

Docket No. _____

THE SUPREME COURT OF THE UNITED STATES

JULIAN MOZ-AGUILAR,
also known as Humilde,
also known as Demente,
also known as Tio Felito,

Petitioner

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

APPENDIX ON BEHALF OF PETITIONER

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APPENDIX A

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**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Nos. 16-4232, 16-4237, 16-4239, 16-4252,
16-4267, 16-4302, 16-4321 & 16-4381

UNITED STATES OF AMERICA

v.

MARIO OLIVA,
also known as Zorro,

Appellant in No. 16-4232

SANTOS REYES-VILLATORO,
also known as Mousey,

Appellant in No. 16-4237

ESAU RAMIREZ,
also known as Panda

Appellant in No. 16-4239

ROBERTO CONTRERAS,
also known as Demonio,

Appellant in No. 16-4252

JULIAN MOZ-AGUILAR,
also known as Humilde,
also known as Demente,
also known as Tio Felito,

Appellant in No. 16-4267

HUGO PALENCIA,
a/k/a Taliban,

Appellant in No. 16-4302

JOSE GARCIA,
a/k/a Chucky
a/k/a Diabolico,

Appellant in No. 16-4321

CRUZ FLORES,
a/k/a Bruja,

Appellant in No. 16-4381

On Appeal from the United States District Court
for the District of New Jersey
(D. C. Criminal Nos. 2-13-cr-00615-002/001/008/003/004/005/006/012)
District Court Judge: Honorable Stanley R. Chesler

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) on
September 27, 2018
Before: SMITH, *Chief Judge*, McKEE and RESTREPO, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit L.A.R 34.1(a) on September 27, 2018.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgments of sentence of the District Court entered on: November 30, 2016, December 1, 2016, November 30, 2016, December 8, 2016, December 1, 2016, December 1, 2016, December 6, 2016, and December 20, 2016, for each defendant

identified herein in the order listed above, be and the same are hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: October 16, 2019

^{004a}
APPENDIX B

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NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
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Before: SMITH, *Chief Judge*, McKEE and RESTREPO, *Circuit Judges*
(Opinion filed: October 16, 2019)

OPINION*

* This disposition is not an opinion of the full Court and under I.O.P. 5.7 does not constitute binding precedent.

McKEE, *Circuit Judge.*

In this consolidated appeal, Mario Oliva and seven other defendants appeal various aspects of their convictions and sentences for criminal activity arising from their participation in a faction of La Mara Salvatrucha (“MS-13”) gang in Plainfield, New Jersey.¹ For the reasons set forth below, we will affirm the convictions and sentences of all defendants.

We will review each claim of error in turn, combining claims where appropriate.²

I.

A. Sufficiency of the Evidence for the Racketeering Conspiracy Convictions of Oliva, Palencia, and Ramirez.³

“In order to be guilty of a RICO conspiracy, a defendant must either agree to commit two [statutorily defined] predicate acts or agree to participate in the conduct of

¹ The district court had jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction pursuant to 28 U.S.C. § 1291.

² Five of the Appellants included a blanket adoption of all of their co-appellants’ arguments to the extent applicable to them. *See* Oliva Br. at 20; Ramirez Br. at 16; Garcia Br. at 16; Palencia Br. at 2; Reyes-Villatoro Br. at 2. Because a blanket adoption of all issues raised by all of one’s co-appellants, without any specification of the discrete issues to be adopted, fails to satisfy Fed. R. App. P. 28(a)(5)’s directive to identify the specific issues for review, *see United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990), the “referenced” arguments are waived to the extent an Appellant did not identify the specific argument that he was adopting.

³ We review challenges to the sufficiency of the evidence *de novo* and “ask specifically whether there is substantial evidence that, when viewed in the light most favorable to the government, would allow a rational trier of fact to convict.” *United States v. Lee*, 612 F.3d 170, 178 (3d Cir. 2010) (internal citations omitted). We review unpreserved sufficiency claims for plain error. *Id.*

the enterprise with the knowledge and intent that other members of the conspiracy would commit at least two such predicate acts in furtherance of the enterprise.”⁴

1. Oliva

Oliva claims that there was insufficient evidence to convict him of the RICO conspiracy charge because the government only proved his involvement with the murder of Jessica Montoya. Oliva Br. at 18. He thus concedes his participation in one predicate act but argues that no other predicate acts were proven. *Id.* at 18-20. The record demonstrates otherwise. Witnesses testified that: (1) Oliva was one of three people with authority to hand out “missions” to kill for the gang;⁵ (2) Oliva ordered Chicas-Ortiz and Contreras to kill a member of the Blood gang;⁶ (3) Oliva relayed Reyes-Villatoro’s plan to kill Latin Kings to other MS-13 members;⁷ and (4) Oliva was present and armed during the hunt for Chavalas that led to the murder of Christian Tigs.⁸ This evidence was sufficient to allow the jury to conclude that Oliva participated in a statutorily defined predicate act in addition to the murder of Jessica Montoya.

2. Palencia

In raising his unpreserved sufficiency claim, Palencia argues that of the five predicate acts charged against him, the record evidence only arguably supports his personal involvement or endorsement of one predicate act – the murder of Spencer

⁴ *United States v. Nguyen*, 255 F.3d 1335, 1341 (11th Cir. 2001).

⁵ A1362.

⁶ A1365-66.

⁷ A1400-03.

⁸ A1441-45.

Cadogan.⁹ According to Palencia, the only other incident the government could have feasibly relied upon as the second predicate act was the attempted murder of Christian Garcia, which the government never actually argued constituted a predicate act.¹⁰ However, there were at least three other acts that the jury could properly have found constituted additional predicate acts. There was testimony that Palencia pulled out a gun, aimed it at two MS-13 gang targets, Carmelo Soto and Kevin Veliz, and fired multiple times.¹¹ There was also testimony that Palencia plotted the murder of detective Edwin Maldonado.¹² Finally, the record demonstrates that Palencia had a gun and was present during the attempted attack on Mario and Jose Abarca.¹³

3. Ramirez

Ramirez claims that the record does not demonstrate that he was anything more than “merely present” for numerous gang-related acts. However, there was evidence that Ramirez and Franklin Mejia actively discussed the details of their plot to murder Detective Maldonado and burn down his mother’s house, as well as murder witnesses.¹⁴ Ramirez was also an active participant in the extortion of “retired” MS-13 gang member Leo Martinez. Ramirez went to collect the payment and threatened to kill Martinez’s siblings if he did not pay.¹⁵

⁹ Palencia Br. at 52-53.

¹⁰ *Id.* at 53-55.

¹¹ A3178, 3728, 3585, 3589.

¹² A5656-60.

¹³ A7750-53.

¹⁴ A8511-16; A9549-52, A9581-82, 9592.

¹⁵ A8126-28, 8131-32.

Ramirez also challenges the sufficiency of the evidence for his murder-in-aid-of racketeering charge. But there is testimony that Ramirez was one of two people who identified the witnesses to be killed.¹⁶

B. Contreras' Challenge to the Sufficiency of the Evidence for Being an Accessory After the Fact.

There was ample circumstantial evidence that Contreras knew Montoya was killed in aid of racketeering. “[A]ll the elements of a conspiracy charge, including intent and knowledge of illicit purpose, ‘may be proven entirely by circumstantial evidence.’”¹⁷ At least three different chains of evidence could have been credited by the jury to show Contreras’ knowledge. For example, Contreras took over as the leader of the MS-13 gang after Oliva fled to Maryland. In that leadership role, he informed others in the gang that Montoya was killed because of orders from higher-ups in the gang.¹⁸ Chicas-Ortiz also testified that Contreras discussed Montoya’s murder while helping him flee to Maryland,¹⁹ and Contreras and Oliva made several calls to one another just before Oliva drove Montoya to be killed.²⁰

¹⁶ A8867-76, A9581-82, 9592.

¹⁷ *United States v. Lore*, 430 F.3d 190, 204 (3d. Cir 2005) (quoting *United States v. Schramm*, 75 F.3d 156, 159 (3d Cir. 1996)).

¹⁸ A5049-50.

¹⁹ A1496-97.

