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**U.S. District Court
Southern District of California (San Diego)
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#: 3:08-cr-00249-BTM-2**

- 01/30/2008 12 INDICTMENT as to Tinamarie Torres Debenedetto (1) count(s) 1, 2, Alejandra Tapia (2) count(s) 1, 2. (rmm) (Entered: 01/31/2008)
- 11/25/2008 87 SUPERSEDING INDICTMENT as to Alejandra Tapia (2) count(s) 1s, 2s, 3s. (vet) (Entered: 11/26/2008)
- 12/19/2008 111 JURY VERDICT as to Alejandra Tapia (2) Guilty on Count 1s,2s,3s. (vet) (Entered: 12/22/2008)
- 3/09/2009 136 SENTENCING SUMMARY CHART by USA as to Alejandra Tapia (Parks, Jaime) (vet). (Entered: 03/09/2009)
- 4/01/2009 137 MOTION Upward Adjustment, MOTION for Upward Departure by USA as to Alejandra Tapia. (Attachments: # 1 Statement of Facts and Memorandum of Points and Authorities, # 2 Declaration of US Marshal Todd Loveless, # 3 Proof of Service) (Parks, Jaime) (vet). (Entered: 04/01/2009)
- 4/28/2009 140 SENTENCING MEMORANDUM by Alejandra Tapia (Attachments: # 1 Exhibit, # 2 Proof of Service) (Betancourt, Michelle) Modified on 4/29/2009 – Atty e-mailed re timeliness (vet). (Entered: 04/28/2009)

- 5/01/2009 142 JUDGMENT as to Alejandra Tapia (2), Count(s) 1, 2, The underlying counts are dismissed on the motion of the United States.; Count(s) 1s, Custody of BOP for a term of 46 Months; Count(s) 2s, Custody of BOP for a term of 46 Months concurrent with count 1.; Count(s) 3s, Custody of BOP for a term of 5 Months consecutive to counts 1 and 2 for a total sentence of 51 Months. Supervised release 3 years concurrent as to all counts. Assessment \$300.00 payable at a rate of \$3.00 per month through the inmate financial responsibility program with the balance to be paid within 6 months of release. No fine. Signed by Judge Barry Ted Moskowitz. (vet) (Entered: 05/01/2009)
- 5/12/2009 143 NOTICE OF APPEAL by Alejandra Tapia re 142 Judgment. (Filing Fee: No Fee Required). (akr) (Entered: 05/12/2009)
-

**General Docket
United States Court of Appeals
for the Ninth Circuit**

Court of Appeals Docket #: 09-50248

Docketed: 05/18/2009

Termed: 04/16/2010

United States of America v. Alejandra Tapia

Appeal From: U.S. District Court for Southern
California, San Diego

Fee Status: IFP

04/16/2010 17 FILED MEMORANDUM (PAMELA
ANN RYMER, M. MARGARET
MCKEOWN and RICHARD A. PAEZ)
AFFIRMED. FILED AND ENTERED
JUDGMENT. [7304231] (SJ)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

January 2007 Grand Jury

UNITED STATES	)	Criminal Case
OF AMERICA,	)	No. 08 CR 0249 BTM
Plaintiff,	)	<u>INDICTMENT</u>
)	
v.	)	(Filed Jan. 30, 2008)
TINAMARIE TORRES	)	Title 8, U.S.C.,
DEBENEDETTO (1),	)	Sec. 1324(a)(2)(B)(ii) –
ALEJANDRA TAPIA (2),	)	Bringing in Illegal Aliens
Defendants.	)	for Financial Gain;
	)	Title 8, U.S.C.,
	)	Sec. 1324(a)(2)(B)(iii) –
	)	Bringing in Illegal Aliens
	)	Without Presentation;
	)	Title 18, U.S.C., Sec. 2 –
	)	Aiding and Abetting

The grand jury charges:

Count 1

On or about January 14, 2008, within the Southern District of California, defendants TINAMARIE TORRES DEBENEDETTO and ALEJANDRA TAPIA, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Isabel Bocanegra-Narvaez, had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said alien for the purpose of commercial advantage and private financial gain;

in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii), and Title 18, United States Code, Section 2.

Count 2

On or about January 14, 2008, within the Southern District of California, defendants TINAMARIE TORRES DEBENEDETTO and ALEJANDRA TAPIA, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Isabel Bocanegra-Narvaez, had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said alien and upon arrival did not bring and present said alien immediately to an appropriate immigration officer at a designated port of entry; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(iii), and Title 18, United States Code, Section 2.

DATED: January 30, 2008.

