

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN MENDEZ,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not oppose appellant's request for oral argument.

IN THE UNITED STATES COURT OF APPEALS
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No. 08-5846

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN MENDEZ,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

This is an appeal from a final judgment by the district court in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. This Court has jurisdiction under 28 U.S.C. 1291. Defendant Juan Mendez was sentenced on June 27, 2008, and final judgment was entered on June 30, 2008. Record Entry No. (R.) 290, Judgment, pp.1-7. The notice of appeal was filed on July 2, 2008, and is timely under Rule 4(a) of the Federal Rules of Appellate Procedure. R. 291, Notice of Appeal, p. 1.

STATEMENT OF THE ISSUE

Whether Juan Mendez's sentence is unreasonable.

STATEMENT OF THE CASE

On November 16, 2006, a federal grand jury returned a sixteen-count superseding indictment against Juan Mendez and eleven other defendants. R. 88, Superseding Indictment, pp. 1-21. Count 1 charged that Mendez and four co-defendants violated 18 U.S.C. 1591(a), 1591(b)(1), and 2 by sex trafficking a minor, S.C.M., through force, fraud, or coercion. R. 88, Superseding Indictment, pp. 1-2. Count 2 alleged that Mendez and a co-defendant violated 18 U.S.C. 1591(a) and 2 by sex trafficking E.F.R. through force, fraud, or coercion. R. 88, Superseding Indictment, p. 3. Count 9 charged that Mendez and five co-defendants violated 18 U.S.C. 1324(a)(1)(A)(v)(I) by concealing, harboring, or shielding an illegal alien from detection. R. 88, Superseding Indictment, p. 14.

On December 12, 2007, Mendez pled guilty to Counts 1 and 2 in exchange for dismissal of the remaining charge in Count 9. See R. 312, Change of Plea Transcript, p. 14; R. 308, Sentencing Transcript (Sent. Tr.), p. 172. The plea agreement was filed under seal. See R. 312, Change of Plea Transcript, p. 3.¹

¹ The government submitted a sealed copy of the plea agreement to the Court on September 15, 2008.

On June 27, 2008, the district court conducted Mendez's sentencing hearing where Mendez and victims S.C.M. and E.F.R. testified. See R. 308, Sent. Tr., pp. 15-87, 111-140. Mendez admitted that he lured S.C.M. and E.F.R. to the United States under false pretenses, abused them, raped them, kept them captive, forced them to engage in prostitution in several states, and took all their earnings. *Id.* at 122-127, 130-140 (Mendez). At the conclusion of the sentencing hearing, the district court calculated that, under the advisory Sentencing Guidelines, Mendez's plea subjected him to life imprisonment. *Id.* at 168. The district court determined that Mendez's offense level was 46, but noted that the Guidelines state that any offense level exceeding 43 must be reduced to an offense level of 43, which provides for life imprisonment. *Id.* at 167-168.

The government argued that the court should sentence Mendez to life in prison. R. 308, Sent. Tr., pp. 154-156. The district court, however, granted Mendez's request for a downward variance based on 18 U.S.C. 3553(a)(1), and sentenced Mendez (then thirty years old) to 600 months in prison on each count, to be served concurrently.² R. 308, Sent. Tr., pp. 168-171; see also R. 290,

² The downward variance to 600 months in prison falls under an offense level of 42, which provides for 360 months to life imprisonment; thus, the court effectively gave Mendez a downward variance of four offense levels. See U.S.S.G., Sentencing Table (Ch. 5 Pt. A).

Judgment, pp. 3-5. In addition, the district court sentenced Mendez to ten years of supervised release, to be served concurrently, and ordered him to pay a \$60,000 fine to S.C.M., a \$40,000 fine to E.F.R., and a \$200 special assessment. R. 308, Sent. Tr., p. 171; see also R. 290, Judgment, pp. 3-5, 6. The court further ordered that Mendez be referred to immigration authorities for deportation proceedings upon his release. R. 308, Sent. Tr., p. 172; R. 290, Judgment, p. 5. The court entered judgment in this case on June 30, 2008. R. 290, Judgment, pp. 1-7.