²⁰ A2379-80.

C. The District Court did not Abuse its Discretion in Declining to Sever the Trial of Cruz Flores.²¹

To prevail on this claim, Cruz Flores must show that there was “a serious risk that a joint trial would compromise a specific trial right” of his “or prevent the jury from making a reliable judgment about guilt or innocence.”²² He also must show that the denial resulted in “clear and substantial prejudice resulting in a manifestly unfair trial.”²³ Flores has not done so. He does not claim there was insufficient evidence to convict him of murdering Julio Matute.²⁴ He does not identify any other evidence that would not have been admitted had his trial been severed. Moreover, as a member of a RICO enterprise, evidence of the enterprise’s actions was directly relevant to the charges against him. The district court issued appropriate limiting instructions each time he requested them.²⁵

²¹ We review the denial of a motion to sever to prevent prejudice pursuant to Fed. R. Crim. P. 14 for an abuse of discretion. *United States v. Walker*, 657 F.3d 160, 170 (3d Cir. 2011). Even if the district court abused its discretion, “reversal is not required absent a demonstration of clear and substantial prejudice resulting in a manifestly unfair trial.” *United States v. Reyeros*, 537 F.3d 270, 286 (3d Cir. 2008) (internal citations omitted).

²² *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

²³ *United States v. Urban*, 404 F.3d 754, 775 (3d Cir. 2005) (internal citations omitted). “[A] defendant is not entitled to a severance merely because evidence against a co-defendant is more damaging than the evidence against the moving party.” *Lore*, 430 F.3d at 205.

²⁴ See Flores Br. at 8-21; A7315-27.

²⁵ A2802, 3786, 5324, 5557, 10112.

D. Moz-Aguilar's Challenge to the District Court's Finding that Murder in Aid of Racketeering is a Crime of Violence Under § 924(c).²⁶

Moz-Aguilar argues that the district court erred in concluding that murder in the aid of racketeering qualified as a crime of violence under 18 U.S.C. § 924(c)(1)(A). The claim is frivolous. The statute makes it illegal for a “person who, during and in relation to any crime of violence . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm[.]” Section 924(c)(3), in turn, defines a crime of violence as “a felony” that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another” (the elements clause); or, “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense,” (the residual clause).²⁷

Moz-Aguilar was convicted under 18 U.S.C. § 924(c) of discharging a firearm during a “crime of violence,” and under § 924(j) for causing death in the course of doing so. Those charges arose from the murder of Christian Tigsí. “[T]he determination of whether a particular crime qualifies as a ‘crime of violence’ under § 924(c) depends upon both the predicate offense . . . and the contemporaneous conviction under § 924(c).”²⁸ Therefore, we have to “look at all the offenses before the jury to the extent that these offenses shed light on whether physical force was used, attempted, or threatened in

²⁶ “We exercise plenary review over questions of law, such as whether a crime is a crime of violence.” *United States v. Stinson*, 592 F.3d 460, 462 n.1 (3d Cir. 2010).

²⁷ 18 U.S.C. § 924(c)(3).

²⁸ *United States v. Robinson*, 844 F.3d 137, 143 (3d Cir. 2016).

committing the predicate offense.”²⁹ “The discharge of a firearm, coupled with resulting personal injury, qualifies as a use of physical force.”³⁰ Christian Tigsí was shot and killed. Accordingly, the element of physical force was present.

E. Moz-Aguilar’s Challenge to the District Court’s Failure to Dismiss his Charge Pursuant to 18 U.S.C. § 924(j).³¹

Moz-Aguilar also argues that the district court erred in declining to dismiss his charge pursuant to 18 U.S.C. § 924(j) pretrial. Aguilar Br. at 34. Because he cannot show prejudice, his claim fails. As we have just explained, he was convicted under 18 U.S.C. § 924(c) and (j) for causing the death of a person with a firearm in the course of a violation of § 924(c).³² He received a 120-month sentence for his § 924(c) conviction and a life sentence for his conviction under § 924(j).³³

The government concedes that although Moz-Aguilar did not raise this concern before the district court, the sentence imposed violated the Double Jeopardy Clause because the court should have merged the §§ 924(c) and (j) counts for purposes of Moz-Aguilar’s judgment of conviction and sentencing.³⁴ To be entitled to relief he must satisfy all four prongs of the plain error standard of review. He must show: “(1) there is an

²⁹ *United States v. Galati*, 844 F.3d 152, 155 (3d Cir. 2016).

³⁰ *Id.*

³¹ We review issues of statutory interpretation *de novo*, *United States v. Ferriero*, 866 F.3d 107, 113 n.4 (3d Cir. 2017), and review unpreserved double jeopardy claims for plain error. *United States v. Miller*, 527 F.3d 54, 60 (3d Cir. 2008).

³² A29-31, 11750.

³³ *Id.*

³⁴ Gov. Br. at 64–65.

‘error’; (2) the error is ‘clear or obvious, rather than subject to reasonable dispute’; (3) the error ‘affected the appellant’s substantial rights, which in the ordinary case means’ it ‘affected the outcome of the district court proceedings’; and (4) ‘the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’”³⁵ The government concedes that the first three prongs are satisfied here. However, as Moz-Aguilar actually benefitted from his failure to raise the double jeopardy challenge at sentencing, his claim fails.

Moz-Aguilar received a mandatory life sentence on the Violent Crime in Aid of Racketeering murder count and a concurrent life sentence for the RICO conspiracy conviction.³⁶ Both sentences were appropriate, proper, and unchallenged. The conviction he challenges – life under § 924(j) – was imposed concurrently with his two other (concurrent) life sentences. Moz-Aguilar therefore received a total sentence of life plus 120 months’ imprisonment. If Moz-Aguilar had raised a double jeopardy issue, the district court would have merged the § 924(c) count with the § 924(j) count. The merged counts would have resulted in a mandatory *consecutive* life sentence pursuant to § 924(c)(1)(D)(ii). Stated differently, Moz-Aguilar should have received two *consecutive life sentences*, not three concurrent life sentences and a consecutive 120-month sentence. Accordingly, this claim fails.

³⁵ *United States v. Marcus*, 560 U.S. 258, 262 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

³⁶ A29-31; A11750.

F. Ramirez' Challenge to the District Court's Admission of Evidence of His Prior Weapon Possession.³⁷

Ramirez argues that the district court abused its discretion under Fed. R. Evid. 403 and 404(b) when it admitted evidence of his prior arrest for possession of a shotgun.³⁸ Courts have consistently declined to apply Rule 404(b) in the context of a RICO enterprise.³⁹ Moreover, even assuming that the rule did require the exclusion of this evidence, it did not require exclusion of evidence that proves the charged offense.⁴⁰ A witness testified that the arrest for shotgun possession occurred during the commission of a “mission” for the gang.⁴¹

G. The District Court Reasonably Limited Garcia's Cross-Examination of Detective Tippett.⁴²

Garcia claims that the district court's limitation of his cross-examination of detective Troy Tippett violated the Sixth Amendment Confrontation Clause. We disagree.

³⁷ We review a district court's decision on the admissibility of evidence for an abuse of discretion. *United States v. Serafini*, 233 F.3d 758, 768 n.14 (3d Cir. 2000).

³⁸ Ramirez Br. at 8–12.

³⁹ See, e.g., *United States v. Henley*, 766 F.3d 893, 914–15 (8th Cir. 2014) (“[E]vidence of uncharged crimes was admissible in a RICO prosecution as proof of an enterprise, of the continuity of racketeering activity, and of the defendant's knowledge of, agreement to, and participation in the conspiracy.”) (internal quotations omitted).

⁴⁰ *United States v. Gibbs*, 190 F.3d 188, 217–18 (3d Cir. 1999) (“In cases where the incident offered is a part of the conspiracy alleged in the indictment, the evidence is admissible under Rule 404(b) because it is not an ‘other’ crime. The evidence is offered as direct evidence of the fact in issue, not as circumstantial evidence requiring an inference as to the character of the accused.”).

⁴¹ A8508–09.

⁴² “We review the court's decision to limit cross-examination for abuse of discretion[.]” *United States v. Ellis*, 156 F.3d 493, 498 (3d Cir. 1998).