A TRUE BILL:

/s/ [Illegible] _____
Foreperson

KAREN P. HEWITT
United States Attorney

By: /s/ D. Keehn _____
DOUGLAS KEEHN
Assistant U.S. Attorney

?

OK - ?
signature hard
to read

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

July 2007 Grand Jury

UNITED STATES	)	Criminal Case
OF AMERICA,	)	No. <u>08CR0249-BTM</u>
Plaintiff,	)	<u>INDICTMENT</u>
v.	)	(Superseding)
ALEJANDRA TAPIA (2),	)	(Filed Nov. 25, 2008)
Defendant.	)	Title 8, U.S.C.,
	)	Sec. 1324(a)(2)(B)(ii) –
	)	Bringing in Illegal Aliens
	)	for Financial Gain;
	)	Title 8, U.S.C.,
	)	Sec. 1324(a)(2)(B)(iii) –
	)	Bringing in Illegal Aliens
	)	Without Presentation;
	)	Title 18, U.S.C., Sec. 2 –
	)	Aiding and Abetting;
	)	Title 18, U.S.C., Sec. 3146
	)	– Bail Jumping (Felony)

The grand jury charges:

Count 1

On or about January 14, 2008, within the Southern District of California, defendant ALEJANDRA TAPIA and Tinamarie Torres Debenedetto, charged elsewhere, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Isabel Bocanegra-Narvaez, had not received prior official

authorization to come to, enter and reside in the United States, did bring to the United States said alien for the purpose of commercial advantage and private financial gain; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii), and Title 18, United States Code, Section 2.

Count 2

On or about January 14, 2008, within the Southern District of California, defendant ALEJANDRA TAPIA and Tinamarie Torres Debenedetto, charged elsewhere, with the intent to violate the immigration laws of the United States; knowing and in reckless disregard of the fact that an alien, namely, Isabel Bocanegra-Narvaez, had not received prior official authorization to come to, enter and reside in the United States, did bring to the United States said alien and upon arrival did not bring and present said alien immediately to an appropriate immigration officer at a designated port of entry; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(iii), and Title 18, United States Code, Section 2.

Count 3

On or about March 27, 2008, within the Southern District of California, defendant ALEJANDRA TAPIA did knowingly fail to appear as required before the United States District Court in San Diego, California, after having been released on or about January 16, 2008, pursuant to the Bail Reform Act of 1984 (Title

18, United States Code, Sections 3141-3150) in connection with the felony charges of bringing in illegal aliens for financial gain, in violation of Title 8, United States Code, Section 1324(a)(2)(3)(ii), bringing in illegal Aliens without presentation, in violation of Title 8, United States Code, Section 1324(a)(2)(B)(iii), and aiding and abetting, in violation of Title 18, United States Code, Section 2; all in violation of Title 18, United States Code, Section 3146.

DATED: November 25, 2008.

A TRUE BILL:

/s/ [Illegible]

Foreperson

KAREN P. HEWITT
United States Attorney

By: /s/ Jaime Parks

JAIME D. PARKS
Assistant U.S. Attorney

[1084] UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF CALIFORNIA

UNITED STATES)
OF AMERICA,)
Plaintiff,) Case No. 08cr0249BTM
vs.) San Diego, California
ALEJANDRA TAPIA,) April 30, 2009
Defendant.)

Sentencing

BEFORE THE HONORABLE BARRY TED
MOSKOWITZ UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Karen P. Hewitt
Jaime Parks
Assistant United
States Attorneys
880 Front Street
San Diego, CA 92102

For the Defendant Tapia: Federal Defenders
Michelle Betancourt
225 Broadway
San Diego, CA 92101

[1085] *Official Reporter:* Barbara Harris CM/
RPR/CRR
880 Front Street
San Diego, CA 92101
619-990-3116

San Diego, California – April 30, 2009

THE CLERK: Number 4 on calendar, 08cr249, United States of America vs. Alejandra Tapia, on for sentence with presentence report.

THE COURT: Okay. This is Ms. Tapia; right?

MS. BETANCOURT: Ms. Tapia is now present before the court, your Honor. Michelle Betancourt, Federal Defenders, on behalf of Ms. Tapia.

MS. PARKS: Jaime Parks for the United States.

THE COURT: Is there any reason not to go ahead with sentencing?

MS. BETANCOURT: No, your Honor.

THE COURT: Did you read the presentence report?

MS. BETANCOURT: Yes, your Honor.

THE COURT: Did you read it also, Ms. Tapia?

THE DEFENDANT: Yes.

