IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:25-cr-00503-JMD
	)	
LESMAN JEROAN RIVERA-VASQUEZ	)	
	)	
	)	
Defendant.	)	

MOTION FOR LEAVE TO FILE AN OVERLENGTH PLEADING

Lesman Jeroan Rivera-Vasquez, through counsel, requests leave to file a pleading in excess of the ordinary 15-page limit set forth in Local Rule 4.01(D). Specifically, counsel requests leave to file a 23-page sentencing memorandum and response to the order entered at Doc. 18. In support of this motion, counsel states the following:

1. Mr. Rivera-Vasquez is set for sentencing on December 17, 2025. The Court has asked the parties to file, no later than 10 days before sentencing, briefing "addressing whether a comparatively harsher sentence is required under §3553(a)(2)(B) to achieve adequate deterrence." Doc. 18 at 5. The Court stated that the parties "should discuss all actions by the Federal Government from 2021 through 2024 that they deem relevant to the question of deterrence" as well as "whether rapid deportation is necessary and whether the need for rapid deportation outweighs the need for a higher sentence." *Id.*
2. To respond appropriately to the Court's order—and to discuss other relevant factors under 18 U.S.C. § 3553(a)—counsel required more than 15 pages.

3. Counsel believes that the overlength pleading does not contain unduly duplicative arguments. Its length is intended to facilitate the Court's review by appraising it of all relevant facts and all relevant law.
4. The pleading contains a table of contents and a table of authorities, as this Court requires.

WHEREFORE, Mr. Rivera-Vasquez moves this Court for an Order allowing the filing of "Defendant's Sentencing Memorandum and Response to Doc. 18."

Respectfully submitted,

/s/Julie R. Clark
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2025, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Thomas C. Albus, United States Attorney, and Tracy Berry, Assistant United States Attorney.

/s/Julie R. Clark
JULIE R. CLARK
Assistant Federal Public Defender

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	)	
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Defendant.	)	

DEFENDANT'S SENTENCING MEMORANDUM AND RESPONSE TO DOC. 18

Lesman Jeroan Rivera-Vasquez, through counsel, submits this sentencing memorandum and response to the order entered at Doc. 18. He asks the Court to honor the joint recommendation and to impose a sentence of time served.

Time served—followed by prompt removal to Honduras—is "sufficient, but not greater than necessary" to achieve the goals of 18 U.S.C. § 3553(a). Mr. Rivera-Vasquez is a 22-year-old who fled the violence and political instability of Central America as a teenager and dedicated himself to a modest, hardworking life in Missouri. He has no prior criminal history (outside of a single traffic offense) and has spent the past several months in custody for a non-violent crime. The shock of incarceration, coupled with the certainty of deportation, has already had a powerful deterrent impact. No additional incarceration is necessary.

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Factual Background

Lesman Rivera-Vasquez was born and raised in rural Honduras. PSR at ¶ 42. He entered the United States prior to his 15th birthday and travelled to St. Louis, where his aunt and uncle took him in. *Id.* at ¶ 45. Through his aunt, he secured a job in construction and, for the past six years, he has worked full-time as a roofer. *Id.* at ¶ 55. This physically demanding work has allowed him to support himself, his one-year-old son, and his parents, who still live in Honduras. *See id.* at ¶¶ 42-43.

When he first came to the U.S., Mr. Rivera-Vasquez was eligible for Temporary Protected Status, an immigration benefit which, from January 5, 1999 to September 8, 2025, allowed Hondurans to remain in the United States with a work authorization. *See infra* at 6. However, Mr. Rivera-Vasquez did not apply for TPS—he could not afford a lawyer and did not know how to apply without one. In 2017, as a result, he was charged in civil immigration court as a removable alien. PSR at ¶ 45. In 2019, when he was 15 years old, he was granted a voluntary departure. *Id.* at ¶ 17. That is, he was given the opportunity to leave the United States, at his own expense, to avoid an order of deportation.

