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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

16 Cr. 249 (GHW)

5 JUAN CASTILLO,

6 Defendant.

7 -----x

8 October 6, 2016
11:45 a.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: SAGAR K. RAVI

Assistant United States Attorney

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

20 BY: ANNALISA MIRÓN

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1 (Case called)

2 MR. RAVI: Good morning, your Honor. Sagar Ravi for
3 the United States.

4 THE COURT: Thank you. Good morning.

5 MS. MIRÓN: Good morning. Federal Defenders of New
6 York, by Annalisa Mirón, on behalf of Juan Castillo.

7 THE COURT: Thank you very much. Good morning.

8 THE DEFENDANT: Good morning.

9 THE COURT: Good morning, Mr. Castillo.

10 So we are here to conduct a sentencing hearing for
11 Mr. Castillo. I have receive and reviewed the following
12 materials in connection with the sentencing:

13 First, the presentence report, which is dated August
14 29, 2016;

15 Second, the defendant's sentencing memorandum, which
16 is dated September 14, 2016;

17 Third, the government's sentencing memorandum, which
18 is dated September 21, 2016;

19 Fourth, the defendant's reply sentencing submission
20 which is dated September 26, 2016; and, most recently,

21 Fifth, the government's supplemental letter memorandum
22 dated October 5, 2016, which was filed sometime between the
23 last business day and today.

24 Let me first ask, have each of the parties received
25 all of those materials?

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1 MR. RAVI: Yes, your Honor.

2 MS. MIRÓN: Yes, your Honor.

3 THE COURT: Thank you.

4 Now, have each of the sentencing memoranda been filed
5 with the Clerk of Court?

6 MR. RAVI: The government's have been file via ECF,
7 your Honor.

8 THE COURT: Thank you.

9 MS. MIRÓN: Yes, your Honor.

10 THE COURT: Thank you.

11 Ms. Mirón, can I ask, first -- actually, both of you,
12 are there any other submissions in connection with this
13 sentencing?

14 MR. RAVI: There are not.

15 MS. MIRÓN: No, your Honor.

16 THE COURT: Ms. Mirón, have you read the presentence
17 report?

18 MS. MIRÓN: Yes.

19 THE COURT: Have you discussed it with your client?

20 MS. MIRÓN: Yes.

21 THE COURT: Thank you.

22 Mr. Castillo, have you read the presentence report?

23 THE DEFENDANT: Yes.

24 THE COURT: Thank you.

25 Have you discussed it with your counsel?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you had the opportunity to review
3 with your counsel any errors in the presentence report or any
4 other issues that should be addressed by the court?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Ravi, have you read the presentence
7 report?

8 MR. RAVI: Yes, your Honor.

9 THE COURT: Do you have any objections related to the
10 factual accuracy of the presentence report?

11 MR. RAVI: No, your Honor.

12 THE COURT: Thank you.

13 Ms. Mirón, do you have any objections related to the
14 factual accuracy of the presentence report?

15 MS. MIRÓN: I have two edits that I would propose that
16 the court make.

17 The first edit is relating to Mr. Castillo's address,
18 which would be important, no matter the sentence he receives,
19 where he would be placed on supervision. So instead of the
20 current address as 274 East 175th Street --

21 THE COURT: Can I ask, counsel, can you point me
22 specifically to the location of the error?

23 MS. MIRÓN: Yes. I believe it is the third page. It
24 is marked page 3 of 24 at the top, "Identifying Data."

25 THE COURT: Thank you.

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1 Proceed.

2 MS. MIRÓN: I have written it out, if that would be
3 easier for the court, but we would propose that that be
4 changed to 115 University Avenue, Apt C12, Bronx, New York,
5 and I can get you the zip code. I'm sorry this is happening
6 last minute, but it has just now been given to me by his
7 family.

8 THE COURT: Thank you.

9 Is this his actual address or is it an address to
10 which he hopes to return after his release? In other words, is
11 this an error in the report?

12 MS. MIRÓN: It is not an error. He was living at --
13 well, he was staying at 274 East 175th Street before his
14 arrest, but he plans to live at this new address.

15 THE COURT: Thank you.

16 It is not apparent to me that that is an error that
17 requires correction at this time.

18 MS. MIRÓN: Okay.

19 Then the other, whether it be an error or change that
20 I would propose is paragraph 9. There is a reference to an
21 ex-boyfriend, "Male 1." We submit that Male 1 is the same
22 person as Victim 1, and we would ask that that be noted in the
23 report.

24 THE COURT: Thank you.

25 I don't know that I have a basis to conclude that.

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1 What is the view of the United States?

2 MR. RAVI: Your Honor, the reason I think there is a
3 distinction made is the Victim 1 identified in paragraph 7 was
4 identified on the 9-1-1 call to be a specific person that's
5 referenced as "Victim 1." The person that's referred to as
6 "Male 1" in paragraph 9 is based on a statement that the female
7 once stated that her ex-boyfriend was jealous that Female 1 had
8 a new boyfriend. She, I believe, did not specify who that
9 ex-boyfriend was; and, therefore, there is a distinction there,
10 in that the identity of that ex-boyfriend, at least from the
11 government's perspective, has not been confirmed, and that is
12 why I believe that there is a distinction that's being made
13 there.

14 THE COURT: Thank you.

15 Let me ask counsel for Mr. Castillo, is this an
16 objection to the factual statement that's made in paragraph 9
17 that I need to resolve?

18 MS. MIRÓN: I am asking for an addition to that
19 paragraph. So I don't know that the court needs to change
20 anything listed, but I would ask for an additional sentence
21 that Male 1 is the same person as Victim 1.

22 THE COURT: Thank you.

23 The issue that I have is that I don't have a basis to
24 conclude that, a factual basis to conclude that.

25 If there is an objection to this as factual matter, we

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1 can have a hearing, and I would be happy to find the
2 appropriate facts. Otherwise, I am not sure what the basis
3 would be for me to modify the presentence report absent a
4 hearing.

5 MS. MIRÓN: Your Honor, I did attach as an exhibit
6 the criminal court records relating to Marvin Prince, who is
7 the person described as "ex-boyfriend." I believe that
8 would constitute a factual basis for indicating that
9 Ms. Ramirez's ex-boyfriend, as listed in the report, is Marvin
10 Prince.

11 I have tried to detail in my memorandum facts that
12 support the fact that Marvin Prince attempted to harass
13 Ms. Ramirez. And this is an issue that I have raised with the
14 government several times, but I think there is a factual basis
15 because the 9-1-1 caller is Marvin Prince. The government
16 would confirm that. Additionally, we have criminal court
17 records from 2011 stating that Mr. Prince has orders of
18 protection against him, and it is a domestic violence case
19 against Marvin Prince.

20 So I believe there is a sufficient factual basis, and
21 I don't believe the government has any contrary facts to my
22 proposal.

23 THE COURT: Thank you.

24 Let me try to frame this request. As you know, I must
25 determine whether there is a dispute regarding the presentence

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1 report; and then the rule requires that, for any disputed
2 portion of the presentence report or any other controverted
3 matter, the court has to rule on that dispute or determine that
4 a ruling is unnecessary.

5 In this instance, I understand that the request is
6 that I enter a ruling adding something to the presentence
7 report. It is not apparent to me how I can do that without
8 facts, whether presented in a hearing or through affidavit. We
9 could determine that separately. But I would anticipate that
10 we would have to proceed using a hearing for me to determine
11 what the facts are. And, again, I would be happy to do that
12 if this is a disputed portion of the presentence report on
13 which the parties require a ruling, which appears to be the
14 case.

15 MS. MIRÓN: I guess the preliminary question is
16 whether the court's sentence might materially change dependent
17 upon that addition; and, if the court determines that it would
18 not make a material difference, then we would not ask for a
19 hearing.

20 THE COURT: You would not ask for a hearing? I'm
21 sorry?

22 MS. MIRÓN: Right. If the court believes that the
23 sentence, if added, would not have a material impact on the
24 sentence imposed on Mr. Castillo, then I do not request a
25 hearing.

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1 THE COURT: Let me clarify. I think that there may be
2 a question here.

3 Yes, it is true that I could determine that a ruling
4 is unnecessary either because the matter will not affect
5 sentencing or because I will not consider the matter in
6 sentencing. However, I am being requested to make a ruling
7 that the report should be modified to include a statement of
8 fact that is not currently before me and as to which I have no
9 evidence to support a finding.

10 So to the extent that the comment that you just made,
11 Ms. Mirón, was, in essence, that I can order that modifications
12 be made to the report so long as it will not affect my sentence
13 or that I will not consider it in sentencing, I am not sure
14 that that is correct. In fact, I think it is incorrect. I
15 don't think I can add anything to the report so long as I don't
16 consider it.

17 MS. MIRÓN: No, I agree.

18 I am saying that we will not request this addition if
19 the court is in a position at this point to determine that the
20 addition would not have an affect on the sentence. If the
21 court is not comfortable with that determination, then --

22 THE COURT: I'm not sure exactly what the request is.
23 I'm sorry. If the question is whether I will make my decision
24 based on the presentence report, as written, without additional
25 content that is not included there, the answer is, yes, that is

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1 what I expect to do. That is all that I would have to
2 consider.

3 MS. MIRÓN: I am wondering whether, if the sentence is
4 added, whether the additional fact would have an impact on
5 Mr. Castillo's sentence.

