No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ROLANDO MULET,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to 18 U.S.C. section 3006A and Supreme Court Rule 39, the Petitioner, Rolando Mulet, asks for leave to file his Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit without pre-payment of fees or costs and to proceed in forma pauperis.

The Petitioner was represented by counsel appointed pursuant to 18 U.S.C. section 3006A in the district court and on appeal to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

By: */s/Manuel Casabielle*
Florida Bar Number 353213

Date: June 25, 2018

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C.J.A. Counsel for Petitioner

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IN THE

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ROLANDO MULET,

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On Petition for Writ of Certiorari to the

United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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C.J.A. Counsel for Petitioner

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QUESTION PRESENTED

Whether or under what circumstances the Fifth Amendment's Self-Incrimination Clause protects a defendant's refusal to answer law enforcement questioning before he has been arrested or read his *Miranda* rights.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Rolando Mulet, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit in this case.

DECISION BELOW

The opinion of the court of appeals in unpublished, but it is attached as App. A.

JURISDICTION

The Eleventh Circuit entered judgement in this case on May 27, 2018. No petition for rehearing was filed. This Petition is being filed within 90 days after entry of the judgement below, so it is timely under Rule 13.1. The jurisdiction of this Court rests on 28 U.S.C. section 1254.

RELEVANT CONSTITUTIONAL PROVISION

The Fifth Amendment states in relevant part "No person ... shall be compelled in any criminal case to be a witness against himself."

STATEMENT OF THE CASE

This case presents a fundamental and recurring question of constitutional criminal law over which federal courts are openly and intractably divided. The Eleventh Circuit held here that a pre-arrest, pre-*Miranda* exercise by the Petitioner of his right to remain silent could be used by the prosecutors in their case in chief, regardless of whether the Petitioner testified.

The Petitioner, and others, were charged with conspiring to defraud the United States through fraudulent marriages entered into for the purpose of interfering with and obstructing the United States Citizenship and Immigration Services in the administration of U.S. immigration laws. The Petitioner was also charged with unlawfully encouraging aliens to reside in the United States illegally.

From 2009 to 2014 the Petitioner and his common law wife, a co-defendant/co-conspirator, ran a business that arranged fake marriages for aliens with Cuban legal residents. By marrying a Cuban resident, the aliens could quickly qualify for legal permanent residency in the United States. At trial co-defendants, who had agreed to cooperate, testified about the Petitioner's involvement in the conspiracy. The prosecutors also introduced at trial three consensually recorded conversations, at least one of which included the Petitioner, and evidence seized from the Petitioner's business during a judicially authorized search.

While the federal agents were searching the Petitioner's business, the Petitioner and his common law wife arrived at the business. The lead agent, Mildred Laboy, confronted the Petitioner and his common law wife and advised each of them separately that the agents were there investigating marriage fraud allegations. When the Petitioner's wife was confronted and given a copy of the search warrant, she denied the allegations. When the Petitioner was confronted by Laboy and given a copy of the warrant he told the agent "he had nothing to say about that". At the time that this exchange took place the Petitioner was not under arrest and had not been *Mirandized.*

At trial the prosecutors, presented this exchange between the agent and the Petitioner during their case in chief. The Petitioner objected and moved for a mistrial. That motion was denied. The Petitioner did not testify. The Petitioner raised this issue on direct appeal to no avail. The Eleventh Circuit stated:

> "We have previously stated that the government may comment on a defendant's silence under these circumstances. *United States v. Rivera*, 944 F.2d 1563, 1568 (11th Cir.1991). Even if *Rivera* was wrong, which we do not think is the case, we have no authority to overrule it. *Hazewood v. Found Fin. Grp., LLC,* 551 F.3d 1223, 1227 (11th Cir. 2008) ("[T]he holding of a

three-judge panel is the law of the circuit unless it is overruled (or undermined to the point of abrogation) by the en banc Eleventh Circuit, or the Supreme Court")."

This Petition follows.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari because the circuits are divided on whether, and under what circumstances, pre-arrest, pre-*Miranda* silence by a defendant can be used as evidence at trial.