THE COURT: There is no addendum; correct?

MS. BETANCOURT: No, your Honor.

THE COURT: Did the two of you discuss the [1086] presentence report?

MS. BETANCOURT: We did.

THE COURT: You did?

THE DEFENDANT: Yes.

THE COURT: Did you find any mistakes in it?

THE DEFENDANT: No.

THE COURT: Ms. Betancourt?

MS. BETANCOURT: No.

THE COURT: Any objections to the presentence report?

MS. BETANCOURT: No, your Honor.

THE COURT: Why don't we go ahead with the government's recommendation first.

MS. PARKS: Your Honor, the government's recommending both that the plus 2 that Probation proposes for obstruction of justice in connection with the bail jump be imposed under the guidelines, and also a plus 2 for the uncharged conduct that Ms. Debenedetto testified to, the alien smuggling conduct.

But, additionally, and I think the biggest issue from my perspective, is the plus 2 for witness tampering.

THE COURT: "Give the rat her cheese"?

MS. PARKS: Exactly, your Honor. It was witnessed by a marshal, the declaration that I attached to my motion from the deputy marshal, Todd Loveless. I understand that –

[1087] THE COURT: And that was what she said, “Give the rat her cheese”; right?

MS. PARKS: She did, but she said it in the course of trial. That was – that’s what the government has presented to the court.

There were some allegations made by Ms. Debenedetto that that was not the sum total of the matter, but the government felt more comfortable putting before the court the declaration of the United States Marshal as to what he actually heard.

But that happened in a crowded cell block with other people around, with other criminal defendants around, and I think it does merit the upward departure.

And I also think the guidelines are clear on that point that when the plus 2 for obstruction of justice doesn’t take into account all of the obstructed justice related conduct, that an upward adjustment is appropriate.

THE COURT: Okay. So your recommendation overall?

MS. PARKS: My recommendation is – I guess the other thing that the government should address is the bail jump count should be consecutive.

I understand that Probation recommended that it be concurrent, but the statute requires that it be consecutive.

THE COURT: Right. I think Probation has the right idea but the wrong method; that what the guidelines say is if [1088] you figure out the guidelines, and Probation has the guidelines as 41 to 51, and so you would then have to break apart whatever sentence you were going to give, you would have to break it apart into a piece that is attributable to the bail jumping and it's consecutive to the other count, but the total is still within the guideline range.

MS. PARKS: Exactly. And then the government also proposes that the witness tampering conduct and the two prior instances of alien smuggling conduct be taken into consideration in her sentence. And it wasn't just Ms. Tapia's testimony – Ms. Debenedetto's testimony that we have with respect to those prior instances of smuggling.

There were also the receipts in the vehicle which I think substantiate, corroborate, her testimony, even though they were –

THE COURT: How many aliens were in the vehicle on the other two occasions?

MS. PARKS: I don't think there was testimony as to that.

THE COURT: But say she was charged with it all?

MS. BETANCOURT: It would be subsumed. I think the court is going to what I was going to respond; that the guidelines would actually take into account, if there had been up to 24 aliens, it would be subsumed in the upward adjustment to 18, because she would get a plus 3 for number [1089] of aliens.

So I think that the government's request for an upward adjustment for uncharged conduct in this case, which is based purely on the cooperating witness's testimony, no further corroboration. There is no interviews with material witnesses. There is not even any testimony as to how many material witnesses, whether it was in the same car. And it's only hotel receipts that the government is claiming corroborates these other instances. I think it's pretty scarce evidence.

Additionally, as I mentioned I think in the guidelines, 2L1.2, if we were to look and go through the guidelines, it actually does an enhancement for number of aliens.

THE COURT: If there were two people in each of the other transactions, and we don't know how many there were, under what circumstances, you would add three levels. That would be a 15. Then you would add the two levels for substantial risk of death or serious bodily injury to an 18.

MS. BETANCOURT: Exactly.

THE COURT: Right. So I don't think it would add. Now, the way it could add it is it could add mandatory minimums, but that is only if she is convicted, and I don't think – you know, the mandatory minimum is that it was done for profit. Who knows whether she was doing it for profit at [1090] the time.

I don't think that that really can be fairly determined. So even if you add up the aliens that group, it still wouldn't change the guideline calculation.

MS. BETANCOURT: Right. And I think that 5(k)2.2(1) indicates that if the guidelines do not adequately take into account for what in this case the government is asking for is an upward adjustment for the number of aliens, then you should look to 5(k)2.2(1).

And I think in this case if the government were to be able to establish, meet their burden that there were more than six people involved in the instant offense, then it just would be a plus 3 which would be subsumed by the already-agreed-upon increase to 18.