6 THE COURT: I can't say.

7 MS. MIRÓN: One way or the other. Okay.

8 So let me just discuss this issue with Mr. Castillo.

9 THE COURT: Thank you.

10 (Defense counsel and defendant confer)

11 MS. MIRÓN: Your Honor, we would request that that
12 addition be made; and, if necessary, request a hearing.

13 THE COURT: Thank you.

14 United States?

15 MR. RAVI: Your Honor, I am trying to understand how
16 this -- the fact that seems to be in dispute is whether or not
17 Victim 1 -- sorry, excuse me, the ex-girlfriend was referring
18 to Victim 1 or some other male when she made the statement as
19 to an ex-boyfriend that day when the officers were at her
20 house. It is unclear to me how that fact would be established
21 at a hearing without calling Victim 1 to establish who she was
22 referring to when she made that statement as to who -- if it
23 was Victim 1 was her ex-boyfriend she was referring to, whether
24 there was another ex-boyfriend that she was referring to in
25 that statement or not.

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1 I believe that, also, Victim 1 is unlikely to
2 cooperate based on the government's previous attempts to speak
3 with Victim 1 further, and I believe that she may also face
4 some potential for exposure in connection with this offense
5 and, therefore, is unlikely to be one who would come to court
6 and testify such that a factual dispute can be made.

7 The focus of this sentencing proceeding is on the
8 facts of the defendant's conduct and not on what the
9 ex-girlfriend said about who her ex-boyfriend was. Therefore,
10 on that basis, I just don't understand how this factual dispute
11 could be resolved at any evidentiary hearing and, in any event,
12 should not be material to a determination here.

13 THE COURT: Thank you.

14 Let me help to frame this. The request is not that I
15 not take into account or the request is not that I ignore the
16 content of paragraph 9 regarding who Female 1 discussed. That
17 would be one request. I would just be not considering the
18 sentences. That would be one request.

19 The request here, however, is that I add a sentence
20 that I then would consider. So the dispute, as I understand
21 it, is that the content of this language is incorrect and,
22 therefore, must be supplemented. It is not that I should
23 ignore the content of this sentence. If this was the first
24 request, I think that we would be following a different
25 process. I could make a determination whether the ruling

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1 was necessary or concluded potentially that I would not
2 consider the issue. That is not the request here, as I
3 understand it.

4 The question, rather, is that I do consider this issue
5 in sentencing and, therefore, if that is the request, I think
6 that I need to have a factual basis to reach that conclusion.

7 That is how I framed the issue. Can I ask if that
8 sounds like the appropriate way to consider it or is there an
9 alternative way for me to be considering it?

10 Ms. Mirón?

11 MS. MIRÓN: I agree that's appropriate.

12 I do want to address the government's concern that
13 there would be no way to elicit testimony on this issue. He
14 did refer to Ms. Ramirez, who is "Female 1" as "Victim 1," but
15 the report makes clear that Victim 1 references a male. So
16 Victim 1 is not her. She was present in the apartment.

17 And, as I wrote in my sentencing memorandum, what
18 happened that day is, her ex-boyfriend, who we believe to be
19 Marvin Prince, tried to enter her apartment; and we believe,
20 although it is not corroborated, because the records were
21 sealed before we could obtain them, we believe that he did that
22 in violation of an order of protection. So it is important
23 because it explains the context of this offense.

24 The first paragraph of the offense conduct or the
25 second paragraph, paragraph 7, indicates that Victim 1

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1 purported a gun had been pointed at him. That is not what
2 happened, and that is important for this sentencing. We have
3 laid that out in our memo. We don't object to the fact that he
4 placed a call, and so that's accurate, but we do object to the
5 fact that the gun was pointed, according to him.

6 So I believe there is context that is laid out in
7 paragraph 9 which explains why Victim 1 was present. Her
8 ex-boyfriend was jealous that Mr. Castillo, who is her current
9 boyfriend, was with her, and he tried to create an altercation.

10 It may be that Ms. Ramirez has some criminal exposure,
11 because the DNA found on the weapon was female DNA. So I
12 believe that is what the government is referring to when they
13 say it would be impossible to establish this fact.

14 We did speak with Ms. Ramirez at the beginning of this
15 case. My investigator was present. She could testify that
16 Ms. Ramirez identified the person who tried to enter the
17 apartment as Marvin Prince, and I think that would establish
18 this fact.

19 I don't know why the government is not -- is
20 protesting the issue, but I think that would be sufficient
21 testimony at a hearing.

22 THE COURT: Let me hear from you, if I can, Mr. Ravi,
23 and we will discuss next steps.

24 MR. RAVI: Yes, your Honor.

25 I certainly think that a fair inference can be drawn,

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1 based on the facts that are laid out in the PSR, as well as the
2 complaint, that the ex-boyfriend she was referring to was
3 likely to be the Victim 1 who called immediately before that
4 and, therefore, is what led the officers to the apartment where
5 the defendant was found throwing a gun out of the window. I
6 just, sitting here today, cannot conclude that she was
7 referring specifically to Mr. Prince.

8 The government doesn't take objection to that fair
9 inference being drawn by the court that they are one and the
10 same. Just in terms of ensuring the PSR is accurate, all that
11 is being laid out there is that she referred to an
12 ex-boyfriend, which the government defined as Male 1. If we
13 want to strike the definition of Male 1 and just have her refer
14 to an ex-boyfriend, that might alleviate the factual dispute,
15 which I understand is that the fact that there was a reference
16 to Male 1 being defined as the ex-boyfriend, that doesn't line
17 up with Victim 1 is what is the issue here. I propose to
18 strike "Male 1" and have her refer to an ex-boyfriend, which is
19 what the factual statement is that she made, and that might
20 alleviate the concern of the defendant.

21 THE COURT: Thank you.

22 Ms. Mirón.

23 MS. MIRÓN: For once I agree with the government.
24 That might solve the issue, striking the "(Male 1)" would
25 permit me to make the argument.

ga62casS kjc

1 THE COURT: Thank you.

2 So the request, here, then, is that the court not
3 consider in sentencing the reference to the parenthetical "Male
4 1" in paragraph 9 of the presentence report. Is that correct?

5 MS. MIRÓN: Yes.

6 THE COURT: Mr. Ravi, this is your idea. I take it
7 you don't object.

8 MR. RAVI: I do not object to the striking of "Male 1"
9 in paragraph 9.

10 THE COURT: Thank you.

11 I understand that there is one factual dispute
12 regarding the PSR, and that is the reference to "(Male 1)" in
13 paragraph 9. I can conclude that I will not consider that
14 parenthetical in my sentencing and, therefore, we can proceed
15 with that understanding.

16 Good.

17 Are there any other objections related to the factual
18 accuracy of the presentence report other than the one that I
19 just addressed?

20 MS. MIRÓN: No, your Honor.

21 MR. RAVI: Not from the government either.

22 THE COURT: Thank you.

23 Given that there are no objections to the factual
24 recitations in the presentence report, the court adopts the
25 factual recitations in the presentence report, with the single

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1 modification just described, namely, I will not consider the
2 parenthetical reference to "Male 1" in paragraph 9 of the PSR
3 on page 4 of that report.

4 The presentence report will be made a part of the
5 record in this matter and will be placed under seal. If an
6 appeal is taken, counsel on appeal may have access to the
7 sealed report without further application to the court.

8 Before I proceed, I would like to hear arguments about
9 the guidelines manual that's applicable in this case and, in
10 particular, the question of whether Mr. Castillo's 2003
11 manslaughter conviction should be treated as a quote/unquote
12 crime of violence under the November 2015 sentencing
13 guidelines.

14 On this, I would like to hear first from Ms. Mirón,
15 and then I will turn to the United States.

16 MS. MIRÓN: Okay.

17 So the backdrop to this argument is that the
18 government has conceded, at least implicitly, that the residual
19 clause cannot be a basis for determining that the manslaughter
20 conviction is a crime of violence. So I am assuming that and
21 proceeding under the theory that the government argued it
22 qualifies as a crime of violence under the force clause.

23 So I am going to turn to 4B1.2.

24 The clause is 4B1.2(a)(1), and it specifies that "a
25 crime of violence" means any offense under federal or state

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1 law, punishable for a term of imprisonment of one year, that
2 (1) has as an element the use, attempted use, or threatened use
3 of physical force against the person of another.

4 So that is written very differently from the residual
5 clause. It is an elements analysis, and it requires that, for
6 an offense to qualify under that clause, it has an element.

7 So manslaughter is drafted such that the person
8 accused of manslaughter must have the intent to -- let me just
9 make sure the language is accurate.

10 (Pause)

11 MS. MIRÓN: The parties agree that subdivision 1 is
12 the right subsection.

13 THE COURT: Let me pause you on that.

14 The statute is divisible, therefore subsections, as
15 you have articulated in your briefs, and both parties have
16 assumed that Mr. Castillo was convicted under subsection 1.

17 What is the basis for me to conclude that subsection 1
18 was the appropriate subsection of the New York State
19 manslaughter statute in this case?

20 MS. MIRÓN: It is in the PSR and, independently, I
21 have obtained the indictment and verified that that is the
22 right subsection that he --

23 THE COURT: Thank you.

24 Has the United States seen the indictment?

25 MR. RAVI: We have not, your Honor. We were relying,

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1 as well, on a criminal rap sheet that was provided to us and
2 did not believe that there was a dispute as to which subsection
3 would apply here.

4 THE COURT: Thank you.

5 The PSR states that it is "Manslaughter in The First
6 Degree: with intent to cause serious physical injury/" with
7 nothing following.

8 Do you have the indictment, Ms. Mirón? And, if so,
9 could you please hand it forward, and would you also please
10 hand it to the United States.