“While the Confrontation Clause guarantees a criminal defendant the right to confront witnesses on cross-examination, a district court retains wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination[.]”⁴³ Moreover, “a restriction will not constitute reversible error unless it is so severe as to constitute a denial of the defendant’s right to confront witnesses against him and it is prejudicial to [his/her] substantial rights.”⁴⁴ The line of questioning that Garcia was prevented from pursuing was irrelevant to any material issue. Garcia was attempting to establish that, although he initially waived his *Miranda* rights and spoke with officers at length, he was questioned again after he asked for the interview to cease.⁴⁵ This was not relevant, however, because each of his incriminating statements occurred during the initial interview to which he voluntarily consented.⁴⁶

H. Due Process Challenges to the Jury Charge and Verdict Sheet.⁴⁷

Oliva contends that (1) the district court abused its discretion by denying his requests for special interrogatories, and Moz-Aguilar (joined by Contreras) argues (2) the

⁴³ *United States v. Jimenez*, 513 F.3d 62, 76 (3d Cir. 2008) (internal citations omitted).

⁴⁴ *United States v. Casoni*, 950 F.2d 893, 918–19 (3d Cir. 1991).

⁴⁵ Garcia Br. at 12–16.

⁴⁶ See A6302 (District Court: “what you’re doing here doesn’t purport to indicate in any way, shape, or form that the prior statements were in any way involuntary. All they end up showing is that this man asked some additional questions.”).

⁴⁷ We review a district court’s denial of a request for special interrogatories for an abuse of discretion, see *United States v. Console*, 13 F.3d 641, 663 (3d Cir. 1993), and “exercise plenary review in determining whether the jury instructions stated the proper legal standard.” *United States v. Berrios*, 676 F.3d 118, 136 (3d Cir. 2012) (internal citations omitted).

court erred in instructing the jury on *Pinkerton* liability. We again disagree.

Appellate courts “commit the decision of whether and how to utilize special interrogatories in [complex] cases to the broad discretion of the district court.”⁴⁸ Here the district court evaluated whether using such interrogatories would aid the jury, but concluded that in an already complex multi-defendant case, special interrogatories would only serve to confuse the jury.⁴⁹

Similarly, the district court did not err in instructing the jury on *Pinkerton* liability. To the extent that Moz-Aguilar contends *Pinkerton* liability instructions are generally inappropriate in RICO conspiracy cases, this claim fails because the district court only instructed the jury on *Pinkerton* liability insofar as that doctrine pertained to the VICAR murder counts. The instruction was not given for the RICO conspiracy counts.⁵⁰ Moreover, the government had no duty to provide notice of its intention to pursue the *Pinkerton* liability theory.⁵¹ Finally, the argument that the *Pinkerton* charge resulted in undue confusion and complexity that substantially influenced the verdict is without any support in the record.

⁴⁸ *United States v. Ogando*, 968 F.2d 146, 149 (2d Cir. 1992).

⁴⁹ A11114-15 (noting jury already “ha[d] an extraordinarily difficult and complex task” that the court was not going to “complicate[] and compound[]” by including “special interrogatories that are not absolutely necessary”).

⁵⁰ See A10515, 11378-85.

⁵¹ *Id.*

I. Appellants' Prosecutorial Misconduct Claims Fail.⁵²

1. Challenge to the Scope and Duration of Rebuttal Summation

Flores claims that the government's rebuttal summation "exceeded the proper scope of such argument" because it was too long and repetitive.⁵³ He does not, however, cite to any persuasive authority to sustain this claim. Moreover, Flores does not allege that the government developed any new arguments during rebuttal summation. In fact, his primary claim is that rebuttal was too long because "[t]here was nothing in the government's rebuttal summation not already delivered once to the jury in the government's initial opening argument."⁵⁴ Indeed, even if this rebuttal (not unlike most summations) was too long, the evidence against Flores was overwhelming, and Flores does not claim that the prosecutor's summation relied on facts not in evidence or misled the jurors.

2. The District Court Did Not Clearly Err When, During Rebuttal Summation, It Struck the Government's Suggestion that Palencia Could Have Called a Handwriting Expert and Issued a Curative Instruction to the Jury.⁵⁵

⁵² We review preserved claims of prosecutorial misconduct for an abuse of discretion and unpreserved claims for plain error. *United States v. Lee*, 612 F.3d 170, 193 (3d Cir. 2010). For unpreserved claims, "[t]here must be an 'error' that is 'plain' and that 'affect[s] substantial rights.'" *United States v. Olano*, 507 U.S. 725, 732 (1993). "'Affecting substantial rights' means that the error must have been prejudicial to the defendant and have affected the outcome of the district court proceeding." *United States v. Brennan*, 326 F.3d 176, 182 n.2 (3d Cir. 2003) (quoting *Olano*, 507 U.S. at 734).

⁵³ Flores Br. at 16–20.

⁵⁴ *Id.* at 19.

⁵⁵ Palencia concedes that he did not raise this issue before the district court, *see Palencia Br. at 34*, so our review is for plain error. *United States v. Thame*, 846 F.2d 200, 204 (3d Cir. 1988). We grant relief where the error is clear, prejudicial, and seriously affects the fairness, integrity, or public reputation of the proceedings. *See Olano*, 507 U.S. at 732.

A witness, Sean Williams, testified that Palencia gave him a handwritten note with instructions to lie to law enforcement.⁵⁶ In summation, Palencia's counsel attacked Williams' credibility, suggesting that Williams himself wrote the note instead of Palencia. Palencia's counsel also attacked the government's failure to hire a handwriting expert to demonstrate that the letter was not, in fact, written by Williams.

The government, in rebuttal summation, reiterated that the burden of proof was "completely on the government, always," but noted that Palencia had called his own expert witness, a former DEA special agent, but never brought up the note in question. The prosecutor stated: "I would point out to you that they put on a case that consisted of . . . a federal agent with 30 years of experience in law enforcement . . . [And] [t]hey had letters. Not one word from them, from their witness, about those letters." The district court quite correctly observed that this statement was "close to burden shifting" and so struck the statement and issued an effective and appropriate curative instruction.⁵⁷

Nevertheless, Palencia claims that the government's statement improperly shifted the burden and thereby "attack[ed] the integrity of defense counsel."⁵⁸ Citing our analysis in *United States v. Keller*,⁵⁹ the government argues that the statement was appropriate because "[i]t is perfectly proper to comment on the failure of the defense to call a potentially helpful witness, at least where, as here, the comment could not be construed

⁵⁶ A5639-41.

⁵⁷ A11200.

⁵⁸ Palencia Br. at 39-41.

⁵⁹ 512 F.2d 182 (3d Cir. 1975).

as a comment on the failure of the defendant to testify.”⁶⁰ We agree. Moreover, Palencia has not cleared the high standard we utilize for plain error review. He has not shown that the district court’s treatment of the government’s statement affected his substantial rights or “seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.”⁶¹

3. The Government Appropriately Used Circumstantial Evidence to Demonstrate Palencia’s Intent and Knowledge

Palencia argues that in summation and rebuttal summation, the government “used acts of past misconduct as evidence that he had a propensity to commit murder.”⁶² He cannot establish the requisite plain error.⁶³ Propensity evidence is unquestionably improper.⁶⁴ However, “[k]nowledge, intent, and lack of mistake or accident are well-established non-propensity purposes.”⁶⁵ Palencia’s conclusory allegation that the government used this evidence in summation, not for intent and knowledge, but for

⁶⁰ *Id.* at 186. See also *United States v. Balter*, 91 F.3d 427, 441 (3d Cir. 1996) (The government may “comment[] on the failure of [the defendant] to point to any evidence in the record supporting his theory of what occurred. Such a comment does not implicate any of the burden-shifting concerns that are raised when a prosecutor points to a defendant’s failure to testify or improperly suggests that the defendant has the [] burden of producing evidence.”).

⁶¹ *Brennan*, 326 F.3d at 182 n.2.

⁶² Palencia Br. at 41–43.

⁶³ See *id.* at 34 (acknowledging plain error review applies to these unpreserved claims).

