Caught Crossing, Caught Between ~
A Tale of Two Cities

Mexican drug cartels and the United States federal courts are distinct and separate institutions, sitting at different ends of a social and legal spectrum, with aims that widely divergent, and often directly opposed. One is a vast and brutal criminal organization that profits from the trade in drugs and trafficking of humans, while the other wields the power and authority of the United States of America to prosecute such activity and enforce American laws. There is ample room between these two organizations, and most Americans steer clear fairly easily of involvement with either. I am among the poor, often homeless, drug addicts in San Diego who have managed to get entangled in both.

I am a recovering addict and I've struggled with addiction for my entire adult life. I lost my home in 2017 and spent a year bouncing between drug treatment programs, sober living homes and the streets before finally giving up. I have been homeless in downtown San Diego since 2018, and for the next two years, I lived either on the streets or in county jail.

In a former life, I taught American Literature at Swarthmore College in Pennsylvania and at Soka University of America in Orange County, California. I lost my academic career when I was convicted of alien smuggling in 2006, a crime I committed because of my addiction. Upon my release from prison, I lived sober for over nine years, and during that time I built a second career in social services and medical research in San Diego in programs for mentally ill homeless adults, HIV positive ex-offenders, and people newly diagnosed with Hepatitis C.

In June of 2020, I was arrested for bringing 3.06 grams of crystal meth into the United States, and have been held in a federal detention facility ever since-- for twelve months, as of this writing The drugs

were strapped to my body, hidden under my clothes, and I tried to walk through the San Ysidro Port of Entry from Tijuana, Mexico into San Diego county. I know several homeless addicts who have done more or less the same thing.

Many homeless people in San Diego find our way to Tijuana, Mexico because the border is easy to cross, drugs are cheap and generally of better quality, and it's possible to get a hotel room with a bed and a hot shower for $10.00 to $15.00 and a good plate of food for $5.00 or less. But it's not necessary to spend any money to sleep indoors. There are places where people can buy drugs, get high and stay for several hours for nothing more than the cost of the drugs they use while there. Homeless from both sides of the border congregate at such places, and many are recruited to become drug mules. People at such places walk in with a few dollars, just enough to get high for a little while, and then stay long enough to become broke, dope sick and desperate. People like that can be talked into doing almost anything, and anyone with the ability to cross legally into the U.S. is likely to be recruited.

I
Gypsies, Tramps and Thieves: Homelessness in the American Imagination & Homelessness Today

Vagabonds, tramps, derelicts, drifters and bums have long been enshrined in our national imagination, whether in a real or imagined Bowery or Skid Row, jumping trains or hitchhiking cross country, or holding a sign looking for money or a meal in exchange for work. People have lived without stable housing in every part of the United States and at every point in our history. And while these vagrants have often run afoul of local law enforcement and have been held up to children as dire warnings of the wages of alcohol and sin, homeless people, real and imagined, have had a place in the history of our nation, in our communities, and in the stories we've told and the songs we've sung. Many of them wander the pages of Walt Whitman's *Leaves of Grass*, and at least one was a leading character in John Dos Passos's *42nd Parallel*. Charlie Chaplin's *Little Tramp* remains an iconic and beloved character. And

Ginsburg's *Howl*, Kerouac's *On the Road*, and Burroughs *Junky* describe people recognizably similar to many I know from the streets.

It is not surprising that a nation styling itself as a nation of immigrants would, from it's start, make room for people without a home, or any property at all. The inalienable rights Thomas Jefferson enshrined in our *Declaration of Independence* are "life, liberty and the pursuit of happiness." This is a revision, of course, of John Locke's notion of three essential rights, the right to "life, liberty and property,"* and it Jefferson's elision of "property" and his decision to replace it with "pursuit of happiness" suggests that there has always been something in the American experiment in democracy that was distinct from its British and continental forebears, and that this difference had something to do with the idea of property.

In England, station and birth first defined political self-hood; land and title were at the heart of the definition of British nobility. As the merchant (and then "middle") class began to emerge, property ownership more generally became central to full participation in the political life of the nation. In the British political tradition, individual autonomy rested upon the notion of property and ownership; in the new world, property ownership was not a prerequisite for individual autonomy or political selfhood. Put another way, the ideal we would come to celebrate as the "self-made man" (as opposed to one who inherits a title and position), depends, at least in part, on a person who starts out with nothing except ambition, determination, and the willingness to work. Property ownership can be a goal, but it was not, in this country, a prerequisite for rights or citizenship.

Arguably, the dominant narrative of the American melting pot, the narrative of displaced Europeans fleeing oppression or seeking opportunity, the narrative that includes symbols like the Ellis Island, the Statue of Liberty and the words inscribed there: "Give us your tired, your poor, your huddled

* John Locke, *Second Treatise of Civil Government.* I am also influenced greatly in my discussion of the role of property in the Contintental, Anglo, and American political traditions by Etienne Balibar's seminal essay, "Citizen Subject," in which he explores how property is at the heart of the concept of liberal individualism; specifically, the idea that even if a person owns nothing else, they own themselves, and this idea forms the conceptual basis for inalienable individual rights.

masses yearning to breathe free" is also a narrative of displaced homeless people seeking a home and opportunity, or even more simply, seeking to live in peace. The stories of the pioneers who, in our national mythology "opened" and "settled" the American West are also the struggles of homeless people braving long distances and great hardship to tame a wild land a make a place for themselves.

To be sure, American history is also the story of indigenous North Americans made homeless on their native land; of captured Africans brought here as chattel, as property, forced to work land that they could never claim as their own; and immigrants and refugees from places other than Europe, many of whom-- Asian immigrants, notably, in the 19th and early 20th century-- who were not allowed to become naturalized citizens, or in many states to own property.

Whether in the dominant narratives of our national mythology or in our alternative histories, homelessness has always been a part of this country, historically and politically, and homeless people have always been present. The American Dream may include home ownership, but the dream itself is characterized by not having a home and aspiring for one. The aspirations of the homeless are at the heart of the American Dream.

Homelessness today is seen somewhat differently. I lived in many major cities-- in New York, the San Francisco Bay Area, Philadelphia and San Diego. People who live, work and recreate in those cities' urban cores coexist with a large and visible homeless population. I worked with severely mentally ill, chronically homeless adults in San Diego. And I've been homeless myself. Homeless people have probably always been seen as violating social norms, as untrustworthy and delinquent, but there is, in our current historical moment, a view of homelessness not as a state of temporary personal crisis but as a profoundly pathological state of being, and of homeless people as dangerous, pariah, and outlaw-- a literal out-caste.

Homeless people are seen as unwashed, smelly and dirty. Our hair is greasy and matted, or skin is smudged with grime, and we have body lice and scabies. We carry disease, we wear pants stained with

urine, and we defecate on public sidewalks and alleys. We are crazy, delusional or actively psychotic. We are angry, prone to outburst, and difficult to predict or control. We are drug addicted, criminal and dangerous. We will fly a sign asking for a handout, and then snatch your wallet or purse if you stop to help us out. We roam your streets and break into your car, or steal your bike, or grab your cellphone when you're not paying attention. We leave remnants of our squalor on the streets that you walk for you to see and smell and clean up after. We are seen as human vermin, and the goal to "end homelessness" often feels like a desire to exterminate the human pestilence that makes our neighborhoods unsafe, and our streets dangerous and dirty. Far too often, the problem of homelessness is characterized as problems posed by the very existence of homeless people.

II
Homelessness and Criminality

I, like many, became homeless because of my addiction. For people like us, our lives on the streets revolve around getting and using illegal street drugs. Few of us are gainfully employed, and even for those of us who do have a source of income, our drug use requires more money than we have, and so we turn to what we might euphemistically think of as creative means for supporting our addiction. These means may skirt of the boundaries of what is strictly legal, or cross them entirely. But for many of us, every aspect of living in active addiction violates the law.

Beyond that, it has become increasingly true that our day to day lives, our very existence, has become criminal, whether or not illegal street drugs are involved. When sitting on a public sidewalk is regarded as "loitering" or "encroachment," when laying down on a blanket or in a sleeping bag under the awning of a business that is closed for the day, or seeking overnight refuge in a parking garage when it rains is "trespassing" and "illegal lodging," when we may not stop, or rest, or congregate on city sidewalks or near businesses, and when public parks are closed between 10pm and 6am, when we may be

cited for local health and safety violations because we do not have easy or regular access to bathrooms, hot and cold running water, showers or laundry, then, even though there is no law that requires citizens to have a fixed and stable residence, the daily routines of homeless people are, in essence, criminal acts.