The First, Second, Sixth, and Seventh Circuits prohibit the use of even pre-arrest silence as substantive evidence of guilt. *United States v. Okatan*, 728 F.3d 111, 120 (2d Cir. 2013); *Ouska v. Cahill-Masching,* 246 F.3d 1036, 1049 (7th Cir. 2001); *Seymour v. Walker,* 224 F.3d 542, 560 (6th Cir. 2000); *Coppola v. Powell,* 878 F.2d 1562, 1568 (1st Cir. 1989). The Ninth, Tenth and D.C. Circuits prohibit the use of post-arrest, pre-*Miranda* silence as substantive evidence of guilt. *United States v. Hernandez*, 476 F.3d 791, 796 (9th Cir. 2007); *United States v. Moore*, 104 F.3d 377, 389 (D.C. Cir. 1997); *United States v. Burson,* 952 F.2d 1196, 1200-01 (10th Cir. 1991). The Eleventh, Fourth, and Eighth Circuits permit the government to comment on a defendant's silence at any time prior to the issuance of *Miranda*. *United States v Rivera*, 944 F.2d 1563, 1568 (11th Cir. 1991); *United*

States v. Cornwell, 418 Fed.Appx. 224, 227 (4th Cir. 2011) (unpublished); *United States v. Osuna-Zepeda*, 416 F.3d 838, 844 (8th Cir. 2005). *See also United States v. Pando Franco*, 503 F.3d 389, 395 n.1 (5th Cir. 2008) (describing circuit split on this issue); *United States v. Wilchcombe*, 838 F.3d 1179, 1190 (11th Cir. 2016) (describing circuit split on this issue).

This Court once granted certiorari to resolve this issue in *Salinas v. Texas*, 133 S. Ct. 2174, 2179 (2013), but ultimately decided the case on other grounds, leaving the circuit split in place.

II. The Eleventh Circuit's decision not to address the Petitioner's appeal en banc, precluded reconsideration of the precedent established by *United States v. Rivera*, 944 F.2d 1563 (11th Cir. 1991), which was wrongly decided.

The Eleventh Circuit in *Rivera* cited in support of its holding that the government may comment on a defendant's silence if it occurred prior to the time that the defendant was arrested and prior to being advised of his *Miranda* warnings, the cases of *Jenkins v Anderson,* 447 U.S. 231 (1980) and *Fletcher v. Weir,* 455 U.S. 603 (1982). Neither case supports the holding in *Rivera.*

In *Jenkins* this Court held that when a defendant elects to testify at trial, "the

Fifth Amendment is not violated by the use of [a defendant's] silence *to impeach [his] credibility*." Id. at 238 (emphasis added). There are two related justifications for this rule, neither of which applied in *Rivera*.

First, the *Jenkins* impeachment rule is necessary to protect against, and to ferret out, perjury. As this Court has explained, "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury." *Harris v. New York*, 401 U.S. 222, 225 (1971). Second, the *Jenkins* impeachment rule "advances the truth-finding function of the criminal trial" by providing the jury with the probative evidence to assist it in considering the defendant's in-court testimony. *Jenkins*, 447 U.S. at 238. Neither of these considerations was present in *Rivera* because none of the defendants in *Rivera* testified.

Fletcher, similarly, cannot support the weight that *Rivera* placed on it. First, *Fletcher* was decided under the "fundamental fairness" standard of the Due Process Clause of the Fourteenth Amendment, and not under the Self-Incrimination Clause of the Fifth Amendment. *See Fletcher*, 455 U.S. at 607. Second, *Fletcher*, like *Jenkins* addressed the use of silence to impeach a defendant during cross examination, and not the use of silence in the government's case in chief.

This Court in *Griffin v. California*, 380 U.S. 609, 613 (1965) held that comments by the prosecution and instructions by the trial court of inferences which can be drawn from a defendant's failure to testify at trial violate the Fifth Amendment, even if the jury is also instructed that a defendant has a constitutional right not to take the stand. The Court explained that "[c]omment on the refusal to testify is a remnant of the 'inquisitorial system of criminal justice,' which the Fifth Amendment outlaws". *Id.* at 614.