11 MS. MIRÓN: I just need a moment.

12 (Pause)

13 MS. MIRÓN: So I will hand it first to the United
14 States?

15 THE COURT: Please, do.

16 MS. MIRÓN: I refer counsel to the third count, which
17 is the only manslaughter count in the indictment.

18 (Pause)

19 MR. RAVI: I am handing this up to the court.

20 (Pause).

21 THE COURT: Thank you.

22 I am looking at a copy of the indictment that's been
23 handed forward by counsel for the defendant. It is indictment
24 number 2109-04.

25 The third count charges that the defendant "did cause

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1 the death of Victor Mojica, while acting with intent to cause
2 serious physical injury to that person, by shooting him in the
3 torso."

4 And the indictment is signed by Mr. Johnson, the then
5 district attorney in the Bronx.

6 So, parties, do you each agree that Mr. Castillo was
7 convicted under subsection 1 of New York Penal Law 125.20?

8 MR. RAVI: Yes, your Honor.

9 MS. MIRÓN: Yes.

10 THE COURT: That understanding is supported by the
11 indictment itself, and we will proceed with the understanding
12 that he was convicted under that subsection of the statute.

13 Please proceed, Ms. Mirón.

14 MS. MIRÓN: So the statute New York Manslaughter in
15 The First Degree, subsection 1, requires that "with the intent
16 to cause serious physical injury to another person, he causes
17 the death of such person or of a third person."

18 In and of itself, that clear statutory language does
19 not require the use of any type of force and under New York
20 Court of Appeals case law, one can be guilty of this subsection
21 through omission. I cited *People v. Steinberg*. I also cited
22 *People v. Wong*, which is not explicit about how it addresses
23 first degree manslaughter, but it does adapt the theory of
24 liability that the People of New York had in that case.

25 In that case, there were two individuals responsible

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1 for the care of a baby. One was accused of actively shaking
2 the baby. The other was accused of not obtaining medical care.
3 The Court of Appeals did not find that there was sufficient
4 evidence about the state of mind of that passive defendant, but
5 it did reinforce the fact that New York Manslaughter in The
6 First Degree, as in *People v. Steinberg*, could be committed
7 through an omission as long as the person has the relevant *mens*
8 *rea*, in this case an intent to cause serious physical injury.
9 That holding makes it clear, under New York law, that there is
10 no requirement that an individual use force, any type of force,
11 even common law force, in the commission of this offense.

12 So I think the government at length argues about
13 *United States v. Hill* and how the Second Circuit may have
14 remarked that its earlier decision in *Chrzanoski* did not take
15 into account the *Castleman* decision by the Supreme Court, which
16 is a 2014 decision about domestic violence, which did
17 undermine, a bit, the idea that you could commit a crime, the
18 idea that the defendants were arguing, that indirect force is
19 not sufficient to qualify as a crime of violence under a force
20 clause, such as 4B1.2.

21 But *Castleman* and *Hill* have nothing to do with
22 omission, which, in and of itself, requires no use of force --
23 no indirect force, no direct force, no common law force,
24 certainly no violent force, which is what's required by 4B1.2.

25 The government, I think, has now focused on the

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1 commentary, and that is an issue that the Supreme Court will
2 ultimately rule on in *Beckles*. But the *Beckles* decision -- I
3 am just learning the law now, so forgive me if it is a little
4 vague, but *Beckles* decision, in the Eleventh Circuit, was that
5 the residual clause was not unconstitutional essentially. It
6 rejected the defendant's argument under 4B1.2 that the court
7 not consider the residual clause in the November guideline.

8 So its side conclusion that the commentary can form a
9 basis for sustaining a crime of violence is dependent on the
10 fact that the residual clause was going to be sustained in the
11 Eleventh Circuit. The Supreme Court granted *cert.* on those
12 questions, so there is a possibility the Supreme Court could
13 disagree. In fact, here, the government has conceded at least
14 that the residual clause cannot be relied upon.

15 So there are two other circuit court cases that I
16 cited in my initial memo related to the commentary. They both
17 go our way. One is *Rollins* and one is *Soto Rivera*, in the
18 First Circuit. Both of these cases stand for the proposition
19 that once the residual clause is unconstitutional, once it
20 falls, essentially, the commentary may not form a basis because
21 it is tied to the residual clause.

22 I think it is important, if you look at the revised
23 guideline, the August 2016 guideline, the enumerated offenses
24 are now in the text of the residual clause. All of them are
25 now in the text of the residual clause. So I will just read

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1 that. They have been taken entirely out of the commentary and
2 they are now listed as murder, voluntary manslaughter,
3 kidnapping, aggravated assault, forcible sex offense, robbery,
4 etc. They are now in the residual clause. They did not create
5 a third subsection that would list enumerated offenses. The
6 Sentencing Commission decided to list them all in the text of
7 that clause, and I think that's logical because the analysis
8 under the force clause is an elements-based analysis. It would
9 be inconsistent if the statute, such as manslaughter, did not
10 require as an element the use of force but, nevertheless,
11 courts could find, under the commentary, that manslaughter was
12 a crime of violence. That would be inconsistent with the text
13 and, under *Stinson*, an improper use of the commentary.

14 So I think logic dictates that the application note 1
15 of the November guidelines is tied to the residual clause; and,
16 if the court is not willing to accept that, it is an
17 inconsistent application, an inconsistent analysis to determine
18 that, even if New York Manslaughter does not require it as an
19 element, it is nevertheless permissible to rely on the
20 application note. We would strongly object to that finding.

21 It is worth noting that the Second Circuit, in 2006,
22 in *Vargas Sormiento*, determined that manslaughter would qualify
23 under the residual clause of 18 United States Code § 16, but
24 essentially implied that it would not qualify under the
25 equivalent force clause of Section 16. And it emphasized, the

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1 court emphasized that 16A requires the use of force as an
2 element. And I don't see anything undermining that conclusion.

3 We rely heavily, of course, on *Chrzanoski* because the
4 statute is written very similarly to the manslaughter, the
5 Connecticut assault statute. It is written in the same way.
6 You need an intent to cause injury and then cause injury, as
7 opposed to using force in the commission of the crime.

8 So if the court has any questions, I am happy to
9 answer them, but that is the bulk of our argument.

10 THE COURT: Very good. Thank you very much.

11 Let me turn to you, Mr. Ravi.

12 MR. RAVI: Thank you, your Honor.

13 I just want to step back and make sure that -- the
14 issue here is whether or not a conviction for manslaughter in
15 the first degree is a quote/unquote crime of violence under the
16 guidelines.

17 Manslaughter is -- the elements -- there are two
18 elements, essentially, and those elements actually track
19 *Johnson* 2010's exact definition of what is violent force. And,
20 in *Johnson*, they identified that physical force was found to
21 mean a violent force, force capable of causing physical pain
22 and injury.

23 Here, the elements of manslaughter are almost exactly
24 that: one, that you intend to cause serious physical injury to
25 another person; and that you are causing the death of another

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1 person.

2 On that basis, and the similarity of the definition of
3 what violent force or physical force means under the
4 guidelines, the government submits that manslaughter does in
5 fact contain an element that involves the use of physical
6 force.

7 I won't address -- the second main argument that the
8 government provides is as to the commentary, which explicitly
9 includes manslaughter as a crime of violence. Certainly,
10 defense counsel has made the argument that courts should ignore
11 the commentary because it is somehow interpreted to interpret
12 only the residual clause that is in 4B12(a)(2) -- 4B1.2(a)(2),
13 as opposed to the force clause, as well as the other sections
14 of that clause.

15 There is no basis, however, in the commentary that the
16 enumeration of the crimes of violence in the commentary are
17 limited to solely interpreting the residual clause. In fact,
18 in the *Stinson* case, the Supreme Court has recognized that that
19 commentary is an interpretation of what is defining broadly a
20 crime of violence, and that it is a binding interpretation on
21 the federal courts. There is no indication otherwise and there
22 are no decisions in this circuit that are binding on this court
23 to find that the commentary, despite having made no reference
24 to anything other than what a crime of violence is, that it
25 solely is there to interpret what the residual clause is

ga62casS kjc

1 intending to make a crime of violence.

2 I want to address now the New York State cases that
3 the defendant refers to. There are two cases. The first is
4 *Steinberg* and the second is referred to as *Wong*.

5 I just want to point out at the beginning that these
6 are not cases that simply involve a person walking down the
7 street and seeing someone who is injured and somehow deciding
8 to not give that person medical care and leaves and then can be
9 convicted of manslaughter.

10 These two cases do in fact, both of them, involve
11 violent physical force.

12 First, in the *Steinberg* case, the defendant was
13 actually caused blunt head trauma to I believe it was a
14 six-year-old girl and then later essentially failed to provide
15 medical care after that injury occurred.

16 The second case is the *Wong* case where a
17 three-month-old infant was shaken violently enough to produce
18 fatal injuries.

19 Both of these cases clearly involve the violent use of
20 physical force. The fact that the Court of Appeals noted that
21 the defendants could be convicted on the basis of their failure
22 to provide medical care, which I believe is, frankly, *dicta*,
23 given the alternative holdings in those cases, does not mean to
24 suggest that, all of a sudden, manslaughter does not in fact
25 involve the use of physical force that is intending to cause

ga62casS kjc

1 serious physical injury.

2 In fact, the *Wong* case actually appears to support the
3 government's position insofar as it found that a passive
4 defendant's presence at where the violent shaking occurred of
5 the baby was not sufficient to sustain a conviction for
6 manslaughter. The court found that the person must know that
7 there was in fact a violent shaking that occurred there and
8 that it created a risk that the child would die without prompt
9 medical care. These are all things that encompass the crime
10 that involves physical force used to cause serious physical
11 injury.