In July of 2018, about two months after I become homeless, I was arrested for selling about a tenth of a gram of crystal meth (in layman's terms, an amount the size of a BB pellet) to an undercover police officer for $8.00 while a regularly scheduled clean needle exchange was taking place a few yards away.

The needle exchange program in San Diego is administered by Family Health Centers of San Diego. In addition to exchanging brand new syringes for old and used one, they provide clean "works"-- things commonly used for IV drug use, like cotton swabs, small metal caps for cooking heroin for injection, sterile water, small bottles of bleach-- as well things like alcohol wipes, antibacterial ointment, and band-aids. These items are key in preventing the transmission of dangerous blood-borne pathogens such as HIV or Hep C, and promoting wound hygiene helps prevent infection and abscess. They also distribute Narcan-- an opiate blocker highly effective in saving people overdosing on heroin or fentanyl, increasingly popular on the streets of San Diego, and they give a brief training on the proper use of it. (I do not use opiates myself, but I always keep Narcan with me because almost everyone I know from the streets does. I helped give people overdosing on heroin three times, I've been around countless times when people are trying to revive someone overdosing, with or without Narcan. They also have nurses and outreach workers there to help people presenting with physical health symptoms, or who may be in mental health crisis or seeking help for their addiction.

Needle exchanges are controversial. There is conclusive data demonstrating their efficacy in lowering rates of HIV and Hep C infection among their target population, and a great deal of anecdotal evidence pointing to lives saved from overdose, or of people who have entered treatment or gotten life-saving help with the help of the needle exchange staff. But needle exchange programs attract IV drug

users, many of whom are homeless, and people do not want such people congregating in their neighborhoods.

I'm not sure how long the needle exchange has been taking place in San Diego, but I believe it was about 15 years ago. When this program first launched, city and county officials gathered with leaders of public health and law enforcement to announce it, to tout its benefits, and to discuss measures they were taking to ensure public safety (taking into account the concerns of people living near the exchange sites). Similar programs across the country have to balance the interests of public health, on the one hand, and the concerns of public safety, voiced loudly by local residents, on the other. Getting clean needles isn't against the law, but having drugs and using them is, and so, there is a lot of fear among addicts that being at the exchange exposes us to risk. For this reason, the Chief of the San Diego Police at the time, Shelley Zimmerman, announced that the San Diego Police Department would not patrol or the exchange sites during the few hours per week they would be open.

The clean needle exchange in San Diego runs out of a mobile van that is open for three hours one day per week in the North Park neighborhood, and for three hours, two evenings per week, in the East Village of downtown San Diego. This downtown location is the busiest, and is on a street in the heart of an area known locally as "the Bottoms," San Diego's skid row. Need, of course, is one primary reason that this site is open two nights per week. But up until recently, this area was long the center of homelessness in the city. The bulk of homeless services are located there, and this area was historically largely industrial, with lots of warehouses and transportation yards. There used too be comparatively few apartments and homes, and therefore, comparatively less objection from the residents of the neighborhood. But this has changed.

As I mentioned, in July of 2018, I sold drugs to an undercover police officer. He was walking up 16th Street, where the clean needle exchange van was parked and providing services, offering homeless people cash for drugs. He approached me with a twenty dollar bill asking for a "dub" of "white" (street

slang for twenty dollars worth of crystal meth, usually somewhere between a half a gram to a gram). A street dealer would have several baggies of this ready to go, but I didn't. I told him I didn't have that much on me, even though I certainly could have used the cash. He said "You got anything? I'll take it." I shook my head and said "I just got some dust in my baggie," and I took it out to show him how little it was. It wasn't even enough for me to have a single shot. He took it from my hand and handed me the twenty, and I refused it. "Whoa! It's not that much. Just take it." He said "No, I have to give you something," and he reached in his wallet and pulled out every small bill he had-- eight dollars, as it turned out-- handed them to me and walked away. Two police cars approached immediately from opposite directions, one driving north down 16th and the other driving south, and they both pulled over, nose to nose, right at the spot on the curb where I was standing. I was handcuffed and arrested just 20 to 30 feet from the needle exchange van a few minutes after it ended while its staff was packing up to leave.

Clearly, the police changed their policy regarding patrolling the clean needle exchange, they just didn't publicly announce it. I'm sure that in their minds, they did not arrest me simply because I was an addict using the needle exchange, but what they did wasn't far from it.

Later, at the police station, the undercover officer entered the interrogation room smiling, and said "remember me?" I'm not sure, but I think he imagined I might try to deny selling anyone any meth, but I wasn't denying it. Frankly, I found the idea of an arrest for that amount ridiculous, even offensive. There was a time not too long before when even the police would laugh off that amount, giving, at the most, a verbal warning. I told him "you didn't deter anybody from using or selling drugs, but you did scare people away from the needle exchange. If what you wanted was to increase HIV and Hep C infection, then good for you."

I am not a drug dealer. I do not stay on a corner and try to make money by selling drugs. But like most homeless drug addicts, at any given moment, some of have drugs and some of us don't, and so, as a routine part of our interactions, we share drugs among ourselves, and we either pay money or trade items

for it. If I need drugs and I have a portable charger, I'll make a trade with a friend of mine. If I need five or six dollars to buy a day pass for the bus, I might sell you a nickel or a dime of dope. This kind of low-level trade of money, drugs and merchandise is as common as breathing among homeless drug addicts. Policing this activity doesn't police drug sales. It polices drug addiction.

Be that as it may, drug sales are always a felony, at least where I live, even when amount is negligible and the dollar value is low. Money doesn't even have to be exchanged. If I'd given the undercover officer the drugs as a thank you for giving me a ride someplace, or if I'd given him the drugs in exchange for a sandwich, that would still constitute a felony drug sale.

For the next two years, I was cited and sometimes taken to jail for crimes that homeless people are routinely cited and arrested for: petty theft, possession of a controlled substance, and giving a false name to a police officer. Other crimes homeless people are routinely cited for include illegal lodging, jumping the trolley without paying a fare, public intoxication, trespassing, and indecent exposure (for urinating in a public area, which includes anyplace outdoors that is not a bathroom, regardless of how secluded or enclosed or out of view that area is). This last charge requires that the person register as a sex-offender. It should not go without noting that the same acts that result in police questioning and citation if one appears homeless might be overlooked entirely when the person doing them is well-dressed and looks like they have a job and a home. Two homeless men sitting on a low wall sharing a burrito on a downtown street might be questioned, even cited by the police for loitering or trespassing. Two professionals sitting in the same spot at the same time of day eating sandwiches they just bought at the deli down the street will be told "have a nice day" should a police officer happen by. It's not specific behavior-- loitering on private property-- that's being policed. It's homelessness.

My involvement with the police and the courts took place during a time when the SDPD increased their enforcement of certain laws, and when the District Attorney of San Diego also greatly increased the rate of prosecution for crimes associated with homelessness. The East Village rapidly

gentrified during the last three years. New, expensive condos are completed, new businesses are opening, and affluent professionals are moving in. Many of these new residents are young and often politically progressive, but nobody wants to pull their dog away from a sleeping homeless person during their morning walk, or have to cross the street to avoid a cluster of sleeping homeless bodies when they're out for their morning run. As much as people may support the idea of a clean needle exchange, nobody wants it down the block from their million dollar condo.

The city and county of San Diego are working together with a host of private partners, faith based organizations and social service providers on a Regional Task Force on Homelessness. This is a serious and well-intended effort aimed at helping homeless people off the streets and into safe, affordable housing. But their efforts are often eclipsed by, rather than complemented by, the greatly increased policing and prosecution of homeless people. Arresting homeless people off the streets has never been an explicit element of the strategy to "end homelessness," but it is central to it, and it is the part felt most acutely by the homeless people living downtown.

In March of 2020, the California Governor issued Stay-at-Home orders, the first of many emergency measures designed to protect the public from the threat posed by COVID-19. State and county services were closed. Residential drug and alcohol treatment programs suspended new admissions. Churches which often provide support to homeless people temporarily shut their doors. Facilities which offered phone service, internet access, laundry, or showers either closed or significantly reduced their hours of operation. The city made grand plans for an emergency expansion of shelter beds in San Diego, even announcing that the marquee San Diego Convention Center would become a safe shelter for hundreds of homeless people. But access to these "greatly expanded" services was administered by agencies whose physical doors were closed and who only offered remote support-- a challenge for homeless people with no reliable access to the telephones or internet, especially when the places that provided such access were closed. The San Diego Police's Homeless Outreach Team was charged with

placing unhoused San Diegans into shelters, but there were only two HOT Team vans canvassing the entire city, and getting into a shelter depended on seeing a HOT Team van on the street and flagging it down for help. During those first weeks of the pandemic in San Diego, access to shelters felt haphazard and random.