Although Mr. Rivera-Vasquez should have left St. Louis in 2019, he did not do so. Ultimately, an order of removal was entered against him and, from 2019 onward, he remained in this country without legal status. *Id.*

On August 8, 2025, Mr. Rivera-Vasquez picked up two boxes of ammunition from Academy Sports in St. Peters. *Id.* at ¶ 15. On August 9, he and two acquaintances went deer hunting in Warren County. *Id.* at ¶¶ 12-14. Though none of the men had a hunting license, they shot a deer and were driving back towards St. Louis when they collided with a police vehicle. *Id.* The collision was unintentional; however, Mr. Rivera-Vasquez was

driving without a valid license and was arrested by the Warren County Sheriff's Department. *Id.* at ¶¶ 12, 19.

Mr. Rivera-Vasquez was cooperative. When interviewed by the Sheriff's Department, he admitted to possessing a rifle and admitted to "handing the rifle to one of his friends," who shot the deer that officers found on-scene. *Id.* at ¶ 14. Though he did not know it at the time, Mr. Rivera-Vasquez had violated federal law, which provides that it is unlawful for any alien who is "illegally or unlawfully in the United States" or who has been "admitted to the United States under a nonimmigrant visa" to possess "any firearm or ammunition[.]" *See* 18 U.S.C. § 922(g)(5) and (y)(2) (excepting certain visa-holders from the prohibition).

Mr. Rivera- Vasquez was charged by complaint in case number 4:25-mj-09254-RHH. He waived indictment and pleaded guilty on September 18, 2025. Doc. 6. "It is anticipated that the defendant will be deported upon disposition of this case." PSR at ¶ 45.

The advisory guideline sentencing range is 10–16 months, and the parties have asked the Court to impose a sentence of time served. *Id.* at ¶ 62; Doc. 6 at 2. The Court, however, has indicated that "it is likely necessary to impose a sentence harsher than the one recommended," and has ordered the parties to brief "whether a comparatively harsher sentence is required . . . to achieve adequate deterrence." Doc. 18 at 1, 5. The Court has also asked the parties to "discuss all actions by the Federal Government from 2021 through 2024 that they deem relevant to the question of deterrence," as well as "whether the need for rapid deportation outweighs the need for a higher sentence." *Id.* at 5.

Argument

I. The actions taken by the federal government between 2021 to 2024 are only tangentially relevant to sentencing in this case.

The Court's order concluded that the Biden administration did not vigorously enforce federal immigration laws and, consequently, did not deter illegal immigration. *Id.* at 1. The Court's order also concluded that "[w]hen the Federal Government fails to enforce the law or pursues policies that increase lawbreaking—as the Biden administration did with illegal immigration—courts may be required to impose higher sentences to offset the negative effect the Executive Branch's past decisions had on deterrence." *Id.* However, the Biden administration's immigration policies should have no impact on Mr. Rivera-Vasquez's sentence. In other words, none of the actions taken by the federal government from 2021 to 2024 are relevant to the question of specific or general deterrence as it arises *in the context of this case*.

Critically, there is no evidence in the record which indicates that Mr. Rivera-Vasquez came to the United States because of the immigration policy in place between 2021 and 2024. Nor is there evidence which indicates that Mr. Rivera-Vasquez *stayed* in the United States because of the immigration policy in place between 2021 and 2024. Here is what we do know: Mr. Rivera-Vasquez is a citizen of Honduras. PSR at 2. He entered the United States at some time prior to his 15th birthday in 2017. *See id.* at ¶ 45. And he was ordered removed in 2019, during President Trump's first term in office. *Id.* at ¶ 17. Thus, Mr. Rivera-Vasquez made the decision to stay in the United States under President Trump's immigration policy, not President Biden's.

The decision to stay was wrong—Mr. Rivera-Vasquez does not deny that. He should have returned to Honduras when he was granted a voluntary departure. But he asks the Court to consider that, at the time of this decision, he was just a teenager.