⁶⁴ *United States v. Caldwell*, 760 F.3d 267, 275 (3d Cir. 2014) (discussing “the longstanding concern that evidence of prior bad acts, when offered only to show the defendant’s propensity to commit the charged crime, is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge.”) (internal citations omitted).

⁶⁵ *United States v. Givan*, 320 F.3d 452, 461 (3d Cir. 2003).

propensity is not enough to show that the court erred in declining to *sua sponte* raise and sustain an objection.

4. Contreras' Claim that the Government Constructively Amended the Indictment in Summation Fails.

Contreras argues that a reference made by the government in summation improperly suggested to jurors that they could also convict him of accessory after the fact for the murder of Spencer Cadogan.⁶⁶ The government stated that Contreras offered “the same services”⁶⁷ as those he offered after the murder of Jessica Montoya to other MS-13 members following the murder of Spencer Cadogan.

We “examine the prosecutor’s [alleged] offensive actions in context and in light of the entire trial, assessing the severity of the conduct[] [and] the effect of [any] curative instructions.”⁶⁸ Here, aside from a single statement, the remainder of the government’s summation properly referred only to Contreras’ actions following the Montoya murder as evidence of his accessory after the fact charge. As the jury instructions did so as well, we find no error.⁶⁹

5. The Government Did Not Commit Prosecutorial Misconduct by Arguing that Reyes-Villatoro Gave Away His Car for Free.

Reyes-Villatoro argues that the government relied on evidence which it “knew or had good reason to know was” false, when it argued that Reyes-Villatoro gave away his

⁶⁶ Contreras Br. at 15–16.

⁶⁷ A10573.

⁶⁸ *United States v. Lee*, 612 F.3d 170, 194 (3d Cir. 2010) (quoting *Moore v. Morton*, 255 F.3d 95, 107 (3d Cir. 2001)).

⁶⁹ A11404-05.

car for free.⁷⁰ The government based this claim on the New Jersey Motor Vehicle certificate of title for Reyes-Villatoro's car that was admitted at trial by stipulation⁷¹ and included: Reyes-Villatoro as the seller; "gift" as the "sale price"; and "3/24/09" as the date of sale.⁷² This reliance on the title was proper. "[O]nce a piece of evidence has been properly admitted the prosecution may 'ask the jury to draw permissible inferences from anything that appears in the record.'"⁷³

Even if the government's reliance on the title was improper, Reyes-Villatoro cannot show prejudice. The government points out that it does not matter whether he gave his car away for free or sold it after he learned that law enforcement suspected his involvement in the murder. The jury could conclude that the fact that Reyes-Villatoro found a way to get rid of the car demonstrated consciousness of guilt. The district court's consciousness of guilt instructions made that same point.⁷⁴

II. CONCLUSION

For the reasons set forth above, we will affirm the judgment of the district court for all claims by all defendants.

⁷⁰ Reyes-Villatoro Br. at 30.

⁷¹ A2283-84.

⁷² A2291.

⁷³ *United States v. Sullivan*, 803 F.2d 87, 91 (3d Cir. 1986) (quoting *Oliver v. Zimmerman*, 720 F.2d 766, 770 (3d Cir. 1983) (per curiam)).

⁷⁴ See A11316 (stating that "the disposal of property . . . may indicate that a specific defendant thought he was guilty of the crime charged and was trying to avoid punishment.").

APPENDIX C

Case 2:13-cr-00615-SRC Document 511 Filed 11/30/16 Page 1 of 6 PageID: 15608

AO 246B (Mod. D/NJ 12/06) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
District of New Jersey**UNITED STATES OF AMERICA**

v.

CASE NUMBER 2:13-CR-00615-SRC-4**JULIAN MOZ-AGUILAR****Defendant.****JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, JULIAN MOZ-AGUILAR, was represented by JOHN C. WHIPPLE, ESQ., CJA.

The defendant was found guilty on count(s) 1r, 2r, 3r & 4r by a jury verdict on 6/1/2016 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18:1962(d)	RACKETEERING CONSPIRACY	12/2008-9/2013	1r
18:1959(a)(1) AND 2	MURDER IN AID OF RACKETEERING	2/8/2009	2r
18:924(c) 1(A)(iii) and 2	USING AND CARRYING A FIREARM DURING A CRIME OF VIOLENCE	2/8/2009	3r
18:924(j) and 2	CAUSING DEATH THROUGH USE OF A FIREARM	2/8/2009	4r

As pronounced on November 30, 2016, the defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$400.00 for count(s) 1r, 2r, 3r & 4r, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

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

Signed this the 30 day of November, 2016.

Stanley R. Chesler
U.S. District Judge

Case 2:13-cr-00615-SRC Document 511 Filed 11/30/16 Page 2 of 6 PageID: 15609

AO 245B (Mod. D/NJ 12/06) Sheet 1 - Judgment in a Criminal Case

Case 2:13-cr-00615-SRC Document 511 Filed 11/30/16 Page 3 of 6 PageID: 15610

AO 245B (Mod. D/NJ 12/06) Sheet 2 - Imprisonment

Judgment - Page 3 of 6

Defendant: JULIAN MOZ-AGUILAR
Case Number: 2:13-CR-00616-SRC-4**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of LIFE on each of counts 1r, 2r and 4r to run concurrently and 120 months on count 3 r to run consecutively to count 1r, 2r and 4r, for a total sentence of LIFE plus 120 MONTHS imprisonment

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau of Prisons designate a facility for service of this sentence as near as possible to the defendant's home address.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ To _____
At _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Case 2:13-cr-00615-SRC Document 511 Filed 11/30/16 Page 4 of 6 PageID: 15611

AO 245B (Mod. D/NJ 12/06) Sheet 3 - Supervised Release

Judgment - Page 4 of 6

Defendant: JULIAN MOZ-AGUILAR
Case Number: 2:13-CR-00615-SRC-4**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years. This term consists of terms of 5 years on each of Counts 1r, 2 r, 3 r and 4r, all such terms to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

Based on information presented, the defendant is excused from the mandatory drug testing provision, however, may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

ALCOHOL/DRUG TESTING AND TREATMENT

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Officer shall supervise your compliance with this condition.

PROHIBITIONS ON GANG/CRIMINAL ASSOCIATIONS

You shall refrain from associating with, or being in the company of, any members of any street gang, outlaw motorcycle gang, traditional or non-traditional organized crime group, or any other identified threat group. You shall be restricted from frequenting any location where members of said organizations are known to congregate or meet. You shall not have in your possession any item or paraphernalia which has any significance or is evidence of affiliation with said organizations.

COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT

You shall cooperate with Immigration and Customs Enforcement to resolve any problems with your status in the United States. You shall provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. If deported, you shall not re-enter the United States without the written permission of the Attorney General. If you re-enter the United States, you shall report in person to the nearest U.S. Probation Office within 48 hours.

Defendant: JULIAN MOZ-AGUILAR
Case Number: 2:13-CR-00615-SRC-4

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 17) You shall cooperate in the collection of DNA as directed by the Probation Officer.
(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);
- 18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including commingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the

Defendant: JULIAN MOZ-AGUILAR
Case Number: 2:13-CR-00615-SRC-4

financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- 19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- 20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

For Official Use Only - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant _____ Date _____

U.S. Probation Officer/Designated Witness _____ Date _____

APPENDIX D

~~Revised Exhibit D~~
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2011R01024/jmd/ajb

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Stanley R. Chesler
v.	:	Crim. No. 13-615
SANTOS REYES-VILLATORO, a/k/a "Mousey,"	:	18 U.S.C. § 924(c) 18 U.S.C. § 924(j)
MARIO OLIVA, a/k/a "Zorro,"	:	18 U.S.C. § 1958(a) 18 U.S.C. § 1959(a)(1)
ROBERTO CONTRERAS, a/k/a "Demonio,"	:	18 U.S.C. § 1959(a)(3) 18 U.S.C. § 1959(a)(4)
JULIAN MOZ-AGUILAR, a/k/a "Humilde,"	:	18 U.S.C. § 1959(a)(5) 18 U.S.C. § 1962(d)
a/k/a "Demente,"	:	18 U.S.C. § 2
a/k/a "Tio Felito,"	:	18 U.S.C. § 3
HUGO PALENCIA, a/k/a "Taliban,"	:	
JOSE GARCIA, a/k/a "Chucky,"	:	
a/k/a "Diabolico,"	:	
ESAU RAMIREZ, a/k/a "Panda," and	:	
CRUZ FLORES, a/k/a "Bruja"	:	

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE
(Racketeering Conspiracy)

Introduction

1. At all times relevant to this Indictment, La Mara Salvatrucha, also known as "MS-13," was an international street gang operating in the District of New Jersey and elsewhere. The gang's membership was composed largely of Salvadorans and immigrants from El Salvador.