This was what was going on when I ran into a homeless friend who I hadn't seen in a while. He told me he'd been staying in Tijuana, Mexico, about a twenty or thirty minute trolley ride from downtown. Many other people I knew who I hadn't seen in a while were also staying there. He went on and on about why TJ (the local nickname for Tijuana) was so much better than downtown to be homeless.

I'd visited Tijuana, and the areas where the homeless there congregate seem much more violent and dangerous than San Diego. My friend said I only thought that because I didn't know where to go, or where to find people I knew. He invited me to go back with him and offered to show me the places to hang out. Life on the streets downtown had become extraordinarily difficult, so I agreed to check it out.

III
Homelessness at the Border

The San Ysidro Port of Entry between Tijuana and San Diego county is the busiest border crossing the world. Many thousands of Tijuanans work and shop in the United States, and many thousands of Americans have chosen to live south of the border because they feel they can live much better and more cheaply. It is not a difficult commute from a home in Tijuana to a job in San Diego.

In Tijuana, the downtown area, El Centro, is in walking distance from the international border. Under normal circumstances, it teems with tourism and commerce. One of the most famous parts of El Centro is the area commonly called Revolución. Avenida Revolución is one of the main thoroughfares through what is one of the busiest and most famous red-light districts in the world.

During Hollywood's Golden Age, Tijuana became a favorite getaway destination for Hollywood

stars and industry executives. But El Centro generally, and Revolución specifically, became what it is today-- a cluster of bars, nightclubs, strip clubs, casinos, street prostitution, drug sales, and cheap, hourly hotels-- by catering to the recreational needs of U.S. Naval personnel stationed across the border in San Diego. Prostitution is illegal in Mexico, but it is nonetheless crucial to bringing American dollars into the Mexican economy. Over time, other illegal or quasi-legal activities that have become integral to the local economy include drug sales, the trade in guns and other weapons, and human trafficking.

San Diego Homeless: Homeless communities are not homogeneous. Drug addiction is so common among the homeless in downtown San Diego as to be ubiquitous, but there are homeless people who do not use drugs or alcohol. Untreated or undiagnosed mental illness is rampant, but not everyone on the streets has a diagnosable mental illness. There are heartbreaking cases of people with evident developmental disabilities, people who might be called "high functioning" but who are unable to navigate social services for themselves, but there are also people at normal, or even above normal cognitive and intellectual functioning.

There are many homeless veterans in a military town like San Diego. Given the climate and geography, homeless people make their way to San Diego from all over the country. Some people choose to be homeless, and while, in some cases, this may be attributable to some kind of personal or social dysfunction, for many, that choice is framed as a rejection of middle-class, bourgeois, consumerist values. For some in this group, it is a temporary lifestyle experiment, and for others, it has become a way of life. And some people simply prefer to live homeless, not as a result of an underlying pathology, and not as a political statement. It is simply a way of life they prefer.

Some homeless people were effectively raised on the streets by badly addicted parents who were never able to provide stable housing. Others were raised in the foster system and in Youth Authority. Others came from families who were fairly affluent who became addicted to prescription opiates or amphetamines as teenagers and whose addictions progressed to the point where they are living on the

streets and using black tar heroin and crystal meth. Though they were raised in stable, even comfortable homes, some of these people have never lived stably as adults unless their families paid for it. And there are plenty of people like me, people who worked hard throughout our lives, achieved some measure of success, and who, due to some combination of addiction, life tragedy and mental illness, have wound up on the streets, either estranged from the love and support of family and friends, or actively hiding from them, ashamed at how far they've fallen.

Homeless in Tijuana: The homeless community in Tijuana is also diverse, but in very different ways, and I can't honestly say I know it well enough to describe it comprehensively. But I can describe the people I met in terms of concentric circles, with the US homeless people I know in the center, and moving outward.

There are many Mexican American deportees, people, usually young men, who were raised in the US, but who were born in Mexico and immigrated with their families at a young age. To be sure, some might have immigrated illegally, but most did not. As teenagers, they may have gotten caught up in gang activity in the U.S., or got caught up with drugs, or just got caught up messing around with friends and doing something that got them arrested. (These young people would be the opposite of the "Dreamers"; these immigrant children are not eligible for the protections of DACA, or whatever it is that will succeed it.) Undocumented immigrants convicted of crimes are routinely deported, but a criminal conviction is grounds for deportation even for resident aliens, so young people convicted of committing all manner of crimes (including crimes like shoplifting, vandalism or possession of drugs) might have their green cards revoked, even if they're young, even if they were raised in the United States, even if they don't know anyone in Mexico, and speak little to no Spanish. The same crime that might result in an 18 or 19 year old American citizen being sent to a drug treatment program, or in a very short jail stay could result in a young American with Mexican citizenship being exiled permanently from their family and friends, "returned" to a place they do not know, and left to fend for themselves on the streets of a foreign country.

There are no substantial programs to assist such deportees with housing, vocational training, education, language acquisition, or even with basic necessities like food, hygiene supplies or clothing. They have very little recourse but to engage in some kind of criminal activity to survive. Some of these deportees were gang members in the United States, and some of those gangs have cross-border affiliations, including affiliating in some ways with some of the cartels.

The homeless population south of the border is also full of many refugees from throughout Latin America. Trump's “Remain in Mexico” program for people seeking political asylum, as well as the much more restrictive immigration regime his Department of Homeland Security enforced, have produced extensive tent cities of bone-crushing poverty and squalor. And then there are the local homeless, the ones from Tijuana or other parts of Mexico who wound up homeless on the streets in Tijuana for many of the same sorts of reasons people wind up on the streets in the United States. The difference is that there is a considerable social safety net in the United States and virtually none in Mexico. And whether by legal, semi-legal or illegal means, it is a fairly easy matter to make at least some money in the United States. That is not always the case in Tijuana.

When I first saw the homeless community in Tijuana, I was stunned at the hunger, the filth, the lack of any meaningful government or community support. (There are churches and other organizations which try to help, but their resources are very limited and the level of need is breathtaking.) The threat of violence looms large; people die violent deaths daily, and if they're homeless, there is literally no one to care about who they are or what happened to them. There is very little doubt in my mind that had I stayed in Tijuana long enough, something like this might have happened to me.

(I will not say much about the police in Tijuana, except that the level of corruption is well-known, and that, on the streets, more people fear robbery or assault from the police than they do from any criminal gang.)

The most striking thing I came to realize was that homeless people from the United States are rich

compared to homeless people in Mexico. We at least have a few dollars in our pockets. We, as U.S. citizens, can cross into the United States and back with ease, and we can make whatever money we make north of the border and bring it south to spend, and live, comparatively speaking, like royalty . In street vernacular, we are "balling." We can afford our own dope, we can buy something to eat, and on a good day, we can go to a strip club or a casino, get a hotel room, or get a prostitute of any gender.

The border area and Revolucion is where all these homeless communities meet. The Mexican drug cartels have their hands in all of the illegal activity which is the lifeblood of this place. Make no mistake about this-- illegal activity is possibly the major source of revenue in the area, it is is among the very top. In one way or another, the cartels run the streets and operations vital to the people who go there to try to make a life and living. I don't think most San Diegans are aware of how close they are to cartel activity, or how close cartel operations cut to our homes and lives.

IV
Trap Houses and Tiendas

As a general principle, guns, stolen property and money flow south across the border into Mexico, while drugs and people flow north. I know that at some point, various criminal cartels in Mexico are involved in, profit from, and at the very highest levels, organize and manage these operations. But on a functional level, most street level criminal activity runs through various cells, small groups, that manage street level drug sales, prostitution, or the black market in guns and stolen property.

Cells are also central to how drugs are sent into the United States. These cells may be formal parts of various cartel organizations, or they may be wholly independent operations that just buy their drugs from one of the cartels. There is so much posturing on the streets, people either claiming or wanting you to assume they are very powerful and well connected but who are really nothing more than street thugs, or the opposite, truly powerful and well-connected people working hard to obscure and obfuscate the level

of their involvement, that it's virtually impossible for me to know who to believe, or to trust what anyone said to me about how such activity is run and organized.