The Sentencing Commission has recognized that a lower sentence may be warranted due to the defendant's "youthfulness at the time of the offense or prior offenses." *See* USSG § 5H1.1 (2024 Manual).[1] And the Supreme Court has often emphasized that "youth matters in sentencing." *Jones v. Mississippi*, 593 U.S. 98, 105 (2021). Indeed, "youth is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuousness, and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient." *Miller v. Alabama*, 567 U.S. 460, 476 (2012) (cleaned up). So, when youth make bad decisions—even criminal decisions—the "case for retribution" is relatively weak. *Id.* at 472 (explaining that minors are less blameworthy than adults). The case for deterrence is similarly weak: "[b]ecause juveniles' lack of maturity and an underdeveloped sense of responsibility often result in impetuous and ill-considered actions and decisions, they are less likely to take a possible punishment into consideration when making decisions." *Graham v. Florida*, 560 U.S. 48, 72 (2010), *as modified* (July 6, 2010) (cleaned up). Consequently, the decisions that Mr. Rivera-Vasquez made as a teenager are not predictive of the decisions that he will make as an adult; in other words, his decision to enter the United States does not indicate

[1] Section 5H1.1 was added to the Guidelines in 2024 as part of a downward departure provision reflecting the "evolving science and data surrounding youthful individuals, including recognition of the age-crime curve and that cognitive changes lasting into the mid-20s affect individual behavior and culpability." USSG Amendment 829 (2025 Manual, Appendix C at 273). This language was eliminated in 2025 when the Commission "delete[d] most departures previously provided throughout the Guidelines Manual." USSG Amendment 836 (2025 Manual, Appendix C at 422). However, the 2025 changes were intended to be "outcome neutral." *Id.* at 423. As the Commission explained, the elimination of departures "[did] not reflect a determination by the Commission that the rationale underlying the deleted departure provisions is no longer informative[.]" *Id.* In fact, it was "the Commission's intent that judges who would have relied upon facts previously identified as a basis for a departure will continue to have the authority to rely upon such facts, or any other relevant factors, to impose a sentence outside of the applicable guideline range as a variance under 18 U.S.C. § 3553(a)." *Id.*

that he will do so again in the future. And his age at the time of the immigration court's adjudication undermines the rationale for a lengthy, deterrence-driven sentence.

Mr. Rivera-Vasquez also made the decision to stay in the United States at a time when Honduras was plagued by violence and political chaos. In November of 2017, Juan Orlando Hernandez was re-elected as Honduras' President; however, "the margin of victory separating incumbent president Hernandez from challenger Salvador Nasralla was extremely narrow." U.S. Dep't of State, *2019 Country Reports on Human Rights Practices: Honduras*, at 12 (hereinafter "Country Report").[2] Protests and riots broke out; the armed forces were required to intervene. *See* Organization of American States, *Human Rights Situation in Honduras*, at 26-32 (Aug. 27, 2019) (hereinafter "OAS Report").[3] In the end, President Hernandez was able to regain control. However, his administration faced steep challenges. Per the State Department, "[o]rganized criminal elements, including local and transnational gangs and narcotics traffickers, were significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats and violence" throughout 2019. Country Report at 1-2. That year, homicide was the leading cause of death in Honduras. OAS Report at 35. And other serious crimes—"robberies, assaults, extortions, rapes, drug trafficking and drug dealing"—often went unpunished. *Id.* at 36.

During this period, Honduras was particularly dangerous for teenagers like Mr. Rivera-Vasquez. "Children and adolescents [left] Honduras mainly because of the situation of violence and because of . . . organized crime," as well as "factors such as poverty, inequality and discrimination." *Id.* at 111. Honduras did not have any specialized support

[2] Available at https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/honduras.
[3] Available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/reports/country.asp.

system for repatriated teenagers; thus, "children and adolescents who [were] returned to the country [were] exposed to the same conditions and risk factors that at the time forced them to leave the country, in addition to possible reprisals for having attempted to emigrate." *Id.*

Meanwhile, many Hondurans in the United States enjoyed Temporary Protected Status ("TPS").[4] *See* 90 Fed. Reg. 30089, 30090 (July 8, 2025). "During [a] TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain an Employment Authorization Document (EAD) so long as they continue to meet the requirements of TPS." *Id.* As the Department of Homeland Security recently explained, Hondurans were initially granted TPS on January 5, 1999, "on the basis of an environmental disaster that resulted in substantial, but temporary, disruption of living conditions, at the request of the Honduran government, and because Honduras was unable, temporarily, to handle adequately the return of its nationals." *Id.* TPS protections remained in effect until September 8, 2025. *See id.* at 30089-90; *but see National TPS Alliance v. Noem*, No. 3:25-cv-05687-TLT (N.D. Cal. July 7, 2025) (litigation challenging the determination that Hondurans no longer qualify for protected status).