THE COURT: There was one other thing I wanted to point out if I can just get to it. Okay. So there is nothing else I want to add.

I agree with Ms. Betancourt. I wouldn't change anything.

MS. PARKS: The government agrees also, your Honor. I withdraw the recommendation for the plus 2 for the alien smuggling conduct.

However, I do still think it's eminently appropriate, given the witness tampering, that a plus 2 be considered there. So the government's recommendation of the [1091] guidelines calculation would then be an adjusted offense level of 22, 20 is what Probation recommends, with an additional plus 2 for the witness tampering conduct.

So that would change the recommendation I made on the sentencing summary chart to 51 months on Counts 1 and 2 and 12 months on Count 3 to run consecutive.

THE COURT: So you're asking for a total of 63 months.

MS. PARKS: Yes, your Honor.

THE COURT: Okay.

MS. BETANCOURT: Your Honor, with respect to the witness tampering, I think that the government has to meet their burden that that is an appropriate upward departure in this case and I would ask for a hearing on that.

We do have the declaration from the marshal, but I think we would have to hear whether Ms. Debenedetto actually heard it. There is nothing in the record to say that she actually heard it, was actually intimidated, or actually threatened by it.

THE COURT: Did she deny she made the comment?

MS. BETANCOURT: Yes, Ms. Tapia does deny she made the comment.

MS. PARKS: I have no objection to an evidentiary hearing, your Honor.

THE COURT: You know, I don't think an evidentiary [1092] hearing is really going to get us anywhere. I don't think it would change the sentence. So I am going to not take that into account. There is so much here that it is just not going to – it wouldn't change the sentence.

If I made a determination she said it or didn't say it, I wouldn't change the sentence. Because assuming she said it, it could be just frustration. Here is a person she was associated with and when people cooperate there is some kind of feeling of abuse of trust or breach of trust that they trusted the person, even if it was in crime, and it was during the course of a trial, she was upset, things obviously weren't going her way, and she made a statement. If she made that statement, it's not clear that it was with the intent to intimidate the witness.

So even if she made it, I wouldn't give much weight to it under the circumstances. It's kind of an odd statement, and I think the oddness of the statement, if it was made, shows that if it was made it was made under circumstances of frustration, not an attempt to influence the witness.

So under those circumstances, even if it were said I wouldn't add anything to it. There are so many

other things that are problematic in this case and the court has to make sure that the sentence isn't greater than necessary to accomplish the purposes we are supposed to accomplish. It [1093] just wouldn't add anything.

So I am not going to grant an evidentiary hearing and I am not going to take it into account.

MS. BETANCOURT: Thank you, your Honor. Then, your Honor, if I may address what our recommendation is.

Your Honor, we are recommending the minimum mandatory of 36 months in this case, but we are very much in agreement with the probation officer's analysis in the presentence report.

Ms. Tapia I think was very candid in her interview with Ms. Hernandez, and I think Ms. Hernandez actually fully captured that in the presentence report.

In particular, I would just like to note, Ms. Tapia is only 29 years old but she has already experienced a lot, much more than maybe most 29-year-olds, in that she started her entry into motherhood at a very, very young age.

And I think due to that she never really gave herself a chance to grow up, to mature, and actually to deal with some of the issues that she had been affected by as a young child.

Ms. Tapia has had several contacts with law enforcement, but by far this sentence is going to be

the longest she has ever been in custody, and actually the time she has now been in custody is the longest she has ever been in custody, if the court looks at the other contacts.

[1094] In speaking with her and reviewing the presentence report, she is more than prepared to make this time of use. She is prepared to better her parenting skills, to develop more skills so that she can be a productive member of society.

As the court sees, she does have her certificate as an LVN that she did use for several jobs, and would like to continue in that work.

She also wants to be able to take advantage of the time to work on her own mental and emotional issues that I think will hopefully get her back on the right path.

With that, your Honor, I think that her letter to the court expressed her remorse for failing to appear.

THE COURT: Can I ask you this: Assuming or implying that she has accepted responsibility for failing to appear, but she hasn't accepted responsibility for the underlying offenses of conviction, Counts 1 and 2, the alien smuggling charges, how does that change things? And is that the way you view the record also?

MS. BETANCOURT: I do view the record – I believe that she does warrant acceptance of responsibility. I think under the guidelines she would have to accept responsibility as to all three counts in order

to get the acceptance of responsibility under 3(e)1.1, but I think it's something that the court can consider in either varying from the guidelines [1095] or under 3553(a) factoring in an appropriate sentence.