A decade later this Court explained that "*Griffin* prohibits the judge and the prosecutor from suggesting to the jury that it may treat the defendant's silence as substantive evidence of guilt". *Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976); *See also United States v. Robinson*, 485 U.S. 25, 32 (1988) ("[w]here the prosecutor, on his own initiative asks the jury to draw an adverse influence from a defendant's silence, *Griffin* holds that the privilege against incrimination is violated"). Just as allowing the prosecution to comment on a defendant's failure to testify would penalize him for relying on his Fifth Amendment rights, so too would allowing the prosecution to comment on a defendant's earlier refusal to answer a police officer's investigatory questions. Put another way, when law enforcement officers question someone about his or her potential involvement in criminal activity, the individual has two choices: speak or remain silent. If

remaining silent creates evidence of guilt, then the right the Constitution grants him to remain silent is little more than a trap for the unwary. This is what happened to the Petitioner. When Petitioner was confronted by agent Laboy he could have denied the allegations, as his common law wife did, he could have said nothing, or he could have asserted his right to remain silent, which he did. Under *Rivera*, the later two options can be used against him as substantive evidence in the prosecutor's case in chief, while the former could be used as an obstruction of justice enhancement under the sentencing guidelines, or as a separate prosecution for violation of 18 U.S.C. section 1001.

For the reasons set forth above, there is no reason to protect the right to remain silent in the setting presented by this case any less than when invoked in trial.

III. This case is a good vehicle for addressing the question presented.

The Petitioner properly raised this issue at the trial level and preserved it for appellate review. The Circuit Court address the issue directly and felt that it was bound by their own precedent set by *Rivera*, which as set forth above was wrongly decided. *See Wilchcombe*, at 1193, (Judge Jordan concurring but stating that although bound by *Rivera*, "it reading of the Fifth Amendment is misguided").

CONCLUSION

For the reasons stated above the petition for writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically file with the Supreme Court Clerk of Court and ten copies, plus the original were mailed via U.S. mail to the Clerk of Court and a copy was serve via U.S. mail to A.U.S.A. Emily Smachetti, Chief, Appellate Division, United States Attorney Office, 99 N.E. 4TH Street, Miami, Florida 33132, this 25th day of June 2018.

By: *Manuel Casabielle*
Florida Bar Number 353213
C.J.A. Counsel for Petitioner

APPENDIX A

(OPINION OF THE COURT OF APPEALS)

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TO PETITIONER'S PETITION

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16400

D.C. Docket No. 1:15-cr-20579-JAL-2

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROLANDO MULET,
ODALYS MARRERO,
a.k.a. Tita,

Defendants - Appellants.

Appeals from the United States District Court
for the Southern District of Florida

(March 27, 2018)

Before MARCUS, FAY, and HULL, Circuit Judges.

PER CURIAM:

Rolando Mulet and Odalys Marrero appeal their convictions for conspiracy to defraud the United States, 18 U.S.C. § 371, and unlawfully encouraging an alien to reside in the United States, 8 U.S.C. § 1324(a)(1)(A)(iv). Mulet also appeals his total sentence. Both defendants argue that the district court deprived them of their constitutional right to present a defense by excluding evidence that they had little financial incentive to commit immigration fraud. Mulet further asserts that his right to remain silent was violated when the government elicited testimony that he had said he "had nothing to say." Mulet also contends that the district court erred by imposing a three-level enhancement under the Sentencing Guidelines and that his total sentence is substantively unreasonable. We conclude that the district court did not abuse its discretion by excluding evidence of Marrero and Mulet's legitimate business activities and that Mulet's argument regarding the comment on his right to remain silent is foreclosed by binding precedent. Even if the district court erred in assessing a three-level Guidelines enhancement, such error does not warrant reversal because his total sentence was reasonable. Accordingly, we affirm.