2. MS-13 originated in Los Angeles, California in the 1980s, where members engaged in turf wars with other criminal organizations for control of drug distribution networks. Some MS-13 members returned to El Salvador, where the gang flourished and spread across Central America, while other members expanded the organization across the United States.

3. MS-13 was organized into a series of sub-units -- or "cliques" -- that operated in specific geographic locations. One such clique was Plainfield Locos Salvatrucha (the "PLS clique"), which operated in and around Plainfield, New Jersey. According to MS-13 rules, any act committed in furtherance of a clique was, by definition, committed in furtherance of MS-13 as a whole. Like all other MS-13 cliques, the PLS clique

established its own internal traditions and hierarchy while adhering to the umbrella rules and protocols of MS-13, including:

a. Use of a system of rules and regulations governing admission to and membership in MS-13, which typically involved an initiation process known as "jumping in," wherein MS-13 members beat the individual seeking membership for thirteen seconds;

b. Various visible demonstrations of gang affiliation, including an identification with the color blue, which appeared prominently in clothing, hats, and bandanas; tattoos signifying their membership in the PLS clique and in MS-13 generally; use of the machete in certain violent crimes; and use of a system of verbal codes and hand signals to communicate with each other and to signify their association with MS-13; and

c. A long-term and often lethal rivalry with other Latin American street gangs, including the 18th Street Gang and the Latin Kings, whose members were sometimes referred to as "chavalas."

4. MS-13 retaliated quickly and viciously to anyone who disrespected or threatened the gang's authority, power, reputation, or control of a neighborhood. MS-13 members often targeted members of rival gangs, but on numerous occasions also retaliated against MS-13 members and associates suspected of

disloyalty or violation of gang rules. Penalties included beatings, stabbings, and in some cases, death.

5. Within MS-13, participation in criminal activity by a member or associate, particularly violent acts directed at rival gangs or as directed by the gang leadership, increased the respect accorded to that member or associate, resulted in that member or associate maintaining or increasing position in the gang, and could result in a promotion to a leadership position.

6. MS-13 ordered murders through a process known as "greenlighting." If MS-13 members identified a certain individual as a threat to the gang, MS-13 leadership could "green light" that person, meaning that other MS-13 members had authorization -- if not the obligation -- to kill the individual. "Greenlighting" orders were enforceable nationwide and internationally by all members of MS-13; in other words, a greenlighting order issued by the PLS clique would be recognized and enforced by other MS-13 cliques in other locations, and vice versa.

7. The criminal activity of MS-13 also included the extortion of inactive members of MS-13, through a process known as "collecting rent." The gang's leadership directed active members of MS-13 to collect monthly tribute payments from the gang's inactive members. These payments, known as "rent," were used to finance the gang's activities, including the purchasing

of firearms and other weapons used by MS-13 members to commit violent crimes. At the direction of the gang's leadership, MS-13 members threatened to commit -- and on occasion did commit -- violent acts against inactive members who failed to make regular rent payments.

8. MS-13 maintained several "safe houses" in and around Plainfield, New Jersey, where members stored weapons, planned crimes, and purchased, sold, used, and hid controlled substances. In some cases, members of the PLS clique resided in these safe houses on a temporary or semi-permanent basis, as did MS-13 members from other cliques across the country who were attempting to evade arrest and prosecution.

9. Like other MS-13 cliques, the PLS clique maintained a hierarchical organization under the control of a single leader, sometimes described as the "First Word." The First Word supervised the activities of the enterprise, enforced discipline, and authorized violent acts committed by other members of the gang. Among other responsibilities, the First Word made the final decision on whether to "greenlight" a particular individual and oversaw the collection of "rent" payments from inactive members of the clique. In addition to the First Word, the clique's leadership included at least one deputy, sometimes described as the "Second Word," who consulted

with the First Word and who weighed in on violent acts to be committed by gang members.

10. At all times relevant to this Indictment, members of the PLS clique met regularly to discuss gang activities. These meetings, which occurred on a weekly or biweekly basis, typically on Friday or Saturday nights, occurred at various locations in and around Plainfield, New Jersey. At these meetings, MS-13 members discussed their recent criminal activities and planned future violent acts. The First Word, along with other members of his leadership team, presided over these meetings, leading discussions and issuing orders. Among other things, MS-13 members used these meetings to vote on whether to "greenlight" specific targets, with the First Word ultimately responsible for deciding whether a certain individual should be subject to a greenlighting order. In addition, MS-13 members used these meetings to discuss the collection of "rent" extortion payments from older, inactive members of the gang, as discussed above, and to plan retaliation against those who failed to make their payments.

The Racketeering Enterprise

11. MS-13, including the leaders, members, and associates of the PLS clique and other cliques, in the District of New Jersey, and elsewhere, constituted an "enterprise" as defined in Title 18, United States Code, Section 1961(4), that is, a group

of individuals associated in fact. The enterprise constituted an ongoing organization whose members functioned as a continuing unit that had a common purpose of achieving the objectives of the enterprise. The enterprise was engaged in, and its activities affected, interstate and foreign commerce.

Purposes of the Enterprise

12. The purposes of MS-13 included the following:

- a. Preserving and protecting the power, territory, reputation, and profits of the enterprise through the use of intimidation, violence, threats of violence, assaults, and murder;
- b. Promoting and enhancing the enterprise and its members' and associates' activities, including, but not limited to, drug trafficking, robberies, extortion, and other criminal activities;
- c. Keeping victims, potential victims, and community members in fear of the enterprise and its members and associates through violence and threats of violence;
- d. Providing financial support and information to gang members, including those incarcerated in the United States and El Salvador; and
- e. Providing assistance to other gang members who committed crimes on behalf of the gang, to hinder, obstruct, and prevent law enforcement officers from identifying the offenders,

apprehending the offenders, and successfully prosecuting and punishing the offenders.

The Defendants

13. Defendant SANTOS REYES-VILLATORO, a/k/a "Mousey," ("SANTOS REYES VILLATORO") was a member of MS-13 and one of the founding members of the PLS clique. SANTOS REYES-VILLATORO helped create the PLS clique in the mid-1990s and, for a number of years, held the leadership title of First Word. As First Word, SANTOS REYES-VILLATORO presided over gang meetings, supervised "rent" collections, issued "greenlighting" orders, and instructed fellow gang members to commit violent acts. In November 2009, SANTOS REYES-VILLATORO was arrested and jailed for his involvement in the attempted murder of Kelvin Bonilla and Alex Gonzalez, prompting him to relinquish his formal leadership position and to assume a lower profile within the gang. While in jail, SANTOS REYES-VILLATORO remained involved as a member of MS-13 and resumed his active involvement in the gang once he was released from jail in April 2011.

14. Defendant MARIO OLIVA, a/k/a "Zorro," ("MARIO OLIVA") was a member of MS-13 who served as Second Word of the PLS clique under SANTOS REYES VILLATORO and then ascended to the position of First Word in or about November 2009 when SANTOS REYES VILLATORO was arrested and relinquished the position. As First Word, MARIO OLIVA presided over gang meetings, supervised

"rent" collections, issued "greenlighting" orders, and instructed fellow gang members to commit violent acts. On or about February 27, 2010, MARIO OLIVA murdered Jessica Montoya, a female member of MS-13 subject to a "greenlighting" order. Shortly after the murder, MARIO OLIVA fled to Maryland, where he lived with members of MS-13 to avoid arrest and prosecution for Jessica Montoya's murder. MARIO OLIVA's relocation forced him to relinquish his position as First Word of the PLS clique, although he remained in communication with his associates and returned to Plainfield from time to time to meet with fellow gang members.

