

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	09-CR-00466(BMC)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
JOAQUIN ARCHIVALDO	:	Wednesday, July 17, 2019
GUZMAN LOREA,	:	9:15 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: RICHARD DONOGHUE, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: GINA MARIE PARLOVECCHIO, ESQ.
MICHAEL ROBOTTI, ESQ.
ANDREA GOLDBARG, ESQ.
Assistant United States Attorney

DEPARTMENT OF JUSTICE, CRIMINAL DIVISION
Narcotic and Dangerous Drug Section
145 N. Street N.E., Suite 300
Washington, D.C. 20530
BY: AMANDA LISKAMM, ESQ.
ANTHONY NARDOZZI, ESQ.

A P P E A R A N C E S: (Continued)

UNITED STATES ATTORNEY'S OFFICE
Southern District of Florida
99 NE 4th Street
Miami, Florida 33132
BY:ADAM S. FELLS, ESQ.

For the Defendant: LAW OFFICES OF JEFFREY LICHTMAN
11 East 44th Street
Ste 501
New York, New York 10017
BY:JEFFREY H. LICHTMAN, ESQ.

LAW OFFICES OF MARC FERNICH
810 Seventh Avenue, Suite 620
New York, New York 10019
BY:MARC A. FERNICH, ESQ.

LAW OFFICE OF WILLIAM B. PURPURA
8 E. Mulberry Street
Baltimore, MD 21202
BY:WILLIAM B. PURPURA, ESQ.

Court Reporter: VICTORIA A. TORRES BUTLER, CRR
225 Cadman Plaza East/Brooklyn, NY 11201
VButlerRPR@aol.com

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1 (In open court.)

2 (Judge BRIAN M. COGAN enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Good morning, be seated, please.

5 (Defendant enters the courtroom.)

6 THE COURTROOM DEPUTY: United States versus Joaquin
7 Guzman, Docket Number 09-CR-466.

8 Counsel, please state your appearances for the
9 record, starting with the Government.

10 MS. PARLOVECCHIO: Good morning, Your Honor.

11 Gina Marie Parlovecchio and Michael Robotti from the
12 Eastern District of New York.

13 Amanda Liskamm and Anthony Nardoizzi from the
14 Narcotics and Dangerous Drug unit of the DOJ.

15 And Adam Fels and then Andrea Goldbarg from the
16 Southern District of Florida.

17 THE COURT: Good morning.

18 MS. GOLDBARG: Good morning.

19 MS. PARLOVECCHIO: And we have Jeffrey Giblin from
20 the United States Probation Department.

21 MR. LICHTMAN: Jeffrey Lichtman for the defendant.
22 Good to see you, Judge.

23 THE COURT: Same here.

24 MR. FERNICH: Your Honor, Marc Fernich, also for
25 Mr. Guzman.

1 Good morning.

2 THE COURT: Good morning.

3 Good morning, Mr. Guzman.

4 THE DEFENDANT: Good morning, Your Honor.

5 THE COURT: I will note for the record that we have
6 an interpreter sitting next to Mr. Guzman who has been
7 previously sworn.

8 MR. PURPURA: Good morning, William Purpura, also
9 for Mr. Guzman.

10 THE COURT: Good morning, Mr. Purpura.

11 We are on for sentencing this morning. I have
12 reviewed the following papers in preparing for the sentencing:

13 First, the Pre-Sentence Investigation Report of
14 May 21st of this year;

15 I then have the Government's sentencing memorandum
16 of July 10th, and;

17 I have a memorandum in support of the request for
18 forfeiture from the Government with Exhibits of July 5th.

19 I have not received anything from the Defense.

20 There is nothing I am supposed to have, is there?

21 MR. LICHTMAN: No, Judge.

22 THE COURT: All right.

23 In the absence of any objection to the PSR, I will
24 adopt the description of the offense and the offender
25 characteristics as set forth in sections A and C of the PSR as

1 my findings of fact for purposes of this sentencing.

2 With regard to the guidelines, I also assume in the
3 absence of objection that there is no dispute that we are
4 talking about an offense level of 66, which gets automatically
5 ratcheted down to the maximum offense level of 43, the
6 criminal history of Category I, and that the guidelines
7 recommendation, therefore, is life imprisonment plus 30 years
8 consecutively as to Count 9. That is my finding on the
9 guidelines.