Today, the situation in Honduras has changed. Per DHS, the country is now able to "handle adequately the return of its nationals." 90 Fed. Reg. at 30091. In fact, it has been accepting repatriated Honduran nationals for the last five years. *Id.* In addition, "the Honduran government [has] enacted a plan called 'Brother, Come Home,' an initiative to

[4] It appears that, at least prior to 2019, Mr. Rivera-Vasquez would have been eligible for TPS. *See* 8 U.S.C. § 1254a(c)(2) (eligibility requirements). However, Mr. Rivera-Vazquez did not apply for TPS and TPS is not an automatic designation.

support Hondurans deported from the United States that reportedly includes providing monetary and food support, along with access to employment programs." *Id.*

The Honduran government has also made enormous strides in rooting out violent crime. Borrowing strategies from neighboring El Salvador, the country declared a state of emergency in 2022 and has taken extraordinary measures to crack down on gang activity. *See, e.g.*, Gustavo Palencia, *Honduras Rolls Out Widespread Gang Crackdown*, Reuters (June 15, 2024).[5] By 2024, the homicide rate had fallen to its lowest in twenty years. *See* Gobierno de la República, *Prestamos Logros Alcanzados en Materia de Seguridad Ciudadana Durante el Año 2024* (Jan. 7, 2025).[6] Today, the country is a "popular tourism and real estate investment destination." 90 Fed. Reg. at 30091.

In sum, two factors motivated Mr. Rivera-Vasquez's 2019 decision to stay in the United States: his youth and conditions in Honduras. Both of those things have changed. Today, Mr. Rivera-Vasquez is more mature. He has a more fully developed capacity to understand the impact of his actions. And, importantly, he is less vulnerable to victimization in Honduras. When he returns home, he will be able to reunite with his parents in a country that is far safer than it was six years ago. He does not plan to come back to the United States.

Thus, the Biden administration's immigration policy did not play a role in Mr. Rivera-Vasquez's decision to come to the United States or to stay in Missouri after 2019. That is not to suggest that federal policy plays no role in migration patterns writ large. As other courts have acknowledged, "'[a]ny number of variables might influence an alien's

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[5] Available at https://www.reuters.com/world/americas/honduras-rolls-out-widespread-gang-crackdown-2024-06-15/.

[6] Available at https://seguridad.gob.hn/presentamos-logros-alcanzados-en-materia-de-seguridad-ciudadana-durante-el-ano-2024/. Honduras' annual homicide data is available at https://www.sepol.hn/sepol-estadisticas-honduras.php?id=147.

independent decision' to enter the country illegally[.]" *General Land Office v. Biden*, 722 F. Supp. 3d 710, 726 (S.D. Tex. 2024) (quoting *Arizona v. Mayorkas*, 584 F. Supp. 3d 783, 797 (D. Ariz. 2022)). But the variables present in this case do not include the actions of the Biden administration.

II. Mr. Rivera-Vasquez objects to a sentence based, in whole or in part, on any aspect of immigration policy which has not been briefed by the parties.

Here, neither party suggested that the Court might be "required to impose [a] higher sentence[ ] to offset the negative effect the Executive Branch's past decisions had on deterrence." Doc. 18 at 1. For that reason, Mr. Rivera-Vasquez objects that imposing a "comparatively harsher sentence" because of the Biden administration's actions would violate the principle of party presentation.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *see also United States v. Sineneng-Smith*, 590 U.S. 371 (2020). "[Courts] do not, or should not, sally forth each day looking for wrongs to right." *Greenlaw*, 554 U.S. at 244 (quoting *United States v. Samuels,* 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in the denial of reh'g en banc)). District Courts can abuse their discretion if, for example, they impose a sentencing enhancement "by relying on an argument the Government did not make." *United States v. Payo*, 135 F.4th 99, 108 (3d Cir. 2025).