THE COURT: But she hasn't accepted responsibility –

MS. BETANCOURT: As to the alien smuggling –

THE COURT: – as to Counts 1 and 2. Right?

MS. BETANCOURT: No, your Honor.

THE COURT: Am I correct?

MS. BETANCOURT: There are no admissions made, no.

THE COURT: Am I correct?

MS. BETANCOURT: Yes. I'm sorry. Yes, your Honor is correct, she has not accepted responsibility as to those.

THE COURT: So the Probation Department guideline calculations are correct. It's a base offense level of 18. You increase – it's a base offense level of 12. It increases to 18 under 2L1.1(b)(6) because of where the witness – the two aliens were in the gas tank compartment. Right?

MS. BETANCOURT: Yes.

THE COURT: Which creates a substantial risk of death or serious bodily injury; correct? Do you agree with that?

MS. BETANCOURT: Yes, your Honor.

THE COURT: And obstruction of justice for the failure to appear, plus 2.

MS. BETANCOURT: Correct.

[1096] THE COURT: So adjusted offense level of 20. No acceptance of responsibilities deduction.

MS. BETANCOURT: Correct, your Honor.

THE COURT: And you also have a minor role.

MS. BETANCOURT: I did. I did argue for a minor role in this case. Ms. Tapia, even if we were to take what the material witness said, all she did was serve as a passenger and sat there.

At most what she said, if we are to believe Ms. Debenedetto, is that they were coming from the grandmother's house. Ms. Debenedetto was the one that talked about the stickers on the car. She was the one that coordinated.

And, again, if we are to believe what she said, if anything Ms. Tapia might have served as an interpreter for the smugglers that Ms. Debenedetto already knew and continued to have contact with post-arrest through phone calls, in fact telling them

to stop alien smuggling because she had already been arrested and been in trouble.

So I think here a minor role adjustment is warranted, or at least for the court to consider that, compared even just to Ms. Debenedetto, Ms. Tapia's role was substantially less culpable than Ms. Debenedetto's and the other people who were organized –

THE COURT: I don't think – Ms. Debenedetto didn't get a minor role adjustment; right?

[1097] MS. BETANCOURT: I don't know that, your Honor. I don't have – the court departed significantly in her case., I don't remember.

THE COURT: Because of cooperation.

MS. BETANCOURT: I don't remember if it was based on role or not.

THE COURT: Partly because of her cooperation and partly for other reasons.

MS. BETANCOURT: She originally was sentenced to eight months.

THE COURT: Right.

MS. BETANCOURT: And then I think cooperation got her to six months.

THE COURT: Right. And that included a departure.

MS. BETANCOURT: Correct.

THE COURT: But not for cooperation.

MS. BETANCOURT: Not cooperation as to eight months no.

MS. PARKS: There was no minor role adjustment, your Honor.

THE COURT: All right. Anything else?

MS. BETANCOURT: No, your Honor.

THE COURT: I don't think minor role is appropriate. I think they were both in it together. They knew they were transporting somebody in a very dangerous way [1098] that could have resulted in death or serious bodily injury to the person. So I think the people who do that, when they are equally involved, the mere fact that it's only a one-steering wheel vehicle, only one person can drive, the mere fact that she was the driver and not the passenger, doesn't make her a minor role.

She wasn't in one of the typical passenger cases the window dressing or the add-on; she was equally involved with Ms. Debenedetto. And I don't think that she was less culpable than the average participant.

Okay. Anything else?

MS. PARKS: Your Honor, if I may, just on the acceptance of responsibility point, I think that any downward departure the court might consider should be weighed against the conduct in the state

offense; that she was found in a trailer she wasn't supposed to be in.

And it wasn't just the possession of the sawed-off shotgun. There was drug paraphernalia all over the trailer, all those meth pipes. None of this evidence came in at trial obviously, but I think it is relevant here at sentencing, and relevant in terms of whether any downward variance or departure should be given for acceptance of responsibility.

Not only were there the meth pipes and the sawed-off shotgun, but there were also pieces of mail. And the defendant made statements to the arresting officer claiming [1099] responsibility for all of those items. So I think that that should be in the court's mind.

Thank you, your Honor.

THE COURT: Anything further?

MS. BETANCOURT: Just to point out, your Honor, that she did – she was taken to court on that offense, so that has been taken into account in the calculation of the guidelines on her Criminal History Category. So, although Ms. Parks wants the court to consider it in determining whether she has accepted responsibility or not as to that, her Criminal History Category has been increased due to that conduct, and those circumstances already, by increasing it to a Criminal History Category III.