12 The government also notes that these two cases are
13 really limited to a very narrow set of circumstances, where an
14 omission can be found as a basis for manslaughter. In the case
15 in *Wong*, the New York Court of Appeals notes that, when
16 discussing the *Steinberg* case, "That parents have an
17 affirmative duty to provide their children with adequate
18 medical care and that, under certain circumstances, the failure
19 to perform that duty can form the basis of a homicide charge."

20 In other words, these two case are really limited to
21 the narrow situation of parents and caretakers taking care of
22 children who have an affirmative duty in order to provide
23 medical care to a child that they have seen be hit, hit hard in
24 the head, or that has been violently shaken. This should not
25 stand for the broad proposition that somehow an omission,

ga62casS kjc

1 without anything else, can stand -- can be sufficient to
2 sustain a manslaughter conviction.

3 THE COURT: Can I pause you on that?

4 Is that the issue, though, or is the issue whether you
5 can be found guilty of manslaughter without the application of
6 physical force?

7 MR. RAVI: The issue is whether or not there is --
8 whether manslaughter does in fact have an element that involves
9 the use, attempted use, or threatened use of physical force;
10 and the government believes that these cases are, where it
11 discusses a manslaughter conviction being sufficient, where
12 someone fails to provide medical care for a child, that
13 affirmative duty that is established in providing medical care
14 is in fact the physical force that was necessary to sustain
15 that conviction.

16 THE COURT: So the view of the United States is that
17 the physical force requirement is satisfied in those cases by
18 the existence of a duty to the children.

19 MR. RAVI: A duty to the children as well as the fact
20 that just because -- if someone has a duty to act and does not,
21 that itself entails some use of physical force. In *Johnson*,
22 2010, the Supreme Court noted that physical force is simply --
23 is action undertaken by concrete bodies. It is not meant to
24 kind of -- it is not meant to lead to anything further than
25 that. But, also, it is important to keep the context in these

ga62casS kjc

1 cases mind, that they are limited to narrow situations where
2 there is, in fact, an affirmative duty to act and where there
3 is, in fact, violent physical force that is used as part of the
4 crime. Both of these defendants had to know that violent force
5 was used in connection with the intentional causation of
6 damage, serious physical injury to these children, which then
7 led to their demise.

8 THE COURT: Thank you.

9 MR. RAVI: I kind of wanted to -- unless the court has
10 other further questions, I can discuss the distinction between
11 omissions and commissions that the defendant goes into, but I
12 think these are really laid to rest by the Supreme Court's
13 decision in *Castleman*, which dismisses the argument that,
14 certainly, poisoning a drink and just sitting idly by still
15 involves the use of physical force, and it is the government's
16 position that the Supreme Court's view that indirect force can
17 be used to satisfy this element, which was adopted and
18 discussed at length by the Second Circuit in *Hill*, is
19 certainly sufficient here in these cases for a manslaughter
20 conviction.

21 THE COURT: Thank you.

22 Let me ask you, Mr. Ravi, regarding your footnote 3,
23 there you describe the *Steinberg* decision and the actions by
24 the defendant there and say that "both actions by the
25 defendant -- the striking of the child and the failure to

ga62casS kjc

1 obtain medical care -- constitute actions knowingly taken to
2 cause physical harm and therefore involve the use of physical
3 force as explained further below."

4 Focusing on the second of the two actions by the
5 defendant, namely, the failure to obtain medical care, why does
6 that constitute an action knowingly taken to cause physical
7 harm and, therefore, perforce, involve the use of physical
8 force? There seems to be a correlation here, a premise in your
9 argument that an action knowingly taken to cause physical harm
10 necessarily involves the use of physical force, and I would
11 appreciate a more fulsome explanation of the basis for that
12 premise.

13 MR. RAVI: Sure. Understood, your Honor.

14 In the *Steinberg* case, again, this involves a
15 defendant who struck a child in the head and then didn't
16 provide medical care to that child. It is the government's
17 position that the fact of -- if we isolate -- the failure to
18 provide medical care cannot be isolated from the fact that this
19 defendant knew whether or not -- even putting aside actually
20 causing it, knew that violent force was in fact used on a child
21 and then failed to provide medical care as a caretaker for that
22 child, that that in fact does constitute physical force. Both
23 the failure -- the fact that it is either an omission, if you
24 want to call it that, that is based on an affirmative duty
25 under New York law to provide medical care, or whether it is

ga62casS kjc

1 indirect force that has been discussed in the *Castleman* and the
2 *Hill* decisions, either way, that is sufficient in order to
3 qualify as physical force the attempted use of threatened
4 physical force under the guidelines.

5 THE COURT: Thank you.

6 Taking *Steinberg* at its face, understanding that that
7 defendant did both a physical act and also omitted to obtain
8 medical care, let me ask you about a hypothetical:

9 So, imagine that your child is tragically -- who you
10 hate -- is tragically struck by a car accidentally. You are
11 standing there. You see them there bleeding. You expect them
12 to die without medical care. You don't make a phone call to
13 get help.

14 Can that support a manslaughter conviction under the
15 New York State statute?

16 MR. RAVI: First -- I will respond to that. I just
17 want to note, as well, that certainly in connecting this
18 analysis, we should not -- the court should not resort to kind
19 of theoretical possibilities as to what could be the basis for
20 a conviction; and, in fact, the *Wong* case specifically states
21 in its decision that, "We agree that the People's formula could
22 theoretically support convictions in a proper case."

23 But now to address the court's hypothetical --

24 THE COURT: The reason why I ask the question, to be
25 clear, is to determine whether, as an element of this offense,

ga62casS kjc

1 it requires the application of violent physical force.

2 MR. RAVI: Understood, your Honor.

3 In that case, in the hypothetical, I believe that the
4 fact that there was, first of all, violent -- there was force,
5 being hit by the car would certainly be violent physical force
6 that was put upon a child, and then the defendant's failure to
7 actually achieve medical care or obtain any sort of medical
8 care, those actions together is what's necessary to make that a
9 conviction under the manslaughter statute, even though the
10 defendant didn't commit that earlier act of hitting the child
11 with the car. Those acts together is what is required in order
12 for there to be a conviction and, on the basis of *Castleman*,
13 which discussed intending to cause serious physical injury,
14 necessarily involves the use of physical force, we believe that
15 case is sufficient to establish that.

16 THE COURT: Let me back up on that. You say intending
17 to cause physical harm is sufficient to show force. How does
18 the intent to cause physical harm cause force?

19 Let me just note that the offense for which the
20 defendant in *Castleman* pleaded guilty is different than the
21 offense that is charged here. Here, the crime involves an
22 intent to cause physical injury. In *Castleman*, if I remember
23 correctly, the defendant pleaded guilty to "intentionally or
24 knowingly causing bodily injury to" the mother of his child.
25 So it was not a plea to a thought crime, an intent to cause

ga62casS kjc

1 bodily injury, but he pleaded guilty to intentionally causing
2 bodily injury.

3 Why do you say that the intent to cause serious bodily
4 injury is the same as applying force or causing the injury?

5 MR. RAVI: Here it is intending to cause serious
6 physical injury and then actually causing death. Based on the
7 language in *Castleman*, which it does involve a separate, a
8 distinct statute, the Supreme Court did say that "the knowing
9 or intentional causation of bodily injury necessarily involves
10 the use of physical force."

11 Here, we have a manslaughter statute that requires
12 intending to cause serious physical injury and then actually
13 causing death. Based on that, it is not -- certainly there has
14 to be an intentional element as to both of those, but certainly
15 the intending to cause serious physical injury is itself
16 sufficient on the basis of how the Supreme Court has described
17 what the -- what is necessary to involve physical force that is
18 at issue here in the manslaughter statute.

19 THE COURT: Thank you.

20 Can I ask, regarding one of Ms. Mirón's comments,
21 namely, her proposition that the United States concedes that
22 the residual clause in the sentencing guidelines was rendered
23 void as a result of the application of *Johnson*, is that
24 correct?

25 MR. RAVI: That is correct, your Honor. Given -- we

ga62casS kjc

1 have been approaching on the idea and belief and understanding
2 that the residual clause, given the similarity to the void for
3 vagueness finding by the Supreme Court, should not apply and
4 that is the basis we are not relying upon the residual clause
5 here, because we believe that it does establish that
6 manslaughter has basis on the force clause anyway.

7 THE COURT: Good. Thank you.

8 Is there anything else that you would like to add?

9 MR. RAVI: I would like to add one last thing your
10 Honor.

11 To the extent the court decides not to find that
12 manslaughter is a crime of violence, the court should keep in
13 mind that the defendant's conduct in that conviction, which was
14 in 2006, was that he shot a man in the torso and caused that
15 man's death. That is certainly -- the seriousness of that
16 offense is something that the court should consider regardless
17 of any finding as to what is a crime of violence in coming up
18 with a sentence.

19 The defendant made a concession in its submission
20 that, starting -- for anyone who commits crimes after August 1,
21 2016, that in fact a manslaughter conviction, such as
22 Mr. Castillo's, would constitute a crime of violence and
23 therefore significantly increase the sentencing guidelines
24 range, which is advisory to this court.

25 The government believes that creates a significant

ga62casS kjc

1 disparity simply because a defendant was convicted after -- or
2 committed a crime after August 1, 2016, compared to
3 Mr. Castillo, who happens to be in this relatively small window
4 of defendants who face this issue; and, as the 3553(a) factors
5 require the court to consider unwarranted sentencing
6 disparities amongst defendants who are similarly situated, the
7 government believes that should also be taken into account in
8 coming up with and determining what is an appropriate sentence
9 in this case.