To be sure, the Court can take Mr. Rivera-Vasquez's status as an alien into account at sentencing. *See United States v. Loaiza-Sanchez*, 622 F.3d 939 (8th Cir. 2010). However, "it is inappropriate to blame [a defendant] for issues of broad local, national, and international scope that only tangentially relate to his underlying conduct." *United States*

v. Robinson, 829 F.3d 878, 880 (7th Cir. 2016) (quoting *United States v. Smith*, 400 F. App'x 96, 99 (7th Cir. 2010) (unpublished)); *see also United States v. Aguilar-Calvo*, 945 F.3d 464 (6th Cir. 2019) (characterizing a sentencing argument which parroted several political talking points surrounding illegal immigration as "blatantly inappropriate" because the argument "shoulder[ed] [the defendant] with the blame for a poorly articulated problem that is of little relevance to [his] case").

Mr. Rivera-Vasquez therefore objects to the consideration of Biden-era immigration policies at his sentencing which have not been cited to or presented by the parties.

III. Politics has no place at sentencing, and this Court is not responsible for deterring the federal government from pursuing legitimate public policy.

The Court may be concerned with "the risk that the Federal Government, years in the future, might revert to the same practices it had in place from 2021 through 2024." Doc. 18 at 4. But Mr. Rivera-Vasquez's sentencing is not the right forum to address such concerns. In fact, it is not the Court's place to attempt to deter the federal government, as a whole, from pursuing legitimate public policy.[7]

True, what is "legitimate" public policy is often in the eye of the beholder—to put a finer point on it, one's policy preferences are often dependent upon one's politics. But courts are apolitical institutions. *See* U.S. Courts, *Code of Conduct for U.S. Judges*, Canon 2B (effective March 12, 2019) ("A judge should not allow . . . political . . . relationships to influence judicial conduct or judgment.").[8] And, more broadly, "[a]n individual judge's policy

[7] Though the Court has stated that "many" of the policies enacted between 2021 and 2024 were illegal, it only provided one example of arguably illegal conduct: the government's refusal to "build the wall" between 2021 and 2024. Doc. 18 at 3 (citing *General Land Office*, 722 F. Supp. 3d at 739). However, the construction of the border wall during that time is only tangentially related to this case. As discussed *supra*, there is no evidence in the record to indicate that Mr. Rivera-Vasquez entered the United States between 2021 and 2024, and there is no evidence in the record to indicate that he arrived in this country by crossing the U.S.-Mexico border.

[8] Available at https://www.uscourts.gov/file/25752/download.

preferences should not influence sentencing." Stephanos Bibas, et al., *Policing Politics at Sentencing*, 103 N.U. L. Rev. 1371, 1388 (2009).

> Those idiosyncratic policy preferences are not relevant to society's decision to punish, incapacitate, or deter criminals. In addition, courts lack the institutional competence to make systemic policy choices. Congress has established an agency, the Sentencing Commission, to collect data and the views of various constituencies in formulating policies and rules. Congress, not courts, can hear expert testimony about the dangers and harms of various crimes and the best ways to address them. Congress, not courts, sets budgets and has to balance priorities such as funding for prisons and law enforcement. Most importantly, Congress has democratic legitimacy; courts do not.

Id. This is especially true when it comes to the enforcement of our country's immigration law and criminal code. "Under Article II, the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law. The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States." *United States v. Texas*, 599 U.S. 670, 678–79 (2023) (internal quotations and citation omitted). Indeed, when it comes to the arrest and prosecution of non-citizens who commit crimes, "courts generally lack meaningful standards for assessing the propriety of enforcement choices[.]" *Id.* at 679. There are other forums for examining the Executive Branch's policies—but "those are political checks for the political process." *Id.* at 685.[9]

IV. Deterrence has a limited role to play in the disposition of this case.

The Court is correct that it is "required to impose a sentence high enough to ensure adequate deterrence" under 18 U.S.C. § 3553(a)(2)(B). Doc. 18 at 2. And the Court is correct that it "must pursue not only specific deterrence but also general deterrence." *Id.* (citing

[9] Even if the Court disagrees with this position, as previously explained, the immigration policy in place between 2021 and 2024 did not impact Mr. Rivera-Vasquez's decision to remain in the United States, which occurred during President Trump's first term. *See supra* at 3.