I. BACKGROUND

From 1999 until 2015, Marrero and Mulet owned and operated Tita's Tramite & Travel (Tita's), a Florida business that provided immigration services. In 2015, a grand jury returned an indictment charging Marrero and Mulet with

conspiracy to defraud the United States (Count 1) and unlawfully encouraging an alien to reside in the United States (Counts 7 through 12).[1] Specifically, the indictment alleged that Marrero and Mulet arranged fraudulent marriages between Cuban citizens and non-Cuban aliens in order to qualify the non-Cuban aliens for immigration benefits, including lawful permanent residency.[2]

Prior to trial, the government filed a motion in limine to exclude, in relevant part, evidence of the defendants' legitimate business activities. In response to the government's motion in limine, Marrero stated that she was "prepared to present evidence that Tita's Tramite & Travel was by and large a legitimate business" that "offered a wide variety of immigration services besides . . . marriage-based petitions," including "applications for employment authorization, applications for travel, applications to bring alien relatives to the United States, and naturalization applications." The district court granted the motion in part, finding that evidence of Marrero and Mulet's legitimate business activities was not admissible to negate the elements of the charged offenses.

At trial, the government presented the following evidence. Manuel Andres Gomez, Okyvi Olmar Yoll Mesa, and Natacha Perera Quintana—Venezuelan

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[1] Several codefendants were also charged with conspiracy to defraud the United States and marriage fraud, 8 U.S.C. § 1325(c).

[2] Under the Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161, a Cuban citizen may adjust his status to lawful permanent resident after living in the United States for a year and one day. The spouse of a lawful permanent resident Cuban may also adjust his status to lawful permanent resident. *Id.*

citizens who wanted to become lawful permanent residents—were told to contact Marrero and Mulet to "fix" their immigration statuses. Each of the aliens met with Marrero and Mulet at Tita's. Marrero told the aliens that she had been in business for a long time and that she "knew the tricks of the trade," "had people in Immigration," and had a lot of experience "getting [immigration] papers." She explained that the aliens could marry Cubans and that doing so would allow them to obtain "green cards"—cards given to lawful permanent residents. Marrero's price for arranging such a marriage ranged from $16,000 to $21,000.[3] Marrero also specified that all payments had to be in cash, and everything was to be discussed either in person with her or Mulet, or over the phone using code words.

Once the aliens made initial payments, Marrero introduced them to their future spouses, three Cuban citizens, whom the defendants procured and paid. The aliens subsequently "married" the Cubans, and Mulet notarized the marriage certificates.[4] Each couple had a wedding ceremony and reception, during which pictures were taken. In accordance with Marrero's instructions, the couples also took pictures in other places to make their marriages appear to be real. None of the marriages were legitimate.

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[3] Yoll paid the defendants $16,000, Perera paid between $18,000 and $20,000, and Gomez paid $21,000.

[4] No party to these sham marriages had any intention of having a real ceremony.

With Mulet's help, the aliens completed applications for permanent residency. To prepare for the immigration interviews, Marrero or Mulet gave the aliens and their Cuban spouses questionnaires to study. The questionnaires, which were 100 or more items long, listed questions that were frequently asked at immigration interviews, such as biographical information about each spouse. Gomez and his new wife also met with Marrero and Mulet two or three times to do mock interviews. Ultimately, only Perera obtained a green card; Gomez's and Yoll's applications were denied.

Gomez subsequently met with Special Agent Mildred Laboy, a criminal investigator for the United States Department of Homeland Security. Gomez "[came] clean" to Laboy and told her that Tita's was arranging marriages between Cubans and non-Cubans so the non-Cubans could obtain green cards. At Laboy's request, Gomez went to Tita's three times with a recording device and recorded conversations between himself, Marrero, and Mulet. During the first recorded conversation, Marrero offered to "fix [Gomez's] situation" in return for another $25,000. Gomez returned to Tita's twice more, attempting to have Marrero refund part of the money he had already paid. At the last meeting, Marrero was "very angry" and upset because Gomez had spoken to an attorney about his situation. According to Gomez, Marrero did not want others to know that he had made "this sort of a deal" with her.

Once Gomez completed the first recording, Laboy applied for and executed a search warrant for Tita's. After Laboy began searching the business, Marrero and Mulet arrived. Laboy provided them with a copy of the search warrant and told them about the allegations against them. Laboy testified that Marrero denied the allegations. The prosecutor then asked, "And as for Mr. Mulet, what did he say to you?" Laboy responded, "[H]e said he had nothing to say about that." Mulet objected and moved for a mistrial; the district court denied the motion.

