

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

UNITED STATES OF AMERICA,

Plaintiff,

V.

LESMAN JEROAN RIVERA-VASQUEZ

Defendant.

No. 4:25-cr-00503-JMD

ORDER

For this immigration offense, the Court believes it is likely necessary to impose a sentence harsher than the one recommended. That is because the Federal Government, from 2021 through 2024, did not deter illegal immigration. It did the opposite. Courts must impose sentences high enough “to afford adequate deterrence.” 18 U.S.C. § 3553(a)(2)(B). The Trump administration is vigorously enforcing immigration laws, deterring unlawful immigration conduct, but the previous administration did not. When 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.

Background

Lesman Rivera-Vasquez awaits sentencing for an immigration offense. After causing a traffic accident with a police vehicle and failing to comply with a voluntary deportation directive, Rivera-Vasquez pleaded guilty to possessing ammunition while in the country

illegally, 18 U.S.C. § 922(g)(5). ECF 6. He has asked the Court to sentence him to time served. ECF 6 at 5. One element of the offense to which Rivera-Vasquez pleaded guilty is “being an alien” who is “illegally or unlawfully in the United States.” § 922(g)(5)(A). The Court must determine how to assess Rivera-Vasquez’s decision to immigrate illegally (and then possess ammunition) in light of the Federal Government’s actions from 2021 through 2024, which drastically increased illegal immigration.

The Court finds it necessary to assess the Federal Government’s actions—and inactions—around illegal immigration during the Biden administration because the Court is required to impose a sentence high enough to ensure adequate deterrence. § 3553(a)(2)(B). That means deterrence not only for Rivera-Vasquez, but also for all illegal immigrants, including ones who entered the country between 2021 and 2024. *See Ferguson v. United States*, 623 F.3d 627, 630 (8th Cir. 2010) (courts must pursue not only specific deterrence but also general deterrence). Deterrence is a function of many factors, not just a court’s sentence. The actions or inactions of the Executive Branch contribute to—or detract from—general deterrence. As the Supreme Court long ago put it, the “ability to enforce criminal and civil penalties for transgression is an aid to securing observance of laws.” *Kane v. New Jersey*, 242 U.S. 160, 167 (1916). When the Federal Government chooses not to enforce certain laws or otherwise adopts policies that increase lawbreaking, those decisions drastically decrease deterrence and may require courts to impose higher sentences.

That happened with immigration laws from 2021 through 2024: the Federal Government’s actions—and inactions—encouraged, rather than deterred, immigration-related lawbreaking. The Federal Government is currently enforcing immigration laws vigorously, but it did not do so from 2021 through 2024. For example, at the height of

confirmed illegal immigration encounters in 2023, more than 10,000 individuals were illegally entering the country every day. Michael Roy Blake and Ted Hesson, *Border Crossings Top 10,000 Daily as Migrants Seek US Entry Before Title 42 Ends*, Reuters (May 10, 2023).¹ In stark contrast, the Federal Government’s data now states that, after a change in enforcement policy following the election of President Trump, illegal immigrant encounters dropped to a record low of 137 on June 28, 2025—down 99 percent. Press Release, The White House (July 2, 2025).² Illegal entry is a crime, as is illegal reentry. 18 U.S.C. §§ 1325–26. The Federal Government’s actions from 2021 through 2024 greatly increased the frequency of those crimes, as well as other immigration-related crimes such as the one to which Rivera-Vasquez pleaded guilty.

Those policies from 2021 through 2024 did not just increase immigration-related crimes; many of those policies were also illegal. For example, after Congress enacted a law directing the Federal Government to construct a “barrier system along the southwest border”—and appropriated billions of dollars to build that border wall—the Federal Government refused to build the wall from 2021 until a court entered a preliminary injunction in 2024. *Gen. Land Off. v. Biden*, 722 F. Supp. 3d 710, 739 (S.D. Tex. 2024). The Federal Government “ha[d] made clear that ‘walls work,’” yet it refused to comply with the law requiring “appropriations be obligated for the construction of barriers at the Southwest border” from 2021 until forced to do so by a court in 2024. *Id.* at 726, 743. This failure to comply with the law directly increased illegal immigration. As the court in *General Land*

¹ <https://www.reuters.com/world/us/biden-restricts-asylum-access-mexico-border-title-42-ends-2023-05-10>

² <https://www.whitehouse.gov/articles/2025/07/extraordinary-president-trump-drives-illegal-border-crossings-to-a-new-historic-low/>

Office determined, the Federal Government’s unlawful refusal to build the border wall “result[ed] in increased numbers of illegal immigrants.” *Id.* at 725. Indeed, the court determined that border walls “*deter* aliens from crossing illegally altogether.” *Id.* at 726 (emphasis added). When the Federal Government in 2021 chose not to comply with federal law requiring it to build a border wall, the Federal Government decreased deterrence.

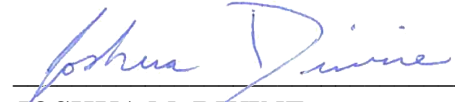
An individual cannot violate the statute to which Rivera-Vasquez pleaded guilty, § 922(g)(5), unless the person is in the country illegally. The Federal Government’s decision to adopt policies from 2021 through 2024 that increased illegal immigration necessarily increased the risk that individuals would violate § 922(g)(5) and other immigration offenses. Of course, the Federal Government now is enforcing immigration laws vigorously, increasing deterrence. But countless immigration offenses have occurred (and continue to occur) because of the actions or inactions of the Federal Government from 2021 through 2024, and the Court also cannot ignore the risk that the Federal Government, years in the future, might revert to the same practices it had in place from 2021 through 2024. The Court is obligated to impose a sentence that “afford[s] adequate deterrence” to illegal immigrants already in the country and also to persons who illegally enter later, so the Court will consider what sentence is necessary to offset the Federal Government’s decisions from 2021 through 2024 that decreased deterrence. § 3553(a)(2)(B).

Conclusion

A baseline assumption is that the law will be enforced by the Executive Branch. But when the governing administration chooses not to enforce the law, actively breaks the law, or otherwise adopts policies that encourage lawbreaking—as the Federal Government did from 2021 through 2024—the inherent deterrent value of the law decreases.

IT IS HEREBY ORDERED that the parties submit briefing at least ten days before sentencing addressing whether a comparatively harsher sentence is required under § 3553(a)(2)(B) to achieve adequate deterrence. The parties should discuss all actions by the Federal Government from 2021 through 2024 that they deem relevant to the question of deterrence. The parties may also discuss whether rapid deportation is necessary and whether the need for rapid deportation outweighs the need for a higher sentence.

Dated this 31st day of October, 2025



JOSHUA M. DIVINE
UNITED STATES DISTRICT JUDGE