10 Let me then hear from all the parties to the extent
11 there is anything they wish to add regarding sentence. I will
12 start with Defense Counsel.

13 MR. LICHTMAN: Judge, may I stand and approach?

14 THE COURT: Sure.

15 MR. LICHTMAN: Thank you.

16 First of all, I want to begin by thanking you for
17 your indulgence in this case. This has been a long, difficult
18 time, I think for all of us, for all the parties and,
19 Your Honor -- and I say this sincerely -- you have a great
20 temperament for this kind of work. I guess that's why you
21 became a judge. And it didn't go unnoticed by the Defense and
22 we appreciate that.

23 THE COURT: Hang on one second.

24 (Pause in the proceedings.)

25 MR. LICHTMAN: In addition, I want to point out that

1 one thing that you said after the verdict came in, which meant
2 a lot to me, was your feelings of patriotism and I think that
3 it's one thing that you and I completely agree with. I'm
4 proud of this country as well. I think that it's the greatest
5 country in the world and I think that there's opportunity for
6 everyone here as long as you're willing to work hard.

7 I also agree that our jury system is exceptional and
8 is an example for the rest of the world and something that we
9 as Americans should be tremendously proud of, especially after
10 all the evidence that we heard in the case that perhaps other
11 countries don't have the same level of fairness with regard to
12 justice.

13 As Your Honor knows, this is a trial that there has
14 been unparalleled publicity. I have sat through trials with a
15 lot of publicity but nothing ever could compare to this and
16 that was the reason why Your Honor consistently and
17 persistently admonished the jury to stay away from the media.
18 And as we all know that in trials like this, there's a lot of
19 publicity and jurors don't always listen. I get it. There
20 are issues that occur and we do the best we can to convince
21 the jury to stay away from the media.

22 THE COURT: Mr. Lichtman, is this about sentencing
23 or a reargument of the motion for a new trial?

24 MR. LICHTMAN: Judge, I'm not here to reargue the
25 motion.

1 THE COURT: Okay.

2 MR. LICHTMAN: But I have an opportunity to speak
3 and I would ask for five minutes of indulgence.

4 THE COURT: Of course.

5 MR. LICHTMAN: Thank you.

6 But what occurred here, and I say this respectfully
7 because I mean it -- and, Judge, if I didn't mean it
8 respectfully I think you'd know based on my personality --
9 what occurred here, I believe, with the jury was much more
10 malevolent. A large part of the jury, according to what we
11 read in the Vice article, failed to tell you the whole truth
12 when you admonished them and questioned them with regard to
13 the interview that was in the Vice news article.

14 The jury is told by a juror that believed that he
15 had committed a crime, which gave his words a sheen of truth
16 because they were against his penal interest, and he stated
17 that up to five jurors purposely sought out sensational media
18 coverage of the case including allegations that were not true
19 but were requested by the Government to be kept out of the
20 case. And not only did the jury fail to tell you the whole
21 truth but they conspired with each other to lie to you about
22 their actions and what they sought out in the media. And this
23 was not a juror that we sought out, Judge, as you know; that
24 this was not a juror with any agenda but to tell the truth
25 about the misconduct.

1 We also learned that the jury inappropriately broke
2 other rules about discussing the case prior to deliberations,
3 the use of a smart watch inside the courthouse in order to get
4 more media to them, and they were reviewing allegations in the
5 media constantly that had nothing to do with the trial. This
6 case was supposed to be about highlighting the exceptionalism
7 of the American justice system and I think as somebody who's
8 been involved in other Mexican cartel cases before Mr. Guzman
9 was extradited to America, we were all surprised when he was
10 brought here. I think most people will tell you that, when he
11 was brought here in 2017.

12 But I think that the reason he was brought here was
13 to highlight the exceptionalism of the American justice system
14 and to show that we can do it right; unlike what occurred in
15 Mexico, we can give this man a fair trial. And respectfully,
16 and I say that again, and I don't say it for any reason
17 because it's the truth, respectfully what occurred here did
18 not satisfy the appearance of justice. What occurred here did
19 not promote public confidence in the integrity of judicial
20 process.