I went with my friend to Tijuana in May of 2020 so he could introduce me to people and show me around. He showed me where he took merchandise he'd stolen sell, to places where we ran into others I knew from downtown, and to the place where he went to get high. I won't talk about the specific place my friend took me where I was recruited to be a drug mule, but I will describe the types of places a homeless addict might wind up.

One Stop Shops: There is a pedestrian thoroughfare from El Centro to the border that spans several blocks, and it looks and feels like an open air bazaar, with store fronts, open stands, kiosks, food carts, restaurants and bars. On a busy night, mariachi bands might walk the streets. Hawkers try to sell you all kinds of things, and there is, of course, drug sales and prostitution.

The stores sell all manner of merchandise-- some specialize, and some offer a range, but in general you can find Mexican blankets, serapes, ponchos, or other items of clothing and accessories; handcrafted, or simulated Mexican ceramic, glassware, piñatas, or semi-precious stones; and, of course, various cheap souvenir items. Pharmacies in Mexico also attract a lot of American business. They are usually small, with just a couple of aisles, and a big main counter. You can purchase over the counter drugs or items for health and hygiene, or with a prescription, a range of medications at a fraction of the cost in the United States.

Among all of the various types of shops, some are front operations for drug sales, and those in the know can walk up to a counter and order whatever it is they want. Cash is exchanged, drugs are dispensed, and you can often buy the paraphernalia you need-- foil, a glass pipe, or a hypodermic syringe. Then you walk to a back room and make yourself comfortable. What might be the storage area in an American store is, in these places, just an open space where people sit on broken chairs, ratty sofas, and on the floor. Some are intent on getting high-- smoking, or shooting up-- while others chat casually, and

others still are nodded or or passed out. In such places, you can stay as long as you're behaving yourself and are using what you purchased there. If you bought a small amount of dope and are hanging around trying to mooch drugs off of others, if you you stay for too long and are too obvious about what you're doing, they'll tell you to leave. You're welcome to come back, but only if you have money. Some of these places only have this one large room where people crowd in to get high and stay indoors. Others have sleeping areas tucked away, and bathrooms people can use.

Your Friendly Neighborhood Trap House: I was taken to a house on a dark, run down residential street just a couple of blocks away from the heart of Revolución. Walking toward it, we passed homeless people crowding the sidewalks, and gated, locked apartment buildings and homes. The corner is well lit, but the street itself is very dark.

I was taken to a two story building near the Rapido, a freeway that runs a long the border at the edge of El Centro. The first floor, street level, is a separate unit. The second floor, the larger unit, is accessible through a front gate that requires a key to open from either side. The gate opens up to an external staircase that leads to a concrete walkway around deck two sides of the building. As we climb the stairs, we pass someone at the top peeing off the side of the walkway, and I look over the railing onto a gated empty lot that is filled with heaps and mounds of garbage. Someone pitched a small tent at the top of the stairs, on one side of the house, and as we pass it to make our way to the front door of the house, I see a middle-aged bearded man peering at us through a slit. I don't know if the person was a hanger on who they let stay there, or was stationed there to watch the front gate.

The inside is spacious, divided down the center by a large wall. On the left side is a large, open living room, furnished sparsely, only a corner sectional sofa in one corner, a coffee table covered in paper cups, cans of beer, and an overflowing ashtray, and a pool table with backpacks and coats thrown on top of it. The living room opens onto a large kitchen area, with a stove that doesn't look attached to the wall, and counters covered with dirty paper plates, cups, and crumpled up bags that spill onto the floor. On the

right side of the center dividing wall was a long hallway, with four bedrooms and a bathroom opening off of it. Nobody appeared to be doing drugs in the main room, but in each of the bedrooms, people were clustered, talking, smoking, watching a movie on TV, and getting high-- shooting up, or smoking heroin or fentanyl off of foil, or crystal meth from a glass bowl.

Drug Tenements: There is a design fairly common to many hotels and apartment buildings in Tijuana-- a door or gate on opens onto a short, dark, narrow hallway that opens onto courtyard. This courtyard was bounded on the street side with a concrete wall, and on the other three sides with three stories of units-- apartments or hotel rooms, but looked abandoned and decrepit. The third story looked like a concrete shell-- unpainted, no doors or windows, like they just never bothered finishing it. As I became more familiar with Tijuana, I saw many hotels or low-rent apartments were similarly maintained. I looked around. Windows were broken or splintered, patched with duct tape or covered with cardboard, plywood or fabric. Doors were splintered, or hanging off the hinges, or missing entirely. I saw people sprawled passed out on a tattered sofa, or clustered in some of the rooms shooting up or smoking. One woman on the second floor stood at her doorway in a slinky, stained robe, with a breast casually exposed and gestured me over with her lit cigarette. I was pointed toward an open door and told to sit and wait in that room. Inside, a man with no shirt was cleaning a gun, cigarette dangling from his mouth, and a large bowie knife on the low table in front of him next to an ashtray. He only had one arm, the stump something like a third of the way from the shoulder to where the elbow was. He didn't acknowledge me, or even seem to notice me, and so I sat and watched, transfixed by his dexterity. In this place, you transact whatever business you transact, and if you need a place to get high, the person you're transacting business with will probably let you stay. If you stay long enough, you will run into others doing more or less the same thing. If you come in, stay for a while. If you leave, stay away. There are fairly clear rules here. Do as your told. Mind your own business. Do not go in and out repeatedly.

Each of these places is quite different. The various tiendas (shops) are all drop in sites. Nobody seems to stay there for real. They are filled mostly with Americans, many just coming through to buy drugs and drive back, but who wanted to stop and get high before hitting the road. The house has a fairly even mix of Mexicans and Americans there, and it appears to be a place where at least some of the people I saw might actually reside, but I had no way of knowing who, or how many. And the courtyard complex seemed like it was a semi-permanent place to stay for a number of people, mostly Mexican, but a lot of people from either side of the border came to transact business of one sort or another.

Once a person is introduced to a particular place, that is where they go. If you are a frequent enough visitor to get introduced into one of these places, then your money and your loyalty belongs there, and to the gang or cell that runs it. It is not safe to go anywhere else, or to buy from anyone else. To visitors, Tijuana seems like a typical large city, but in reality, in this part of town, no one is anonymous, especially if they're American and they have money to spend. Everyone knows everyone, everyone is watching everything that happens, and if you are American, it's probably a good idea to assume that everyone you meet is in cahoots with each other.

Gangs with connections across the border, and the major drug cartels are like criminal multinational corporations. The San Diego/ Tijuana region is a kind of black and gray market free trade zone for human traficking, sex work, drug sales , guns, and all manner of stolen property. NAFTA's got nothing on this free trade zone.

V
My (short) Life as a Drug Mule

On the night in May when I went to Mexico with my friend, he took me to the place where he's connected, he introduced me to the people I would need to know when I came back, and we got drugs and made ourselves comfortable.

Many people go to Tijuana to bring drugs back to sell. Some people go to Tijuana and buy Xanax for cheap at a pharmacy and sneak it back into the US to sell. Others buy "black" and "white" (local slang for black tar heroin and crystal meth. In Mexico, it's chivo, feria and criko) by the ounce-- generally enough to get high themselves, and have enough to turn a profit, or at the very least, break even. Some people do this hoping to build up enough cash to make a go of making serious money selling drugs on the streets in San Diego or Los Angeles. And then there are the drug mules, people like me who are paid to take temporary possession of many ounces and pounds of drugs for just a few hours from our bosses in Mexico, then carry them the couple miles necessary to cross into the United States, and then return the drugs to the folks who are paying us for our trouble.

My friend wanted me to talk to the guy who was kind of in charge of the place. This man realized I spoke English well and presented myself decently, and the first thing he did was hand me a baggie with a decent amount of crystal meth. He literally handed me drugs, and then offered me cash for walking across the border for him.

From my vantage point now, it is astonishing to me that I agreed to something that I was certain would get me sent to prison. I had a previous federal felony, and I was pretty sure that I'd be searched at the border. But that night, I didn't think about the risk. I can truthfully say that my thinking was badly compromised-- from being high, from feeling scared and desperate for a very long time, from living a life in constant crisis, and from the thousand small, daily erosions of my integrity, my values, and my good sense. But as true as that is, it's just as true that I felt alone and scared on the streets, and a friend invited me to go with him to Mexico, and introduced me to someone who gave me free drugs, let me stay indoors, and offered me a chance to make some money. I felt important. I felt included. And frankly, I felt grateful. Under those circumstances, and in my state of mind, a foolish idea seemed reasonable, a dangerous idea seemed logical, and a really bad decision seemed like a pretty good option.