10 THE COURT: Thank you very much.

11 Thank you for your arguments.

12 Ms. Mirón, is there anything that you would like to
13 add before I rule on this issue and proceed to my analysis of
14 the sentencing guidelines?

15 MS. MIRÓN: Just the argument that omission could
16 constitute the use of force finds no basis in any case law.
17 The focus of the force clause is about the mechanism of force;
18 not the effect some action or inaction might have, but the
19 mechanism, the use of force, the attempted use, or the
20 threatened use of force, and that is viewing the statute from a
21 categorical perspective, not an element. I think the
22 government, even when it seeks to restrict it to the duty that
23 parents have, concedes that in that application there is no
24 force, no use of force, I should say.

25 THE COURT: Thank you.

ga62casS kjc

1 Under Section 1B1.11, I am directed to use the
2 guidelines in effect on the date of the sentencing unless the
3 use of that manual would result in a violation of the *ex post*
4 *facto* clause of the Constitution, in which case I would apply
5 the guideline in effect on the date of the offense. The manual
6 in effect today is the November 2015 sentencing manual, as
7 supplemented by the August 1, 2016, supplement. Under the
8 August 1, 2016, supplement, Mr. Castillo's 2003 conviction for
9 manslaughter clearly constitutes a "crime of violence" under
10 Section 4B1.2(a)(2) of the sentencing guidelines, which would
11 result in a higher offense level for Mr. Castillo. The
12 question that we have been debating here today is whether the
13 manslaughter conviction would be treated as a crime of violence
14 under Section 4B1.2(a) at the time that the offense was
15 committed, namely, November 2015.

16 For some reason, I have been thinking of the Oliver
17 Wendell Holmes quote as I have been consider these arguments,
18 the famous one in which he states that "The life of the law has
19 not been logic; it has been experience." Here, my decision is
20 driven by logic more than experience, because I am going to
21 conclude that the manslaughter offense would not have been
22 included in the definition of a crime of violence under Section
23 4B1.2 and that, therefore, I must apply the November 2015
24 Sentencing Guidelines Manual.

25 Let me explain the reasoning behind this:

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1 I am going to hold that Mr. Castillo's manslaughter
2 conviction does not fit within the "force" clause of U.S.
3 Sentencing Guideline Section 4B1.2(a)(1) as set forth in the
4 November 2015 Sentencing Guidelines Manual. I understand, in
5 doing so, that this is a counterintuitive conclusion, given the
6 nature of Mr. Castillo's underlying conviction. Mr. Castillo
7 caused someone's death, which is a vile crime, one that
8 impacted the victim whose life he took, but also, I imagine,
9 the lives of the victim's family and friends. But this is not
10 an analysis in which I follow my gut. Instead, I have to
11 follow the law and logic where it leads me, and the governing
12 precedent leads me to the conclusion that the crime at issue
13 here does not meet the test established in Section 4B1.1(a).

14 First, Mr. Castillo was convicted of manslaughter in
15 the first degree under New York Penal Law Section 125.2. That
16 statute contains four subsections describing the elements of
17 the offense. As I will state later, it was clearly a divisible
18 statute. Mr. Castillo was convicted, we have all agreed, under
19 subsection 1 of that statute, which provides that "a person is
20 guilty of manslaughter in the first degree when (1) with intent
21 to cause serious physical injury to another person he causes
22 the death of such person or the third person . . ." New York
23 Penal Law § 125.20(1).

24 New York Penal Law § 125.20 is a divisible statute.
25 *Vargas Sormiento v. United States Department of Justice*, 448

ga62casS kjc

1 F.3d 159, 167 (2d Cir. 2006). In *Vargas Sormiento*, the Second
2 Circuit held that convictions under clauses (1) and (2) of that
3 statute constituted "crimes of violence" under 18 U.S.C. §
4 16(b) *Id.* The Circuit's decision in that case rested,
5 however, on the residual clause in section 16(b). Of course,
6 the Supreme Court later found the "residual clause" of the
7 Armed Career Criminal Act to be unconstitutionally vague in
8 *Johnson v. United States*, 135 S.Ct 2551 (2015). So prior to
9 the Supreme Court's decision in *Johnson*, it would have been
10 easy to conclude, as the United States asks me to here, that
11 the manslaughter conviction was a crime of violence. The
12 Second Circuit would have held that it was, or at least under
13 the ACCA.

14 In *Johnson v. United States*, the Supreme Court held
15 that the "residual clause of the Armed Career Criminal Act is
16 unconstitutionally vague." The stricken language from the ACCA
17 "or otherwise involves conduct that presents a serious
18 potential risk of physical injury to another" is identical to
19 the residual clause in the career offender guideline at section
20 4B1.2(a)(2). The United States has conceded that that residual
21 clause has been rendered void as a result of the logic of
22 *Johnson*. But, still, let me note that the Second Circuit has
23 explained that "authority interpreting one phrase frequently is
24 found to be persuasive in interpreting the other phrase,"
25 citing to *United States v. Brown*, 514 F.3d 256, 268 (2d Cir.

ga62casS kjc

1 2008) (quoting *United States v. Palmer*, 68 F.3d 52, 55 (2d Cir.
2 1995)). As a result, the residual clause in Section
3 4B1.2(a)(2) is unconstitutionally vague, and in order for the
4 crime to constitute a "crime of violence," it must fit within
5 the "force" clause of 4B1.2(a)(1).

6 To evaluate this question, I am directed to apply a
7 categorical approach to the statute of conviction. In this
8 case, actually, first a modified categorical approach, we have
9 already concluded that the first subsection of that divisible
10 statute applies. Now I apply categorical approach. In
11 applying that approach, I "'look only to the statutory
12 definitions' -- i.e., the elements -- of a defendant's prior
13 offenses, and not 'to the particular facts underlying those
14 convictions.'" *Descamps v. United States*, 133 S.Ct 2276, 2283
15 (2013) (quoting *Taylor v. United States*, 45 U.S. 575-600
16 (1990)) (emphasis in original).

17 I recognize that the meaning of physical force in
18 Section 4B1.2(a) is a question of federal law. See *Johnson*,
19 559 U.S. at 138. However, I am bound by the New York Court of
20 Appeals' interpretation of the relevant statute, including its
21 determination of its elements. *Id.*

22 In *Johnson*, the Supreme Court defined the term
23 "physical force" in the following terms: "We think it clear
24 that in the context of a statutory definition of 'violent
25 felony,' the phrase 'physical force' means *violent force* --

ga62casS kjc

1 that is, force capable of causing physical pain or injury to
2 another person." *Johnson*, 559 U.S. at 140. In *United States v.*
3 *Castleman*, the court clarified that the use of force
4 "encompasses even its direct application," 134 S.Ct 1405, 1414
5 (2014). At the same time, the court clarified that "force"
6 required the exercise of some physical exertion: In the
7 court's words "But, as we explained in *Johnson*, 'physical
8 force' is simply 'force exerted by and through concrete bodies'
9 as opposed to 'intellectual force or emotional force.'" 559
10 U.S. at 138. Therefore, even following *Castleman*, for me to
11 find that an element involves physical force, I must find, I
12 believe, that it requires force exerted by and through concrete
13 bodies, even if that force is applied indirectly. Using the
14 categorical analysis, a crime that can be committed through
15 inaction -- involving no force at all -- is not a force crime.
16 As I am about to analyze, under New York law, manslaughter can
17 be committed through inaction and, therefore, I conclude, is
18 not a force offense under Section 4B1.2(a)(2).

19 In *People v. Steinberg*, 79 N.Y.2d 673, 680 (1992), the
20 New York Court of Appeals held expressly that a person can be
21 convicted of manslaughter under New York Penal Law § 125.20 in
22 circumstances that do not involve the application of force.
23 The court found that a defendant could be found guilty under
24 Section 125.20(1) on the basis of an omission: a failure to
25 act. The Court of Appeals wrote: "The Penal Law provides that

ga62casS kjc

1 criminal liability may be based on an omission . . . which is
2 defined as the failure to perform a legally imposed
3 duty . . . parents have a nondelegable affirmative duty to
4 provide their children with adequate medical care . . . thus a
5 parent's failure to fulfill that duty can form the basis of a
6 homicide charge." *Steinberg*, 79 N.Y.2d 680 (internal citations
7 omitted). In light of this ruling by New York State's highest
8 court, which is binding on me for this analysis, I must
9 conclude that 125.20(1) does not require, as an element, the
10 application of force. An "omission" -- a failure to act --
11 does not require the application of force, and one can be found
12 guilty of manslaughter under the New York statute on the basis
13 of an omission.

14 Now, I should note, Mr. Ravi's arguments regarding the
15 concept that force in my hypothetical applied by a random
16 external actor -- in my example, the car accident -- the driver
17 of the car could meet the force requirement. I am unaware of
18 case law that would allow the force element to be afforded not
19 indirectly by an act of the defendant, but by action of some
20 body completely independent of the defendant, in other words,
21 not indirect, but complete inaction; and, in fact, I believe
22 that the *Castleman* holding, which distinguished intellectual
23 force and emotional force from the movement of concrete bodies,
24 I believe, draws that distinction clearly, nor am I aware of a
25 similar holding with respect to New York law, nor am I aware of

ga62casS kjc

1 a case that would hold that the existence of a legal or
2 fiduciary duty, such as the duty of a parent to a child under
3 New York law, is a sufficient substitute for "force." Again,
4 as in *Castleman*, where it describes "force" requiring the
5 exercise of some physical exertion, I believe that the Supreme
6 Court's ruling regarding the application of force would not
7 allow the existence of a fiduciary or other duty to replace the
8 force requirement.