THE COURT: Anything further?

MS. BETANCOURT: Nothing further.

THE COURT: You have the right to address the court. Is there anything you wish to say prior to sentencing?

THE DEFENDANT: No.

THE COURT: Look, she was really going down the wrong road here. I do understand that there is a prior background where she has been sexually and physically abused since she was a teenager and I'm concerned about that and she needs help. There were attempts to get her help and she really wasn't availing herself of that.

[1100] She then gets involved in this alien smuggling activity, and then she fails to appear. And when she was finally – she failed to appear and stayed away for a period of months. And then when she was finally arrested, she had a sawed-off shotgun, she was using methamphetamine, and she had stolen mail that she possessed to commit identity theft.

So she was engaged in a lot more serious activity than the alien smuggling when she failed to appear. So it wasn't that she failed to appear and tried to rehabilitate herself and do something for her benefit. She was a fugitive and engaging in criminal conduct, and that is of serious concern to the court.

The nature and circumstances of the offense, she was involved in alien smuggling with Debenedetto, smuggling aliens in a way that could substantially –

or that did substantially create – or created a substantial risk of death or serious bodily injury.

The nature and history of her, of the defendant, she is a 29-year-old woman. Actually she is 30 now, right, because she was born in March of '79.

She has a history of being abused, both sexually and physically, and I think that a lot of times that gives people a low esteem and then they associate with the wrong people, and she was associating – boy, was she associating with the wrong people, and she continued to associate with [1101] the wrong people.

The meth, sawed off shotgun, the stolen mail for identity theft is really, really of concern to the court, that it needs to be addressed both during the period of incarceration and on supervised release, which the term of supervised release will be three years to effect addressing that.

The offense here is smuggling aliens, it is serious, and the way it was done, a sufficient sentence has to be imposed for that.

It has to deter – the sentence has to deter criminal conduct by others, and it has to protect the public from further crimes of the defendant. And the sentence, that's a big factor here, given her failure to appear and what she did out on bail.

She also has a prior marijuana possession for sale case, 66 pounds of marijuana, so she has a prior conviction. This is not her first felony conviction.

The sentence has to be sufficient to provide needed correctional treatment, and here I think the needed correctional treatment is the 500 Hour Drug Program.

The guideline range is as calculated, it's the 41 to 51 months. And the sentence has to be sufficient to effect the purposes of 3553(a) but not greater, but it also has to avoid unwarranted sentencing disparities among [1102] defendants with similar records who have been found guilty of similar conduct.

Here I have to say that one of the factors that – I am going to impose a 51-month sentence, 46 months plus five months for the bail jump, and one of the factors that affects this is the need to provide treatment. In other words, so she is in long enough to get the 500 Hour Drug Program, number one.

Number two, to deter her from committing other criminal offenses. This isn't her first offense. She does have that prior marijuana possession for sale conviction, and that is what is really of concern. And what pushes it even further is that while she is out on bail, she was ready to engage in identity theft, she was using meth, and she was in possession of a sawed-off shotgun.

A sawed-off shotgun, whether it was hers or her boyfriend's or whatever, but it was in the trailer, and she admitted her connection to it to the police officers.

But putting the sawed-off shotgun aside, the identity theft, the fact that she was launching into a

new criminal career while she was a fugitive really is of concern to the court and that's something that motivates imposing a sentence that in total is at the high end of the guideline range.

I decline to depart further for the government's [1103] recommended obstruction of justice. I'm not going to take that into account. Even if the government proved it I wouldn't add anything. If they didn't prove it, it wouldn't make the sentence less. So an evidentiary hearing is unnecessary there.

Defendant is committed to the custody – do you wish me to go through any of the factors under 3553 further, provide any further reasons?

MS. BETANCOURT: No, your Honor, I think that's sufficient.

THE COURT: I think that a sentence less than what I am imposing would not deter her and provide for sufficient time so she could begin to address these problems. And I am going to recommend that she serve her sentence at FCI Dublin where they have the facilities to really help her, and I think that this is the necessary sentence for all the reasons I stated, and it's the least sentence that can be imposed to effect all these reasons.

The defendant is committed to the custody of the Bureau of Prisons on Count 1 and Count 2 for 46 months concurrent to each other.

She is committed to the custody of the Bureau of Prisons on Count 3 for five months consecutive to the

sentence on Count 1 and Count 2, for a total of 51 months.

The court recommends, strongly recommends, that she [1104] participate in the 500 Hour Drug Program and that she serve her sentence at FCI Dublin/Pleasanton.