15. Defendant ROBERTO CONTRERAS, a/k/a "Demonio," ("ROBERTO CONTRERAS") was a member of MS-13 who served as Second Word of the PLS clique under MARIO OLIVA and then ascended to the position of First Word in or about March 2010 when MARIO OLIVA fled to Maryland and relinquished the position. As First Word, ROBERTO CONTRERAS presided over gang meetings, supervised "rent" collections, issued "greenlighting" orders, and instructed fellow gang members to commit violent acts.

16. Defendants JULIAN MOZ-AGUILAR, a/k/a "Humilde," a/k/a "Demente," a/k/a "Tio Felito," ("JULIAN MOZ-AGUILAR"); HUGO PALENCIA, a/k/a "Taliban," ("HUGO PALENCIA"); JOSE GARCIA, a/k/a "Chucky," a/k/a "Diabolico," ("JOSE GARCIA"); ESAU RAMIREZ, a/k/a "Panda," ("ESAU RAMIREZ"); and CRUZ FLORES, a/k/a "Bruja,"

("CRUZ FLORES") were all members of the MS-13 enterprise and associated with the PLS clique. Ruben Portillo-Fuentes, a/k/a "Sombra," a/k/a "Gordo," ("Ruben Portillo-Fuentes"); Kelvin Mejia, a/k/a "Machete," ("Kelvin Mejia"); Franklin Mejia, a/k/a "Frankbo," a/k/a Grillo," ("Franklin Mejia"); Julio Adalberto Orellana-Carranza, a/k/a "Player," a/k/a "Stewie," a/k/a "Rata," ("Julio Adalberto Orellana-Carranza"); Walter Yovany-Gomez, a/k/a "Cholo," ("Walter Yovany-Gomez"); and Jose Romero-Aguirre, a/k/a "Conejo," a/k/a "Justin Locote," ("Jose Romero-Aguirre"), who are not charged in this Indictment, were also members of the MS-13 enterprise and also associated with the PLS clique. Among other things, as members of MS-13, JULIAN MOZ-AGUILAR, HUGO PALENCIA, JOSE GARCIA, Ruben Portillo-Fuentes, ESAU RAMIREZ, Kelvin Mejia, Franklin Mejia, and Julio Adalberto Orellana-Carranza agreed that members of the PLS clique would collect "rent" from inactive gang members, attack and kill actual and suspected members of rival gangs, and identify and retaliate against individuals who were suspected of cooperating with law enforcement.

The Racketeering Conspiracy

17. Beginning on a date unknown to the Grand Jury but since at least December 2008 and continuing through September 2013, in the District of New Jersey, and elsewhere, the defendants,

SANTOS REYES-VILLATORO,
a/k/a "Mousey,"
MARIO OLIVA,
a/k/a "Zorro,"
ROBERTO CONTRERAS,
a/k/a "Demonio,"
JULIAN MOZ-AGUILAR,
a/k/a "Humilde," a/k/a "Demente," a/k/a "Tio Felito,"
HUGO PALENCIA,
a/k/a "Taliban,"
JOSE GARCIA,
a/k/a "Chucky," a/k/a "Diabolico," and
ESAU RAMIREZ,
a/k/a "Panda,"

together with others known and unknown, each being a person employed by and associated with MS-13, an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired and agreed with each other and others to violate Title 18, United States Code, Section 1962(c), that is to conduct and participate, directly and indirectly, in the conduct of the affairs of the MS-13 enterprise through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and (5), which pattern of racketeering activity consisted of multiple acts involving offenses chargeable under the following provisions of New Jersey law:

- a. Murder, in violation of N.J.S.A. 2C:11-3;
- b. Robbery, in violation of N.J.S.A. 2C:15-1;
- c. Extortion, in violation of N.J.S.A. 2C:20-5;

and multiple acts which are indictable under the following provision of Title 18, United States Code:

d. 18 U.S.C. § 1958(a) (murder-for-hire); and offenses involving the felonious manufacture, importation, receiving, concealing, buying, selling, and otherwise dealing in a controlled substance punishable under the laws of the United States, specifically:

- e. 21 U.S.C. § 846 (conspiracy to distribute and possess with intent to distribute controlled substances);
- f. 21 U.S.C. § 841 (distribution and possession with intent to distribute controlled substances);
- g. 21 U.S.C. §§ 952, 960, 963 (conspiracy to import controlled substances); and
- h. 21 U.S.C. § 843(b) (use of a communication facility).

18. It was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

Manner and Means of the Conspiracy

19. It was part of the manner and means of the conspiracy that the defendants, as members of MS-13, were required to attend and did attend regular meetings to discuss, among other

things: the structure and organization of the gang; past criminal acts committed against rival gang members and others; MS-13 members who were arrested or incarcerated; the disciplining of MS-13 members; enforcement of gang rules; police interactions with MS-13 members; the identities of individuals suspected of cooperating with law enforcement and proposed actions to be taken against them; and plans and agreements regarding the commission of future crimes, including murder, extortion, illegal possession of firearms, and assault, as well as ways to conceal these crimes.

20. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 purchased, maintained, and circulated a collection of firearms and machetes for use in criminal activity by MS-13 members.

21. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 committed and agreed to commit acts of violence, including murder, attempted murder, and assault with a deadly weapon, against rival gang members or others when it suited the enterprise's purposes. MS-13 also used violence to impose discipline within the gang, including against members of MS-13 who associated with members of rival gangs.

22. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 financed the enterprise through a variety of activities, including the sale of controlled substances, armed robberies, and the extortion of money -- or "rent" -- from other individuals.

23. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 distributed and agreed to distribute controlled substances, to use the telephone to facilitate drug distribution, to commit robberies and other crimes, and to conceal their criminal activities by obstructing justice, threatening and intimidating witnesses, and other means.

24. It was further part of the manner and means of the conspiracy that the defendants and other members and associates of MS-13 persuaded, induced, enticed, and coerced females -- many of whom were under the age of eighteen -- to engage in sexual activity for the gratification of MS-13 members and others. In certain cases, the sexual activity occurred without the consent of the minor females.

Overt Acts

25. In furtherance of the conspiracy and to achieve the objectives thereof, the defendants performed or caused to be

performed the following overt acts, among others, in the District of New Jersey and elsewhere:

a. On a date prior to November 2009, SANTOS REYES-VILLATORO ascended to the top leadership position in the PLS clique, a title known as the "First Word."

b. On a date prior to November 2009, MARIO OLIVA ascended the position of second-in-command in the PLS clique, a title known as the "Second Word."

c. At regular MS-13 meetings beginning no later than December 2008 and continuing through in or about November 2009, in Plainfield, New Jersey, and elsewhere in New Jersey, SANTOS REYES-VILLATORO instructed MS-13 members to collect "rent" from inactive members of the gang and to threaten violence against anyone who failed to make timely payments.

d. On or about December 5, 2008, in New Jersey, HUGO PALENCIA, Kelvin Mejia, and other members of MS-13 attacked Kevin Veliz and Carmelo Soto, who were junior members of the rival Latin Kings gang. During the altercation, HUGO PALENCIA fired a gun at the rival gang members.

e. On or about January 25, 2009, in New Jersey, SANTOS REYES-VILLATORO instructed another member of MS-13 to kill members of a rival gang.

f. On or about January 25, 2009, in Plainfield, New Jersey, at the direction of SANTOS REYES-VILLATORO, a member of

MS-13 fired multiple shots into a car occupied by individuals the shooter believed were members of the rival Latin Kings gang. David Moncada and Armando Ganhito were injured in the shooting.

g. On or about February 8, 2009, in Plainfield, New Jersey, SANTOS REYES-VILLATORO ordered another member of MS-13 to kill members of the rival Latin King gang.

h. On or about February 8, 2009, in Plainfield, New Jersey, at the direction of SANTOS REYES-VILLATORO, JULIAN MOZ-AGUILAR murdered Christian Tigsí.

i. On a date after February 8, 2009, JULIAN MOZ-AGUILAR obtained a tattoo depicting an MS-13 symbol in recognition of his role in the murder of Christian Tigsí.