21 The Government will not even dignify that the juror
22 who spoke to Keegan Hamilton was even an actual juror. He is
23 an alleged juror according to them, despite the fact that
24 Keegan was here every day for three months and knows exactly
25 who he spoke to. If the Government is unsure about whether

1 there was an actual juror, we know full well there's one way
2 to resolve that, which is with a hearing.

3 THE COURT: I assumed in my decision that it was an
4 actual juror.

5 MR. LICHTMAN: Judge, I'm talking about what the
6 Government alleged. That they wouldn't even agree it was an
7 actual juror. You assumed it for purposes of your decision, I
8 understand.

9 Judge Garaufis, a judge that I greatly respect as
10 well, said after the allegations came out and before his very
11 own high-profile trial started: The El Chapo trial shows that
12 people don't listen to judges, that jurors will go on the
13 internet, Twitter and ignore their duties. This is a real
14 issue and I am going to come down very hard on the jurors. I
15 will even make a reference to the U.S. Attorney; we are here
16 to do justice, not spread gossip about the defendants on
17 trial.

18 But, in fact, that's exactly what occurred here in
19 this trial and unlike what Judge Garaufis threatened, nothing
20 was done in response.

21 And I'm closing now, Judge.

22 In the end, how we treat our most reviled in society
23 is a measuring stick of our own society and I know that you
24 agree with me on that. We simply asked for a hearing to find
25 out the truth of what occurred here to seek the truth. And

1 that's what we're here for, is an attempt to find the truth.
 2 And respectfully, the Government fought very hard to prevent
 3 that truth from coming out at a hearing and these are
 4 prosecutors that I respect greatly, every single one of them.
 5 They know how I feel about them and how hard they work, and
 6 the agents even more than the prosecutors. They know how I
 7 feel about them and I respect their work. But they did all
 8 they could to prevent that truth from coming out.

9 No hearing will occur here today to find out what
 10 really happened with this jury and for that reason history
 11 will treat this verdict with skepticism. Sweeping the
 12 misconduct by the jury under the rug does not provide the
 13 appearance of justice, no matter how painful that hearing
 14 might have been. And while we had the best intentions as a
 15 nation to show the world that the American justice system is
 16 exceptional and certainly beyond that of our neighbors in
 17 Mexico, we actually achieved the opposite. And that's a
 18 shame. Mr. Guzman, being convicted of horrific crimes, does
 19 not change that.

20 Thank you, Judge.

21 THE COURT: All right.

22 Mr. Guzman, you have the right to be heard. Is
 23 there anything that you would like to say?

24 THE DEFENDANT: Yes, Your Honor, thank you very
 25 much.

1 I thank you, Your Honor, for allowing me to say a
2 few words.

3 Do I stand?

4 THE COURT: It is up to you Mr. Guzman, whichever
5 you want. I think you should probably sit because it is
6 easier to talk into the microphone.

7 THE SPANISH INTERPRETER: "Will you translate for
8 me?"

9 "Yes, sir."

10 THE DEFENDANT: First of all, I would like to thank
11 my wife, my family, my daughters for their unconditional
12 support during this large -- this long proceeding. They have
13 supported me and they will continue to support me. To my
14 mother, my brothers, my sisters and everybody, all the people
15 who prayed for me, their prayers have given me the strength to
16 bear this torture that I have been under for the last 30
17 months. And I would like to thank my private attorneys and
18 the public Defenders, especially the attorneys Michele and
19 Michael, and all the paralegals.

20 As you know, Your Honor, the conditions of my
21 confinements under which I've lived for the last 30 months
22 have been total torture. I have been forced to drink
23 unsanitary water. I have been denied access to fresh air and
24 to sunlight. The only light that I get in my cell comes
25 through a duct and the air that comes into the cell is forced

1 in and it makes my ears, my throat, my head hurt. In order to
2 sleep, I have to use plugs made out of toilet paper in my ears
3 because of the noise that the air duct makes and this has
4 affected me during this time. My wife has not been allowed,
5 to this date, to visit me. I have not been allowed to hug my
6 daughters. It has been psychological, emotional, mental
7 torture 24 hours a day.