My soon-to-be boss gave me some ground rules for working with him. Do not ever tell anyone

what I'm doing, not even friends. That puts a target on me, and on the place where I work. But if I recruit anyone else and they work out, he'll pay me in cash. (We didn't discuss the contradiction in doing both those things.) Do not ever discuss how much I was getting paid with anyone else. He told me he'd pay me $100.00 per pound, and made it sound like that was better than he was paying others. And I believed him. Finally, he told me "never give anyone your real name. Nobody needs to know who you are."

Homeless drug addicts are great mules. We don't judge, we are satisfied with shockingly little money, we blithely put ourselves at great risk of injury and arrest, and we don't know enough to give useful information to law enforcement. If we are arrested, we are forgotten and the comparatively small amount of drugs we carry is simply written off as part of the cost.

To the people who hire us, we are an extraordinarily cheap way to ferry drugs across the border. It is no surprise that we are recruited and used in this way by the cartels. To them, we are worthless junkies. If we're willing to put our freedom at risk just to get high, then why not give us what we want?

I crossed that night, and the money was easy. A couple hundred dollars is not very much money for the amount of drugs I carried, especially not compared to the amount of money my boss made from selling it. But for me, coming up on a hundred dollars took a great deal of time and effort. In comparison, this was a walk in the park.

From the perspective I had, I couldn't say if I was working for a cartel cell, or for an independent operation that bought their drugs from the cartels. The man I worked for sometimes said things that suggested he was a rising star in a cartel organization. Other times, he seemed to want us to think he was just a guy trying to get his little operation off the ground to make some money. Sometimes it seemed like he operated several similar cells. Sometimes it seemed like ours was his only, the first in what he hoped might someday become a major operation. Giving conflicting, contradictory information is part of how someone who runs a cell keeps from being identified.

I was not privy to any significant amount of information, and my Spanish is so poor, I can only

sometimes make out bits and pieces of conversations I'm hearing, and then, only if I'm lucky. But I heard from other mules that some of us were sent across as decoys, or more accurately, as sacrificial lambs. I couldn't ever figure out if who gets caught and who gets through was purely random, and if the people who ran things made decisions using a kind of ad hoc, operational calculus, a ratio of how many people they had to send across to yield a certain amount of drugs on the other side, or if these things were arranged much more deliberately, and that on any given day, a certain number of specific people were sent across in order to be caught. I can see good reasons why the guy I worked for might want that to be ambiguous. It made people anxious to stay on his good side, but at the same time, people couldn't really blame him or be angry with him if they got caught. And if people were certain that he was sending people to get caught, everyone would quit, unless they were very sure it would never be them.

The line that leads into the pedestrian port of entry into the United States stretches back anywhere from a several blocks to more than a mile. Along the way, Mexican border patrol agents stand at points along the line, and there are a some police and military vehicles parked along the way. Along the way are several small shops, selling food or souvenirs, a couple of pharmacies for last minute purchases, and a duty free shop which does a big trade in cheap cartons of cigarettes and tequila. The pedestrian line runs right next to the thick tangle cars clawing their way to the border. Peddlers carrying goods or pushing carts dart in and out of the cars, and also park next to the pedestrian line to chat and make some money there.

The port of entry building is secured by a gate with armed American officers who wave people in one at a time through a gated turnstile. Passing this gate marks entry into the United States. Once you enter this area, you walk several yards to the entrance of the building, passing cameras and, I suspect, a other sensors scanning for all manner of dangerous and contraband items. Upon entering the building, you immediately choose between several lines leading up to a bank of counters staffed with Customs and Border Patrol agents who check identification documents, inquire about anything you might be bringing

across, and ask you a number of questions about why you're going to Mexico, or what your business in the United States is. The agent either passes you through, and then, after sending any bags you're carrying through an x-ray machine, you exit the building into San Diego, or you're sent into secondary inspection to be searched more thoroughly and have someone go through your bags by hand.

I know that my boss had eyes and ears on the line. He once told me that he always has people watching the line-- watching out for us, is how he put it, to alert him potential problems so he could protect us. Apparently, he also had eyes inside the heavily guarded and highly secure port of entry building.

One time when I crossed, I got into a lengthy conversation with the border agent. We must have chatted for about five minutes before he passed me through. There wasn't anything wrong. It turned out he had lived in the city where I was born, and he felt like talking for a few minutes. Later, my boss asked why the border agent held me for so long. Maybe the interaction was filmed (though use of cameras or phones is forbidden in that area), or maybe he got a report about it from someone-- someone else in line who I didn't know? Someone who worked in the building? I suspected, though, that he wasn't all that worried about whatever it is I might have talked about with the agent as much as he wanted me to understand that he was always watching, at least while I was holding his product.

On another night, I was waiting to go cross and sharing a cigarette with a young man from Bakersfield, 22 or 23, who somehow wound up homeless in Tijuana and who was doing the same thing I was. He had a good rapport with our boss, sometimes almost like a protege. I was waiting for a ride to the border to cross, and Bakersfield was waiting to go on a run later in the day. He approached our boss because he wanted to go right then. The truth was, he needed some money, and fast, and so he was anxious to do this. They got into a very brief but very intense argument. "Just gimme the shit and let me cross!" Bakersfield said. He wanted to go right then, not even with the group. "I don't wanna cross with a bunch of fools. That's a bust. Lemme just go do this." Our boss got mad. "Oh. You think you know how

to do this? You think you can do it better than me?"

The upshot was that Bakersfield got his way and was sent right then across the border. While he was packing to go, the boss told me "stay back and go on the next run." I had things I wanted to do in the States so I said "Can I still go now? I'll pay for my own taxi to get there." He said, "no, just wait. Trust me. You'll be glad." Everyone in that run got arrested. Later, when my boss sent me, I crossed without incident.

I have no idea for sure what my boss meant when he said "trust me." Perhaps he was just telling me to relax, that he was in charge, not me. Or perhaps he was showing me what happens to people who work for him who don't behave.

I know that on any given day, and probably in any given hour, substantial amounts of illegal drugs are making their way across the border, by individuals who purchased drugs for themselves, by human drug mules working for various criminal organizations, and hidden in cars, trucks, drones, boats and planes swarming their way from Mexico into the United States. And everyone involved-- the perpetrators of the trade and the Americans charged with stopping it-- know this very well. It may be that both sides are locked in a pitched and relentless struggle, with one side innovating ever better methods and while the other pours vast resources to respond. It may be that when this much money is involved, that drugs and people will find a way north across the border. Or maybe things have been going on as I experienced them for a fairly long time, and that the current situation not so much a fierce cat and mouse as it is a kind of homeostasis, perhaps the result of some kind of arrangement which may or may not include graft, corruption and outright cooperation so that that CBP makes arrests and satisfies their obligations, while huge amounts of drugs continue to flow into the United States. I don't know. I know that the cartels make hundreds of millions, even billions, through this trade, and that this revenue is important to Mexico, and to other economies in Latin America. It must be important to certain government officials in those countries. I have no idea what this money might mean to the United States.

On the day I was arrested, I was caught with 3.06 kg of crystal methamphetamine, wrapped in thin sealed, airtight plastic slabs, strapped tightly to my back, torso, and upper thighs. I never handled the drugs myself. The packs were taped onto me, and I never had any clear sense of the weight I was carrying. I crossed a few times, and always carried what looked like the same amount-- two pounds, I thought, at $100.00 per pound. After I was arrested, it turned out I was carrying over three kilograms, or almost 7 pounds, of crystal meth.

On the day I got arrested, the line to the border was moving very quickly, and it only took me about 15 minutes to get to the port of entry. As I made my way to the border agent, a uniformed officer standing against a far wall was scanning the crowd. As she saw me approach one of the counters, she rushed over to that station. As the agent waved me through, she came up and said "Wait! Wait! Search him!" The agent looked at me, rolled his eyes, and said "Could you put your hands on the counter please." He did a quick pat down, my shoulder, a hand lightly down my back, brushed my hips and outer thighs and said "OK sir, you're good to go." And she said "No! No! Do it again!" This time he ran his hand more carefully down his back and felt a package strapped to my back and asked "what's that?" "I hurt myself moving some boxes last week," I answered. "This is a brace." He looked at the woman-- his supervisor, I guessed-- and she smiled. "Yeah, I bet. Send him to secondary."