j. On or about October 31, 2009, in Plainfield, New Jersey, Kelvin Mejia and Franklin Mejia confronted members of the rival 18th Street Gang and Kelvin Mejia brandished a firearm with the intent to intimidate members of the rival gang.

k. On or about October 31, 2009, shortly after the confrontation described in Overt Act j, SANTOS REYES-VILLATORO and Kelvin Mejia drove in SANTOS REYES-VILLATORO's car to a house in North Plainfield, New Jersey that they believed was occupied by 18th Street Gang members involved in the confrontation earlier that day.

l. On or about October 31, 2009, in North Plainfield, New Jersey, while SANTOS REYES-VILLATORO was driving

the vehicle described in Overt Act k, Kelvin Mejia opened a rear window to the car and fired several shots at the house they believed was occupied by members of the rival 18th Street gang, injuring Kelvin Bonilla and Alex Gonzalez.

m. On a date after October 31, 2009, but prior to February 27, 2010, MARIO OLIVA ascended to the position of "First Word" within the PLS clique.

n. On a date after October 31, 2009, but prior to February 27, 2010, ROBERTO CONTRERAS ascended to the position of "Second Word" within the PLS clique.

o. On a date after October 31, 2009, but prior to February 27, 2010, MARIO OLIVA, in his capacity as "First Word," instructed MS-13 members to collect "rent" from inactive members of the gang and to threaten violence against anyone who failed to make timely payments.

p. On a date after October 31, 2009, but prior to February 27, 2010, ROBERTO CONTRERAS drove two girls under the age of eighteen, Jessica Mendoza and Jennifer Cruz, to a private residence in Bound Brook, New Jersey, for the purpose of coercing the minors to engage in sexual intercourse.

q. After arriving at the private residence described in Overt Act p, MARIO OLIVA and ROBERTO CONTRERAS used their status as high-ranking members of MS-13 to coerce Jessica Mendoza and Jennifer Cruz into engaging in sexual activity,

further establishing the role and authority of MARIO OLIVA and ROBERTO CONTRERAS in the gang.

r. On a date prior to February 27, 2010, after consulting with other members of MS-13, MARIO OLIVA authorized the "greenlighting" -- or murder -- of Jessica Montoya, a female member of MS-13.

s. On or about February 27, 2010, MARIO OLIVA and at least one other MS-13 member drove Jessica Montoya to an industrial area in Piscataway, New Jersey.

t. On or about February 27, 2010, MARIO OLIVA and another member of MS-13 shot and killed Jessica Montoya.

u. On a date after February 27, 2010, ROBERTO CONTRERAS transported an MS-13 member involved in Jessica Montoya's murder from New Jersey to Maryland in order to help that individual evade arrest and prosecution for the murder.

v. On a date after the activity described in Overt Act u, ROBERTO CONTRERAS transported MARIO OLIVA from New Jersey to Maryland to assist MARIO OLIVA in evading arrest and prosecution for Jessica Montoya's murder.

w. On a date after February 27, 2010, but prior to the summer of 2010, ROBERTO CONTRERAS ascended to the position of "First Word" within PLS.

x. On a date after February 27, 2010, but prior to February 2011, ROBERTO CONTRERAS, in his capacity as "First

Word," authorized the "greenlighting" -- or murder -- of an MS-13 member suspected of cooperating with law enforcement in the investigation and prosecution of Jessica Montoya's murder.

y. On a date after February 27, 2010 and continuing until at least January 2011, ROBERTO CONTRERAS, in his capacity as "First Word," instructed MS-13 members to collect "rent" from inactive members of the gang and to threaten violence against anyone who failed to make timely payments.

z. On or about November 10, 2010, in Plainfield, New Jersey, HUGO PALENCIA threatened a member of a rival gang near Barack Obama Academy in Plainfield, New Jersey.

aa. On or about November 11, 2010, in Plainfield, New Jersey, HUGO PALENCIA handed a firearm to another member of MS-13 and instructed him to shoot and kill the rival gang member described in Overt Act z.

bb. On or about November 11, 2010, in Plainfield, New Jersey, at the direction of HUGO PALENCIA, the MS-13 member described in Overt Act aa fired a gun, resulting in the death of Spencer Cadogan.

cc. On a date after November 11, 2010, but before January 10, 2011, JOSE GARCIA and others agreed that members of MS-13 would offer their services in a murder-for-hire.

dd. In or about December 2010 and early January 2011, JOSE GARCIA contacted MS-13 members living in the Washington,

D.C. area to request that they travel to New Jersey in order to assist with the murder-for-hire described in Overt Act cc.

ee. On or about January 9, 2011, a member of MS-13 murdered Andres Chach, a member of the rival 18th Street Gang, in front of Pueblo Viejo, a bar in Plainfield, New Jersey that was popular with MS-13 members.

ff. On or about January 10, 2011, JOSE GARCIA arranged to host members of MS-13 living in the Washington, D.C. area in New Jersey while they assisted him with the murder-for-hire described in Overt Acts cc-dd.

gg. On or about May 7, 2011, in Plainfield, New Jersey, using the same firearm discharged in the murder of Andres Chach described in Overt Act ee, Ruben Portillo-Fuentes shot Carmelo Nieto in order to intimidate the victim and to further establish MS-13's control and dominion over its "turf" in the area.

hh. On or about May 8, 2011, JOSE GARCIA assaulted Jose Abarca as part of an ongoing feud between MS-13 members and members of Jose Abarca's family.

ii. On or about May 8, 2011, and after the assault described in Overt Act hh, Ruben Portillo-Fuentes sent an electronic message to a family member of Jose Abarca threatening him with bodily injury, in order to intimidate Jose Abarca and to increase respect for MS-13.

jj. In or about May 2011, the leadership of MS-13 assigned certain members of the gang, including Kelvin Mejia and Julio Adalberto Orellana-Carranza, to murder members of rival gangs. These assignments were known within the PLS clique as "missions."

kk. On or about May 8, 2011, while inside an apartment on West Front Street in Plainfield, New Jersey, two members of MS-13 -- Cruz Flores, a/k/a "Bruja," who is charged in Counts Seventeen and Eighteen of this Indictment, and Walter Yovany-Gomez, a/k/a "Cholo," -- murdered Julio Matute because they believed that Julio Matute was associating with members of the rival 18th Street Gang. In killing Julio Matute, Cruz Flores and Walter Yovany-Gomez completed a "mission" as required by the PLS clique.

ll. On a date after May 8, 2011, but before July 2, 2011, Kelvin Mejia arranged the transportation of Walter Yovany-Gomez from New Jersey to Maryland in order to help Walter Yovany-Gomez evade arrest and prosecution for Julio Matute's murder.

mm. On or about May 11, 2011, Ruben Portillo-Fuentes spoke by telephone to Jeremias Martinez, an inactive member of MS-13, and stated that Jeremias Martinez was expected to make regular "rent" payments to MS-13. During this and subsequent conversations, Ruben Portillo-Fuentes threatened to commit acts

of violence against Jeremias Martinez if he failed to make "rent" payments in a timely manner.

nn. On or about May 11, 2011, Ruben Portillo-Fuentes, JULIAN MOZ-AGUILAR, and ESAU RAMIREZ agreed to collect "rent" payments from Jeremias Martinez and to use threats of violence to ensure that Jeremias Martinez made the required payments.

oo. On or about June 4, 2011, in New Jersey, Franklin Mejia and other members of MS-13 attacked Manuel Enriquez with machetes because they believed that Manuel Enriquez was associating with members of the rival Latin Kings gang.

pp. On or about June 11, 2011, in Plainfield, New Jersey, Julio Adalberto Orellana-Carranza asked JOSE GARCIA for his help in acquiring a firearm. Julio Adalberto Orellana-Carranza stated to JOSE GARCIA that he needed the firearm to complete a "mission."

qq. On or about June 11, 2011, at the request of Julio Adalberto Orellana-Carranza, JOSE GARCIA telephoned Kelvin Mejia to ask to borrow a firearm.