STATEMENT OF FACTS³

1. *Mendez's Conduct Relating To S.C.M.*

Juan Mendez operated a brothel in Tennessee. R. 308, Sent. Tr., pp. 118, 121 (Mendez). In 2005, he directed his girlfriend, co-defendant Cristina Perfecto, to bring a “young girl” from Mexico to engage in prostitution in the United States. *Id.* at 93, 99 (Harris)⁴; cf. *id.* at 124-126 (Mendez). Mendez believed a young girl would “net more money in the prostitution business.” *Id.* at 93 (Harris).

According to S.C.M., Perfecto, who used to live in S.C.M.'s village in Oxaca,

³ Because Mendez pled guilty, there was no trial. This statement of facts is based upon the evidence presented at Mendez's sentencing hearing on June 27, 2008.

⁴ At Mendez's sentencing hearing, FBI agent Tracey Harris testified about her interview with Mendez and his attorney at a proffer session on March 19, 2008. R. 308, Sent. Tr., p. 93 (Harris).

Mexico, offered her a job in a restaurant in the United States and assured S.C.M.'s parents that Perfecto would care for her. *Id.* at 16-19 (S.C.M.). S.C.M. wanted to go with Perfecto to earn money to send back to her family. *Id.* at 52 (S.C.M.); *id.* at 100 (Harris). S.C.M.'s parents ultimately allowed Perfecto to take S.C.M. to the United States. *Id.* at 19 (S.C.M.). Mendez stated that Perfecto told him prior to leaving Mexico that she was bringing back "a little girl (S.C.M.) and that she was very pretty." *Id.* at 124 (Mendez). S.C.M. was only 13 years old at the time. *Id.* at 133 (Mendez).

Mendez paid for Perfecto and S.C.M.'s trip to the United States, including the fee for the smuggler who helped them cross the border. R. 308, Sent. Tr., p. 54 (S.C.M.); *id.* at 93, 103 (Harris); *id.* at 124 (Mendez). After two failed attempts, Perfecto and S.C.M. illegally entered the United States in August 2005. *Id.* at 20 (S.C.M.); see *id.* at 108-109 (admitting records of two failed border crossings as the government's Exhibits 4-7). Arriving in Nashville, Tennessee, S.C.M. stayed with Perfecto in an apartment Mendez paid for. *Id.* at 23 (S.C.M.); *id.* at 91 (Harris). Perfecto and Mendez immediately took S.C.M.'s birth certificate from S.C.M., her only form of identification. *Id.* at 44-45 (S.C.M.). Perfecto subsequently informed S.C.M. that the restaurant job was a pretense and that S.C.M. was expected to engage in prostitution. *Id.* at 22-23, 55 (S.C.M.). S.C.M.

refused to be a prostitute and told Perfecto that she was a virgin. *Id.* at 23 (S.C.M.).

Soon thereafter, Perfecto told S.C.M. that Mendez was coming by the apartment to have sex with S.C.M. R. 308, Sent. Tr., pp. 24, 56 (S.C.M.). When Mendez pushed S.C.M. down and S.C.M. resisted, he slapped her across the face. *Id.* at 24 (S.C.M.); *id.* at 94 (Harris); *id.* at 131 (Mendez). Mendez raped S.C.M. and then left the room, leaving her bleeding profusely. *Id.* at 26, 57, 65 (S.C.M.); *id.* at 94 (Harris); *id.* at 131 (Mendez). A few days later, Mendez brought a male customer over to have sex with S.C.M. *Id.* at 26 (S.C.M.); *id.* at 132, 134 (Mendez). Mendez was able to charge that customer \$100 to have sex with S.C.M., as opposed to the standard \$30 that Mendez charged, because that man wanted to have sex with a young “girl.” *Id.* at 132 (Mendez); see also *id.* at 29-30 (S.C.M.).

Despite knowing that S.C.M. did not want to engage in prostitution and that she was a minor, Mendez and Perfecto nevertheless forced S.C.M. to do so by threatening to harm her and her family. R. 308, Sent. Tr., pp. 35, 38, 52, 58 (S.C.M.); *id.* at 95 (Harris); *id.* at 105-106 (Garcia)⁵; *id.* at 125-127, 132-

⁵ Rosa Elida Menendez Garcia, who worked for Mendez, testified in a deposition that she helped S.C.M. escape from Mendez. R. 308, Sent. Tr., pp.