I recommend that institution because I think they have the appropriate tools and rehabilitation, people there to help her, to start to make a recovery here.

She is then on three years of supervised release on all counts concurrent under the following terms and conditions, all of which are listed on the two pages the clerk gave her.

She is to report to the Probation Department within 72 hours of her release.

She's to obey all laws, federal, state, and local, and abide by the rules and regulations of the Probation Department.

She is not to possess a firearm, dangerous weapon, or explosive device.

She is not to possess or use a narcotic drug or controlled substance unless she has a lawful medical prescription.

She is to participate in a program of alcohol and abuse treatment, including testing and counseling with at least one to eight tests per month and one to eight counseling sessions per month as directed by the Probation Department.

When she finishes that program she is on the [1105] mandatory drug testing condition of two more tests during the course of supervised release, but the court authorizes up to four tests per month to avoid relapsing.

She is to cooperate as directed in the collection of a DNA sample.

She is to report all vehicles she owns, operates, or has an interest in to the Probation Department.

She is to disclose all of her personal, business, and financial records to the Probation Department at their request.

She is to submit her person, residence, office, or vehicle to a search conducted by a United States Probation Officer at a reasonable time and a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation.

Defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

She is to participate in a program of mental health treatment, and by that, she needs counseling, for all the adduce she suffered to help her get a better sense of herself and more self-esteem.

[sic]

③

And the Probation Department is free to release the materials they have to the mental health provider for the [1106] purposes of diagnosis and treatment.

The defendant has to consent to the mental health provider releasing to the court and the Probation Department all treatment status and mental health condition information for the purposes of supervision.

She is to report all vehicles she owns, operates, or has an interest in to the Probation Department.

She is not to enter Mexico without the written permission of the Probation officer.

She is not to associate with persons she knows to be drug traffickers or users. And if she follows that she'll be staying away from drugs.

So if you go to a party and people are using drugs, you have to leave. You can't associate with those people.

You are to maintain full-time employment or education or combination of both.

She is financially unable to pay a fine. There is three \$100 penalty assessments. The court suggests imposing it at the rate of \$3 per month through the Inmate Financial Responsibility Program with the balance due in six months of release.

Any objection to that?

MS. BETANCOURT: No objection to that.

THE COURT: She has the right to appeal. Do you have any other objections?

[1107] MS. BETANCOURT: No, your Honor. My only request is her son's grandmother, who she is actually fairly close with and does take her son down to visit every so often, once she establishes a rapport with her probation officer, does the court – I know the wording is that the court does not allow her to go to Mexico unless –

THE COURT: She is not to enter Mexico without the written permission of the Probation officer.

MS. BETANCOURT: Right. So as long as that it's known that she does have that, and hopefully the request is granted, otherwise I guess we'll come back to the court.

THE COURT: Right.

MS. BETANCOURT: That was my only other clarification.

THE COURT: She has the right to appeal. I agree with your analysis. She has the right to appeal. To appeal she would have to file a notice of appeal with the Clerk of the District Court within ten days of the entry of the sentence or she will forever lose her right to appeal.

She has a right to have a lawyer represent her on appeal without cost to her.

MS. BETANCOURT: Thank you, your Honor.

MS. PARKS: Thank you.

(This matter was in recess.)

[1108] **CERTIFICATION**

I hereby certify that I am a duly appointed, qualified and acting official court reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated: June 18, 2009 at San Diego, California

S/Barbara Harris

Barbara Harris, Official Reporter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(Filed May 1 ~~Apr. 31~~, 2009)

UNITED STATES **JUDGMENT IN A**
OF AMERICA **CRIMINAL CASE**

v.

(For Offenses Committed On
or After November 1, 1987)

ALEJANDRA TAPIA (2)

Case Number:
08CR0249-BTM

M. BETANCOURT, FED-
ERAL DEFENDER'S INC.
Defendant's Attorney

REGISTRATION NO. 06933298

THE DEFENDANT:

pleaded guilty to count(s) _____

X was found guilty on count(s) 1s, 2s, 3s
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of
such count(s), which involve the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
8 USC 1324(a)(2)(B)(ii)	Bringing In an Illegal Alien for Financial Gain	1s
8 USC 1324(a)(2)(B)(iii)	Bringing In an Illegal Alien Without Presentation	2s
18 USC 2	Aiding and Abetting	
18 USC 3146	Bail Jumping	3s

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____.

x The underlying counts are dismissed on the motion of the United States.

Assessment: \$300.00 payable at a rate of \$3.00 per month through the inmate financial responsibility program with the balance due within 6 months of release.