rr. On or about June 11, 2011, Julio Adalberto Orellana-Carranza and at least one other person drove through Plainfield, New Jersey in search of the individual Julio Adalberto Orellana-Carranza was instructed to murder as part of the "mission" described in Overt Act pp.

ss. On or about June 15, 2011, in Plainfield, New Jersey, Ruben Portillo-Fuentes attempted to murder Esteban Chach, who Ruben Portillo-Fuentes believed to be a member of the rival 18th Street Gang, by attacking Esteban Chach with a machete.

tt. On or about June 15, 2011, in Plainfield, New Jersey, Kelvin Mejia, Franklin Mejia, and another MS-13 member robbed two individuals, John Gatimu and Alyssa Irizzary, at gunpoint in Green Brook Park in Plainfield, New Jersey.

uu. On or about June 24, 2011, in Plainfield, New Jersey, Julio Adalberto Orellana-Carranza, ESAU RAMIREZ, and Franklin Mejia plotted to commit an armed robbery of Emertia Garcia, a woman who operated an underground liquor store in Plainfield.

vv. On or about June 28, 2011, Kelvin Mejia and Franklin Mejia threatened to kill an individual they believed was cooperating with law enforcement in the investigation and prosecution of the attempted murder described in Overt Act ss.

ww. On or about June 30, 2011, Kelvin Mejia spoke by telephone with an individual in Guatemala. During the conversation, Kelvin Mejia and the individual discussed the importation and distribution of cocaine.

xx. On or about July 1, 2011, Kelvin Mejia and Franklin Mejia spoke by telephone to discuss the price at which they would sell an amount of cocaine to another individual.

yy. On or about July 2, 2011, in Plainfield, New Jersey, Franklin Mejia plotted with other members of MS-13 to locate Manuel Enriquez, who had survived the June 4, 2011 attack described in Overt Act oo, with the intent that they kill Manuel Enriquez.

zz. On or about July 2, 2011, in Plainfield, New Jersey, while attempting to locate Manuel Enriquez, Franklin Mejia confronted one of Manuel Enriquez's associates, an MS-13 member named Manuel Hernandez, a/k/a "Vago.". During this confrontation, Franklin Mejia indicated to "Vago" that he intended to kill Manuel Enriquez, prompting "Vago" to punch Franklin Mejia in the face.

aaa. On or about July 2, 2011, after the confrontation described in Overt Act zz, Franklin Mejia returned to a residence in Plainfield, New Jersey and stated to other MS-13 members, including Kelvin Mejia, that he intended to kill "Vago."

bbb. On or about July 2, 2011, as part of an effort to help Franklin Mejia kill "Vago," Kelvin Mejia telephoned another MS-13 member to determine the whereabouts of a firearm stored at a residence in Plainfield, New Jersey.

ccc. On or about July 4, 2011, JOSE GARCIA and Kelvin Mejia plotted to rob Emertia Garcia to raise bail money for MS-13 members detained at the Union County Jail.

ddd. In or about July 2011, while detained at the Union County Jail, in Elizabeth, New Jersey, Franklin Mejia and ESAU RAMIREZ plotted with other MS-13 members to retaliate against a certain detective of the Plainfield Police Department ("Detective #1") that they considered responsible for their arrest and detention. Among other things, Franklin Mejia and ESAU RAMIREZ discussed firebombing a residence belonging to the mother of Detective #1.

eee. In or about July 2011 and continuing through at least August 2011, while detained at the Union County Jail, in Elizabeth, New Jersey, Kelvin Mejia, Franklin Mejia, JOSE GARCIA, ESAU RAMIREZ, and Julio Adalberto Orellana-Carranza plotted to intimidate and/or kill individuals they believed were cooperating with law enforcement in the prosecution of MS-13 members.

fff. On or about August 1, 2011, in Elizabeth, New Jersey, ESAU RAMIREZ used a telephone located at the Union County Jail to call Jose Romero-Aguirre, a/k/a "Conejo," a/k/a "Justin Locote," a member of MS-13 who, at the time of ESAU RAMIREZ's telephone call, was not detained in jail. During the call, ESAU RAMIREZ and Jose Romero-Aguirre plotted to kill

certain individuals, including Jeremias Martinez, "Vago," and "Chucho," that ESAU RAMIREZ believed were cooperating with law enforcement.

ggg. On or about August 2, 2011, in Elizabeth, New Jersey, ESAU RAMIREZ used a telephone located at the Union County Jail to call Jose Romero-Aguirre, who was not then detained in jail. During the call, ESAU RAMIREZ instructed Jose Romero-Aguirre to meet with other MS-13 members not then detained in jail so that they could put into effect the witness-murder plot discussed in Overt Act fff.

hhh. On or about August 2, 2011, in Elizabeth, New Jersey, during the phone conversation described in Overt Act ggg, Jose Romero-Aguirre stated that he would meet with other members to plan the murder of witnesses as described in Overt Act fff.

All in violation of Title 18, United States Code, Section 1962 (d).

COUNT TWO
(Murder in Aid of Racketeering)

1. The allegations contained in Paragraphs 1 through 16 and 19 through 25 of Count One of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. At all times relevant to this Indictment, La Mara Salvatrucha ("MS-13") constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that was engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

3. At all times relevant to this Indictment, MS-13, the above-described enterprise, through its members and associates, engaged in racketeering activity, as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), consisting of multiple acts involving offenses chargeable under the following provisions of New Jersey law:

- a. Murder, in violation of N.J.S.A. 2C:11-3;
- b. Robbery, in violation of N.J.S.A. 2C:15-1;
- c. Extortion, in violation of N.J.S.A. 2C:20-5;

and multiple acts which are indictable under the following provision of Title 18, United States Code:

d. 18 U.S.C. § 1958(a) (murder-for-hire);
and offenses involving the felonious manufacture, importation,
receiving, concealing, buying, selling, and otherwise dealing in
a controlled substance punishable under the laws of the United
States, specifically:

- e. 21 U.S.C. § 846 (conspiracy to distribute and
possess with intent to distribute controlled
substances);
- f. 21 U.S.C. § 841 (distribution and possession with
intent to distribute controlled substances); and
- g. 21 U.S.C. §§ 952, 960, 963 (conspiracy to import
controlled substances); and
- h. 21 U.S.C. § 843(b) (use of a communication
facility).

4. On or about February 8, 2009, in Union County, in the
District of New Jersey and elsewhere, the defendants,

SANTOS REYES-VILLATORO,
a/k/a "Mousey," and
JULIAN MOZ-AGUILAR,
a/k/a "Humilde," a/k/a "Demente," a/k/a "Tio Felito,"

for the purpose of maintaining and increasing position in MS-13,
an enterprise engaged in racketeering activity, did knowingly
and purposely murder Christian Tigsi, contrary to N.J.S.A.

2C:11-3(a)(1), 2C:11-3(a)(2), and 2C:2-6.

In violation of Title 18, United States Code, Section
1959(a)(1) and Section 2.

COUNT THREE

(Using and Carrying a Firearm During a Crime of Violence)

On or about February 8, 2009, in Union County, in the District of New Jersey, and elsewhere, the defendants,

SANTOS REYES-VILLATORO,
a/k/a "Mousey," and
JULIAN MOZ-AGUILAR,
a/k/a "Humilde," a/k/a "Demente," a/k/a "Tio Felito,"

during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, namely, the Violent Crime in Aid of Racketeering alleged in Count Two of this Indictment, did knowingly use and carry a firearm, which was discharged.

In violation of Title 18, United States Code, Section 924(c)(1)(A)(iii) and Section 2.

COUNT FOUR

(Causing Death Through Use of a Firearm)

On or about February 8, 2009, in Union County, in the District of New Jersey, and elsewhere, the defendants,

SANTOS REYES-VILLATORO,
a/k/a "Mousey," and
JULIAN MOZ-AGUILAR,
a/k/a "Humilde," a/k/a "Demente," a/k/a "Tio Felito,"

in the course of a violation of Title 18, United States Code, Section 924(c), as alleged in Count Three of this Indictment, did knowingly and purposely cause the murder of Christian Tigsí through the use of a firearm.

In violation of Title 18, United States Code, Section 924(j) and Section 2.