133, 135, 139-140 (Mendez). They took S.C.M. from brothel to brothel – in Memphis, Nashville, Knoxville, as well as Kentucky and Alabama – and forced her to engage in prostitution a week at a time at each place. *Id.* at 27-32, 60-61, 66 (S.C.M.); *id.* at 96 (Harris); *id.* at 135, 137 (Mendez). Mendez, or someone Mendez directed, also took S.C.M. directly to customers who would call Mendez for “deliveries.” *Id.* at 33, 65-67 (S.C.M.). S.C.M. was forced to engage in prostitution “seven days” a week “all month every month,” and would have only an occasional week off. *Id.* at 30, 32 (S.C.M.); see also *id.* at 105 (Garcia); *id.* at 136 (Mendez).

The first time Mendez took S.C.M. to a brothel, she was supposed to stay at the brothel for a week and Mendez would pick her up at the end of the week. R. 308, Sent. Tr., pp. 27-29, 57-58, 61 (S.C.M.). When a customer arrived, the person operating the brothel house would give him a white chip in exchange for a payment of \$30. *Id.* at 28-29 (S.C.M.). The customer would then select a prostitute and give her the chip for fifteen minutes of sex. *Ibid.* At the end of each day, the person operating the house would tally each prostitute’s chips – for each

⁵(...continued)
105-107 (Garcia). The government read a portion of the transcript from Garcia’s deposition into the record at the sentencing hearing. *Id.* at 104-107. That excerpt of the transcript was also admitted as the government’s Exhibit 3. *Id.* at 108.

chip, the house would keep \$15 and the prostitute would get the other half. *Id.* at 30 (S.C.M.). Mendez or Perfecto always kept S.C.M.'s share of the earnings, giving S.C.M. nothing. *Id.* at 31, 34, 59, 66 (S.C.M.); *id.* at 95 (Harris); *id.* at 127, 138 (Mendez). On her first day at a brothel, S.C.M. was forced to have sex with 14 men. *Id.* at 31 (S.C.M.). By S.C.M.'s third day, her "stomach started hurting" from having sex with so many men and she became very ill. *Ibid.* She was admitted to a hospital for three days. *Ibid.* After she recovered, Mendez again forced S.C.M. to engage in prostitution. *Id.* at 32 (S.C.M.). On at least one occasion, S.C.M. was forced to have sex with 50 men in one day. *Id.* at 34 (S.C.M.).

Mendez and Perfecto controlled every aspect of S.C.M.'s life during her captivity. R. 308, Sent. Tr., p. 37 (S.C.M.). They bought her food and clothing and controlled her movements. *Id.* at 34-37 (S.C.M.). She could not freely leave the apartment she shared with Perfecto. *Id.* at 34 (S.C.M.). Sometimes she was locked in her room and was allowed to come out to the living room only for meals. *Id.* at 36 (S.C.M.). She did not know where she was, nor was she able to speak English. *Id.* at 45 (S.C.M.); *id.* at 134 (Mendez). She had no identification other than fake identity cards that Mendez gave her, one had her name and a false year of birth while another one had a false name. *Id.* at 45 (S.C.M.). Mendez and

Perfecto knew S.C.M. was a minor and told her to always represent herself as eighteen years old. *Id.* at 52, 58 (S.C.M.); *id.* at 132-133, 135 (Mendez). Mendez also monitored the limited communication that she was allowed to have with her family. *Id.* at 46 (S.C.M.). Mendez threatened to hurt S.C.M. and her family if she ever escaped or disobeyed him. *Id.* at 35, 38 (S.C.M.); *id.* at 105 (Garcia); *id.* at 132, 139-140 (Mendez). He repeatedly raped S.C.M. whenever he wanted to have sex with her. *Id.* at 35, 38-39, 57 (S.C.M.). S.C.M. testified, “I had to obey everything [Mendez] said and give him the money when I was working prostitution.” *Id.* at 35 (S.C.M.).