8 With all due respect, it's been torture. It's the
9 most inhumane situation I've lived in my life. It's been lack
10 of respect for human dignity. I was forced... these last 30
11 months have been filled with torture and we are in the 21st
12 century. We would not be subjected to these cruel and
13 inhumane treatment.

14 I thank the prison guards. Their good treatment of
15 myself has allowed me to bear this torture. And to the
16 Marshals here in the courthouse during the three months that
17 my trial lasted when they have me here, when they transport me
18 from the jail to the courthouse, from the courthouse to the
19 jail.

20 When I was extradited to the United States I
21 expected to have a fair trial, a trial where justice would be
22 blind and where my fame, my reputation, would not be a
23 determining factor in the administration of justice. But what
24 happened was actually the opposite even though you,
25 Your Honor, gave the jury instructions to not watch media and

1 to -- and the jury promised to follow the rules. They did the
2 opposite. They looked at all the articles where I was exposed
3 to the most horrible accusations against me, which were not
4 true. These accusations damaged my opportunity to be judged
5 only on the evidence presented at trial.

6 A member of the jury told a newspaper that they had
7 violated the law and that they have lied to you. In response,
8 you decided to do nothing. You didn't want to question not
9 even one member of the jury to determine if I had received
10 justice and you didn't want to bring the jury back to question
11 the jury because that would have resulted in a new trial, a
12 trial where this second time I would have received justice.
13 So what you did was you alleged that the actions of the jury
14 were not important because there was a lot of evidence against
15 me. You alleged that the actions of the jury were not
16 important because there was a lot of evidence against me to
17 find me guilty. If that was the case, then I ask you, why did
18 we go to trial? Why not rather sentence me from day one? The
19 jury was not necessary, then.

20 Since the Government of the United States is going
21 to send me to a prison where my name will not ever be heard
22 again, I take advantage of this opportunity to say there was
23 no justice here. My case was stained and you denied me a fair
24 trial when the whole world was watching and where the press
25 was present, judging everybody's actions at every moment. And

1 this then can be denied to any other person in other cases
2 where nobody's watching. What happened here leaves very clear
3 that the United States is not better than any other corrupt
4 country of those that you do not respect.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Guzman.

7 I will hear from the Government.

8 MS. PARLOVECCHIO: Thank you, Your Honor.

9 May I speak from here as well?

10 THE COURT: If you want.

11 MS. PARLOVECCHIO: Thank you.

12 THE COURT: Just make sure you use a mic.

13 MS. PARLOVECCHIO: Yes, Your Honor, it's on.

14 Your Honor, I agree with Mr. Lichtman on one thing.

15 And that's that the United States justice system is
16 exceptional and justice was served in this courtroom in
17 February of this year. But today is not about that new trial
18 motion that the Defense filed. You wouldn't know that from
19 the comments you heard from the Defense. Today is about this
20 defendant and his three-decade criminal career.

21 As stated in our submission, the applicable
22 statutory mandatory sentence for the defendant is life
23 imprisonment with a 30-year sentence to run consecutive to
24 that life term. The Eastern District of New York courthouse
25 has seen the prosecution of some of the world's most notorious

1 criminals. Even among them, this defendant is uniquely
2 deserving of a life sentence, plus 30 years imprisonment.

3 As the jury found, the defendant was one of the
4 principal leaders of one of the world's most violent and
5 prolific drug cartels. The defendant reached this benchmark
6 because of his greed and because of his unmitigated use of
7 violence and corruption. Overwhelming evidence during the
8 trial showed this defendant's vicious use of violence against
9 dozens of murder conspiracy victims. And one of those
10 victims, Andrea Velez will make a statement to the Court
11 today.

12 But many of these victims don't have faces or names
13 like the innocent people partying at Christine's disco when
14 the defendant's men burst in and opened fire. And there are
15 countless other victims of the defendant's orders to kill,
16 like law enforcement officials who were just doing their jobs.
17 But there are millions of other victims of the defendant who
18 will not have a voice in today's proceedings; the victims
19 impacted by the devastation and death of the defendant's drugs
20 that he and his associates pumped onto the streets and
21 communities throughout this country, drugs for which the
22 defendant reaped billions of dollars in blood money.