Ferguson v. United States, 623 F.3d 627, 630 (8th Cir. 2010)). But deterrence—both specific and general—has a limited role to play at sentencing in this case.

Specific Deterrence

Mr. Rivera-Vasquez will not return to the United States. As discussed *infra*, he has family in Honduras who are not only looking forward to seeing him again, but are expecting his arrival and will house him for as long as he needs. His home country is not as violent as it was in 2019, and he will be able to receive governmental assistance to help him reintegrate into society. His father has secured him a job in Honduras. Thus, Mr. Rivera-Vasquez can envision a future in Honduras that is safe and stable. He has no need to return to the U.S.

Mr. Rivera-Vasquez is also unlikely to commit any other kind of crime. He has a limited criminal history; with one prior conviction assigned one criminal history point, *see* PSR at ¶ 37, he is among the class of federal offenders least likely to be rearrested. *See* U.S. Sentencing Comm'n, *Criminal History and Recidivism of Federal Offenders*, at 6 (Mar. 2017) (concluding, after an in-depth statistical analysis, that an offender's criminal history score is a "strong predictor[ ]" of recidivism and that "[o]ffenders who only had prior convictions assigned one point have a significantly lower recidivism rate than offenders who have prior convictions assigned two or three points").[10]

This is the first time that Mr. Rivera-Vasquez has ever been incarcerated. *See* PSR at ¶ 35 (noting that Mr. Rivera-Vasquez previously received 2 years of probation for the offense of "Careless and Imprudent Driving"). The months that Mr. Rivera-Vasquez has spent in Grayson County Jail have made the consequences of criminal activity very clear.

[10] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170309_Recidivism-CH.pdf.

And so—as with any other case where the defendant has a limited criminal history—a comparatively harsh sentence is unnecessary to achieve specific deterrence.

General Deterrence

The Court has emphasized the need to deter "all illegal immigrants[.]" Doc. 18 at 2. However, as the Court noted, migrant encounters at the southern border have dropped dramatically since the inauguration of President Trump in January 2025. *See* U.S. Customs and Border Protection, *Southwest Land Border Encounters*, available at https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (hereinafter "CBP Data"). One inference which could be drawn from this data is, of course, that the policies and rhetoric of the Trump administration have *already* deterred unlawful entries.

If that is true, there is little reason to think that a harsh sentence in this case would meaningfully contribute to general deterrence. "Only a smattering of the thousands of sentences imposed each day throughout the nation are reported in the mass media," so there is reason to "doubt whether most sentences ever register on the consciousness of the community." Arthur W. Campbell, *Deterrence*, Law of Sentencing § 2:2 (Aug. 2025 update). That is particularly true when the community that the court seeks to deter is comprised of "individuals who reside outside of our territorial boundaries and under the jurisdiction of foreign governments." Emily Ryo, *Detention as Deterrence*, 71 Stanford L. Rev. Online 237, 242 (2019). "[L]anguage divides, cross-country differences in legal systems . . . and the lack of access to modern communication technology" make it difficult for a single sentencing court to "send a message" which results in effective general deterrence. *Id.* In this domain, the Executive Branch has a distinct institutional advantage.

That is not to say that the Court should disregard general deterrence when sentencing Mr. Rivera-Vasquez. Deterrence is a factor that the Court must consider—but

prolonged incarceration at taxpayer expense will not appreciably increase that deterrent effect that Mr. Rivera-Vasquez's arrest, incarceration, and deportation will have.

V. Rapid deportation will have a greater deterrent effect than a long sentence.

In general, "[i]ncreasing the severity of punishment does little to deter crime." U.S. Dep't of Justice - National Institute of Justice, *Five Things About Deterrence*, at 2 (May 2016).[11] "The most generous statement that could be made about the perceived severity of punishment is that evidence in support of a deterrent effect has been inconsistent; perhaps a more accurate statement is that supportive evidence has been weak." Thomas A. Loughran et al., *Deterrence*, *in* Handbook of Criminological Theory, at 53 (Alex R. Piquero ed. 2016). Indeed, there is "far more empirical support for the deterrent effect of changes in the certainty of punishment than changes in the severity of punishment." Daniel S. Nagin, *Deterrence: A Review of the Evidence by a Criminologist for Economists*, 5 Ann. Rev. Econ. 83, 85 (2013); *accord* Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. Economic Literature 5, 32 (2017) ("[W]ithin the range of typical changes to sanctions in contemporary criminal-justice systems, the evidence suggests that the magnitude of deterrence owing to more severe sentencing is not large and is likely to be smaller than the magnitude of deterrence induced by changes in the certainty of capture.").