With another prostitute’s help, S.C.M. finally escaped from the apartment in May 2006. R. 308, Sent. Tr., pp. 39-41, 43 (S.C.M.). During the nine months Mendez held S.C.M., he forced her to have sex with hundreds, if not thousands, of men, solely for his financial gain. *Id.* at 130-131, 136 (Mendez).

2. *Mendez’s Conduct Relating To E.F.R.*

In 2006, Mendez directed Perfecto to travel to her village in Oxaca, Mexico, to recruit another juvenile prostitute. R. 308, Sent. Tr., p. 99 (Harris). This time, she lured S.C.M.’s cousin, E.F.R., who was 19 years old, to come to the United States under the pretense of working in a restaurant. *Id.* at 69-70 (E.F.R.).

Mendez paid for a smuggler to bring Perfecto and E.F.R. into the United States.

Id. at 103-104 (Harris). When E.F.R. arrived in Nashville in March 2006, S.C.M. told her that there was no restaurant job and that Mendez and Perfecto had brought E.F.R. to the United States to engage in prostitution. *Id.* at 69-70, 83 (E.F.R.). Perfecto explained the prostitution business and “how everything was” to E.F.R. *Id.* at 70 (E.F.R.). As with S.C.M., Mendez raped E.F.R., who was a virgin. *Id.* at 70-72 (E.F.R.); *id.* at 95 (Harris); see also *id.* at 139 (Mendez). Mendez also threatened to call immigration authorities if E.F.R. refused to have sex with him. *Id.* at 71 (E.F.R.). He raped E.F.R. on several other occasions. *Id.* at 75 (E.F.R.); cf. *id.* at 96 (Harris).

Mendez and Perfecto forced E.F.R. to engage in prostitution against her will by making her “feel threatened.” R. 308, Sent. Tr., pp. 139-140 (Mendez); see also *id.* at 73, 79 (E.F.R.); *id.* at 126-127 (Mendez). On her first day at a brothel, she had sex with twenty-five men. *Id.* at 73 (E.F.R.). Mendez, or someone he directed, took E.F.R. to engage in prostitution at various brothels in Tennessee, Alabama, Kentucky, or took her directly to customers, as was done with S.C.M. *Id.* at 76-79, 85 (E.F.R.); *id.* at 89-91, 96 (Harris); *id.* at 137-138 (Mendez). E.F.R. testified that she had to have sex with “all kinds of men” – “men who * * * want to see you naked,” “men who want to take you by force,” and “men who would ask you for so many things the whole night.” *Id.* at 74 (E.F.R.). She said, “You have

to be strong even if you just don't want to do it." *Ibid.* Mendez and Perfecto took all her earnings. *Id.* at 74, 78 (E.F.R.); *id.* at 138 (Mendez). E.F.R. stated that Mendez told her that "the only thing he wanted was money [and E.F.R.] had to work so he could have money." *Id.* at 73-74 (E.F.R.).

As with S.C.M., Mendez held E.F.R. captive and controlled her life. R. 308, Sent. Tr., p. 79 (E.F.R.). Mendez even prohibited E.F.R. and S.C.M. from speaking with each other. *Id.* at 42 (S.C.M.). After being held captive for four months, E.F.R. escaped from Mendez's apartment. *Id.* at 74, 79-80, 84 (E.F.R.).

SUMMARY OF ARGUMENT

This Court should affirm Juan Mendez's sentence. The district court properly calculated the applicable Guidelines range for his sentence and then properly considered the factors in 18 U.S.C. 3553(a) in imposing Mendez's sentence for his repulsive and inhuman treatment of one young woman and one young girl.

Mendez raises meritless challenges to his sentence. He asserts that the district court failed to consider certain factors relating to his personal characteristics and history that militate in favor of a shorter sentence, as required by Section 3553(a). Contrary to Mendez's arguments, the district court considered all relevant mitigating factors and, as Mendez's counsel requested at sentencing,

gave Mendez a more lenient sentence than the life imprisonment the Guidelines recommended. That the district court did not give Mendez an even shorter sentence hardly demonstrates that the sentence was unreasonable.