23 Throughout his criminal career, this defendant has
24 not shown one shred of remorse for his crimes and you heard
25 that today. He is not sorry for his crimes. He speaks of

1 lack of respect for human dignity. You heard throughout this
 2 trial that this defendant has no respect for human dignity.
 3 He had no respect for the human dignity of his murder
 4 conspiracy victims or the millions of people that he poisoned
 5 with his drugs. He's not shown one bit of acceptance of
 6 responsibility for making billions off of the misery and
 7 addiction of people around the world. That was exemplified by
 8 the video the defendant made for Rolling Stone.

9 During that video we heard the defendant's callous,
 10 matter-of-fact description of how people get a taste for his
 11 drugs and the addiction starts to grow. And he benefitted
 12 from that. Instead of taking responsibility, throughout his
 13 25-year reign as a leader of the Sinaloa Cartel, this
 14 defendant consistently obstructed justice and endangered the
 15 lives of law enforcement and other innocent people in the
 16 process.

17 A life sentence, plus 30 years, will protect the
 18 public from this defendant who has shown that he will not be
 19 deterred from committing horrific crimes. A sentence of life
 20 plus 30 years is a just sentence for this defendant.

21 Thank you.

22 THE COURT: I understand one victim has come forward
 23 who has a statutory right to be heard at this proceeding.
 24 Let's have that person come, please.

25 (Andrea Velez enters the courtroom.)

1 THE COURT: I will note that the victim also has an
2 interpreter who has been previously sworn.

3 ANDREA VELEZ: Good morning.

4 As you all heard, my name is Andrea Velez and today,
5 in front of all of you, I want to stop being a name without a
6 face. To stop being the subject of speculations and of gossip
7 from those who don't know me and have only heard about me from
8 what other people say. Today, I come here. I'm a miracle of
9 God because Mr. Guzman tried to kill me, and today I have an
10 opportunity to tell the truth, and the truth is what is going
11 to make us free thanks to the United States Government and the
12 Southern District of New York who led part of this massive
13 investigation and who were the ones who literally rescued me
14 from hell when Mr. Guzman tried to kill me.

15 From Agents Bob Potash, Steve Marsten and Tim
16 Van Dyke I was able to understand that incorruptible
17 authorities do exist and that in this country there are
18 professional and honest federal agents who accompanied me on
19 this torturous road full of terror. Through them, I was able
20 to see an example which led me to be a better person and
21 woman.

22 I still have nightmares from when Mr. Guzman used me
23 as bait to kidnap a former military person in Ecuador with a
24 squadron of men armed with AK-47s putting my life at risk.
25 Also, when a group of armed commandos with the federal police

1 arrived at my apartment in Mexico City, Mr. Joaquin Guzman
2 offered \$1 million to the Hells Angels to end my life. This
3 caused me a psychological trauma. Fortunately, I found out
4 and I escaped with the help of the FBI.

5 Although it may be hard to understand it, I
6 profoundly admire Mr. Joaquin Guzman and empathy grew when he
7 started to develop his movie project. I came to see him as a
8 good person, polite, who was concerned about me. When I met
9 him, he seemed to me a man with great kindness and charisma.
10 I was very sorry for what was being said about him. At one
11 point I felt that they were actually my family and that
12 nothing could happen to me beside them. Perhaps I lived in my
13 own skin what many specialists have called the Stockholm
14 syndrome; seeing a distorted image of my captors because when
15 I saw the reality and I wanted to distance myself, those
16 friends were only that. Captors. And who reminded me that if
17 I left the organization, I could only do it in a plastic bag
18 and feet first.

19 I confessed that I sinned but I paid a high price
20 for my faults. My dreams of grandeur became my worst
21 nightmare. I lost my family, my friends. I became a shadow
22 without a name, afraid of my past. I had everything and I
23 lost everything. Even my identity. Today all I have left is
24 to tell the world in person my experience so that so many
25 young people, just like me, who get themselves involved in

1 this drug-trafficking world with its apparent power and glamor
2 really know what is hidden behind it.