9 In its analysis of *Steinberg*, the United States writes
10 in its letter brief that "Both actions taken by the
11 defendant -- the striking of the child and the failure to
12 obtain medical care -- constitute actions knowingly taken to
13 cause physical harm and therefore involve the use of physical
14 force as explained further below." Docket Number 23 at 7.
15 First, I observe that while the defendant in *Steinberg* used
16 force to cause the injury and then failed to act to obtain
17 medical treatment, the Court of Appeals clearly held, as I have
18 just read, that the omission alone may have been sufficient to
19 sustain a conviction under the statute. I believe that the
20 *Wong* decision is also consistent, as just described on the
21 record here. Second, while the United States asserts that the
22 failure to obtain medical care perforce involves the use of
23 physical force, I didn't see that argument substantiated with
24 case law in the brief. To the extent that the argument relies
25 on *Castleman*, as I said earlier, I read the case somewhat

ga62casS kjc

1 differently. *Castleman* arguably makes it clear -- or does it
2 make it clear? -- that indirect force, such as poisoning,
3 constitutes the use of force; but, at the same time, *Castleman*
4 made it clear that "physical force" required the use of some
5 force and action on a physical body. *Castleman* stated, in my
6 view, that thought alone, "intellectual force or emotional
7 force," did not constitute physical force. I believe that a
8 crime of omission fits into that category. Also I would like
9 to note that the crime for which the defendant which is
10 convicted in *Castleman* differed from the statute here as we
11 discussed during our colloquy previously.

12 In sum, since a defendant can commit manslaughter
13 under New York Penal Law § 125.20(1) through an omission,
14 without, as an element, the use of physical force, applying the
15 categorical approach, as I am required to do, I have to
16 conclude that it does not qualify as a crime of force because,
17 again, it does not require as an element the use or threat of
18 force as required by Section 4B1.2(a)(1).

19 Now, the United States also argues that the commentary
20 to the guidelines defines crimes of violence to include
21 manslaughter. See Application Note 1. First, I would like to
22 say that I wish, like the Court of Appeals, that I could wait
23 for the Supreme Court to decide this issue, but I don't think
24 that I have that leeway. So let me say that I fully recognize
25 the weight that's to be afforded to the commentary in

ga62casS kjc

1 application notes. Failure to follow or misreading of the
2 commentary which results in the selection of a sentence that is
3 within the wrong guidelines range constitutes "'an incorrect
4 application of the sentencing guidelines'" subjecting a
5 sentence to possible reversal on appeal. See, e.g., *Stinson v.*
6 *United States*, 508 U.S. 36, 43 (1993). In *Stinson*, however,
7 the Supreme Court also described rules for the construction of
8 the application notes. The court wrote, "It does not follow
9 that commentary is binding in all instances. If, for example,
10 commentary and the guideline it interprets are inconsistent in
11 that following one will result in violating the dictates of the
12 other, the Sentencing Reform Act itself commands compliance
13 with the guideline." *Id.* The Supreme Court went on to say
14 that courts should construe the commentary in the way that they
15 do agency interpretations of their own legislative rules, in
16 other words, "it must be given 'controlling weight unless it is
17 plainly erroneous or inconsistent with the regulation'" *Id.* at
18 45.

19 Here, again, while I prefer to wait until after
20 *Beckles*, I conclude that the application note is inconsistent
21 with the regulation as reformed in light of *Johnson*. Looking
22 to the analogy posited by the Supreme Court in *Stinson* --
23 namely, an agency's interpretation of its own legislative
24 rules -- an agency's interpretation of its own legislative rule
25 does not have the force of law. The rule, if properly enacted

ga62casS kjc

1 through the Administrative Procedure Act procedures, does. If
2 the rule itself is invalid, the interpretation of the rule does
3 not have independent legislative force. Here too, I will apply
4 the same analysis. Since the residual clause was rendered
5 ineffective and the force clause does not apply in all cases to
6 all state manslaughter statutes, as it does not, as I have just
7 concluded, to the New York State statute, I cannot conclude
8 that the itemization of manslaughter in the application notes
9 has independent force.

10 As a result, I have applied the November 2015
11 Sentencing Guidelines Manual and, as I will describe further as
12 this proceeding continues, you will see my conclusion affects
13 the base offense level that I will calculate for Mr. Castillo.

14 So although district courts are no longer required to
15 follow the sentencing guidelines, we are still required to
16 consider the applicable guidelines in imposing sentence and, to
17 do so, it is necessary that we accurately calculate the
18 sentencing range.

19 In this case, the defendant pleaded guilty to Count
20 One of the indictment as being a felon in possession of a
21 firearm in violation of 18 United States Code § 922(g)(1).

22 Mr. Ravi, first, does the government agree that a
23 two-level adjustment is appropriate here under 3E1.1(a)?

24 MR. RAVI: Yes, your Honor.

25 THE COURT: Thank you.

ga62casS kjc

1 Mr. Ravi, the PSR suggests that the government also
2 expects to move for an additional one-level adjustment under
3 Section 3E1.1(b), is that correct?

4 MR. RAVI: That's correct, your Honor.

5 THE COURT: So a three-level adjustment from whatever
6 offense level I determine is the appropriate base offense
7 level?

8 MR. RAVI: We do believe that the defendant did timely
9 notice -- provide notice to the government of his intention to
10 plead guilty and, on that basis -- and he did in fact plead
11 guilty. On that basis, we believe he is entitled to -- well,
12 let me step back for one moment.

13 THE COURT: Thank you.

14 (Pause)

15 THE COURT: In Ms. Mirón's calculation of his offense
16 level in her sentencing submission, she works from a premise
17 that it is a 12.

18 MR. RAVI: That is correct, your Honor. I believe
19 that he is not entitled to that extra level because the offense
20 level is below a level 16; so, therefore, we would not be
21 moving, and actually could not move, for the extra level.

22 THE COURT: Thank you.

23 I calculate the sentencing guidelines as follows:

24 First, as I already have addressed, I conclude that
25 the applicable Sentencing Guidelines Manual is the November 1,

ga62casS kjc

1 2015 Sentencing Guidelines Manual, without giving effect to the
2 August 1, 2016 supplement, for the reasons that I have
3 previously articulated, namely, that application of the August
4 1, 2016 supplement, I believe, would result in the imposition
5 of a sentence that was greater than that at the time that he
6 committed the offense and therefore violate the *ex post facto*
7 clause requiring that I apply the guidelines in effect on the
8 date of his offense.

9 The applicable sentencing guideline for the offense
10 for which Mr. Castillo pleaded guilty is Section 2K2.1.
11 Pursuant to section 2K2.1(a)(6), because the defendant was a
12 prohibited person at the time that he committed the instant
13 offense, the base offense level is 14. Because the defendant
14 has demonstrated acceptance of responsibility for his offense
15 in his plea allocution, I apply a two-level reduction pursuant
16 to section 3E1.1(a). As a result, the applicable guidelines
17 offense level is 12.

18 The defendant has four criminal history points
19 resulting from two criminal convictions during the applicable
20 time period. On February 2, 2006, the defendant was sentenced
21 to eight years' imprisonment, following conviction for
22 manslaughter in the first degree, yielding three criminal
23 history points. On May 6, 2014, the defendant was sentenced to
24 30 days' imprisonment, following conviction for criminal
25 possession of a controlled substance in the seventh degree,

ga62casS kjc

1 yielding one criminal history point. As a result, I find that
2 the defendant has four criminal history points. Therefore, his
3 criminal history category is III.

4 In sum, I find that the offense level is 12 and the
5 criminal history category is III. Therefore, the guidelines
6 range in this matter is 15 to 21 months of imprisonment.

7 I have considered whether there is an appropriate
8 basis for departure under the advisory guidelines range within
9 the guidelines system; and, while I recognize that I have the
10 authority to depart, I do not find any grounds warranting a
11 departure under the guidelines.

12 Counsel, does either party have any objections to the
13 sentencing guidelines calculation?

14 MR. RAVI: Other than the government's objection as to
15 the calculation of whether or not manslaughter is a crime of
16 violence, the government has no objections.

17 THE COURT: Thank you. I overrule that objection.

18 Ms. Mirón.

19 MS. MIRÓN: No objection, your Honor.

20 THE COURT: Thank you very much.

21 Ms. Mirón, do you wish to be heard with respect to
22 sentencing.

23 MS. MIRÓN: Yes.

24 So I just want to take a moment to talk a little bit
25 about Juan Castillo. We have talk a lot about the prior

ga62casS kjc

1 offense, but Mr. Castillo has suffered a long line of tragedies
2 in his life. The first one started out when he found his
3 mother suffering from a seizure. She later died as a result of
4 that. He then -- I think he was about eight years old --
5 suffered a language impairment that made it very, very
6 difficult for him to go to school, to learn in the setting he
7 was placed in, to live a productive life as a young adult.

8 His family loves him very much. They are not here
9 today mostly because they are all suffering from certain
10 illnesses. Both of his aunts are ill. They are elderly. But
11 your Honor can consider the letters written on his behalf at
12 least from one of his aunts, and that aunt is with whom he
13 proposes to live after he is released from his sentence.