Applying this logic to immigration-related offenses, one would expect to see a significant deterrent effect from increased civil enforcement, including increased CBP and ICE presence, increased arrests, and increased deportations. In contrast, one would *not* expect to see a significant deterrent effect from increased criminal prosecutions or harsher sentencing practices.

[11] Available at https://www.ojp.gov/pdffiles1/nij/247350.pdf.

Over the past two decades, that is exactly what appears to have occurred.

Consider the early 2000s. Prior to 2005, "over 95% of Mexican nationals apprehended while trying to cross the border unlawfully were granted voluntary return, under which they were released into Mexico and subject to no further repercussion." Samuel Bazzi et al., *Deterring Illegal Entry: Migrant Sanctions and Recidivism in Border Apprehensions*, at 1 (Feb. 2019) (emphasis removed).[12] "In 2008, the U.S. Border Patrol sought to deter new and repeated attempts at illegal entry by replacing voluntary return with sanctions imposed under a Consequence Delivery System (CDS)." *Id.* CDS sanctions included administrative consequences, which complicated obtaining a U.S. entry visa in the future; programmatic consequences, which involved relocating a migrant far from the point of capture; and criminal consequences, which entailed formal prosecution in federal court. *Id.* Critically, the "[l]ess-severe administrative sanctions ha[d] similar effects on recidivism as more-severe programmatic and criminal sanctions." *Id.* at 3. Certain but less severe consequences were just as powerful as criminal prosecution and sentencing.

Now consider 2020 to 2024. Sentencing Commission data shows that during the Biden administration, sentences for illegal reentry actually *increased* in length when compared to the last year of the first Trump administration. *See* U.S. Sentencing Comm'n, *Quick Facts: Illegal Reentry Offenses*, at 2 ("The average sentence imposed was 8 months in fiscal year 2020 and 12 months in fiscal year 2024.").[13] But while sentences increased during President Biden's term in office, crossings at the southwest border reached a historic high, with nearly 2.5 million enforcement encounters reported in fiscal year 2023. *See* CBP Data. Harsh sentencing was not deterring illegal immigration.

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[12] Available at https://www.bu.edu/econ/files/2020/01/BBHRW_Manuscript.pdf.
[13] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Illegal_Reentry_FY24.pdf

Of course, "the Executive Branch must balance many factors when devising arrest and prosecution policies." *Texas*, 599 U.S. at 680. Incarceration is not costless: U.S. taxpayers currently pay $4,309 per month for each offender in BOP custody. *See* PSR at ¶ 71. Perhaps for that reason, the second Trump administration has chosen to address some amount of criminal activity through deportation as opposed to the prosecution. *See* Attorney General Pamela Bondi, *Memorandum Re: Total Elimination of Cartels and Transnational Criminal Organizations*, Dep't of Justice, at 2 (Feb. 5, 2025) (stating that although the Trump administration is pursing the "total elimination" of cartels and transnational criminal organizations, it will "often be prudent to pursue removal from the United States of a low-level investigative target without immigration status, rather than incurring the time and resource costs associated with criminal prosecution.") [14]

If it is prudent to forgo a long prison sentence for an illegal immigrant with cartel ties, it is prudent to forgo a long prison sentence in this case.

VI. A sentence of time served, followed by deportation, is consistent with the other factors identified in 18 U.S.C. § 3553(a).

Nature and Circumstances of the Offense

Mr. Rivera-Vasquez was prosecuted after possessing ammunition for deer hunting. His offense was nonviolent. He did admit to hunting out of season; however, there was no indication that he knowingly disregarded the state hunting regulations.

Nor was there evidence that Mr. Rivera-Vasquez knew it was illegal for him to possess ammunition. His short period in Missouri, limited English proficiency, and relative youth all point to a lack of awareness, not criminal intent.