This was, effectively, the end of my possible affiliation with the cartel. I say "possible" because I don't know who I worked for, if I was a part of a cartel cell or if I was working for an independent start-up shop, if what I think I saw and understood was real, or imagined, or a story I was told. And I have no idea if, on the day that I was arrested, I was sent to get caught, or if, in the game of Russian roulette I was playing with my life, the bullet was finally in the chamber. All I know for sure is that my arrest was the end of my relationship with the cartel (although if I believe everything I hear, then nobody whose ever involved is every fully free) and the beginning of my relationship with the federal criminal justice system.

VI
American Justice

Much attention is being paid to systemic inequities in federal drug law that have an outsized impact on black and brown people. President Biden came under considerable fire during the early primary debates about his role in authoring much of the current law which resulted in a mass incarceration of people of color. 70% of all federal prisoners are non-white, and 48% of them are convicted of drug offenses. As an American of Mexican and Japanese descent, and as a person who, professionally and personally, has a long commitment to working toward racial equity, I believe such attention is long overdue. There are bills making their way through Senate committees right now which seek to reform mandatory minimum sentences for non-violent drug offenses.

In broad terms, it's possible to see my story as part of a larger narrative of racial inequity resulting from overly harsh punishments for non-violent drug offenders. But I think there's a somewhat more nuanced story to be told, the story of pedestrian drug mules arrested and charged in the Southern District of California, the federal district for San Diego and the San Ysidro Port of Entry. To be sure, many of us are non-white, but by no means all, and all of us face very harsh punishment for a non-violent drug offense. But it seems to me that it is our indigence, our homelessness, that is a key factor in how we get caught up in this crime in the first place, and then, in how we are charged and prosecuted within the federal system.

Pretrial Detention: The first determination the court makes is whether or not a defendant is eligible for pretrial release. It probably goes without saying that defendants who are professionals and homeowners are usually released while their case proceeds, sometimes with only their signature as security, while blue collar workers, people on a fixed income, and renters face somewhat more difficulty securing pretrial release, and it usually involves putting something up as a surety. The indigent are generally not granted pretrial release. There are, of course, other issues involved, but the fact of the matter

is that the amount of assets a person has is directly correlated with their eligibility for pretrial release. Other factors a magistrate might weigh include family, social connections and "substantial ties to the community"; current and recent employment; whether or not the defendant has a fixed address; and their criminal history. A cursory glance at a homeless person's criminal background-- a list of arrests and citations which might take up several pages-- looks very bad. You have to look closely to see that the crimes are almost all misdemeanor, and very minor, infractions. The metrics used to assess eligibility for release on bond almost all automatically excludes homeless people. Put plainly, indigent people are denied pretrial bond because we are indigent. This single determination has great bearing on the eventual outcome of a defendant's case. By being held in detention, we experience much more difficulty navigating our way through this system, communicating with our attorneys, and participating in our own defense than people who are granted pretrial release.

Base Offense Level & Criminal History Category: The charging and sentencing of non-violent drug offenses is under a great deal of scrutiny right now. All federal felonies are assigned a "base offense level" from 1 to 43, to create a "sentencing table" where the severity of criminal offense (defined by the base offense level) is considered along with the defendant's "criminal history category" (from category I to category VI), such that a person who's never run afoul of the law likely receives a significantly lower sentence than a serial offender, even though they are both charged with the same crime. The intent behind this table is entirely reasonable. (See Figure 1: Federal Sentencing Chart.)

I attempted to bring 3.06 kg of crystal meth into the United States. The base offense level for importing 1.5 kg to 4.5 kg of crystal meth into the United States is 38, only five points lower than the highest possible offense level. On the sentencing table, this crime is in the 88th percentile. Drug couriers who are caught in cars, trucks, boats, and planes carry substantially greater amounts, but their offense level is only two points higher.

Pedestrian drug mules, people who conceal drugs on their person and attempt to walk across the

FIGURE 1

SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
Zone A	1	0–6	0–6	0–6	0–6	0–6	0–6
	2	0–6	0–6	0–6	0–6	0–6	1–7
	3	0–6	0–6	0–6	0–6	2–8	3–9
	4	0–6	0–6	0–6	2–8	4–10	6–12
	5	0–6	0–6	1–7	4–10	6–12	9–15
	6	0–6	1–7	2–8	6–12	9–15	12–18
	7	0–6	2–8	4–10	8–14	12–18	15–21
	8	0–6	4–10	6–12	10–16	15–21	18–24
Zone B	9	4–10	6–12	8–14	12–18	18–24	21–27
	10	6–12	8–14	10–16	15–21	21–27	24–30
	11	8–14	10–16	12–18	18–24	24–30	27–33
Zone C	12	10–16	12–18	15–21	21–27	27–33	30–37
	13	12–18	15–21	18–24	24–30	30–37	33–41
Zone D	14	15–21	18–24	21–27	27–33	33–41	37–46
	15	18–24	21–27	24–30	30–37	37–46	41–51
	16	21–27	24–30	27–33	33–41	41–51	46–57
	17	24–30	27–33	30–37	37–46	46–57	51–63
	18	27–33	30–37	33–41	41–51	51–63	57–71
	19	30–37	33–41	37–46	46–57	57–71	63–78
	20	33–41	37–46	41–51	51–63	63–78	70–87
	21	37–46	41–51	46–57	57–71	70–87	77–96
	22	41–51	46–57	51–63	63–78	77–96	84–105
	23	46–57	51–63	57–71	70–87	84–105	92–115
	24	51–63	57–71	63–78	77–96	92–115	100–125
	25	57–71	63–78	70–87	84–105	100–125	110–137
	26	63–78	70–87	78–97	92–115	110–137	120–150
	27	70–87	78–97	87–108	100–125	120–150	130–162
	28	78–97	87–108	97–121	110–137	130–162	140–175
	29	87–108	97–121	108–135	121–151	140–175	151–188
	30	97–121	108–135	121–151	135–168	151–188	168–210
	31	108–135	121–151	135–168	151–188	168–210	188–235
	32	121–151	135–168	151–188	168–210	188–235	210–262
	33	135–168	151–188	168–210	188–235	210–262	235–293
	34	151–188	168–210	188–235	210–262	235–293	262–327
	35	168–210	188–235	210–262	235–293	262–327	292–365
	36	188–235	210–262	235–293	262–327	292–365	324–405
	37	210–262	235–293	262–327	292–365	324–405	360–life
	38	235–293	262–327	292–365	324–405	360–life	360–life
	39	262–327	292–365	324–405	360–life	360–life	360–life
	40	292–365	324–405	360–life	360–life	360–life	360–life
	41	324–405	360–life	360–life	360–life	360–life	360–life
	42	360–life	360–life	360–life	360–life	360–life	360–life
	43	life	life	life	life	life	life

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border, usually carry an amount below 4.5 kg. More than that requires a vehicle. If my story is any indication at all, a disproportionate number of pedestrian drug mules arrested in the Southern District of California are like me: impoverished, often homeless, and badly addicted.

As a frame of reference to understand the severity of the offense level assigned to the importation of drugs, I turn to the *U.S. Sentencing Guidelines Manual.* The base offense level for embezzlement is 7. The offense level for alien smuggling (bring undocumented immigrants into the country illegally) is offense level 12. Promoting prostitution is at a base offense level of 19, <u>if the offense involved a minor</u>"* (emphasis mine), half as severe as importing crystal meth. The unlawful possession, receipt or transportation of firearms has a base offense level of 24, 26 if it is semiautomatic. These crimes come in at more than 10, 20 and 30 points lower than the crime I am charged with.

The facts in Ramos v United States describe defendants who "held, housed and harbored hundreds of migrant workers, who were poverty stricken, uneducated, and unable to speak English. [They] used threats to prevent the migrant workers from leaving their employment, housed the migrant workers in abysmal conditions, kept the migrant workers under surveillance, and kept the migrant workers in debt for the duration of the harvesting season."** According to the procedural history of this case, "[t]he initial base offense level for an offense involving involuntary servitude,... was set at level 22. After several enhancements due to particularly heinous elements of the crime, the total adjusted offense level was set at 30.