ARGUMENT

MENDEZ'S SENTENCE WAS REASONABLE

A. Standard Of Review

This Court reviews sentences for reasonableness. See *United States v. Booker*, 543 U.S. 220, 261-262 (2005); *United States v. Carson*, 560 F.3d 566, 585 (6th Cir. 2009). Reasonableness review consists of two components, procedural and substantive. *Gall v. United States*, 128 S. Ct. 586, 597 (2007). First, this Court must ensure that the district court did not commit any significant procedural errors, such as failing to consider the correct advisory sentencing range under the Federal Sentencing Guidelines, as required by 18 U.S.C. 3553(a)(4); neglecting to consider the other factors listed in 18 U.S.C. 3553(a); or selecting a sentence based on clearly erroneous facts. See *United States v. Penson*, 526 F.3d 331, 336 (6th Cir. 2008); see also *Carson*, 560 F.3d at 585; *United States v. Webb*, 403 F.3d 373, 383 (6th Cir. 2005), cert. denied, 546 U.S. 1126 (2006).

After addressing the procedural reasonableness of the sentence, the Court must also “consider the substantive reasonableness of the sentence imposed under

an abuse-of-discretion standard.” *Gall*, 128 S. Ct. at 597. A sentence may be substantively unreasonable if the sentencing court, *e.g.*, “based the sentence on impermissible factors, failed to consider pertinent § 3553(a) factors, or gave an unreasonable amount of weight to any pertinent factor.” *Carson*, 560 F.3d at 585. Although the procedural and substantive components of the Court’s reasonableness analysis “appear to overlap,” *United States v. Jones*, 489 F.3d 243, 252 n.3 (6th Cir. 2007), the substantive inquiry turns on whether “the length of the sentence is reasonable in light of the § 3553(a) factors.” *United States v. Tate*, 516 F.3d 459, 469 (6th Cir. 2008) (“The touchstone for our [substantive reasonableness] review is whether the length of the sentence is reasonable in light of the § 3553(a) factors.”).

In conducting this inquiry, this Court applies a rebuttable presumption of reasonableness to sentences within the applicable Guidelines range. *United States v. Walls*, 546 F.3d 728, 736 (6th Cir. 2008); *United States v. Richardson*, 437 F.3d 550, 553 (6th Cir. 2006); see also *Rita v. United States*, 551 U.S. 338, 345-347 (2007). Where the district court imposes a sentence below the Guidelines range, “simple logic compels the conclusion * * * that defendant’s task of persuading [this Court] that the more lenient sentence is unreasonably long is even more

demanding.” See *United States v. Curry*, 536 F.3d 571, 573 (6th Cir.), cert. denied, 129 S. Ct. 655 (2008).

B. Mendez’s Sentence Is Reasonable

Mendez does not challenge the procedural reasonableness of his sentence, nor could he. The record shows that the district court (1) calculated and considered the applicable Guidelines range, which was life imprisonment; (2) considered the relevant factors listed in 18 U.S.C. 3553(a); and (3) considered Mendez’s arguments for a lenient sentence and granted him a downward variance from life imprisonment to 600 months. See R. 308, Sent. Tr., pp. 164-172; see also *Webb*, 403 F.3d at 383. Instead, Mendez asserts (Br. 3-7) that his sentence is excessive and, therefore, substantively unreasonable.⁶

1. Section 3553(a) requires district courts to consider certain enumerated factors, such as “the nature and circumstances of the offense and the history and characteristics of the defendant,” and then impose a sentence that is sufficient but not greater than necessary to (1) “reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense”; (2) “afford adequate deterrence to criminal conduct”; and (3) “provide the defendant with needed educational or vocational training, medical care, or other correctional

⁶ “Br. ___” refers to the page number of Mendez’s opening brief.

treatment in the most effective manner.” 18 U.S.C. 3553(a)(1), (a)(2). Mendez argues (Br. 5-6) that his sentence is greater than necessary to achieve the goals set forth in Section 3553 because the district court failed to consider his (1) disadvantaged background and lack of education, skills, and training; (2) remorse; (3) drug and alcohol abuse; (4) assistance to the government with related prosecutions; and (5) deportation pending release.