After the government rested,[5] the defense called two character witnesses, who testified that the defendants were honest. Marrero also called Carmen Cabrera, who testified that she had met Marrero when her Cuban husband took her to Tita's to "try to legalize [her] situation and . . . to get married." Shortly thereafter, the government objected to Cabrera's testimony. During a sidebar conference, the defense proffered that Cabrera would testify that she had been Marrero's client, that she had returned to Marrero after she had a difficult time during her immigration interviews, and that she had communicated her experience to Marrero. Relying on its prior ruling on the government's motion in limine, the district court sustained the government's objection and stated that Cabrera could not testify as to particular services Marrero provided during the period of the

[5] At the conclusion of the government's case, the district court entered a judgment of acquittal as to Counts 8 and 11.

alleged conspiracy. Following deliberations, the jury convicted Marrero and Mulet of Counts 1, 7, 9, 10, and 12.

At sentencing, Marrero and Mulet objected to the assessment of a three-level enhancement based on the number of aliens smuggled, transported, or harbored, pursuant to U.S.S.G. § 2L1.1(b)(2)(A).[6] The district court overruled Marrero's and Mulet's objections. The defendants' resulting Guidelines ranges were 30 to 37 months' imprisonment. For both defendants, the district court imposed a 37-month sentence as to Count 1 and 48-month sentences as to Counts 7, 9, 10, and 12, all to run concurrently. The court noted that it would have imposed the same sentences even if its Guidelines calculations were erroneous.

II. DISCUSSION

A. Exclusion of Evidence

We review district courts' decisions as to the admission of evidence for abuse of discretion, but we review constitutional challenges de novo. *United States v. Rushin*, 844 F.3d 933, 941 (11th Cir. 2016). "[A] defendant's [constitutional] right to a fair trial is violated when the evidence excluded is

[6] Section 2L1.1(b)(2)(A) of the Sentencing Guidelines provides for a three-level enhancement if the offense involved the smuggling, transportation, or harboring of between 6 and 24 aliens. U.S.S.G. § 2L1.1(b)(2)(A). Aside from the evidence discussed above, the government presented evidence at trial that the defendants arranged a fourth sham marriage between a Cuban and an alien. At sentencing, Laboy testified regarding two more sham marriages that the defendants arranged. The district court credited Laboy's testimony and found that the offense involved the smuggling, transportation, or harboring of between 6 and 24 aliens.

material in the sense of a crucial, critical, highly significant factor." *Id.* (quotation omitted).

The district court did not abuse its discretion by excluding Cabrera's testimony.[7] The government did not contend at trial that Tita's was an entirely illegitimate business, so this evidence was unnecessary to rebut the government's arguments. Moreover, the government's evidence of guilt was overwhelming. At trial, three aliens testified that Marrero and Mulet charged them large sums of money to arrange illegitimate marriages with people they had never met. Marrero instructed the aliens to discuss the marriage arrangements only in person or over the phone using code words and commented several times that the purpose of the marriages was for the aliens to obtain green cards, which strongly suggests that she knew the marriages were illegitimate and intended to engage in a scheme to

[7] We do not review whether the district court abused its discretion by excluding other evidence of the defendants' legitimate business activities because the defendants failed to make a sufficient proffer regarding this evidence. The preferred way to make a proffer is to file an affidavit or deposition, or to call the witness to present testimony outside the presence of the jury. However, counsel's statements, standing alone, may form an adequate basis for a proffer provided that they outline a witness's anticipated testimony in sufficient detail. *See United States v. Stephens*, 365 F.3d 967, 973-974 (11th Cir. 2004) (concluding that the record was sufficiently developed to review a claim that evidence was improperly excluded when counsel explained in detail the anticipated contents of three witnesses' testimony). Here, Marrero explained in sufficient detail the anticipated contents of Cabrera's testimony to allow us to review the defendants' claim that the district court abused its discretion by excluding her testimony. By contrast, we can only guess as to what other evidence the defense would have offered to show that Tita's provided legitimate immigration services, given that Marrero only outlined the general topics about which she was prepared to present evidence. Because the defendants failed to make a sufficient proffer with respect to any other evidence they would have offered regarding their legitimate business activities, we have nothing to decide with respect to that issue. *See Busby v. City of Orlando*, 931 F.2d 764, 786 (11th Cir. 1991) ("Because we have no proffered testimony before us to review, we have nothing to decide with respect to [the issue of whether the district court abused its discretion by excluding a witness's testimony].").