The base offense level is a number assigned to the specific charge, and then the particular elements of the specific crime and the characteristics of the individual charged with committing it are taken into account, resulting in various downward or upward departures and variances, which then result in an adjusted offense level. So in the end, a drug courier like me might start at base offense level 36, but

* *U.S. Sentencing Guidelines Manual,* 18 U.S.C.S. App. § 3G1.1 (LexisNexis, Lexis Advance through Public Law 116-282, approved December 31, 2020, with a gap of Public Law 116-260)

** This, and the succeeding quote, are in "Factual and Procedural History" in the "Report of the Magistrate Judge Following Evidentiary Hearing," *Ramos v. United States,* No. 06-14162-Civ-MOORE, 2009 U.S. Dist. LEXIS 151764 (S.D. Fla. Aug. 4, 2009)

can wind up at an adjusted offense level of 28. But in federal statute, the act of bringing anything between 1.5 – 4.5 kg of meth into the United States is scored to start as significantly worse than exploiting hundreds of migrant workers, housing them in "abysmal conditions" and using surveillance and threats of physical harm to keep them in servitude, and committing additional felonies, including violent ones, in the process, even after that charged is maximally enhanced. And after the specific details of both crimes and both defendants are taken into account, they wind up at more or less the same level of severity

I found this particularly striking since the Thirteenth Amendment to our Constitution bans peonage and servitude, and as a society, we continue to pay a price for our nation's history of chattel slavery. I wondered how a person might be charged and sentenced if they purchased a human being and held them in slavery for several years. Headnote 19 of *United States v. Dann,* 652 F.3d 1160 (9th Cir. 2011) explains that "...*U.S. Sentencing Guidelines Manual § 2H4.1,* [governs] Peonage, Involuntary Servitude, Slave Trade, and Child Soldiers. The base offense level is 22. The offense may be subject to a three-level enhancement if any victim was held in a condition of peonage or involuntary servitude for more than one year..." If I were to hold a person in slavery, against their will, for more than a year, that would be at a base offense level of 25, eleven points lower than bringing 3.06 kg of crystal meth into the United States.

Other crimes which are scored significantly lower than drug importation include arson, bank robbery and providing material support to global terrorist organizations.

We're not comparing apples and oranges. We're comparing one set of illegal activities against others, some of them acts many would regard as reprehensible. It is difficult to know how to compare and rank criminal, often heinous acts, and yet, this is what assigning a numerical offense level does: It creates a hierarchy of the severity of criminal conduct as a tool in the sentencing of such conduct. It is worth noting that many of the drug couriers charged in the Southern District are indigent, impoverished, and desperate, and that this might be a reason why this crime is charged so severely. Homeless people are not

particularly compelling, attractive or sympathetic. We are already seen a criminal and dangerous. Who will advocate for us in this matter?

Addiction destroys lives, tears families apart, and communities suffer the consequences. It is an ugly, violent business. The criminal organizations behind the manufacture and importation of these drugs ought to be held culpable, as should the individuals who organize their operations and who profit richly from destroying lives. They are predators. But by charging drug importation so heavily, especially at the weight that most pedestrian drug couriers carry, federal sentencing law takes aim at the drones and worker bees, at people who are indigent, impoverished, and desperate, who become mules precisely because we've destroyed our lives through our drug use. We are responsible for our actions, but our punishment should be just and measured.

The base offense level defines the severity of the charge on the sentencing table. From this, a defendant's "criminal history category" from category I to category VI is determined. Taken together, both numbers-- the base offense level, and the criminal history category, determine the recommended sentencing guideline range for a particular defendant charged with their particular crime.

I have a criminal history category of VI, the highest category. This suggests that I am among the most serious criminals and that I deserve the severest penalties possible for my crimes. As I mentioned, the criminal conduct used to calculate my criminal history score took place within two years, from 2018 when I became homeless to 2020 when I was arrested for this charge, and consists of low-level offenses consistent with homelessness. I don't believe that my criminal history score fairly reflects the person I am, or the severity of my criminal conduct. But it does illustrate how the scoring effectively penalizes indigence.

The scoring used to calculate criminal history category gives undue weight to petty crimes and minor infractions because of their number and how recently they happened. Some of the men I am housed with have lived their adult lives involved in serious criminal activity and have served substantial amounts of

time in prison. Some even regard their criminal reputations and the length of prison time they've served as marks of pride. And many have a criminal history category lower than mine. Because I am guilty of low level infractions committed within a two year period, I accumulated more points than people guilty of violent felonies sentenced to lengthy sentences in state prison.

My point is that the nature of living is homeless in a place intent on prosecuting it is that indigent people will have frequent police contact, and that, in the eyes of the federal criminal justice system, a series of minor infractions associated with homelessness is equivalent to serious, even violent felonies. Indigent defendants guilty of low level criminal behavior who serve jail terms of days or weeks can have criminal history scores as high or higher than people convicted of far more serious crimes sentenced to far longer prison terms.

To give a hypothetical example, a person sentenced to five or seven years in prison for a crime such as home invasion or commercial robbery, crimes that involve serious threat, damage or injury to people or property, scores three points. A homeless person stopped and questioned by a police officer, and from that single encounter, receives three citations for things like loitering, trespassing, encroachment or possession of drug paraphernalia. Each citation scores one point. In one single encounter with the police, a homeless person can score as many points as a person sentenced to many years for a much more serious crime, even if that encounter resulted in very little jail time. Paradoxically, because the serious felon is incarcerated for several years, for that period of time, they do not garner additional points, while a homeless person is likely to be cited again, and frequently, within very short intervals.

In my case, I accumulated 15 criminal history points in two years, which put me at Category VI, while others I'm detained with who've been in prison for many, many years have between 6 to 10 criminal history points, putting them in categories III, IV and V. It is certainly right that all criminal behavior be taken into account by the federal courts when sentencing those of us convicted of crimes, but it's a curious algorithm in which a person guilty of very serious felonies and sentenced to lengthy prison terms scores

fewer points than a homeless person guilty of petty infractions who has served only weeks or months in custody.

Right to Counsel: People who cannot afford their own attorneys are assigned counsel by the court, and I was assigned an attorney from the firm Federal Defenders, the largest federal criminal defense organization defending people without the ability to pay. Naturally, they defend the bulk of indigent federal defendants. I have great respect for the work they do, and for their long record of advocating on behalf of poor people seeking justice in the federal criminal courts. Nonetheless, I experienced issues of concern, and I believe that what I experienced was not unique.

In response to the threat posed by COVID, Federal Defenders instituted a policy whereby their attorneys did not meet in person with their clients, not even in "no-contact visitation" where defendants were separated from attorneys by a glass barrier. Presumably, this was because their attorneys did not want to enter potentially infectious places like detention facilities. All of my conversations with my attorney took place on a phone in the common room of a housing unit, where other inmates were sitting within two or three feet of me, and could easily hear what I was saying. It was neither safe nor advisable for me to discuss specific details of my crime, or of my life.

In the federal criminal courts, the vast majority of cases are settled through plea agreements. Since most of our cases will never go to trial, the plea process becomes central to the disposition of our cases. Once we are offered a plea by the prosecution and agree to it, we plead guilty in court pursuant to the terms specified in the agreement which we've already signed. The terms of the agreement determine how a defendant is charged, and often carry weight in how we're sentenced.

I did not speak to my attorney confidentially at all prior to signing my plea. I saw my attorney in person for the very first time right before my change of plea hearing. We spoke in the courtroom in the presence of court staff, various Assistant U.S. Attorneys, other criminal defendants and their counsel. Since we were masked and maintained a distance of approximately six feet, it was necessary to speak

loudly enough to be heard not only by each other, but by the others in the courtroom. The ability to speak confidentially with an attorney is an important element of the constitutionally defined right to counsel. In my case, I don't know if what I would have disclosed to my attorney might have had an impact on the plea agreement I was offered or on outcome of my case, but I will never know. I believe I should have been given the opportunity to speak candidly with my attorney at a stage when it might have been helpful in my plea negotiation.

Detention facilities were the sites of many COVID outbreaks, so it is understandable why defense attorneys were disinclined to visit their detained defendants, or to spend hours in close quarters reviewing the plea document in person. Courts deemed it acceptable for attorneys to discuss plea agreements over the phone, and to secure a "telephonic signature" from a defendant, their verbal consent given over the phone.