X Fine ordered waived.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

April 30, 2009
Date of Imposition of Sentence

/s/ Barry Ted Moskowitz
BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

Entered Date:

IMPRISONMENT

x The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY-SIX (46) MONTHS as to counts 1s and 2s concurrently, ~~FIVE~~ (5) MONTHS as to count 3s consecutive to counts 1s and 2s for a total sentence of FIFTY-ONE (51) MONTHS.

{sic} (?)

x The court **STRONGLY** recommends to the Bureau of Prisons:

THAT THE DEFENDANT PARTICIPATE IN THE 500 HOUR DRUG PROGRAM.
THE COURT ALSO RECOMMENDS THAT THE DEFENDANT SERVE HER SENTENCE AT FCI DUBLIN/PLEASANTON.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____ .
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - by 12:00 noon on or to this court by 2:00 p.m.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS** concurrent as to all counts.

MANDATORY CONDITIONS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons unless removed from the United States.

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

The defendant shall cooperate as directed in the collection of a DNA sample, pursuant to 18 USC 3583(d).

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, but not more than 4 times per month, unless defendant is removed from the United States.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

- x Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
- x Not possess firearms, explosive devices, or other dangerous weapons.
- x Not possess any narcotic drug or controlled substance without a lawful medical prescription.

- If deported, excluded, or allowed to voluntarily leave the United States, obey all laws federal, state and local and not reenter the United States illegally and report to the probation officer within 72 hours of any reentry to the United States; the other conditions of supervision are suspended while the defendant is out of the United States after deportation, exclusion, or voluntary departure.
- Participate in a program of drug and alcohol abuse treatment including testing and counseling, with at least 1 to 8 tests per month and 1 to 8 counseling sessions per month as directed by the probation officer.
- Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- Not enter the United States illegally.
- Cooperate as directed in the collection of a DNA sample.
- Provide complete disclosure of all personal and business financial records to the probation officer when requested.
- Resolve all outstanding warrants within sixty (60) days of release from custody.
- Remain in your place of residence for a period of ___ days, except while working at verifiable employment, attending religious services or undergoing medical treatment
- Enter and successfully complete a residential drug program of at least 4 months in duration.

- ___ Complete ___ hours of community service in a program approved by the Probation officer within ___ months.
- ___ Reside in a Sober Living Facility for a period of 1 year commencing upon release.
- x Participate in a program of mental health treatment as directed by the probation officer. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. The defendant shall consent to the release of evaluations and treatment information to the probation officer and the Court by the mental health provider.
- x Not associate with known drug traffickers or users.
- x Not enter Mexico without the written permission of the probation officer.
- x Maintain full-time employment or education or a combination of both.
- ___ If the defendant has complied with all conditions of Supervised Release for ___, Supervised Release may be terminated on application to the Court and good cause shown.
-

376 Fed.Appx. 707, 2010 WL 1513838 (C.A.9 (Cal.))

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter *See* Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. *See also* Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Alejandra TAPIA, Defendant-Appellant.

No. 09-50248.

Submitted April 5, 2010.*

Filed April 16, 2010.

Arnold Dale Blankenship, Assistant U.S., Office of the U.S. Attorney, San Diego, CA, for Plaintiff-Appellee.

Michelle Betancourt, Esquire, Doug Keller, Federal Public Defender, Federal Defenders of San Diego, Inc., San Diego, CA, for Defendant-Appellant.

Appeal from the United States District Court for the Southern District of California, Barry T. Moskowitz,

* This panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

District Judge, Presiding. D.C. No. 3:08-CR-00249-BTM.

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

MEMORANDUM**

Alejandra Tapia appeals from the 51-month sentence imposed following her jury-trial conviction for bringing in an illegal alien for financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), bringing in an illegal alien without presentation, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii), aiding and abetting, in violation of 18 U.S.C. § 2, and bail jumping, in violation of 18 U.S.C. § 3146. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Tapia contends that the district court committed plain error by basing her 51-month sentence on speculation about whether and when Tapia could enter and complete the Bureau of Prison's 500-hour drug abuse treatment program. No reversible error was committed. *See United States v. Duran*, 37 F.3d 557, 561 (9th Cir.1994); *see also United States v. Waknine*, 543 F.3d 546, 554 (9th Cir.2008).

AFFIRMED.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

December 10, 2010

Mr. Doug Keller
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101

[JXF]

Re: Alejandra Tapia
v. United States
No. 10-5400

Dear Mr. Keller:

The Court today entered the following order in the above-entitled case:

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

end