3 It's never too late to ask for forgiveness. It's
4 never too late to begin again. It's never too late to say
5 that I was wrong. I admitted my mistakes and I accepted the
6 second chance that life offered to me to come back to life.

7 Mr. Guzman, the same as I ask for forgiveness, I
8 forgive you. And I hope that you can forgive me. You have
9 two beautiful daughters who you would not like to have happen
10 to them the same thing that happened to me. You are a good
11 father, as was my father, also. And like so many parents who
12 have lost their children as a consequence of drugs.

13 Today I want to close an extremely painful chapter
14 in my life. Today I am strong, but yesterday I was weak. I
15 hope one day to overcome the emotional and psychological
16 damage which these memories cause me. But in the end what I'm
17 certain of is that God's powerful hand acts on a supernatural
18 plane. For me to be able to be here today is a redemption.
19 To have managed to make it alive, to be the voice of many more
20 victims of this war who didn't -- weren't able to make it here
21 because their lives were cut short. My greatest desire is
22 that their families receive peace in their hearts.

23

24 (Continued on following page.)

25

1 (Continuing.)

2 ANDREA VELEZ: And that was also true and
3 demonstrated in this case in the Eastern District of New York
4 with its extraordinary and arduous work. All that is left is
5 to leave everything in the hands of the United States justice
6 system.

7 Thank you very much.

8 THE COURT: You're welcome.

9 Any further victims identify themselves to the
10 Government?

11 MS. PARLOVECCHIO: No, your Honor.

12 THE COURT: All right. Let's not lose sight of the
13 fact that the reason we're here today is no different than any
14 other sentencing hearing.

15 MR. FERNICH: Judge, before we go forward, can I
16 just quickly place three points on the record?

17 I'll be very brief. They are legal objections
18 that --

19 THE COURT: Who are you again?

20 MR. FERNICH: I'm Fernich, the appeals lawyer.

21 THE COURT: Go ahead.

22 MR. LICHTMAN: Judge, to the extent this ever
23 becomes an issue in this case or some future case, I'd like to
24 state for the record our position that the CVRA -- and this is
25 without commenting on the comments, the remarks, that we just

1 heard or diminishing them in any way -- I'd like to say for
2 appeal purposes, we contend that the CVRA, to the extent that
3 it purports to give victims a full slate of participatory
4 rights commensurate with those in our Bill of Rights afforded
5 to criminal defendants, we think that provision, and
6 particularly Subsection (a)(4), of the statute is
7 unconstitutional as a matter of law and that it contravenes
8 the Fifth and Sixth amendments, Judge.

9 Second, I don't know when the opportunity to place
10 this technical objection on the record would occur. We'd like
11 to move for the dismissal of the 924(c) count based on
12 *Rutledge* insofar as your Honor has, with the Government's
13 consent, tossed the drug conspiracy counts that are subsidiary
14 to the CCE charge.

15 And, also, I'd like to place on the record, in case
16 the Supreme Court rules in the defense's favor in the pending
17 case of *Shular v. United States*, I'd like to place on the
18 record my position that that provision of 924(c), the drug
19 trafficking clause, is impermissibly vague and
20 unconstitutional.

21 And, finally, Judge -- and I apologize for bending
22 over to the microphone here -- just to very, very briefly hark
23 back to Mr. Guzman's comments on the conditions of confinement
24 in this case, needless to say, Mr. Guzman is a unique
25 defendant and the allegations against him are and were

1 indescribably serious, but it's important not to lose sight of
2 the fact that throughout this lengthy period of incarceration,
3 Judge, he was still, despite his notoriety, a pretrial
4 detainee, your Honor, who was presumed innocent. And he was
5 subjected to what goes beyond solitary confinement for a
6 convicted individual.

7 And in light of Justice Breyer's, among others',
8 repeated statements of doubt about the constitutionality of
9 solitary confinement even for a convicted inmate, maybe some
10 day, in this case or in another case, these type of pretrial
11 restraints will go up to the Supreme Court, and I'd like to
12 say that, in our view, they violate the Eighth Amendment.