14 The report that we provided in our memorandum was
15 conducted by Cheryl Paradis who is a psychologist who I met
16 because she was hired by the government in two of the cases
17 that I handled a couple of years ago. So she, I think, comes
18 to the court with some credibility. She determined, after
19 analyzing Mr. Castillo's Rikers Island records and also
20 interviewing him -- I don't think she had access to the
21 education records which we later obtained -- that he would
22 benefit from a MICA program, and that he is not yet had that
23 opportunity to engage in a MICA program, which addresses both
24 substance abuse and mental illness.

25 Mr. Castillo initially, when he was arrested on this

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1 case, was granted bail in the state. He was out on bail from
2 November until his federal presentment, I believe, which was in
3 March, and he did well. But he was detained by the magistrate
4 judge and initially given the wrong medication. He eventually
5 got the right medication and he was stabilized.

6 Dr. Paradis believes that, with the right medication
7 and with some treatment, he will be able to resolve or handle
8 his life in a productive way, and I think his family's letters
9 corroborate that.

10 I think his cousin's letter, Clarissa, really talks
11 about what a fundamentally good person Juan Castillo is, but
12 there are certain things that trigger him and she doesn't know
13 what they are. But I think Dr. Paradis understands that he has
14 a history of trauma and fears losing people who are close to
15 him in some way.

16 So I think the government would argue that this court
17 should not sentence him within this new guidelines range
18 because it would be a disparity to those who have committed
19 offenses after August 1 of this year. There is a randomness to
20 criminal justice, and I would argue that, had Mr. Castillo
21 maybe pled to a different count in the indictment, a possession
22 of a weapon count, there would be no dispute that that would
23 not qualify as a crime of violence and that would have been
24 supported by the facts.

25 I was not able to obtain any court documentation that

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1 objectively corroborated this, but Mr. Castillo all along,
2 since I have known him, has told me that the individual who
3 passed away was armed and that he was shooting at a friend of
4 his. And I finally found some New York news reports which
5 corroborate that. So I can hand a copy to the court and to the
6 government and just cite the relevant portion. It is towards
7 the middle bottom paragraph. It says, "The youngest of the
8 weekend's murder victims, 17-year-old Victor Mojica, of
9 Brooklyn, died with a loaded .22 caliber gun in his hand,
10 police said. While walking with friends by East 176th Street
11 and Monroe Avenue, he argued with a stranger. The two
12 exchanged gunfire."

13 There is no dispute that this is an incredibly serious
14 offense, but the circumstances are that the other individual
15 who died had a gun which was loaded and shot that gun, and it
16 is -- had a different attorney negotiated a different type of
17 plea, a proper plea would have been to possessing a weapon, and
18 then there would be no issue about the disparity. I tried to
19 contact that attorney. He had no recollection of the case and
20 he has no file for me to review. But I think this news report,
21 which has no reason to lie, corroborates Mr. Castillo's view of
22 what happened on that day.

23 I won't go on at length, but I think a proper sentence
24 here is one of a year and a day, and that also takes into
25 account the nature of the offense itself. He did not point

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1 this weapon at anybody. He did throw it out the window. But,
2 in my opinion, that is a nonviolent, temporary possession of a
3 weapon. He did not threaten anyone with it. He did not
4 attempt to use it. He threw it out the window to protect a
5 loved one. Obviously he regrets that today, and he would do
6 differently when given the choice. Hopefully he will never be
7 given that choice again. But that's what happened. His DNA
8 was not on the gun. The person who made the report has his own
9 motive to lie. I think that's corroborated by his own
10 convictions for violating his orders of protection. But that's
11 the nature of the offense, and I think it supports, along with
12 Mr. Castillo's sympathetic past, a sentence of a year and a
13 day.

14 Thank you.

15 THE COURT: Thank you.

16 Let me turn to you, if I can, Mr. Castillo. Do you
17 wish to make a statement to the court?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you. Please proceed.

20 THE DEFENDANT: I want to apologize to my family and
21 to the United States government for my actions, and I want to
22 take full responsibility for my actions. But I am going to
23 help myself by taking programs and changing my character
24 because of how I live in my environment. A lot of things
25 happened in my life, and I regret it, but life moves on, you

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1 know? And I just want to apologize to my family.

2 That's all.

3 THE COURT: Thank you, Mr. Castillo.

4 Counsel, does the United States wish to be heard with
5 respect to sentencing?

6 MR. RAVI: Yes, your Honor. I will just make a few
7 points in response to defense counsel's arguments.

8 THE COURT: Thank you.

9 MR. RAVI: First, I just want to -- urge the court to
10 follow the court's experience and logic with respect to this
11 sentencing. The defendant has provided -- appears to provide
12 an explanation as to what happened on the day that his
13 manslaughter conviction occurred. The bottom line, though,
14 however, is he pled to a count that involved him shooting
15 another person, using a loaded gun, and that is something that
16 is very serious crime that resulted in the death of another
17 person. And although he could have maybe pled to a possession
18 of a firearm, if that would have been permitted, he did plead
19 to manslaughter, and that is something, even though it is not a
20 crime of violence, the court should take into account in
21 thinking about the history and characteristics of Mr. Castillo.

22 He was sentenced to I believe it was seven years in
23 jail for that manslaughter conviction and was then, when he was
24 released and paroled in 2010, he then had his parole revoked on
25 two occasions -- in February 2013 and 2014 -- and then was

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1 also, after that, then convicted of criminal possession of a
2 controlled substance in the seventh degree during that time,
3 where he was found with bags of crack cocaine that were on his
4 person.

5 And this offense, him possessing a firearm, was
6 committed just within five months of his discharge from parole
7 for the manslaughter conviction which involved a shooting that
8 occurred in 2003 and an actual conviction in 2006. In other
9 words, right before committing this offense or shortly before
10 the defendant had finally completed his sentence on the
11 manslaughter conviction that resulted in the death of another
12 individual, and the court believes -- I apologize, the
13 government believes that the court should consider this history
14 of the defendant and the violent nature of the previous conduct
15 when you look at the offense conduct here.

16 The defendant seems to put -- seems to appear to point
17 blame or at least attempts to distract the court by pointing to
18 the fact that there was another individual involved there who
19 may have been threatening his girlfriend at the time, but the
20 bottom line is that the defendant was in a room, there was a
21 load gun in a bag, and the defendant clearly knew that gun was
22 there and then threw that gun out of the window.

23 It is unclear why exactly he had that gun, why he
24 threw it out the window. The assumption is that he did so in
25 order to avoid detection by law enforcement that he in fact had

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1 that gun. But, either way, it is extremely concerning that a
2 defendant who has caused the death of another person is here
3 again in court on the basis that he has a loaded firearm in his
4 possession.

5 The government would request the court consider that
6 specific offense conduct and the history and characteristics of
7 this defendant in coming up with a sentence that's appropriate
8 and that should -- and the court should consider the fact that
9 although the court has found a crime of violence does not
10 include manslaughter, the nature of that conviction and the
11 sentencing disparity should be strongly considered by the court
12 when coming up with an appropriate sentence that is near or
13 close to the guidelines range that the government believes
14 would be appropriate.

15 THE COURT: Thank you.

16 Is there any reason why sentence should not be imposed
17 at this time?

18 MR. RAVI: Nothing from the government, your Honor.

19 MS. MIRÓN: No, your Honor.

20 THE COURT: Thank you.

21 I will now describe the sentence that I intend to
22 impose. Both counsel will have a final opportunity to make
23 legal objections before the sentence is finally imposed.

24 As I have stated, the guidelines range applicable to
25 this case is 15 to 21 months of imprisonment. I have

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1 considered the guidelines range. Under the Supreme Court's
2 decision in *Booker* and its progeny, the guidelines range is
3 only one factor that I must consider in deciding the
4 appropriate sentence. I am also required to consider the other
5 factors set forth in 18 U.S.C. 3553(a). These include:

6 First, the nature and circumstances of the offense and
7 the history and characteristics of the defendant;

8 Second, the need for the sentence imposed to (a)
9 reflect the seriousness of the offense, to promote respect for
10 the law, and to provide just punishment for the offense (b) to
11 afford adequate deterrence to criminal conduct (c) to protect
12 the public from further crimes of the defendant and (d) to
13 provide the defendant with needed education or vocational
14 training, medical care, or other correctional treatment in the
15 most effective manner;

16 Third, the kinds of sentences available;

17 Fourth, the guidelines range;

18 Fifth, any pertinent policy statement;

19 Sixth, the need to avoid unwarranted sentence
20 disparities among defendants with similar records to have been
21 found guilty of similar conduct; and

22 Seventh, the need to provide restitution to any
23 victims of the offense. Ultimately I am required to impose a
24 sentence that is sufficient, but no greater than necessary, to
25 comply with the purposes of sentencing that I mentioned a

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1 moment ago in section 3553(a).

2 I have given substantial thought and attention to the
3 appropriate sentence in this case, considering all of the
4 3553(a) factors and the purposes of sentencing as reflected in
5 the statute.

6 Based on a review of all of the factors, which I will
7 discuss in more detail in a moment, I intend to impose a
8 guideline sentence of 19 months of incarceration to be followed
9 by three years of supervised release.

10 I do not expect to impose a fine. I will impose the
11 mandatory fee of \$100.

12 I am going to discuss the terms of supervised release
13 and other issues with more specificity after I review my
14 reasoning.

15 First, the nature of the crime is very significant.
16 Mr. Castillo, you, having been convicted of a very serious
17 felony, pleading guilty here to possession of another firearm.
18 You had a gun, and you had it shortly after your parole ended.
19 This is a serious offense, not just because you had it, but
20 because you had it so shortly after your prior term. I believe
21 that the sentence must take the seriousness of that crime into
22 effect and punish you for the serious offense.

