections, Mr. Pena's juvenile adjudications, which consisted of 6 points, were improperly considered. They were improperly considered in violation of Application Notes 4A1.1(b), 4A1.2(d)(2)(A), 4A1.1(c), and 4A1.2(d)(2)(B). Further, Mr. Pena stated in his objections to the PSR that he did not commit the instant offense while under a criminal justice sentence, which resulted in a 2-point increase in his criminal history score pursuant to Paragraph 83, 84, and 85. Mr. Pena should not be subject to an increase in his criminal history category based on his adjudications that did not occur within the five-year period prior to the commencement of the instant offense.

Further, the Court should not interpret "relevant conduct" to encompass any alleged crime or action not related to the underlying offense, which is the distribution of fentanyl.

USSG § 1B1.3(a)(1)(B) defines relevant conduct as:

all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were—(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity; that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.

Further the commentary in USSG § 1B1.1 defines "offense" as:

the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context. The term "instant" is used in connection with "offense," "federal offense," or "offense of conviction," as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an

offense before another court (e.g., an offense before a state court involving the same underlying conduct).

Here, the instances mentioned in the PSR were not in furtherance of the underlying offense nor reasonably foreseeable in connection with that offense. The only relevant conduct that should be considered is that which is related to the specific act he admitted to in his plea agreement. The increase in Mr. Pena's criminal history category should not be based on allegations. Although relevant conduct does not necessarily require a conviction, the only relevant conduct here that should be considered is that which is connected to the underlying offense.

Therefore, Mr. Pena's total criminal history point should be 6 because there is no relevant conduct related to Mr. Pena's underlying offense that would alter the five-year period provided in sections 4A1.1(b), 4A1.2(d)(2)(A), 4A1.1(c), and 4A1.2(d)(2)(B). Ultimately, this puts Mr. Pena in a criminal history category of III.

2. Mr. Pena Should Qualify for a 2-Point Minor Role Reduction

Additionally, Mr. Pena should qualify for a 2-point minor role reduction pursuant to USSG § 3B1.2(b). His involvement and underlying activity were limited to distribution of 38.7 grams of fentanyl to a cooperating witness on November 21, 2018. The minor role Mr. Pena played within the overall conspiracy supports a reduction of the offense level by 2 points, yielding an adjusted offense level of 17.

In conclusion, Mr. Pena's total offense level should be 17 and his criminal history category should be a III, supporting a sentence of 30 months of incarceration.

3. It is Fundamentally Fair to Sentence Mr. Pena to the Same Term as Other Co-Defendants Who Committed the Same or Similar Offenses

If someone of similar culpability received a lesser sentence, then Mr. Pena should also receive a lesser sentence. According to the PSR, co-Defendant Hector Manuel Vega pled guilty to Count 1 of the Indictment, which is what Mr. Pena pled guilty to. Mr. Vega was sentenced to 18 months of incarceration followed by three years of supervised release. Further, co-defendant Wilson Peguero, who also pled guilty to Count 1 of the Indictment, was sentenced to 30 months of incarceration followed by three years of supervised release. Lastly, co-defendant Juan Figueroa, who pled guilty to Count 1 of the Indictment, was sentenced to 24 months of incarceration followed of three years of supervised release.

4. The Department of Justice has Recommended Less Stringent Sentences for Individuals Involved in More Serious Crimes But Had the Advantage of Wealth and Status.

The Department of Justice (DOJ) has recommended less stringent sentences for several individuals who were connected to President Donald J. Trump and who were charged with far more serious crimes.¹ The individuals charged with these serious crimes are able to enjoy all the advantages of wealth and status as the DOJ recommends lesser sentences for them. Mr. Pena who found himself in the world with little to no support as he grew up deserves more consideration than the wealthy defendants for whom the Department of Justice recommended a variance sentence far below the advisory guideline.

B. Other Factors

¹ Eileen Sullivan & Michael D. Shear, *Trump Praises Barr for Rejecting Punishment Recommended for Stone*, THE NEW YORK TIMES (Feb. 12, 2020) <https://www.nytimes.com/2020/02/12/us/politics/trump-stone.html>; See also Matt Zapotosky, Devlin Barrett, Ann E. Marimow, & Spencer S. Hsu, *Prosecutors quit amid escalating Justice Dept. fight over Roger Stone's prison term*, THE WASHINGTON POST (Feb. 11, 2020) https://www.washingtonpost.com/national-security/justice-dept-to-reduce-sentencing-recommendation-for-trump-associate-roger-stone-official-says-after-president-calls-it-unfair/2020/02/11/ad81fd36-4cf0-11ea-bf44-f5043eb3918a_story.html; <https://law.stanford.edu/2020/02/12/stanfords-robert-weisberg-on-roger-stone-sentencing-and-independence-of-the-doj/>

In arriving at a fair and just sentence, the Court is required to consider the statutory factors under 18 U.S.C. § 3553(a) and may also consider other factors relevant to his sentencing.

1. Collateral Consequences Mr. Pena Will Suffer in Addition to the Prison Sentence

The sentence Mr. Pena will receive will not only result in the continued loss of liberty but will also be accompanied by collateral consequences of loss of family bonds. His relationship with his children, who he has cared for and provided for while he was not incarcerated, will lose a supportive father figure. The bond between a parent and a child contributes significantly to a child's wellbeing and emotional growth, and Mr. Pena's absence and inability to provide support will certainly affect the lives of his children. Children whose parents are incarcerated are more likely to experience "behavioral problems and physical and mental health problems."² They are vulnerable and susceptible to various challenges in life, including "psychological strain, antisocial behavior, suspension or expulsion from school, economic hardship, and criminal activity."³

V. Conclusion

Mr. Pena respectfully submits that upon analysis of each of the factors enumerated in 18 U.S.C. § 3553(a), including the specific offence conduct, Mr. Pena's background and history, the need for deterrence, the prospect of recidivism, the impact on innocent third parties, and the direction of Congress to avoid sentencing disparities with similarly situated defendants supports a sentence of 30 months of incarceration.

² Paola Scommegna, *Parents' Imprisonment Linked to Children's Health, Behavioral Problems*, PRB (Dec. 3, 2014), <https://www.prb.org/incarcerated-parents-and-childrens-health/>

³ Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NATIONAL INSTITUTE OF JUSTICE (March 1, 2017), <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>

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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) on January 12, 2021.

/s/ Derege B. Demissie
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