13 And these days, your Honor, we hear the term
14 "concentration camp" being thrown about very casually, and I
15 abhor that and I'm not remotely suggesting, to be clear, that
16 this is anything commensurate with a concentration camp, but,
17 based on what I heard come out of Mr. Guzman's, mouth it's
18 very hard to fathom that these conditions exist for a
19 presumptively innocent individual in an American jail.

20 Thank you.

21 THE COURT: Thank you.

22 MS. PARLOVECCHIO: Your Honor, I'm sorry, just for
23 the record, the 924(c) count is tied to Count One, which we
24 are not asking to be vacated for purposes of sentencing.

25 And as to Mr. Guzman's conditions of confinement,

1 before Mr. Fernich coming into the case they were thoroughly
2 litigated, your Honor looked at all of these as legal issues,
3 and came to his own conclusion.

4 Thank you.

5 THE COURT: None of the comments that defense
6 counsel just made were directed at me, they were directed at
7 the Second Circuit, which is fine, although all of those
8 comments have either been previously litigated or could have
9 been made.

10 For example, the alleged unconstitutionality of
11 allowing the victim to speak. Defense counsel knew that was
12 going to happen. I didn't receive a single piece of paper
13 protesting that, saying I had an issue to resolve. So, since
14 no motions also have been made before me with regard to
15 anything defense counsel just said, I have nothing to rule on.

16 All I have to rule on today is the sentence, and
17 there's not much I have to say about that because Congress has
18 mandated, mandated, that I impose a minimum sentence of life
19 plus 30 years imprisonment. I have no discretion to do
20 anything but impose at least life plus 30 years imprisonment.
21 That's the law.

22 Having said that, for the sake of good order, I will
23 also note that the guidelines fully agreed with the statutory
24 minimum. The guidelines, in fact, have to be taken down from
25 66 points because there aren't 66 offense level points. You

1 can only have a maximum of 43. So, it gets taken down because
2 we are so far above the maximum offense level points.

3 And I will also note that to the extent that I
4 should consider the 3553(a) factors, they all point towards
5 what the statutory minimum and the guidelines point towards.
6 The nature and circumstances of this offense, the trial record
7 speaks for itself: It is a series of the most serious
8 criminal offenses in the federal code. The circumstances
9 under which they occurred are the most aggravating they could
10 be.

11 The history and characteristics of the Defendant
12 were alluded to both by the Government and by the victim.
13 It's very clear they do not work in his favor, despite the
14 fact that he may be a good father and have other attributes.
15 But the overwhelming evil is so severe that the history and
16 characteristics don't point that way.

17 The need for general deterrence is quite obvious in
18 a case of this profile and the need for specific deterrence
19 when someone has done this level of criminality for so long is
20 also clear.

21 So, everything in front of me points to the sentence
22 that the statute requires that I impose.

23 The only other thing I'll say is, as I said to
24 Mr. Lichtman, that was not a sentencing discussion that he had
25 with me, that was a reargument of the motion for a new trial

1 based on the alleged jury misconduct.

2 I wrote a 45-page decision on why that was wrong.
 3 And I'm not going to read it aloud because we'd be here all
 4 day, but I will just summarize it by saying that there were
 5 only two facts which were allegedly discussed with the press:
 6 One had to do with an indiscretion unrelated to the case of
 7 defense counsel; and the other had to do with an uncharged
 8 crime that was serious, but no more serious than everything
 9 else that the evidence showed the Defendant had actually done.

10 When you take those two little things and you put
 11 them against what I called in the decision a "mountain range
 12 of evidence," it explains why I was compelled to deny your
 13 motion for a new trial.

14 Having said that, the sentence of the Court is as
 15 follows: As to Counts One through Eight, life imprisonment as
 16 to each count, to run concurrently; as to Count Nine, 30
 17 years -- that's 240 months -- to run consecutively to Counts
 18 One through Eight; as to Count Ten, 240 months imprisonment,
 19 to run concurrently with Counts One through Eight.