23 Mr. Castillo, I have read all of the materials that
24 were submitted on your behalf and all of the facts in the PSR.
25 You have had a very difficult life. I am really sorry for

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1 that. I was struck by the tragic passing of your mother when
2 you were eight. Your father, I understand, suffered from PTSD
3 and was unable to live with you; and, as a result, you were
4 raised in large part by your aunts, who I am sorry not to see
5 today. I understand that they remained your guardian until you
6 were 18 and you have continued to live with one part-time
7 since.

8 I know that you struggled in school. I read the
9 report from the psychologist that Ms. Mirón found to talk to
10 you. I can see that you have got some mental issues that I am
11 hoping that, through supervised release and through treatment
12 in prison, you will be able to address. I saw that you have
13 received some therapy between 2011 and 2013, that you have been
14 prescribed some medication for depression and anxiety.

15 You have had a series of odd jobs including, most
16 recently, as I understand it, working at the Ambassador
17 Shelter; maintenance and cleaning halls in your aunt's
18 building; but you haven't had the chance yet to acquire
19 specialized job skills. Again, I am going to hope that the
20 time that you have in prison you can use to develop the kind of
21 skills that you need to thrive and to take care of your son
22 when you get back out.

23 I understand that you were living with Ms. Ramirez,
24 the mother of your son, who is at that adorable age just over
25 two, and that you are splitting time between her home and your

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1 maternal aunt.

2 One of the things that weighs heavily in my
3 sentencing, Mr. Castillo, is your prior offenses, the most
4 serious one is this manslaughter offense that we spent so much
5 time talking about. We spent a lot of time talking about it in
6 the context of this sort of complicated legal issue. At base,
7 it is really a serious thing. Somebody died in a crime that
8 involved a gun and, here again, too, you have a gun. That
9 really weighs on me, as does the fact that I see from the
10 records that your parole was twice revoked during your period
11 of parole in your state offense and that you ultimately had to
12 serve the maximum term. As I said earlier, it was only shortly
13 after your term of parole ended that this offense was
14 committed.

15 It also is of issue, of concern to me that, although I
16 take your words from your letter to me to heart, namely, that
17 you were protecting reflexively by throwing the gun out the
18 window, at the same time, if you were protecting reflexively by
19 getting rid of what the government says might have been
20 evidence of a crime, that is also a problem.

21 I have read all of the letters from your family
22 members as well as your letter. I am sorry that they can't be
23 here, again. They all offer to support you and they recognize
24 the difficulties of your life, and I look to them to help
25 support you after you come back out.

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1 I believe that a significant sentence is important in
2 this case to impose a just punishment. I am required,
3 Mr. Castillo, to consider both the deterrent effect on you
4 personally and also what's called general deterrence, in other
5 words, sending a message to other people who might commit this
6 offense.

7 Now, I am concerned, Mr. Castillo, given your criminal
8 history, that in this case a meaningful term of incarceration
9 is necessary because I want to make sure that you don't commit
10 further crimes. I also impose the sentence consistent with the
11 guidelines in the hopes that it will promote the goal of
12 general deterrence.

13 I should also state, Mr. Castillo, that I am going to
14 be imposing a term of supervised release following your term of
15 incarceration, which I really hope you can use to take
16 advantage of the services that I am going to order the
17 probation department provide for you, that you participate in.
18 I hope that, too, will help you stay away from trouble in the
19 future.

20 I believe that Mr. Castillo will be able to use the
21 period of incarceration for educational or vocational training,
22 medical care, or other correctional treatment. In particular,
23 I hope that you will take the opportunity to obtain counseling
24 and that you will take the opportunity to advance your
25 education. I saw that you haven't been able to complete high

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1 school while you were inside. There are educational
2 opportunities that you should take advantage of if you care to.
3 It will certainly help you in your future life.

4 I have considered the kinds of sentences available in
5 this case. Given the nature of the offense and the defendant's
6 conduct, I believe a sentence with a term of imprisonment is
7 necessary to provide sufficient specific deterrence to
8 Mr. Castillo. I believe that a significant term of supervised
9 release is also appropriate because of my concern that
10 Mr. Castillo may be tempted, as he was after the end of his
11 term of parole, to return to criminal activity, but also,
12 again, because it will make available to Mr. Castillo
13 additional resources that will help him overcome the problems
14 that brought him here.

15 I have given serious consideration to the guidelines
16 and the policy statements in this case. I believe a guidelines
17 sentence is appropriate. And by imposing a guidelines sentence
18 I expect that I will avoid unwarranted sentencing disparities
19 with other defendants with similar records nationwide. It is
20 partly in recognition of that factor that I have imposed a
21 sentence that is at the higher end of the guidelines range, in
22 recognition of the argument and concern suggested by Mr. Ravi
23 during his argument.

24 So, Mr. Castillo, please rise for the imposition of
25 sentence. Thank you, Mr. Castillo.

ga62casS kjc

1 It is the judgment of this court that you be sentenced
2 to 19 months of imprisonment. I find that sentence to be
3 sufficient but not greater than necessary to comply with the
4 purposes of sentencing set forth in 18 United States Code §
5 3553(a)(2).

6 Now, following your term of imprisonment, I am going
7 to sentence you to a term of three years of supervised release,
8 which is the guidelines range. The mandatory conditions of
9 supervised release shall apply. They are:

10 The defendant shall not commit another federal, state,
11 or local crime.

12 The defendant shall not illegally possess a controlled
13 substance.

14 The defendant shall not possess a firearm or
15 destructive device.

16 The defendant shall cooperate in the collection of DNA
17 as directed by the probation officer.

18 The mandatory drug testing condition is going to be
19 suspended due to the imposition of a special condition
20 requiring drug treatment and testing.

21 The standard conditions of supervised release 1
22 through 13 shall apply. In addition, the following special
23 conditions shall apply:

24 The defendant shall participate in a program approved
25 by the United States Probation Office, which program may

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1 include testing to determine whether the defendant has reverted
2 to using drugs or alcohol. The court authorizes the release of
3 available drug treatment evaluations and reports to the
4 substance abuse treatment provider as approved by the probation
5 officer. The defendant shall be required to contribute to the
6 cost services rendered in copayment in an amount determined by
7 the probation officer based on ability to pay or availability
8 of third-party payment.

9 The defendant shall participate in an outpatient
10 mental health treatment program approved by the United States
11 Probation Office. The defendant shall continue to take any
12 prescribed medication unless otherwise instructed by the
13 healthcare provider. The defendant shall contribute to the
14 cost of services rendered based on the defendant's ability to
15 pay and the availability of third-party payments. The Court
16 authorizes the release of available psychological and
17 psychiatric evaluations and reports, including the presentence
18 investigation report, to the health care provider.

19 The defendant shall submit his person, residence,
20 place of business, vehicle, or any other premises under his
21 control to a search on the basis -- I'm sorry. Let me restate
22 that condition.

23 The defendant shall submit his person, residence,
24 place of business, vehicle, and any property or electronic
25 devices under his control to a search on the basis that the

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1 probation officer has reasonable suspicion that contraband or
2 evidence of a violation of the conditions of the defendant's
3 probation or supervised release may be found. The search must
4 be conducted in a reasonable time and in a reasonable manner.
5 Failure to submit to a search may be grounds for revocation.
6 The defendant shall inform any other residents that the
7 premises may be subject to search pursuant to this condition.

8 The defendant shall be supervised in his district of
9 residence. The defendant is to report to the nearest probation
10 office within 72 hours of release from custody.

11 There will be no fine, Mr. Castillo, because the
12 probation department reports that you are unable to pay one.
13 You must pay to the United States, though, a special assessment
14 of \$100, which shall be due immediately.

15 I understand, Mr. Ravi, that the United States is not
16 seeking forfeiture or restitution in this case, is that right?

17 MR. RAVI: No, your Honor.

18 THE COURT: Thank you very much.

19 Does either counsel know of any legal reason why this
20 sentence shall not be imposed as stated?

21 MR. RAVI: None from the government.

22 MS. MIRÓN: No, your Honor.

23 THE COURT: Thank you.

24 The sentence, as stated, is imposed. I find that
25 sentence to be sufficient but not greater than necessary to

ga62casS kjc

1 comply with the purposes of sentencing set forth in 18 United
2 States Code § 3553(a)(2).

3 Thank you, Mr. Castillo. You can be seated.

4 THE DEFENDANT: Thank you.

5 THE COURT: Thank you.

6 Mr. Castillo, you have a right to appeal your
7 conviction and sentence, except to the extent -- actually, you
8 haven't waived it, so you have the right to appeal your
9 conviction and sentence. The notice of appeal must be filed
10 within 14 days of the judgment of conviction. If you are
11 unable to pay the costs of an appeal, you may apply for leave
12 to appeal *in forma pauperis*. If you request, the Clerk of
13 Court will prepare and file a notice of appeal on your behalf.

14 Are there any other applications at this time,
15 counsel?

16 MR. RAVI: No, your Honor.

17 MS. MIRÓN: I would request that the court recommend
18 to the Bureau of Prisons that Mr. Castillo serve the remainder
19 of his prison term here in New York City to facilitate family
20 ties.

21 THE COURT: Thank you.

22 I will make that recommendation. As you know, the BOP
23 may or may not follow it.

24 Is there anything else we should discuss?

25 MR. RAVI: No, your Honor. Thank you.

ga62casS kjc

1 MS. MIRÓN: No, thank you.

2 THE COURT: Thank you very much. Thank you,
3 Mr. Castillo.

4 THE DEFENDANT: Thank you.

5 THE COURT: This proceeding is adjourned.

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