In the detention facility where I was housed, I observed that other defendants were hearing of their plea agreement for the first time, discussing it with their attorney, and then agreeing to it in the course of a single phone conversation. I found this startling, so I made a point of asking my attorney to send me the document at least a day before we spoke so I could read it for myself before we discussed it on the phone. I also told her I wanted to sign the plea for myself, not via telephone, and mail it back to her. I was grateful when I received a copy of my plea agreement in the mail, along with a stamped return envelope for me to return the document to her.

I spoke with my attorney on the phone at length about the plea, and noted areas I wanted to explore further in the law library of the detention facility. I was surprised when, at the end of our discussion, my attorney asked me to "sign" it right then. I reminded her that I had asked to be able to sign it for myself and return it to her by mail, and she said I had to agree immediately or I would lose the deal. I asked if I could at least have a single night to think it over and was told that I could not. At her insistence, I finally acquiesced, but immediately after hanging up, I called her right back. She did not

answer, so I left a lengthy message telling her "what you did was not right, and you know it. I made a specific request well in advance of our discussion today, and you deliberately ignored what I wanted."

In the end, I am guilty of the crime. I don't doubt in retrospect that I would have signed the plea if given more time. But I don't think it is wrong of me to wish I had been treated with a little more dignity and respect. There's little value in raising this here, except that I think it's an issue that could stand further attention. Many of us in detention during this time felt pressured by our attorneys to sign our plea agreements, and unlike me, most never even saw the plea document until after they'd agreed to it over the phone.

I do not fault Federal Defenders for their concern for their health, or the health of their clients. But it strikes me that certain things ought to be essential and guaranteed, even during a pandemic-- the right to speak confidentially with my attorney, the opportunity to describe freely what I did and why, the ability to think through my plea agreement before agreeing to sign it-- were not assured or protected, at least not for me, and, I think, not for other defendants who were indigent and held in detention.

Had I appeared before the court as a working professional, had I had an attorney I was paying, or had I not been held in federal detention, I probably would have been able to have private conversations with my attorney, and I might have been allowed to take some time before signing my plea. While I have concerns over certain decisions Federal Defenders made, my main point is about the influence income, status and privilege have within this system, even with regard to the largest criminal defense organization that advocates for the rights of working poor and indigent criminal defendants.

I fear that some playing fast and loose with basic procedural fairness is permissible when a defendant is indigent and addicted because we are often unable to articulate what we experience and are usually ill-equipped to advocate for ourselves.

I do not consider myself ill-equipped to advocate for myself. I have a good education, a long professional career, and I am not timid about articulating my concerns or asserting myself. I tried to find

appropriate ways to have my concerns addressed as they were taking place, but I could not find an effective mechanism.

When I spoke to my attorney, she became angry and defensive. I wrote my concerns in a letter to her and copied her supervisor, but felt after that I was being regarded as a problem client, and her supervisor took to sitting in on our various "meetings," which did little to improve the quality of our communication. None of the concerns I raised were addressed. And there was no other place I knew of to lodge a complaint. (Keep in mind that in detention, we do not have access to the internet, and are not able to research how to address such concerns most effectively. No resources are posted or available to detainees having concerns about their attorneys at the facilities where I was held.)

Cookie Cutter Plea Agreements: Since most pedestrian drug couriers held in pretrial detention face substantially similar charges, it is not surprising that our plea agreements are substantially similar. What is discomfiting is that the pleas are not merely similar, they are identical. If you place our plea agreements side by side (which I have) they match up entirely. It's difficult to imagine that they result from any meaningful negotiation between the parties when most of us receive the exact same agreements. (That there are no real, substantive negotiations for pedestrian drug couriers might explain why my attorney did not seem particularly interested in hearing what I might say if given the opportunity to speak confidentially to her. It wouldn't have mattered.) The agreements are clearly boilerplate, drawn from a template, and are designed for categories of offenders rather than individual defendants. Many of our plea agreements differ only in the "Superseding Information" and "Factual Basis" sections, and there's not even an attempt to delete parts of the template that are clearly inapplicable to specific defendants.

This isn't surprising, since, as I said above, we are guilty of substantially similar crimes. But more to the point, we are also substantially similar in our poverty and addiction, and so I think it's worth at least considering whether the cookie-cutter plea agreements given at least to pedestrian drug mules might also reflect that in the eyes of the U.S. Attorneys who prosecute us, we are virtually indistinguishable from one

another. Certainly we're treated this way.

Homeless people are, in a sense, victimized twice. First, as desperate drug addicts who've destroyed our lives, we are easy prey for the cartels to exploit. Then, once arrested, we are treated as though we are among the worst offenders within the federal criminal system. Our rights are disregarded, and our voices not heard-- largely because of our indigence. We are are processed as though on an assembly line, and receive the same exact plea agreement as the indigent drug mules before us and after us.

The set of likely outcomes for severe, unremmitent addiction is predictable. I am an intravenous crystal meth user, and once homelessness and criminality enter, the road I am on leads to several destinations that are much more violent and far uglier than appearing before a federal judge and being sentenced to prison. I count myself lucky that I wound up in a federal detention facility instead with me trying to survive a permanent disabling injury due to an assault, or being killed violently and left dismembered in Mexico, or becoming so badly damaged by trauma and drug use that I'm lost in psychosis on the streets of downtown San Diego or in Tijuana.

As of this writing, I have been clean and sober for over a year. Had I stayed on the streets, I probably would have continued doing exactly what I was doing, or maybe I would have moved on to something even more dangerous. Instead, I am clean and sober. And if I have built a foundation on which to build a lifelong recovery, then I will owe everyone related to my arrest a debt of gratitude. This includes, I suppose, even the people who hired me to commit the crime for which I was arrested, as well as the people who arrested, prosecuted, defended and judged me. But any personal gratitude I might owe, while real, is beside the point.

Because of highly unusual circumstances brought about by the COVID pandemic, I've been awaiting sentencing for far longer than would be typical. In addition, the new presidential administration

has clearly signaled its desire to address systemic inequities in federal drug law. In my case, what this meant was that when the new leadership in the Justice Department took over and a new U.S. Attorney took the lead in San Diego, a great many people like myself who were facing a mandatory minimum sentence of five years received revised plea agreements in which there is no mandatory minimum sentence, and I may now receive a sentence of three to five years, rather than the ten or twelve years I was told to expect many months back. But that does not address the fact that the set of factors which push homeless drug addicts into drug muling still exists, and that indigence, in the federal system, is still unfairly penalized.

The nexus between homelessness and criminality is complex. And homeless people in the border region of San Diego and Tijuana wind up there for a variety of reasons ranging from the profoundly personal, to reasons that emphatically political, and even because of global economic and political factors far beyond the ability of the impoverished at the border to address.

Homeless people are as much a part of this country, it's history, and it's political life as the immigrant, the refugee, the homeowner, the farmer, the businessman, or any of the other archetypes in our national mythology.

Addicted, criminal, psychotic, and dirty: homeless people are seen as a risk to public health and public safety. Homelessness is no longer merely regrettable. It has become understood as a profoundly pathological state of being, and homeless people are among the most stigmatized, most marginalized in our society.

For those of us who found our way to TJ and were recruited as drug mules, we are seen by the people who hire us as cheap labor and worthless junkies, expendable and disposable. And then, once arrested, we are (by definition, existentially) without social connection and without resources, and yet, paradoxically, are treated as among the most serious criminals guilty of the worst possible crimes. We aren't important to anyone. That's why how we're treated in the federal system seems so out of proportion

not just to our place in the world, but also to our place in the criminal enterprise in which we are involved.

And yet, it doesn't. From another perspective, we are treated this way in the federal system precisely because we are "the least of these," because, in a sense, we can be. We are not sympathetic, attractive, or compelling. We do not have champions or advocates willing to take up our cause, and we are without the ability-- the means, the connections, the resources-- to do so for ourselves.

While there are certainly homeless people who choose to be homeless, not because of mental illness or addiction, but simply because it is a way of life they prefer, the majority of homeless people I know do not love it as a way of life. I am not arguing for "homeless pride," nor am I suggesting that homeless people be allowed to live any way we choose. (Though for those who aren't breaking the law in any way other than by being homeless, why not? There was a time in this country where somebody could choose to live this way unmolested, where people chose to live and let live.) I am arguing rather that as a society, we step away from stigmatizing homelessness and step toward remembering and recognizing homeless people and valuing their lives. Our lives.

Homeless people may not have homes or jobs, but we are still citizens. We may be unwashed, but we still have rights. We may be badly addicted and prone to criminal behavior, but we are still human beings worthy of fundamental respect.