20 There's a mandatory \$1,000 special assessment.

21 I'm not going to impose a fine because I am going
 22 to -- I've had no objection to the Government's proposed order
 23 of forfeiture in the amount of \$12,666,191,704. The
 24 Government has offered a method of calculating that amount
 25 that I find is reasonable both as to the quantity of the drugs

1 involved and the value of those drugs involved. So, I adopt
2 that and I have entered the order of forfeiture.

3 The Government has also requested that I dismiss
4 without prejudice Counts Two, Three, and Four. That motion is
5 granted.

6 And finally, the Government has requested that I
7 defer a final ruling on restitution.

8 Let me ask you about that, Ms. Parlovecchio, why
9 couldn't we get restitution done before today?

10 MS. PARLOVECCHIO: Your Honor, we didn't realize
11 that the one victim wanted to file the affidavit for
12 restitution. So, we're still waiting on that to be finalized,
13 and then we'll submit it to the Court.

14 But as cited in our papers, the Court has up to 90
15 days to find a restitution number as long as your Honor finds
16 restitution would be warranted.

17 THE COURT: Let's not take the whole 90 days. Let's
18 get that done sooner.

19 In the meantime, I'll enter a judgment and then I'll
20 enter an amended judgment when I decide on the amount of
21 restitution, if any.

22 Anything further before I advise the Defendant of
23 his appellate rights?

24 MS. PARLOVECCHIO: Just briefly, your Honor, in
25 regards to Counts Two, Three, and Four, upon looking at that

1 issue a little bit further, we looked at a case, *U.S. v.*
 2 *Bourne*, 08-CR-888. In that case, Judge Garaufis had a similar
 3 issue, and the language that he used in the judgment and
 4 decision was "vacate as lesser included offenses" of
 5 Count One, Counts Two, Three, Four.

6 And we would respectfully ask that the Court use
 7 that language.

8 THE COURT: I will adopt that language for purposes
 9 of pronouncing it today and I will also include it in the
 10 judgment.

11 MS. PARLOVECCHIO: Thank you.

12 THE COURT: Anything further before I advise
 13 Defendant of his appellate rights?

14 MS. PARLOVECCHIO: We move to dismiss the underlying
 15 indictments through S-3.

16 THE COURT: That motion is granted.

17 Mr. Guzman, you have the right to appeal the
 18 conviction against you and the sentence that I have imposed.
 19 If you want to appeal, you have to get what's called a "notice
 20 of appeal," a one-page piece of paper that says you are
 21 appealing, filed with the Clerk of the Court. Your lawyers
 22 will do that for you, if you ask them; you can certify to the
 23 Clerk of the Court, if it's true, that you can't afford a
 24 lawyer, and the Clerk will do it for you; or you can get the
 25 one-page paper yourself and file it.

1 But however you delegate it, it remains your
2 responsibility and nobody else's to see to it that it gets
3 filed within 14 days; otherwise, you will have irrevocably
4 waived any right you might have to appeal.

5 THE DEFENDANT: Thank you.

6 THE COURT: Anything further?

7 MS. PARLOVECCHIO: No, your Honor.

8 MR. LICHTMAN: Your Honor, if I can, because this is
9 a lengthy...

10 Judge, may I have a second?

11 THE COURT: You may.

12 (Defense counsel confer.)

13 THE COURT: Anything further, Mr. Lichtman?

14 MR. LICHTMAN: Yes, your Honor.

15 Because of the length of this record, which,
16 obviously, has been going on now for two and a half years, and
17 the extradition as well, we would ask if your Honor would
18 order that Mr. Guzman remain in his present location for a
19 period of 60 days before he is designated -- your Honor knows
20 sometimes it takes up to 30 days for a designation anyway --
21 to allow him to work with the appellate lawyers on the case.

22 As your Honor knows, his situation makes it a little
23 tougher to work with on legal issues. So, we would ask that
24 he remain in New York for a period of 60 days.

25 THE COURT: What's the Government's position?

1 MS. PARLOVECCHIO: Your Honor, the Government will
2 defer to the U.S. Marshals and the Bureau of Prisons on this
3 issue.

4 THE COURT: I will recommend that he stay for 60
5 days, but I'm leaving the decision ultimately to the Bureau of
6 Prisons and the marshals.

7 Thank you. We are adjourned.

8
9 (Matter concluded.)

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