[14] Available at https://www.justice.gov/ag/media/1388546/dl?inline.

Protection of the Public

Considering these facts—and considering Mr. Rivera-Vasquez's limited criminal history—there is little reason to believe that he is a danger to the community. Here, too, deportation plays a role in the sentencing calculus: as the Eighth Circuit has noted, "the need to protect the public from a defendant may be reduced in a case where, upon immediate release from incarceration, the Government will deport the defendant." *United States v. Morales-Uribe*, 470 F.3d 1282, 1287 (8th Cir. 2006) (citing *United States v. Zapata-Trevino,* 378 F. Supp. 2d 1321, 1328 (D.N.M. 2005); *United States v. Ramirez-Ramirez,* 365 F. Supp 2d 728, 733 (E.D. Va. 2005)); *see also United States v. Chin Chong*, No. 13-CR-570, 2014 WL 4773978, at *8 (E.D.N.Y. Sept. 24, 2014) (unpublished) (reasoning that "[f]or many types of offenses, deportation will provide an effective means of protecting the public from future wrongdoing by the defendant, obviating the need for a lengthy and costly term of incarceration . . . . Absent a prompt unlawful reentry, *see* 8 U.S.C. § 1326, or a crime capable of being committed from abroad, *see, e.g.*, 8 U.S.C. § 2251(c), the American public is generally safe from those who have been deported.").

History and Characteristics of the Defendant

Mr. Rivera-Vasquez's history and characteristics are mitigating—and, in addition, they illustrate why he is unlikely to return to the United States.

Throughout his time in Missouri, Mr. Rivera-Vasquez has maintained strong ties to Honduras. His parents have been a constant source of emotional support and have remained in close communication with him since he arrived in the U.S. as a teenager. They expect his return, have a room for him in their home, and have already arranged a job for him on the coffee plantation where his father is employed. Thus, Mr. Rivera-Vasquez will

not struggle to reintegrate; following his deportation, he will step into a supportive, structured environment.

Though Mr. Rivera-Vasquez has strong ties to Honduras, he has weak ties to the United States. He does have a one-year-old son in Missouri, David, but he was never the child's primary caregiver. Mr. Rivera-Vasquez supported David financially and visited him every few weeks; however, he has not seen or spoken to David or David's mother since his incarceration in August.

His relationship with David's mother, though respectful, is no longer romantic, and Mr. Rivera-Vasquez's most recent romantic relationship ended when he was arrested. Thus, the only significant tie that Mr. Rivera-Vasquez has to the United States is through David. And he understands that he does not have to return to the U.S. to continue this relationship: he can support David financially by working in Honduras and, in the future, his son can travel to Honduras for in-person visits.

Just Punishment

"[D]eportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants[.]" *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). Though it is not technically a part of the court's criminal sanction, it is often perceived as punishment. *Id.* at 365-66. Consequently, "[l]ess severe criminal sanctions will suffice to provide 'adequate deterrence' when . . . defendants face the double threat of incarceration *and* deportation as a result of their conduct." *Chin Chong*, 2014 WL 4773978, at *7.

In addition, it is important to note that defendants like Mr. Rivera-Vasquez serve "hard time" while they are in federal custody. If they are designated to BOP, deportable aliens are categorically ineligible for early release, cannot be placed in minimum security

settings, and are ineligible for certain kinds of rehabilitative programming. *Zapata-Trevino*, 378 F. Supp. 2d at 1328. When their sentence is complete, they are released into DHS custody, which "can, and generally does, mean a further term of detention until . . . removal has been completed[.]" *Ramirez-Ramirez*, 365 F. Supp. 2d at 733. Thus, Mr. Rivera-Vasquez will be harshly punished even if he is sentenced to a short period of incarceration. He will receive just punishment.

Conclusion

For these reasons, Lesman Jeroan Rivera-Vasquez asks the Court to sentence him to time served. That is the only sentence sufficient, but not greater than necessary, to serve the purposes of sentencing set forth in 18 U.S.C. § 3553(a).

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2025, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Thomas C. Albus, United States Attorney, and Tracy Berry, Assistant United States Attorney.

/s/Julie R. Clark
JULIE R. CLARK
Assistant Federal Public Defender