Here, after calculating the applicable offense level under the Guidelines, the district court properly conducted its Section 3553(a) inquiry by considering the “nature and circumstances” of Mendez’s offenses, and his “history and characteristics.” R. 308, Sent. Tr., pp. 168-171. The district court quite appropriately, in our view, found the nature of Mendez’s conduct unusually repulsive. The court described the offenses as particularly “heinous,” and “the most troubling set of circumstances the court has had the regret of being involved in.” *Id.* at 168-169. As the court stated, Mendez lured a minor and another young woman to the United States under false pretenses, abused them, raped them, kept them captive, and transported them from state to state to participate in prostitution without financial compensation – “just basically treating these young ladies as pieces of meat to be passed around in the sordid circumstances involved in this

situation.” *Ibid.* Indeed, Mendez admitted to each of these acts in his testimony at sentencing. *Id.* at 122-127, 130-140 (Mendez).

The district court next considered Mendez’s background, lack of education, and purported remorse, and took them into account at sentencing. R. 308, Sent. Tr., pp. 157-161, 168-171. The district court acknowledged “Mendez’s background,” such as his lack of education and life of poverty in Mexico, and stated that “the court does understand the circumstances and has considered that and is considering that in terms of the sentence it’s going to impose.” *Id.* at 170-171. With respect to Mendez’s assertions of remorse (Br. 5), the district court specifically found that Mendez had acted in a manner inconsistent with acceptance of responsibility when he contended that he did not dispatch “[Cristina] Perfecto to Mexico to recruit minors or young women for the prostitution business” and when he claimed that he never threatened “S.C.M.’s parents if she refused to work as a prostitute.” R. 308, Sent. Tr., p. 148. The court said these objections were “frivolous” because Mendez had earlier admitted that he committed both these acts. *Ibid.* The district court further stated that although Mendez had demonstrated remorse at the sentencing hearing, “it comes many months and years too late in many respects because of the absolute devastating impact [his crimes]

ha[ve] caused these young ladies and their families to experience and to bear.” *Id.* at 170.⁷

Mendez’s assertions regarding the remaining mitigating factors are without merit. Mendez did not present any evidence at sentencing of his purported drug and alcohol abuse, or even mention that he had a drug and alcohol problem when S.C.M. and E.F.R. were under his control, other than in his request for a downward departure. Even though the district court did not specifically refer to Mendez’s alleged but unproven drug and alcohol abuse, that is not a basis for finding the sentence unreasonable. See *United States v. Gale*, 468 F.3d 929, 940 (6th Cir. 2006) (“When a district court adequately explains why it imposed a particular sentence * * * we do not further require that it exhaustively explain the

⁷ To the extent that Mendez argues (Br. 5) that the district court erred in refusing to grant his request for a downward departure for acceptance of responsibility, a district court’s refusal to exercise its discretion to grant a downward departure under the Sentencing Guidelines is generally not reviewable on appeal. See *United States v. Puckett*, 422 F.3d 340, 344 (6th Cir. 2005), cert. denied, 547 U.S. 1122 (2006); *United States v. Owusu*, 199 F.3d 329, 349 (6th Cir. 2000). This Court “may review a denial of a downward departure only if the district court incorrectly believed it lacked the authority to grant such a departure as a matter of law.” *Owusu*, 199 F.3d at 349; see also *Puckett*, 422 F.3d at 346. Nothing in the record supports finding that the district court believed it lacked authority to grant a downward departure. On the contrary, the district court knew it had the authority to grant a downward departure but did not believe that a departure for acceptance of responsibility was warranted. R. 308, Sent. Tr., p. 148.

obverse – why an alternative sentence was not selected – in every instance.”) (emphases omitted), cert. denied, 127 S. Ct. 3065 (2007).

Nor did Mendez argue at sentencing that his deportation upon release should be considered a mitigating factor. See R. 308, Sent. Tr., p. 173. Thus, the district court did not abuse its discretion in not considering this factor. See *Walls*, 546 F.3d at 737 (holding that district court did not abuse its discretion in not considering a potential mitigating factor when defendant never raised the issue at sentencing). In any event, collateral consequences that a defendant may face because he is a deportable alien do not independently support leniency. See, e.g., *United States v. Maung*, 320 F.3d 1305, 1309-1310 (11th Cir. 2003) (downward departure sentence could not properly be based on a desire to shield defendant from immigration consequences of conviction); *United States v. Restrepo*, 999 F.2d 640, 646-647 (2d Cir.) (collateral consequences of defendant’s status as an alien, such as post imprisonment detention pending removal, were insufficient to support a downward departure), cert. denied, 510 U.S. 954 (1993).