defraud the United States by arranging such marriages. Mulet, who was present for Marrero's conversations with the aliens, notarized the marriage certificates and helped fill out the aliens' applications for permanent residency. At most, Cabrera's testimony might have suggested that they had little financial incentive to commit immigration crimes. Such evidence was not crucial to their defense, as it did not counter any of the government's extensive evidence of guilt. Accordingly, we conclude that it was not an abuse of discretion to exclude Cabrera's testimony.

B. Denial of Mulet's Motion for a Mistrial

"We review the district court's denial of a motion for a mistrial for abuse of discretion." *United States v. Abraham*, 386 F.3d 1033, 1036 (11th Cir. 2004). Here, the district court did not err, much less abuse its discretion, by denying Mulet's motion. When Mulet told Laboy that he "had nothing to say about that," he had not been arrested or given his *Miranda*[8] warnings. We have previously stated that the government may comment on a defendant's silence under these circumstances. *United States v. Rivera*, 944 F.2d 1563, 1568 (11th Cir. 1991). Even if *Rivera* was wrongly decided, which we do not think is the case, we have no authority to overrule it. *Hazewood v. Found. Fin. Grp., LLC*, 551 F.3d 1223, 1227 (11th Cir. 2008) ("[T]he holding of a three-judge panel is the law of the

[8] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

circuit unless it is overruled (or undermined to the point of abrogation) by the en banc Eleventh Circuit, or by the Supreme Court of the United States.").

C. Reasonableness of Mulet's Total Sentence

We review the reasonableness of a defendant's sentence under a deferential abuse-of-discretion standard. *United States v. Livesay*, 525 F.3d 1081, 1090 (11th Cir. 2008). When a district court errs in calculating a defendant's Guidelines range, but states that it would have imposed the same sentence regardless of any Guidelines calculation errors, we will uphold the defendant's sentence so long as it is reasonable. *See United States v. Keene*, 470 F.3d 1347, 1348-50 (11th Cir. 2006).

Assuming arguendo that the district court erred in assessing a three-level enhancement under U.S.S.G. § 2L1.1(b)(2)(A), such error does not warrant reversal of Mulet's sentences. If the district court had decided the enhancement issue in Mulet's favor, his Guidelines range would have been 21 to 27 months' imprisonment.[9] Even using this lower Guidelines range, Mulet's 48-month total sentence was reasonable in light of the facts of the case. As discussed above, the government presented overwhelming evidence that Marrero and Mulet charged

[9] Under the district court's calculations, Mulet had a total offense level of 19 and a criminal history category of I, which yielded a Guidelines range of 30 to 37 months' imprisonment. Without the three-level enhancement, Mulet would have had a total offense level of 16 and a criminal history category of I, resulting in a Guidelines range of 21 to 27 months' imprisonment. The district court could have imposed much higher sentences as to Counts 7, 9, 10, and 12, and made these sentences run consecutively. At sentencing, the district court made clear that it would have imposed the same sentence absent the enhancement.

aliens thousands of dollars each to arrange sham marriages for the purpose of defrauding the United States. They facilitated every step of the immigration process, from procuring Cubans to act as spouses for the aliens, to introducing the aliens to their Cuban spouses, to notarizing the aliens' marriage certificates, to filling out the residency applications, to preparing the aliens for immigration interviews. Under these circumstances, Mulet's 48-month total sentence was not unreasonable regardless of whether his Guidelines imprisonment range is 21 to 27 months or 30 to 37 months. For the same reasons, we conclude that Mulet's total sentence was substantively reasonable.

III. CONCLUSION

The district court did not abuse its discretion by excluding Cabrera's testimony. The district court also did not abuse its discretion by denying Mulet's motion for a mistrial because his argument in support of his motion is foreclosed by binding caselaw. Finally, any error in assessing a three-level Guidelines enhancement does not warrant reversing Mulet's total sentence, and Mulet's total sentence was substantively reasonable.

AFFIRMED.