Furthermore, contrary to Mendez’s assertion (Br. 6), the evidence at the sentencing hearing did not establish that he provided the government substantial assistance in the investigation or prosecution of persons involved in prostitution activity. R. 308, Sent. Tr., pp. 101-102, 104 (Harris). Mendez had offered to

assist the government by providing information on other brothels and pimps who operated brothels. *Id.* at 101 (Harris). FBI Agent Harris stated that while Mendez gave the government “very basic information,” he failed to provide “a lot of details.” *Ibid.* Based on information from the victims and Perfecto, however, Harris believed that Mendez “was not giving [the government] all the information that was available to him.” *Ibid.* As a result, the government did not request a downward departure under Section 5K1.1 of the Guidelines because, despite his promise, Mendez did not provide substantial assistance to the government.

2. In concluding its Section 3553 analysis, the district court stated that the sentence of 600 months in prison for each count, to be served concurrently, was appropriate and reasonable because it reflects the “seriousness of the offense, * * * promote[s] respect for the law and * * * provide[s] just punishment for the offense.” R. 308, Sent. Tr., pp. 168-169. The court also believed that the length of this sentence was necessary to meet the other goals set forth in 18 U.S.C. 3553(a)(2). R. 308, Sent. Tr., pp. 169-170.

The fact that the district court may have given greater weight to the nature of the offense than to the factors that might militate in favor of a shorter sentence does not render Mendez’s sentence substantively unreasonable. See *United States v. Trejo-Martinez*, 481 F.3d 409, 413 (6th Cir. 2007) (district court was not

obligated to accept defendant's version of the facts concerning his prior conviction and impose a shorter sentence). Indeed, Mendez's counsel at sentencing "ask[ed] the court to consider something less than a life sentence," R. 308, Sent. Tr., p. 160, and the court did not impose a life sentence over the government's objection.

That Mendez simply desires a more lenient sentence than he got is not grounds to disturb the reasoned judgment of the district court. As this Court stated in *United States v. Jackson*, 466 F.3d 537, 540 (6th Cir. 2006), cert. denied, 549 U.S. 1290 (2007), the "fact that the district court did not give the defendant the exact sentence he sought is not a cognizable basis to appeal, particularly where the district court followed the mandate of Section 3553(a) in all relevant respects." See *Curry*, 536 F.3d at 574 (holding that sentence was reasonable where district court imposed a sentence that took in account defendant's remorse even though defendant argued that the sentence should have been even shorter); *Trejo-Martinez*, 481 F.3d at 413 (stating that the mere fact that defendant wanted a more lenient sentence did not warrant finding the sentence substantively unreasonable).

In *United States v. Presto*, 498 F.3d 415, 420-421 (6th Cir. 2007), this Court rejected defendant's challenge to his sentence as unreasonable where the defendant incorrectly believed that his offense did not warrant the length of his sentence. Similarly, Mendez's description (Br. 5) of his offense simply as "[t]he

operation of a business engaging in prostitution” shows that he substantially underestimates the seriousness of his offense, and the significant harm he inflicted on his young victims. The mitigating factors Mendez asserts on appeal do not undermine the reasonableness of his sentence.

CONCLUSION

The Court should affirm Mendez’s sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation imposed by Fed. R. App. P. 32(a)(7)(B). The brief was prepared using WordPerfect X4 and contains 4,756 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

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Date: May 5, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2009, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court using the CM/ECF system. The following participant in this case will be served by the CM/ECF system:

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ADDENDUM

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to 6th Cir. R. 28(c), the United States designates the following relevant district court documents:

11/16/2006	88	Redacted Superseding Indictment
06/30/2008	290	Redacted Judgment
07/02/2008	291	Notice of Appeal
09/22/2008	308	Unredacted transcript of sentencing hearing on June 27, 2008
10/23/2008	312	Unredacted transcript of change of plea hearing on December 12, 2007